Federal Court  Cour fédérale

Date: 20230404

Docket: IMM-5987-21

Citation: 2023 FC 474

Ottawa, Ontario, April 4, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

BAOCHENG LIU
GUOLING ZHANG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision dated August 18, 2021, by a Senior Immigration Officer (the "Officer") with Immigration, Refugees and Citizenship Canada ("IRCC"). The Officer refused the Applicants' application for permanent residence on

humanitarian and compassionate ("H&C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] Upon considering the relevant factors and the several letters of support proffered in support of their application, the Officer found that the Applicants provided insufficient evidence to warrant an exemption on H&C grounds.

[3] The Applicants submit that the Officer applied the incorrect test for granting an H&C exemption under section 25 of *IRPA* and failed to meaningfully consider the totality of the Applicants' evidence, rendering the decision unreasonable.

[4] For the reasons that follow, I find the Officer's decision is unreasonable. This application for judicial review is therefore granted.

II. Facts

A. *The Applicants*

[5] The Applicants, Baocheng Liu (Mr. "Liu") and his spouse, Guoling Zhang (Ms. "Zhang"), are citizens of China. They currently reside in Canada with their daughter ("Kun"), their daughter's husband ("Ruiqi"), and their grandson ("Frederick"), who are Canadian citizens.

[6] The Applicants first entered Canada in April 2011 on a temporary resident visa ("TRV"), and remained here until October 2011. They visited Canada for a second time in March 2018, staying until August 2018.

[7] The Applicants most recently entered Canada on March 21, 2019, on a TRV that was valid until December 2, 2020. The Applicants submitted an application for extension of their status on August 21, 2019, in order to spend more time with their family in Canada. The Applicants' counsel claims that IRCC returned the extension application on November 4, 2019, and only communicated its refusal on February 27, 2020, after the Applicants' status had expired. At that point, the COVID-19 pandemic was spreading and the Applicants feared returning to China. The Applicants then submitted an application for restoration of their status in March 2020, which was refused on August 12, 2020.

[8] On October 27, 2020, the Applicants submitted an application for a Temporary Resident Permit ("TRP"), which included a letter from the Applicants' counsel and supporting documentation. The letter stated that the Applicants found themselves in Canada without status and potentially inadmissible without having committed any wilful or serious breach of *IRPA*, and that any such breach was clearly inadvertent and accidental. As of the date of this judicial review hearing, a decision on the TRP application has not yet been rendered.

[9] The Applicants' application for permanent residence on H&C grounds was received on April 26, 2021. The application included submissions by the Applicants' counsel on the factors of the potential separation of the family unit, the best interests of the child ("BIOC"), and

potential hardship the Applicants would face upon return to China, specifically pointing to evidence of elder abuse in China. The application also included supporting documentation, such as affidavits and financial records from both Kun and Ruiqi, documentation regarding their business, and several letters of support from the Applicants' family friends.

B. *Decision Under Review*

[10] In a decision dated August 18, 2021, the Officer refused the Applicants' permanent residence application on H&C grounds.

[11] The Officer considered the Applicants' establishment in Canada. The Officer noted that the Applicants are residing with Kun, Ruiqi, and Frederick in their home in Markham, Ontario, and have done so during each of their visits to Canada. The Officer therefore granted some weight to the Applicants' residency as a component of establishment. The Officer noted that Kun's affidavit, included as part of the application, stated that she wants to be able to pay the Applicants back for everything they have done for her.

[12] The Officer then summarized the evidence relating to Kun and Ruiqi's financial status. This evidence included bank statements, several of their Notices of Assessment, the Ontario business license for Ruiqi's business, and copies of the company's tax returns. The Officer found that this evidence warranted some weight to be granted to Kun and Ruiqi's ability to financially support the Applicants if they were to remain in Canada.

[13] Considering the Applicants' family ties, the Officer noted that Ms. Zhang lost her previous husband to cancer when Kun was 10 years old. Ms. Zhang married Mr. Liu four years later and the two did not have other children, so that they could afford to provide Kun with a quality life and education. The Officer acknowledged the photographs of the family included as part of the Applicants' application. The Officer found that the Applicants' familial connections should be granted significant weight as a component of their establishment in Canada.

[14] The Officer summarized the affidavits proffered by Kun, Ruiqi, and Frederick. Kun's affidavit explained that she and Ruiqi both work in the family business, that Mr. Liu always treated her like his own daughter and prioritized her education, that her parents helped raise her son while she worked, and that they provided consistent support to their family on their visits to Canada. Kun expressed concern about her parents traveling back to China at their age as they do not have any other children to take care of them in China, and she does not trust that a hired maid or retirement home could provide them with the adequate level of care, particularly considering the prominence of elder abuse in China. Frederick's affidavit explained that his grandparents cared for him and it would be difficult for them to travel during the COVID-19 pandemic. Ruiqi's affidavit explained that his in-laws have always supported him, cared for Frederick and Kun when he could not provide for them, and that he wishes to support them in their old age.

[15] The Officer acknowledged the several additional letters of support, noting that these letters reiterate that the Applicants are caring and hospitable people who are eager to be involved in their community. The Officer ultimately granted moderate weight to the letters of support in terms of the Applicants' establishment in Canada.

[16] The Officer granted no weight to the BIOC in the Applicants' case, noting that the Applicants' grandson is now an 18-year-old university student and able to look after himself.

[17] The Officer considered the factor of health or medical care for the aging Applicants, noting that their application included several articles speaking to the elderly care system in China. These articles discuss China's aging population, the lack of an adequate elderly care system for the large demand, the lack of available resources and need for international aid, despite recent developments, the "depressing atmosphere" of nursing homes, and the prevalence of elder abuse in China. The Applicants' counsel's letter provided in support of their application stated that the Applicants would face such conditions in China as an elderly couple, isolated from their family. The Officer found no indication that the Applicants would require in-home care or a retirement home upon return to China, as they seem healthy, and therefore granted little weight to this consideration.

[18] The Officer ultimately found that the Applicants' circumstances do not warrant granting permanent residence on H&C grounds. The Officer noted that the parental sponsorship program, the super visa program, or a potentially positive outcome in their pending TRP application are all viable alternatives for their return to Canada.

III. Issue and Standard of Review

[19] The sole issue is whether the Officer's decision is reasonable.

[20] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[21] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[22] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[23] The Applicants submit that the Officer failed to engage in a global assessment of the relevant H&C factors, as outlined by the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*"). While *Kanthasamy* instructs that an H&C assessment should involve a global and cumulative assessment of the relevant factors, the Applicants submit that the Officer erroneously considered each factor in isolation. The Applicants note that the Supreme Court in *Kanthasamy* emphasized a compassionate and empathetic approach to assessing H&C applications, as previously stated by this Court in *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 at paragraph 34. The Applicants submit that the Officer's assessment of the Applicants' circumstances lacks this approach, rendering the decision unreasonable. The Applicants further note that the Officer's statement that the decision involved a "global assessment of the all factors raised" is insufficient to make it so.

[24] The Applicants submit that the underlying decision is analogous to the one found unreasonable by my colleague Justice Campbell in *Paul v Canada (Citizenship and Immigration)*, 2013 FC 1081 ("*Paul*"), which also involved an elderly couple seeking permanent residence on H&C grounds. In *Paul*, this Court agreed with the Applicants' submission that the Officer "ignored the reality of their lives" in concluding that they "have each other," when the crux of their H&C application was the ongoing support and proximity of their family in Canada (paras 2, 4). Here, the Applicants submit that the Officer similarly misapprehended the core of their application by concluding that they could seek alternative means to return to Canada.

[25] The Applicants submit that the Officer's reasons surrounding the evidence of elder abuse in China, particularly the conclusion that the Applicants do not show any indication of requiring elderly care, exhibit a lack of empathy that is required of an H&C assessment and a commitment to find reasons to refuse the application.

[26] The Applicants further submit that the Officer's reasons amount to a recitation of the application and evidence, rather than an independent analysis of the evidence to arrive at the conclusion. The Officer summarized the evidence and stated the degree of weight to be given to certain factors, rather than explain the connection between the evidence and the finding. The Applicants submit that this lack of justification renders the decision unreasonable.

[27] The Respondent maintains that the Officer's decision is reasonable and the Applicants have failed to point to a reviewable error to warrant this Court's intervention. The Respondent notes that an H&C exemption under section 25 of *IRPA* is an exceptional measure that is not intended to be an alternative immigration stream, is not intended to compensate for differences in the standard of living between Canada and other countries, and hardship alone will not generally be sufficient to warrant an H&C exemption. The Respondent submits that the Officer adhered to these principles in assessing the underlying H&C application.

[28] The Respondent further submits that the Applicants request this Court to simply reweigh the evidence that was before the decision-maker, which is not its role on reasonableness review. The Respondent submits that the decision in *Paul* is distinguishable from the Applicants' case

because in this case, the Officer explicitly states that the Applicants' familial relationships are granted significant weight as a component of establishment.

[29] The Respondent submits that the Applicants' submission that the Officer's reasons lack the requisite degree of empathy and compassion is unintelligible. The Respondent notes that the Officer's reasons exhibit an understanding of the Applicants' facts and circumstances, and the Applicants do not point to a specific element of the Officer's reasons that signal a lack of empathy or a fundamental misunderstanding of the application. The Respondent submits that it is open to the Officer to propose alternative methods to visit Canada.

[30] The Respondent submits that the Officer's reasons exhibit a sufficient analysis of the application and clearly indicate which elements of the Applicants' evidence is granted weight in the assessment. The Respondent submits that the Applicants' disagreement with the weight granted to certain elements of their application amounts to a request for this Court to reweigh the evidence, which is not the purpose of judicial review. The Respondent submits that the Officer reasonably granted little weight to the health and medical considerations in the Applicants' case, given that one of the letters of support stated that the Applicants are currently quite healthy. The Respondent submits that ultimately, the Officer's decision aligns with the evidence and displays all the hallmarks of a reasonable decision.

[31] In my view, the Officer's decision lacks the requisite degree of justification, intelligibility and transparency, and is therefore unreasonable (*Vavilov* at para 100). A bulk of the Officer's reasons are simply a regurgitation of the Applicants' evidence, followed by a brief conclusion on

the weight to be given to the evidence in the overall assessment. For instance, when considering familial ties and the letters of support proffered in support of the application, the Officer provides a lengthy summary of Kun, Ruiqi and Frederick's affidavits. These paragraphs are followed by a single sentence concluding that the Officer grants these "moderate weight as a component of establishment."

[32] A reasonable decision contains rational and logical reasoning, and a reviewing court "must be able to trace the decision-maker's reasoning" through a "line of analysis" connecting the evidentiary record and legal constraints to the ultimate decision (*Vavilov* at para 102). The Officer's reasons in this case fail to establish a rational line of analysis and, rather, simply reiterate the evidence before providing a brief and unexplained conclusion, without the required justification or transparency. The reasoning amounts to little more than a robotic assessment of a checklist of factors (*Salde v Canada (Citizenship and Immigration)*, 2019 FC 386 at para 23).

[33] The Officer's decision also fails to accord with the required approach for an H&C assessment, as per the Supreme Court in *Kanthasamy*. The Officer's reasons appear to consider each factor in isolation, resulting in a failure to assess the Applicants' circumstances as a whole. In response to the Respondent's submission that an officer's assessment of an H&C application is highly discretionary, and there may be a wide range of reasonable outcomes, I agree with the Applicants' contention that this discretion does not absolve officers from following the required approach enumerated in *Kanthasamy*, which states that "hardship is determined as a result of a global assessment of [humanitarian and compassionate] considerations" (at para 28). In this case, the Officer erroneously determined that the Applicants would not face the alleged hardship

as an elderly couple in China because "there is no indication that the applicants would require in-home care or have to live in a retirement home."

[34] This reasoning suggests a narrow and singular view of the Applicants' alleged hardship, without an attentiveness to their global and cumulative circumstances, and with an unreasonable preoccupation with the "exceptional" nature of H&C relief. It fails to account for the fact that the Applicants do not have any living family to support them in China; they have provided indispensable support to their daughter and her family in Canada for a great part of their lives; they have established a community in Canada, and; their old age makes them vulnerable to health issues and abuse in China, particularly if isolated from their family. A failure to consider the Applicants' situation in its entirety when considering the central factor of hardship in the H&C assessment fails to accord with the global approach required by *Kanthasamy* and, as the Applicants submit, fails to exhibit the compassionate approach that is at the forefront of H&C relief (*Kanthasamy* at para 25; *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at para 21). In my view, this error is sufficient to render the decision as a whole unreasonable.

V. Conclusion

[35] This application for judicial review is granted. The Officer failed to establish a line of analysis connecting the evidence to the conclusion, and did not conduct a proper and global assessment of the H&C factors as required. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-5987-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a different officer.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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