Federal Court  Cour fédérale

Date: 20230915

Docket: IMM-1969-22

Citation: 2023 FC 1247

Ottawa, Ontario, September 15, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

QINYAO YU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Qinyao Yu, seeks judicial review of a decision of a Senior Immigration Officer (the "Officer") of Immigration, Refugees and Citizenship Canada dated February 28, 2022, denying the Applicant's application for permanent residence on humanitarian and compassionate ("H&C") grounds, under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Officer assessed the Applicant's establishment in Canada, the hardship she would face upon return to her country of origin, and the best interests of the child ("BIOC") in relation to the Applicant's daughter, April. The Officer was not satisfied that an H&C exemption was warranted in this case.

[3] The Applicant submits the decision is unreasonable as the Officer failed to reasonably assess April's best interests, the evidence of establishment, and the potential hardship.

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

II. Facts

A. *The Applicant*

[5] The Applicant, Qinyao (Eugenia) Yu, is a 36-year-old citizen of China. She is a single mother to her Canadian-born daughter, April Qianhe Ma, who is nine years old. The Applicant's parents live in China.

[6] The Applicant first entered Canada on May 10, 2012, as an international student. She initially held study permits, followed by work permits. The Applicant submitted an application for permanent residence on October 18, 2019.

[7] The Applicant met her ex-husband in June 2012, and they married in April 2013. Their daughter, April, was born on April 23, 2014. The Applicant describes the relationship as abusive. On August 30, 2014, the Applicant submits that her ex-husband physically assaulted her. When police were called, she submits that he lied about what happened, leading the police to charge her with assault against her ex-husband. This occurred again in April 2016, and the Applicant was charged with assault with a weapon. Both of these charges were subsequently withdrawn. The Applicant gained sole legal custody of April on July 24, 2017. The Applicant and her ex-husband were divorced on October 12, 2018.

[8] While visiting China in 2019, the Applicant submits that she realized her Temporary Resident Visa ("TRV") had expired. She states that she rushed to submit a new application so that she could return to Canada, and inadvertently failed to disclose the withdrawn charges against her stemming from the incidents with her ex-husband. Due to her failure to disclose the prior charges, the Applicant was sent a procedural fairness letter. Her former counsel responded, and requested a Temporary Resident Permit ("TRP") in the alternative to the issuance of a TRV. The Applicant was issued a TRP, with which she returned to Canada in December 2019.

[9] The Applicant's TRV application was refused and she was found inadmissible pursuant to paragraph 40(2)(a) of *IRPA*. As such, she did not pursue her permanent residence application. The Applicant's challenge to the inadmissibility finding is ongoing before this Court. The Applicant subsequently received an extension on her TRP and work permit. The Applicant's TRP was issued under the Victims of Family Violence program.

[10] The Applicant submitted her application for permanent residence on H&C grounds in December 2020.

B. *Decision under Review*

[11] The Officer found that the Applicant provided insufficient evidence to warrant H&C relief.

[12] In considering the Applicant's establishment in Canada, the Officer found the Applicant did not demonstrate that her level of establishment in Canada is to such a degree that she will experience "any difficulties" in having to apply for permanent residence from abroad.

[13] The Officer noted that the Applicant has been living in Canada since 2012, attends a church in her community, speaks English, owns property, has savings in Canada, has earned a diploma and certificate in Canada, has friends in Canada, and many of her extended family members are, or will be in Canada. The Applicant has worked for many years in Canada with valid work permits. She opened her own business in March 2017, is working on becoming a licensed real estate agent, and recently started a new job as an interior designer. She created a community group while studying in Canada and she participates in established groups. The Officer found the Applicant's relationships in Canada are not characterized by interdependency and reliance such that removal would cause hardship. The Officer did not grant significant weight to the Applicant's length of time in Canada. The Officer was satisfied the Applicant would face minor difficulties in readapting in China.

[14] The Officer was not persuaded the Applicant faces a serious possibility of hardship in China. The Officer noted counsel's submissions pertaining to the Applicant's contentious history with her ex-husband and his family. However, the Officer highlighted that the Applicant is now divorced, she does not know where her ex-husband lives, and neither she nor April have any communication with him. The Applicant has full custody of April.

[15] The Officer found the Applicant to be a "resourceful person" and the difficulties arising from starting again in China to be minimal. The Officer found counsel's submissions that the Applicant would have difficulty finding employment to be speculative. The Officer found the Applicant did not corroborate her allegations that she would suffer discrimination and harassment because of her gender or Catholic faith.

[16] In considering the BIOC, the Officer found that the evidence does not demonstrate that removal would jeopardize April's best interests. The Officer was not satisfied there would be significant impacts on April's best interests if she returns to China with her mother.

[17] The Officer noted counsel's submissions pertaining to the difficulty April would face accessing healthcare or education in China, as she is not a Chinese citizen. The Officer noted this might pose a challenge, and that the Applicant may have to pay higher educational fees. However, the Officer found insufficient evidence about those fees and her ability to pay them.

[18] The Officer found insufficient evidence that April could not access healthcare services or that April has any health concerns. The Officer found sufficient documentary evidence to

indicate that the Applicant would be able to access healthcare services for April. The Officer stated that children are resilient and adaptable, and there was insufficient evidence that April would not be able to adapt to life in China.

[19] The Officer concluded that an H&C exemption is not warranted in this case.

III. Issue and Standard of Review

[20] This application raises the sole issue of whether the Officer's decision is reasonable.

[21] The parties agree 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. This is consistent with the Supreme Court of Canada's decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44.

[22] 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).

[23] 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

[24] The Applicant submits the Officer's decision lacks intelligibility as the Officer repeatedly concludes that the Applicant adduced "insufficient objective evidence," but fails to explain why the evidence that was adduced is insufficient. The Applicant cites *Shekari v Canada (Citizenship and Immigration)*, 2022 FC 70, where this Court held that a repeated rejection of submissions on the basis of insufficient evidence, without saying more, rendered the decision unjustified and unintelligible. The Applicant also cites *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14, where this Court commented that in reviewing findings about the sufficiency of evidence, it is useful to ask what other evidence could reasonably have been provided.

[25] The Applicant asserts that the Officer's analysis of April's best interests is riddled with errors, rendering the decision unreasonable. The Applicant argues that the Officer failed to grapple with the submissions on April's citizenship, and that the Officer unreasonably focused on the lack of evidence regarding steps taken towards securing permanent residency, without ever grappling with the Applicant's submissions on the potential loss of April's Canadian

citizenship. Second, the Applicant submits that the Officer erred in assessing the Applicant's ability to access healthcare for April in China. Third, the Applicant submits the Officer erred by relying on the general resilience and adaptability of children. The Applicant relies on *Obeid v Canada (Citizenship and Immigration)*, 2022 FC 88 at paragraph 9, where this Court held that the officer's statement that children are "resilient and adaptable," without supporting evidence for that statement, is unintelligible and based on generalized assumptions. Fourth, the Applicant submits that the Officer failed to adequately identify April's best interests.

[26] The Applicant submits that the Officer erred in assessing the Applicant's establishment, despite her evidence regarding her financial, professional, and educational establishment, and her evidence of community involvement. The Applicant also argues that the Officer unreasonably found the Applicant did not adduce sufficient evidence that she could not maintain her relationships in Canada from China.

[27] The Applicant submits the Officer erred in finding there was insufficient evidence about the hardship she would face in China. She submits that she provided "significant" objective evidence that she would face discrimination in the job market as a woman and a single mother, and that she would be unable to practice her Catholicism freely due to China's religious intolerance.

[28] Lastly, the Applicant submits the Officer erred by failing to conduct a global assessment of all factors in this case to determine whether collectively they warrant an H&C exemption.

[29] The Respondent's submissions do not respond to all of the issues raised by the Applicant in her submissions. The Respondent submits that the Officer's findings regarding the insufficiency of evidence are to be afforded deference and that it is open to the Officer to find that the Applicant's evidence is insufficient to warrant an H&C exemption in the circumstances.

[30] The Respondent submits that the Officer's finding that there was insufficient evidence regarding the Applicant's financial ability to pay for April's education and health care in China is reasonable. The Respondent points to the Applicant's financial information to demonstrate that she is financially well established in Canada, with significant resources.

[31] The Respondent submits that the Officer reasonably concluded that the Applicant's establishment in Canada was not to such a level such that it warranted an H&C exemption. The Respondent argues the Officer has expertise in this regard, and should be afforded deference, citing *Villanueva v Canada (Citizenship and Immigration)*, 2014 FC 585 at paragraph 11.

[32] The Respondent submits that the Officer reasonably turned their mind to the perceived threat from the family of the Applicant's ex-husband in China. The Respondent makes no submissions on the reasonableness of the Officer's treatment of the adverse country conditions.

[33] While I agree with the Applicant that the Officer's analysis of the BIOC factor contains shortcomings, I do not find this sufficient to render the decision unreasonable as a whole. Reviewed holistically, the Officer's refusal is primarily founded on the insufficiency of evidence provided by the Applicant, which I find falls squarely within the range of reasonable outcomes

for this decision, in light of the facts and jurisprudence (*Vavilov* at para 86). In weighing the evidence before them, it is open to the Officer to find that the Applicant's evidence is insufficient to support her claims or warrant H&C relief. I agree with the Respondent that as per *Vavilov*, it is not this Court's role to reweigh or reassess the evidence on reasonableness review, and that a bulk of the Applicant's submission seek that this Court do just that (*Vavilov* at para 125). As a whole, the Officer's decision is adequately justified, transparent, and intelligible, and does not warrant this Court's intervention (*Vavilov* at para 99).

[34] On establishment, the Officer reasonably found that the Applicant did not put forth sufficient evidence that she would be unable to maintain her relationships in Canada from China. The letters of support from the Applicant's friends do not speak to the ability of the Applicant and the authors to maintain their friendships remotely. While the Officer's finding focuses more on what the letters do not say, as opposed to what they do say, the Officer's reading of the letters was reasonable, given the lack of discussion in the letters referencing the implications of the Applicant's removal to China on the relationships.

[35] On hardship, the Officer reasonably found the Applicant did not put forth sufficient evidence that she would be affected by adverse country conditions as a woman, a single mother, and a Catholic. To support her hardship claim based on gender discrimination, the Applicant referenced a Human Rights Watch report, a New York Times article, and a China Daily article speaking to gender discrimination in China, which were footnoted in her submissions to the Officer. She quoted briefly from one article, but beyond this, she did not use the evidence to

discuss how gender discrimination would affect her specifically, such as referencing factors like her age, motherhood, or field.

[36] To support her hardship claim based on religious discrimination, the Applicant asserted she would face discrimination, but did not support this assertion with any citations. On judicial review, she references a Freedom House report, Amnesty International report, and Human Rights Watch report, which were footnoted in her submissions to the Officer to support the statement that "China's human rights record is concerning." The Applicant did not pinpoint any passages or statements to tie that evidence to her circumstances. The Officer's hardship analysis is therefore reasonable.

[37] In the Applicant's submissions to the Officer, she simply asserted that as a Catholic, she would be unable to practice her religion in China due to the government's lack of religious tolerance. Given that the evidence provided on this point is general and the Applicant failed to provide evidence elucidating the connection between her own personal circumstances and this evidence, the Officer's determination that her submissions on this issue were insufficiently corroborated is reasonable.

[38] The Officer acknowledged the Applicant's submissions pertaining to her fear of her ex-husband's family, but also noted that the Applicant's divorce has been finalized, she does not know where her ex-husband lives, and she does not communicate with her ex-husband. The Officer also noted that the Applicant now has full custody of April, and her ex-husband is not in contact with April. When read holistically, the Officer's finding pertaining to the hardship the

Applicant may face from her ex-husband's family is not unreasonable. It is justified by the Officer's findings about the Applicant's lack of knowledge about her ex-husband's whereabouts, the lack of communication with her ex-husband, and the current custody arrangement.

[39] Lastly, contrary to the Applicant's submission that the Officer erred by failing to globally assess all the factors, I note that the Officer concludes their analysis by stating the following:

> Based on a cumulative assessment of the evidence submitted, I have considered the applicant's personal circumstances, her establishment, employment, hardship and best interests of the Child. After conducting a global assessment of all the relevant factors put forth by the applicant, it is determined that her cited factors do not support that relief from the requirement to apply for permanent residence from abroad is justified in this case.

[40] The contention that the Officer failed to conduct a global assessment is unsupported.

V. Conclusion

[41] The application for judicial review is dismissed. The Officer's decision is reasonable in light of the Applicant's evidence and circumstances. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-1969-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Lorne Waldman	FOR THE APPLICANT
John Loncar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT