Federal Court Cour fédérale

Date: 20231011

Docket: IMM-7245-21

Citation: 2023 FC 1344

Ottawa, Ontario, October 11, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

MUYASSER FATHI ELKUJA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Muyasser Fathi Elkuja, seeks judicial review of the refusal of his application for permanent residence on humanitarian and compassionate (H&C) grounds.

[2] For the reasons that follow, this application will be dismissed.

I. Background

[3] The Applicant is a citizen of Libya who came to Canada as a visitor with his then-wife, a Canadian citizen, and their son. They decided to stay in Canada to provide a better life for their son given the ongoing situation in Libya. The Applicant applied for permanent residence, sponsored by his wife, and the couple had a second child. He also obtained a work permit, valid until October 2020.

[4] The spousal sponsorship application was withdrawn after the Applicant separated from his wife in March 2019. In October 2020, the Applicant applied for permanent residence from within Canada on humanitarian and compassionate grounds (H&C), based on the best interests of his two children, his establishment in Canada and the hardship he would face on returning to Libya because of the conditions in that country.

II. The Decision under Judicial Review

[5] The Officer refused the H&C application. The Officer found that the Applicant's evidence did not demonstrate a significant establishment in Canada, noting that although the Applicant said he had worked for several companies and had been able to support himself and his family, he did not provide any pay stubs or other objective evidence such as income tax records to corroborate this. Considering the lack of any evidence of the Applicant's involvement in the wider society or any other efforts to integrate, the Officer accepted that the Applicant's three and one-half year residence in Canada would have resulted in a certain degree of establishment, but overall gave this minimal weight.

[6] On the best interests of the children, the Officer noted that the Applicant had been living apart from them since March 2019. The Officer accepted that the Applicant was involved in his children's lives when they were younger, but also noted that there was no evidence showing any interaction with them more recently. The Officer also commented on the evidence arising from the separation and divorce, which appeared to show that the Applicant was in arrears in his child support obligations. Overall, the Officer found there was insufficient evidence about the nature of the Applicant's relationship and involvement with his children, or whether he provided an ongoing, significant presence in their lives. The Officer found that the children would be staying in Canada and would continue to have the care and support of their mother, and that it was not clear that they had any ongoing dependency on the Applicant. Based on the lack of evidence that the Applicant had a current and active presence in the children's lives, the Officer found that the best interests of the children was insufficient to warrant H&C relief.

[7] In regard to the claim of hardship because of adverse conditions in Libya, the Officer noted that the Applicant had not provided any country condition evidence about specific hardships he would face. The Officer acknowledged the Applicant's claim that he would find it difficult to obtain a visa from Libya in order to be able to return to see his children because of the absence of an airport in Tripoli, and the fact that Canada had closed its embassy in Libya and the nearest one was in Tunisia. The Officer also noted that there was an Administrative Deferral of Removals (ADR) in relation to Libya, so the Applicant would not be sent back until the ADR was lifted. The Officer noted that the Applicant had managed to obtain a visa to come to Canada from the Canadian embassy in Tunis, and that he had previously been employed in Libya. The Applicant also indicated that before coming to Canada he and his family had enjoyed a great quality of life in Libya. Based on all of these considerations, the Officer gave this factor some

weight. However, balanced against the other factors the Officer found that the hardships the Applicant would face upon a return to Libya did not justify granting H&C relief.

[8] The Officer also noted that the Applicant's work permit had expired, and it did not appear that he had applied for a restoration of his temporary resident status. The Officer concluded that the Applicant had remained in Canada without authorization.

[9] In light of all of these considerations, the Officer denied the application for H&C relief. The Applicant seeks judicial review of the Officer's decision.

III. Issues and Standard of Review

[10] The only issue that arises in this matter is whether the Officer's decision is reasonable, assessed using the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

IV. Analysis

[11] The Applicant submits that the decision should be overturned because the Officer made key factual mistakes about his status in Canada, did not adequately assess the impact of his departure on the best interests of his two children, and failed to consider the hardship associated with a return to Libya. While none of these individual errors may be fatal in themselves, the Applicant says that their combined effect is sufficiently grave to make the entire decision unreasonable.

[12] I am not persuaded by the Applicant's arguments.

A. *Status in Canada*

[13] A significant focus of the Applicant's argument related to the Officer's failure to acknowledge the steps he had taken to seek information from the Respondent about how to regularize his status in Canada during the COVID-19 pandemic. The Applicant says that he contacted the Department of Immigration, Refugees and Citizenship Canada (IRCC) to inquire about COVID-19 immigration restrictions because he wanted to ensure he was complying with the laws in Canada in order to avoid harming his H&C application or future prospects of obtaining a visa. He provided an email he received from an IRCC official indicating that because of COVID-19 the timelines for applying for a restoration of status had been extended. He also inquired about the steps he needed to take if he decided to leave Canada, and was advised to keep a record of his departure travel documents.

[14] In March 2021, the Applicant left Canada. The Officer's decision on the H&C application was not finalized until October 13, 2021. The Applicant contends that the Officer should have been aware that he had tried to regularize his status and had left the country. This was relevant to the H&C assessment, but the Officer failed to take his efforts into account; furthermore, the Officer also mistakenly concluded that he had overstayed his visa and thus contravened the law. The Applicant submits this is unreasonable.

[15] While it is not disputed that the Officer was mistaken in finding that the Applicant was still in Canada, I am not persuaded that this aspect of the decision is unreasonable. The Applicant says that he wanted to avoid the problems he would face if he knowingly remained in Canada without status. He therefore made the inquiries noted above, and then decided he should leave. The Applicant points to evidence about his exchanges with IRCC in the Application Record

before this Court, but as the Respondent correctly notes, this evidence is not in the Certified Tribunal Record and there is no indication it had been provided to the Officer. There is also no evidence that the Applicant sought to contact the Officer handling his file, or otherwise took steps to update his H&C application. It is unclear why the Applicant would expect that the Officer who answered his call or who sent him the email would automatically update his H&C file. In any event, it is also not clear how evidence about his efforts to obtain more information would justify granting H&C relief.

[16] The Applicant's work permit expired and he applied for H&C relief. No doubt the onset of the pandemic caused significant disruptions for the Applicant and the Respondent, like everyone else in Canada at that time. However, the email the Applicant received indicated that the deadline for him to apply to restore his status had been extended because of the pandemic; it did not indicate that his status was automatically extended, but rather that he had more time to apply. There is no evidence in the record that the Applicant ever applied to restore his status, and in this respect the Officer's statement is correct. The fact that the Officer mistakenly stated that the Applicant had overstayed his visa is a minor error that did not otherwise taint the entire decision.

B. *Best Interests of the Children*

[17] Next, the Applicant submits that the Officer failed to consider the impact of his departure on his children, because of their financial dependency on him and the difficulty he would face in continuing to provide financial support because of economic conditions in Libya.

[18] The key problem for the Applicant on this point is that his H&C claim did not advance this argument. The evidence in the record, which the Officer aptly summarized, shows that the Applicant had been in arrears in making child support payments and the child custody and support provisions were still under discussion in the context of the divorce proceeding. The Officer noted that the Applicant had not provided any updated information to demonstrate the nature or extent of child support payments he had been making, or otherwise to indicate the nature or degree to which the children were financially dependent upon him.

[19] In light of this, the Officer's findings on this point are reasonable and consistent with the evidence that the Applicant provided. The onus was on the Applicant to provide all relevant evidence, and he does not point to any crucial information on this question that the Officer ignored.

C. *Hardships & Administrative Deferrals of Removal*

[20] Finally, the Applicant argues that the Officer failed to give due consideration to the ADR that the government of Canada had imposed on removals to Libya. He submits that this is clear evidence that Canada has determined that conditions in Libya would impose an undue hardship, and the Officer should have given this factor more weight.

[21] There are several problems with this argument. First, the Officer *did* refer to the ADR that had been imposed and also noted that no removal order had been issued to the Applicant. The Officer clearly understood that because of the ongoing situation in Libya, the Applicant was not in imminent risk of being returned to that country. The Officer also referred to the Applicant's evidence about his life there prior to his arrival in Canada in February 2018,

including his work history and his statement that he and his family had “a great quality of life despite the clashes in Tripoli.” Based on this, and in the absence of objective country condition evidence demonstrating that the Applicant would face particular hardships on a return to Libya, the Officer accorded this factor only moderate weight.

[22] The Officer’s finding on the ADR issue is supported by the evidence and clearly explained in the reasons. The fact that Canada had temporarily halted removals to Libya was noted, but the Officer found that this temporary measure did not justify granting the Applicant permanent status in Canada. This is consistent with the case-law on this question (see *Emhemed v Canada (Citizenship and Immigration)*, 2018 FC 167 at para 9 and the cases cited therein). There is no basis to find the Officer’s conclusion on this point to be unreasonable.

V. Conclusion

[23] For all of these reasons, I am unable to find that the Officer’s decision is unreasonable. The application for judicial review is dismissed. There is no question of general importance for certification.

JUDGMENT in IMM-7245-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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