Federal Court Cour fédérale

Date: 20231025

Docket: IMM-10848-22

Citation: 2023 FC 1421

Ottawa, Ontario, October 25, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

ABAYOMI ADEDAPO ADESOJI-ATOYEBI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, a citizen of Nigeria, first entered Canada in January 2014. He was 15 years old at the time and was attending secondary school in Toronto. Since then, the applicant maintained his status in Canada with a succession of study and work permits.

[2] Although it is not entirely clear from the record, it appears that the applicant was accompanied by his parents and his two younger siblings. The applicant's parents and siblings

submitted claims for refugee protection in Canada. The applicant also submitted a claim for refugee protection but he eventually withdrew it in March 2022.

[3] In February 2021, the applicant's mother applied for permanent residence in Canada under the temporary public policy establishing a pathway to permanent residence for refugee claimants working in Canada's health-care sector during the COVID-19 pandemic. The applicant, his two siblings, and his father were all included on the application. However, the applicant was not an eligible dependent because he exceeded the maximum age of 22 years by seven months. As a result, he was removed from the application.

[4] The application for permanent residence was approved in principle in June 2021. Subsequently, it received final approval in March 2022. The applicant's mother, father, and two siblings are now all permanent residents of Canada.

[5] In August 2021, the applicant submitted an application for permanent residence in Canada on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). Pointing to the fact that he was just over the age of dependency and, consequently, could not be included on his family's application for permanent residence, the applicant submitted that an exception to the usual requirement that permanent residence must be applied for from abroad should be made in his case given his family ties in Canada, his establishment here, and the hardship he would suffer if he were required to return to Nigeria and apply for permanent residence from there.

[6] In a decision dated August 22, 2022, a Senior Immigration Officer refused the application because the officer was not satisfied that the applicant's particular circumstances warranted relief.

[7] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*. He submits that the decision is unreasonable. I agree.

[8] It is well-established that the decision should be reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10).

[9] 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). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious

shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[10] I am satisfied that the officer’s decision fails to exhibit the requisite degree of justification, intelligibility and transparency in a key respect.

[11] The applicant’s central contention in his H&C application was that the personal circumstances on which he relied all stemmed from his ineligibility to be included as a dependent on the application for permanent residence by the rest of his family. In response to this overarching submission, the officer stated: “I note that the applicant is required to meet the requirements of the H&C and not being able to apply under certain programs is not a hardship in the context of the H&C.” Accordingly, the officer disregarded this circumstance when evaluating the other circumstances on which the applicant relied.

[12] In my view, the officer’s analysis is unreasonable in two fundamental respects.

[13] First, the officer does not explain the basis for this blanket statement in any way, leaving a key part of the decision lacking in transparency and intelligibility (*c.f. Vavilov* at paras 95-96).

[14] Second, the officer’s analysis is inconsistent with the established understanding of the rationale for H&C relief, which is to provide flexibility to mitigate the effects of a rigid application of the law in appropriate cases (*Kanthasamy* at para 19). Subsection 25(1) of the *IRPA* directs the decision maker to consider whether granting permanent residence or an

exemption from any applicable criteria or obligations under the Act "is justified by humanitarian and compassionate considerations relating to the foreign national." As *Kanthasamy* instructs, this provision should be interpreted by decision makers to allow it to respond flexibly to its equitable goals (*Kanthasamy* at para 33).

[15] This did not happen here. The applicant framed his H&C request in terms of his ineligibility to be included on the successful application for permanent residence by the rest of his family. He exceeded the age limit for dependency by only a matter of months. Recognition of this context is entirely in keeping with the equitable underlying purpose of H&C relief. Indeed, having regard to the legal framework within which H&C decisions must be made, this context was essential for evaluating the particular hardships on which the applicant relied – namely, disruption of his establishment in Canada, family separation, and having to return to a country in which he has no family or other supports. The background circumstances had to be considered when determining whether a reasonable and fair-minded person would conclude that the misfortunes the applicant was facing warranted relief. Instead, without explanation, the officer simply deemed this context to be irrelevant. In short, the officer's analysis of the applicant's circumstances is not justified in relation to the law that constrained the decision maker.

[16] These flaws in the officer's analysis undermine the reasonableness of the decision as a whole. Consequently, the decision must be set aside and the matter remitted for reconsideration.

[17] Finally, the parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-10848-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Senior Immigration Officer dated August 22, 2022, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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