Federal Court Cour fédérale

Date: 20231205

Docket: IMM-8623-22

Citation: 2023 FC 1629

Ottawa, Ontario, December 5, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

SHINDERPAL KAUR BRAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of India. In January 2022, she applied 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*). This was her fourth such application since 2015.

[2] The application was based on the applicant's family ties and establishment in Canada, the best interests of the children who would be directly affected by the application, health considerations, and adverse conditions in India. More particularly, the applicant is a 71-year-old widow. Her brother, her two adult children, and their families all live in Canada. Since 2014, the applicant has been visiting them on temporary resident visas. (The applicant currently holds a parent/grandparent "super visa" that is valid until October 2026.) According to the applicant, she depends on her children for financial and emotional support, she has few supports in India, as an older single woman she would experience hardship there if she had to return, and she wishes to maintain her close relationship with her five grandchildren in Canada.

[3] A Senior Immigration Officer refused the application in a decision dated August 23, 2022. The officer found that the applicant had identified several factors that carried positive weight, including her family ties in Canada and the best interests of her grandchildren. However, the officer found that, considering the application as a whole, the applicant had failed to provide sufficient evidence to demonstrate that H&C relief is warranted.

[4] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*. She contends that the officer's decision is unreasonable. For the reasons that follow, I am unable to agree.

[5] Subsection 25(1) of the *IRPA* authorizes the Minister to grant relief to a foreign national seeking permanent resident status who is inadmissible or otherwise does not meet the requirements of the Act. The Minister may grant the foreign national permanent resident status

or an exemption from any applicable criteria or obligations under the Act only if the Minister "is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national." This discretion to make an exception provides flexibility to mitigate the effects of a rigid application of the law in appropriate cases (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 19). Whether relief is warranted in a given case will depend on the specific circumstances of that case (*Kanthasamy* at para 25).

[6] H&C relief is a highly discretionary measure (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15; *Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4). The onus is on an applicant to present sufficient evidence to warrant the exercise of such discretion in his or her case (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45; *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2008 FC 646 at para 31; *Zlotosz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 724 at para 22).

[7] The parties agree, as do I, that the merits of the officer's decision should be reviewed on a reasonableness standard (*Kanthasamy* at para 44). 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*).

[8] The onus is on the applicant to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, 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).

[9] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). Nor is it the role of the reviewing court to reweigh or reassess the factors the officer considered in determining whether H&C relief was warranted. Given the discretionary nature of H&C decisions, generally the decision maker's determinations will be accorded a considerable degree of deference by a reviewing court (*Williams*, at para 4). At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review (*Vavilov*, at para 13).

[10] Having considered the record before the officer, the officer's reasons, and the applicant's submissions on review, I am not persuaded that there is any basis to interfere with the decision. As required, the officer carefully assessed the various factors relied on by the applicant both individually and globally. The officer concluded that the applicant had not provided sufficient evidence to establish that an exemption on H&C grounds from the usual requirements of the law is warranted in her case. There is nothing to suggest that the officer misunderstood or misapplied the test for H&C relief. Nor is there anything to suggest that the officer overlooked or misconstrued relevant evidence.

[11] A central contention in the H&C application was that the applicant required this relief because her daughter lacked the income necessary to be able to sponsor her for permanent residence. The officer found that the applicant had not provided sufficient evidence to establish that this is the case. The officer also found that, in any event, the fact that the applicant holds a super visa mitigates to a significant degree the alleged hardships on which she relied in seeking H&C relief. It was open to the officer to make these determinations.

[12] The decision ultimately turned on the officer's assessment of the evidence and weighing of the relevant factors, matters on which the officer is owed considerable deference. In essence, the applicant's submissions on review boil down to disagreements with how the officer weighed the relevant factors. Unless that weighing is unreasonable, which is not the case here, it is not open to a reviewing court to intervene.

[13] While each case turns on its own facts, my conclusion that the officer's decision is reasonable is fortified by the fact that negative H&C decisions in circumstances that are very similar to those of the case at bar have been found to be reasonable: see *Kaur v Canada (Citizenship and Immigration)*, 2022 FC 686, and *Toor v Canada (Citizenship and Immigration)*, 2022 FC 773.

[14] Finally, for the sake of completeness, I would note that at the hearing of this application the applicant did not pursue the argument that the decision did not comply with the requirements of procedural fairness included in her written submissions. There is no merit to that argument in any event.

[15] For these reasons, this application for judicial review will be dismissed.

[16] 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-8623-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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