Federal Court  Cour fédérale

Date: 20240126

Docket: IMM-4267-22

Citation: 2024 FC 136

Ottawa, Ontario, January 26, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

BARBARA SILVA PRADO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Barbara Silva Prado, applied for permanent residence in Canada based on humanitarian and compassionate grounds ("H & C Application"). An officer at Immigration, Refugees and Citizenship Canada (the "Officer") refused her application. Ms. Prado challenges this refusal on judicial review.

[2] Ms. Prado argues that the Officer failed to consider the impact that her removal to Brazil, her country of citizenship, would have on her mental health. She also argues the Officer ignored or misconstrued central factors raised in her application, including her spousal sponsorship breakdown due to family violence in Canada and the family abuse and insecurity she experienced in Brazil. I agree with Ms. Prado that the Officer did not substantively weigh and consider these factors raised by her application.

[3] Ms. Prado also argues that the Officer breached procedural fairness by issuing their decision without providing her with notice in order to file further submissions and evidence despite her request for such notification. As I have already found the decision needs to be redetermined, it is unnecessary for me to address this issue.

[4] Based on the reasons below, I grant the application for judicial review.

II. Immigration History and Application before the Officer

[5] Ms. Prado came to Canada on a visitor visa in 2015, having been invited by her step-mother and family. In December 2016, she attempted to renew her visitor status but her application was denied. Ms. Prado remained in Canada without status and worked as a childcare provider for several families. There may have been an attempt to apply for a work permit through the Labour Market Impact Assessment process, but this is unclear from the record.

[6] Ms. Prado married a Canadian citizen in September 2017. In 2018, they retained the services of an immigration consultant to prepare a spousal sponsorship application. Ms. Prado

describes in her H & C Application details ofher husband's abuse. He threatened to report her lack of immigration status to the authorities if she reported his abuse to the police. Ms. Prado eventually left her husband and instructed the consultant not to file the spousal sponsorship application.

[7] In June 2021, Ms. Prado filed her H & C Application with the assistance of the Barbra Schlifer Commemorative Clinic, which included a detailed statutory declaration about the abuse she suffered in Brazil and in Canada. In February 2022, Ms. Prado's lawyer filed an update including that a psychological assessment had been completed, and that they were waiting on the psychologist (Dr. Hakim) to produce a written psychological assessment report (the "Psychological Report"). In March 2022, Ms. Prado's lawyer submitted a further update to IRCC, including the Psychological Report, and advised that they intended to file further submissions and country conditions evidence. In this same update, Ms. Prado's lawyer asked that they be advised when the Officer was about to render a decision so that these materials could be provided.

[8] The Officer denied the H & C Application on April 22, 2022.

III. Analysis

[9] Foreign nationals applying for permanent residence in Canada can ask the Minister to exercise Ministerial discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because of humanitarian and compassionate factors (*IRPA*, s 25(1)). The Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*,

2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration) (1970)*, 4 IAC 338, [1970] IABD No 1, confirmed that the purpose of this humanitarian and compassionate discretion is "to offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (*Kanthasamy* at para 21).

[10] Given that the purpose of humanitarian and compassionate discretion is to "mitigate the rigidity of the law in an appropriate case," there is no limited set of factors that warrants relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but "officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them" (*Kanthasamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74–75).

[11] Ms. Prado argues that the Officer did not substantively consider and weigh the following three factors raised by her application for relief: i) the impact removal to Brazil would have on her mental health; ii) spousal sponsorship breakdown due to family violence; and iii) her history of abuse in Brazil.

A. *Mental Health*

[12] Ms. Prado was diagnosed with Post Traumatic Stress Disorder and Major Depressive Disorder, with recurrent episodes of anxious distress. The Officer notes the Psychological Report and cites from it. The Officer focuses on the availability of mental healthcare in Brazil and

concludes that “the applicant has provided insufficient objective evidence that she would not be able to access healthcare in her country.”

[13] The Officer does not acknowledge Dr. Hakim’s conclusion that Ms. Prado’s mental health would likely worsen because of the deportation itself. Dr. Hakim concluded their report by stating: “Given her current state of affective functioning and her reported experiences, re-exposure to her country of origin of Brazil would likely provoke a psychological decompensation by increasing her symptomatology, resulting in a decreased ability to engage in basic daily tasks and work.”

[14] The problem in the Officer’s analysis here is similar to the issue raised in *Kanthasamy*. Like in this case, the officer evaluating Mr. Kanthasamy’s circumstances focused on the availability of treatment in Sri Lanka and did not also consider that the deportation itself would have an impact on his mental health. The Supreme Court of Canada found the Officer’s failure to consider the impact of removal on mental health resulted in an unduly narrow approach to assessing the circumstances of an applicant (*Kanthasamy* at paras 45, 48; *Natesan v Canada (Citizenship and Immigration)*, 2022 FC 540 at paras 39–40). The same is true here. The Officer’s narrow focus on treatment availability resulted in a failure to substantively weigh and consider Ms. Prado’s mental health condition, rendering the decision unreasonable.

B. *Spousal Sponsorship Breakdown*

[15] Ms. Prado argues that the Officer does not substantively consider and weigh as a relevant factor her abusive marriage to a Canadian citizen that did not result in permanent residence because Ms. Prado left the abuse before a spousal sponsorship application was filed.

[16] As noted by Ms. Prado, the Immigration, Refugees and Citizenship Operational Instructions entitled "The humanitarian and compassionate assessment: Dealing with family relationships" ("Guidelines") specifically cautions officers to be sensitive to spousal sponsorship breakdown: "You should be sensitive to situations in which the spouse (or other family member) of a Canadian citizen or permanent resident leaves an abusive situation and, as a result, does not have an approved family class sponsorship."

[17] The Guidelines also note that "family members in Canada, particularly spouses, who are in abusive relationships and are not permanent residents or Canadian citizens, may feel compelled to stay in the relationship or abusive situation so they may remain in Canada; this could put them in a situation of hardship."

[18] The Respondent argues that Ms. Prado is asking the Court to re-weigh this factor. I do not agree. Despite raising the breakdown of the spousal sponsorship as a central issue, and the Guidelines directing officers to be sensitive to this issue, the Officer does not engage with this factor at any point in their analysis of the relevant factors raised by her application. This is similar to the problem identified by this Court in *Febrillet Lorenzo v Canada (Citizenship and*

Immigration), 2019 FC 925 at paragraph 24 [*Febrillet Lorenzo*], citing to *Swartz v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 268. The only place where the relationship and its breakdown is mentioned is the Officer's recitation of the facts of the application. Even in this recitation, there is no mention of the spousal sponsorship application that was being prepared at the time of the relationship's breakdown. In any case, reciting the facts of the application is not the equivalent of substantively considering and weighing a relevant factor as is required by *Kanthasamy* (para 25).

[19] The Officer's failure to engage with this central aspect of Ms. Prado's application for relief renders the decision unreasonable and requires redetermination (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 128).

C. *History of Family Violence in Brazil*

[20] Ms. Prado provided a detailed account of the severe difficulties she faced, including neglect and abuse, beginning in childhood and continuing until she left Brazil in 2015. The Psychological Report also explains this history and its impact on her current mental health diagnosis. The Officer narrowly construes this aspect of Ms. Prado's application as being about future risk of physical harm in Brazil and availability of treatment for mental health in Brazil. This narrow and segmented focus is inconsistent with both how Ms. Prado's request for relief was framed and the approach set out by the Supreme Court of Canada in *Kanthasamy*.

[21] Because the Officer deals with Ms. Prado's experiences in Brazil as only relevant to future risk of physical harm from one individual and availability of mental health in Brazil, the

rest of the Officer's analysis on establishment and hardship read as if Ms. Prado had no difficulties in Brazil prior to coming to Canada.

[22] For example, the Officer relies on boilerplate statements about Ms. Prado's ability to maintain her connections with the friends she has made in Canada through electronic means without considering that this is the very support network referenced by Ms. Prado, her counsel, and Dr. Hakim as being important to maintaining Ms. Prado's mental health. As Justice Strickland found in *Febrillet Lorenzo*, "the support provided to the Applicant by her friends and family in Canada should also have been considered in light of her circumstance as a victim of domestic abuse" (at para 18).

[23] Further, the Officer relies on the boilerplate statement that "[Ms. Prado] has lived the greater part of her life in Brazil" and that "dislocation after a number of years is difficult for anyone" but "given her education and employment history there is no persuasive evidence to suggest that [Ms. Prado] […] would be at a greater disadvantage of finding employment than any other Brazilian woman with her education and work experience." Again, this analysis is devoid of any consideration of the central factor raised by Ms. Prado's request—her past experiences of abuse in Brazil that continue to affect her mental health. Similar to Justice Ahmed's recent finding in *Alghanem v Canada (Citizenship and Immigration)*, 2023 FC 1223, I find the Officer here too failed to "meaningfully consider and account for the past mistreatment faced by the Applicant […], which is at the core of her H&C application" (at para 41). This is another basis upon which to find the decision unreasonable and requiring redetermination.

IV. Conclusion

[24] Overall, the Officer's segmented approach is contrary to the Supreme Court of Canada's guidance in *Kanthasamy* that instructs decision-makers to consider an applicant's circumstances as a whole (at para 45). It is also not responsive to key submissions and evidence in the record (*Vavilov* at paras 99, 128), resulting in relevant factors not being substantively considered and weighed as required (*Kanthasamy* at para 25). Based on all of the reasons set out above, the application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-4267-22

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended with immediate effect to correct the name of the Respondent to the Minister of Citizenship and Immigration;
2. The application for judicial review is allowed;
3. The IRCC decision dated April 22, 2022 is set aside and sent back to a different decision-maker for redetermination; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4267-22
STYLE OF CAUSE:	BARBARA SILVA PRADO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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