Federal Court Cour fédérale

Date: 20240222

Docket: IMM-9778-22

Citation: 2024 FC 272

Ottawa, Ontario, February 22, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

JOHNSON ADEGBAYI ADEBANJO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Johnson Adegbayi Adebanjo, seeks judicial review of an Officer's decision denying his request for permanent residence from within Canada on humanitarian and compassionate ("H&C") grounds.

[2] The Applicant claimed the Officer erred in assessing his establishment in Canada, the hardship he will face if he has to return to Nigeria, the best interests of his daughter in Canada, as well as his criminal inadmissibility.

[3] I am not persuaded. The Officer's assessment of the H&C factors was unreasonable because it was based in the evidence and the rationale for each finding is explained in the decision. Based on the reasons set out below, this application for judicial review will be dismissed.

I. Background

[4] The Applicant is a citizen of Nigeria. He came to Canada in 2006 and filed a refugee claim, which was accepted in 2009. He became a permanent resident that same year. In 2012, he had a child with a Canadian citizen.

[5] In 2015, the Applicant was charged and convicted of six counts of possession of a counterfeit mark under paragraph 376(2)(b) of the *Criminal Code*, RSC 1985, c C-46[*Code*]. He was sentenced to probation for 36 months and was ordered to pay a fine of $5,000 CAD. He has since completed his sentence and applied for a pardon. However, as a result of this conviction, the Applicant became criminally inadmissible to Canada, pursuant to paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. His refugee status was also ceased as a consequence of this conviction.

[6] In May 2018, the Applicant was charged with assault under s. 267 of the *Criminal Code* and received a conditional discharge after completing one year probation and an anger management class.

[7] The Applicant has made two H&C applications. The first was refused in July 2021, and he submitted the second one in November 2021. The denial of this second H&C is the foundation of this application for judicial review.

[8] The H&C request was based on a number of factors:

- the best interests of the child ("BIOC"), relating to the interests of his nine-year-old daughter in Canada;
- his 16-year establishment in Canada, including his employment and community ties;
- the hardships related to returning to Nigeria after such a lengthy absence, including the fact that his family there is not in a position to support him, the inadequate medical system, and the desperate unemployment situation;
- his steps towards criminal rehabilitation, including his completion of anger management class and his volunteer work with the Jane Finch Concerned Citizens Organization.

[9] The Officer reviewed the Applicant's submissions and evidence on these factors, and concluded that he had not demonstrated that H&C relief was warranted. The Officer's findings are discussed in more detail below; at this stage, a brief summary of the reasons is sufficient. The Officer gave highly favourable weight to the Applicant's family ties to his wife and

daughter in Canada, but also noted that he has family in Nigeria including two grown daughters with whom he maintains a close relationship. The community ties were given moderately favourable weight because of the sparse evidence about his role as a pastor at his church. To a similar effect, the Officer did not find evidence to support the Applicant's claim to be a volunteer. His employment information was scanty, and his financial situation did not count in his favour (negative bank balance and substantial arrears in child support).

[10] On the hardship of returning to Nigeria, the Officer found that unemployment rates varied across the country and medical care is available in urban centres (where the Applicant would likely settle). On BIOC, the Officer accepted that the Applicant plays a significant role in his Canadian daughter's life, but she would continue to live with her mother in the same community, and thus would have other supports she could rely on.

[11] On rehabilitation, the Officer noted the mixed record. The Applicant had no issues with the law since 2018, but that is a relatively short period of time; balanced against that, he breached the conditions of his 2015 sentence and was charged with a new crime in 2018. The anger management class he completed was part of his sentence for the 2018 offence, and so was not taken at the Applicant's initiative.

[12] Overall, the Officer was not satisfied that the Applicant had demonstrated that H&C relief should be granted, and the application was refused. The Applicant seeks judicial review of this decision.

II. Issues and Standard of Review

[13] The issue in this case is whether the Officer's decision is reasonable. This is assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2 [*Mason*].

[14] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paragraph 2 [*Canada Post*]). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at paragraph 102).

[15] The Applicant submits that the decision is not reasonable because the Officer erred in the assessment of five elements of the case: establishment; family ties; hardship and adverse country conditions; BIOC; and criminal inadmissibility. Each of these will be discussed in the next section.

III. Analysis

[16] Establishment**:** the Applicant claims the Officer failed to give sufficient weight to the length of his stay in Canada (16 years), discounted his community ties because of an undue focus on exactly when he began his work as a pastor rather than giving credit for the important

work that he did in this role; and by imposing an unreasonable demand that he provide information about his work history prior to 2011.

[17] I am not persuaded. The Officer clearly noted the Applicant's 16-year stay in Canada, but also observed that the evidence providing details of his life here during that time was somewhat lacking. On the community ties, the Officer reasonably found the evidence regarding the Applicant's work as a pastor to be sparse, including the absence of evidence from the Church as well as the lack of specifics in the support letters parishioners had provided. As for the financial aspect, the Officer detailed the evidence in the record and reasonably concluded it did not weigh in favour of the Applicant. There is no basis to find this aspect of the decision unreasonable, and it is not the role of the court to re-weigh the evidence the Officer considered.

[18] Family ties: the Applicant argues that the Officer gave undue weight to the fact that he has three siblings in Nigeria, while downplaying the devastating impact his removal would have on his partner and child in Canada. He also says that the Officer's description of the weight given to different factors ("some" or "modest" positive consideration or "low weight") was unreasonably vague and imprecise.

[19] I disagree. The Officer noted the evidence about family ties, finding that the Applicant's relationship with his partner and child in Canada merited strong positive consideration. The Officer also noted that the Applicant has a strong relationship with his adult daughters in Nigeria, based on their letters that were submitted as evidence. As regards the Applicant's siblings, the Officer merely noted that he had three siblings in Nigeria and that he "may"

reconnect with them. All these findings are rooted in the evidence that was in the record. There is no basis to find this aspect of the analysis unreasonable.

[20] Hardship and adverse country conditions*:* the Applicant had claimed that he would face grave difficulties because of the high rate of unemployment in Nigeria. The Officer found that the situation varied in different parts of the country and that he could settle in areas where jobs were more plentiful. The Applicant submits this is unreasonable, because in another part of the decision the Officer states the Applicant's adjustment to life in Nigeria would be eased by living close to his adult daughters – but this is an area of higher unemployment.

[21] I disagree. The Officer's analysis discussed different options the Applicant could pursue upon his return to Nigeria, and the supports and opportunities that would be available to him there. This is not a contradiction, and it does not undermine the Officer's analysis of hardship. The reasoning in the decision is rooted in a realistic appraisal of the objective country condition evidence, combined with the Applicant's evidence about his family ties in Nigeria. This aspect of the decision is not unreasonable.

[22] BIOC: the Applicant raises two main complaints about the Officer's analysis: the failure to give appropriate consideration to the impact of separation from his daughter in Canada, and the discounting of the report he filed from the American Psychological Association (APA) about the harms associated with family separation caused by deportation. On the first point, the Applicant submits that the law has consistently recognized that the impact of separation on minor children should be given more weight than that for children who are adults. He also says

that the Officer unreasonably discarded the APA Report because it was based on the immigration system in the United States. This is irrelevant to the point the Officer was analyzing, and the Report's findings regarding the harms to children associated with the deportation of their parents applies equally to Canadian children.

[23] While I agree with the Applicant that the Officer's treatment of the APA report was not appropriate, I am not persuaded that this is a reviewable error. The Officer considered the bond between the Applicant and his daughter, and the evidence about the role he played in her life. The Officer also considered other facts, including that the mother had full custody, and the daughter would remain in Canada with her, continuing to live in a familiar environment. The Officer did not ignore the negative consequences of separation on the daughter, and it is not the Court's role to re-weigh the evidence on this point. There is no basis to overturn the decision because of the BIOC analysis.

[24] Rehabilitation: the Applicant submits that the Officer contradicted themselves in regard to the impact of the 2018 charges, saying, on the one hand, that it did not affect his criminal inadmissibility, and later finding that it was a relevant consideration in assessing his H&C claim.

[25] I disagree. The Officer's comments on the 2018 charges were reasonable given that the Officer discussed them in two separate parts of the decision, for two different purposes. The Applicant's criminal inadmissibility was settled as a result of the 2015 charges and his unsuccessful efforts to challenge the decisions that flowed from that. In that respect, the 2018

charges did not change anything, as the Officer reasonably noted. However, that did not mean that the more recent criminal involvement was irrelevant in assessing the Applicant's request for equitable relief under s. 25 of *IRPA*. There is no basis to question the Officer's reasoning on this point.

[26] Stepping back from the details and examining the Officer's decision as a whole, I find it to be a detailed, thorough, and balanced assessment of the Applicant's H&C application, based on the evidence in the record. It reflects an engagement by the Officer with the Applicant's submissions and evidence, and the reasoning on each point is clearly explained.

[27] I disagree with the Applicant's submission that the Officer's description of the weight assigned to each factor was imprecise or vague. The key point on this is that the Officer explained, in relative terms, whether a particular factor merited strong, medium, or low weight (as relative descriptors), but the Officer also explained why that assessment was made (based on the evidence and analysis that preceded each conclusion). That meets the standard of responsive justification set out in *Vavilov* and *Mason*, and there is no basis to find the reasons or reasoning to be unreasonable.

[28] For the reasons set out above, the application for judicial review will be dismissed.

[29] There is no question of general importance for certification.

JUDGMENT in IMM-9778-22

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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APPEARANCES:

Ariel Hollander	FOR THE APPLICANT
Gregory George	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates LLP Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT