Federal Court  Cour fédérale

Date: 20240409

Docket: IMM-2919-23

Citation: 2024 FC 557

Ottawa, Ontario, April 9, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

RAJ KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Raj Kaur, seeks judicial review of a decision of a Senior Immigration Officer (the "Officer") of Immigration, Refugees and Citizenship Canada, dated February 7, 2023, denying her application for permanent residence on humanitarian and compassionate ("H&C") grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 ("*IRPA*"). The Officer was not satisfied that the Applicant's establishment in Canada and the hardship she would face upon removal to India warranted an H&C exemption.

[2] The Applicant submits that the Officer's decision is unreasonable for deferring to the decision of the Refugee Protection Division ("RPD"), as well as erring in the establishment and hardship analyses.

[3] For the following reasons, I find that the decision is reasonable. This application for judicial review is dismissed.

II. **Analysis**

A. *Background*

[4] In 2015, the Applicant entered Canada on a temporary resident visa. Just over a week after her visitor status expired, she applied for refugee status. Her refugee claim and its appeal were denied. In 2021, the Applicant submitted her H&C application.

[5] In a decision dated February 7, 2023, the Officer found that the Applicant's circumstances did not warrant H&C relief pursuant to section 25(1) of the *IRPA*.

[6] The Officer acknowledged the evidence of the Applicant's volunteerism and friendships in Canada, but found that the evidence did not establish that she could not re-establish in India. The Officer further found that there was little evidence to demonstrate how the Applicant has

been supporting herself in Canada and that she could not reside with her sons living in Germany and Russia. The Officer found that the Applicant, as a resident of India for 27 years, could reside there and that the Applicant made a personal choice to stay in Canada without status. Additionally, the Officer found that objective evidence demonstrated that India had systems in place to support their residents, and that the evidence did not establish that her circumstances were unusual compared to others who were similarly situated such that an H&C exemption was warranted.

B. *Issue and Standard of Review*

[7] This application for judicial review raises the sole issue of whether the Officer's decision is reasonable.

[8] The standard of review on the merits of the decision is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[9] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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). Whether a decision is reasonable depends on the relevant

administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[10] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

C. *The decision is reasonable*

[11] The Applicant maintains that the Officer erroneously relied upon the RPD's decision, thereby failing to analyze whether the Applicant could live with her sons in Germany or Russia, as well as whether she could return to India. The Applicant submits that the Officer unreasonably focused upon the Applicant's contravention of Canadian immigration laws and disregarded evidence of her establishment in Canada. Additionally, the Applicant maintains that the Officer failed to consider objective evidence of conditions in India.

[12] The Respondent submits that the Officer did not erroneously focus upon the Applicant's time spent in Canada without status, erroneously rely upon the RPD's decision, disregard evidence of conditions in India, or err in the establishment analysis. The Respondent maintains that instead, the Applicant simply failed to adduce evidence and submissions to support her application.

[13] I agree with the Respondent. First, the Officer did not unduly rely upon the RPD's decision. The Supreme Court of Canada has provided that an H&C officer is entitled to ask whether evidence provided for a claim under sections 96 or 97 of the *IRPA* warrant an H&C determination (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*") at para 51). And my colleague Justice Turley has held that an H&C officer may defer to the RPD's credibility findings "where the evidence merely corroborates allegations already found not credible," but must explain why there was an insufficient evidentiary basis to overcome these credibility findings (*Joyettte v Canada (Citizenship and Immigration)*, 2023 FC 1670 at paras 13-16). An RPD decision in an H&C claim "may not be ignored, particularly where it speaks to the alleged hardship and has serious credibility concerns with the Applicants' allegations" (*Nwafidelie v Canada (Citizenship and Immigration)*, 2017 FC 144 at para 22).

[14] The reasons reflect that the Officer relied upon the RPD decision for factual findings not in spite of the Applicant's evidence, but because there was a distinct lack thereof. This includes, for example, evidence that the Applicant had stamps in her passport for Germany and Russia and that she has never been employed, is illiterate, and has no formal education. Furthermore, in my view the Officer's reliance on the RPD's credibility findings was supported by acknowledging that there was a lack of evidence to explain why the Applicant could not reside in India, the Applicant failing to provide corroborative evidence for her claims, nor evidence that would counter the RPD's findings. The onus is always on an applicant to establish their H&C claim with sufficient evidence (*Milad v Canada (Citizenship and Immigration)*, 2019 FC 1409 ("*Milad*") at para 31, citing *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45, *Liang v Canada (Citizenship and Immigration)*, 2017 FC 287 at para 23).

[15] I further agree with the Respondent with regard to the Officer's findings about country condition evidence in India. There is no indication that the Officer overlooked this evidence, nor that this evidence contradicted the Officer's findings. For example, the article the Applicant's rely on for stating that India is inhospitable for single women is heavily qualified by evidence showing that increasingly, single women in India can support themselves. Moreover, the evidence cited regarding discrimination against Sikhs are generally with regard to discrimination in Afghanistan, rather than India. Additionally, while there is evidence of extremism and discrimination against Sikhs, this same report contains evidence that "the majority of Sikhs do not experience societal discrimination or violence." The Officer's reasons disclose that they were alive to how country conditions affected the Applicant and her personal circumstances, as H&C officers should be (*Arsu v Canada (Citizenship and Immigration)*, 2020 FC 617 at para 16). In my view, the Applicant is requesting the Court reweigh this evidence, which is not this Court's role on review (*Vavilov* at para 125).

[16] Moreover, I agree with the Respondent that the Officer did not err in the establishment analysis. The Officer acknowledged the evidence of the Applicant's volunteerism and friends in Canada, but found that the degree of establishment was "minimal," with there being a lack of evidence as to how the Applicant was and would be supporting herself in Canada. As noted above, the onus was on the Applicant to provide evidence in support of her H&C claim (*Milad* at para 31). The Applicant failed to do so (*Owusu v Canada (Minister of Citizenship and Immigration) (FCA)*, 2004 FCA 38 at para 8).

[17] Finally, any errors the Officer may have made with respect to finding that the Applicant could re-establish herself in India are insufficiently serious to render the decision unreasonable

as a whole (*Vavilov* at para 100). The Applicant does not point to evidence that would displace this finding. The Officer is presumed to have weighed all of the evidence (*Arvan v Canada (Citizenship and Immigration)*, 2024 FC 223 at para 20, citing Kanagendren v Canada (Citizenship and Immigration), 2015 FCA 86 at para 36; Florea v Canada (Minister of Employment and Immigration), [1993] FCJ No 598 (FCA) at para 1). In my view, the Applicant's submissions on these issues amount to requesting that this Court engage in a "line-by-line treasure hunt for error," which is not this Court's role on reasonableness review (*Vavilov* at para 102).

III. **Conclusion**

[18] This application for judicial review is dismissed. The decision is reasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2919-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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