Federal Court  Cour fédérale

Date: 20240708

Docket: IMM-1630-23

Citation: 2024 FC 1070

Edmonton, Alberta, July 8, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

ZARIFE CHEHIMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Zarife Chehimi, seeks judicial review of the decision of an Immigration Officer to refuse to grant her a temporary resident permit ("TRP").

[2] The Applicant entered Canada in July 2018, on a work permit to work as a Food Service Supervisor. She obtained an open work permit which was valid until October 2021. In July 2019,

she applied for permanent residence under the Spouse or Common-Law Partner Class; she was sponsored by her husband. In April 2020, her husband withdrew the sponsorship application and they separated shortly thereafter. At that time, the Applicant was pregnant with the couple's son, who was born in Canada in June 2020.

[3] On October 4, 2021, the Applicant applied for a TRP under section 24 of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 [*IRPA*], as well as a work permit extension. On the same day she also submitted an application for permanent residence from within Canada based on humanitarian and compassionate ("H&C") grounds, pursuant to section 25 of *IRPA*.

[4] The Applicant's application for a TRP was refused in January 20, 2023. The Officer noted that the Applicant's main reason for seeking a TRP was to allow her to remain in Canada while her H&C application was processed. The Officer noted the interim support order the Applicant had filed, but found that there was no other documentation indicating that the Applicant's child could not leave Canada if she was removed. The Officer also observed that while the letters of support filed by the Applicant stated that Lebanon was not the best choice of a place to live, the Applicant had not indicated that she would not feel safe there. Overall, the Officer was not satisfied that the Applicant had demonstrated that a TRP was warranted based on the information she had provided.

[5] The Applicant claims this is unreasonable, because the Officer failed to conduct an analysis of the best interests of the child, and did not consider the country condition evidence about the dismal conditions in Lebanon.

[6] I am not persuaded that the decision is unreasonable. The decision is justified in light of the legal and factual matrix of the Applicant's case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*] at paras 90 and 105; see also *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 S.C.R. 900 at para 2.

[7] A TRP is a time-limited privilege that is available to permit flexibility in the administration of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 [*IPRA*]. It was described in the following way in *Alabi v. Canada (Citizenship and Immigration)*, 2018 FC 1163 (cited in *Williams v. Canada (Citizenship and Immigration)*, 2020 FC 8 at para 64) :

> [20] The provision permits flexibility through the issuance of a TRP in cases where the strict application of the IRPA would lead to an individual's exclusion from Canada. Subsection 24(1) provides an officer with a broad discretionary power to be used in exceptional cases to allow such an individual to enter into or to remain in Canada. As the Officer stated in the Decision, an applicant is required to submit compelling evidence in support of his or her TRP application. Justice Heneghan in *Sellapah v Canada(Citizenship and Immigration)*, 2018 FC 198, described the TRP regime as follows (at para 9):

[8] As noted by Justice Shore in *Farhat v. Canada (Citizenship and Immigration)*, 2006 FC 1275 (CanLII), [2006], 302 F.T.R. 54 at paragraph 2, the issuance of a TRP is part of an "exceptional regime". Evidence is required of something more than inconvenience to an applicant to justify the issuance of such a privilege.

[9] The Applicant's claims that the Officer failed to conduct an adequate analysis of the best interest of the child or country conditions is not persuasive, in light of the evidence and submissions that were included in her TRP application.

[10] The Officer was required to consider the child's best interests in assessing whether to grant a TRP: *César Nguesso v. Canada (Citizenship and Immigration)*, 2015 FC 880 at para 105.

[11] In this case, the Officer properly observed that the Applicant had submitted an interim order for child and spousal support, but then went on to note the absence of other evidence or submissions regarding the child's situation, including custody arrangements, any legal impediments to leaving the country or other information that would be pertinent to assessing his best interests. The Applicant claims that the Officer should have applied common-sense and general knowledge to the situation, and that doing so would have raised the question about whether the Applicant can leave Canada with her son without the father's consent.

[12] I disagree.

[13] The onus was on the Applicant to demonstrate compelling circumstances that warranted the grant of the highly discretionary exceptional relief offered by a TRP. The Officer was not required to engage in independent research regarding family law, parental rights or similar matters: *Shabdeen v. Canada (Citizenship and Immigration)*, 2020 FC 492 at para 9, citing *Wu v Canada (Citizenship and Immigration)*, 2016 FC 621 [*Wu*] at para 28. Had that been done, the Officer would have been duty-bound to give the Applicant notice of the extrinsic evidence that had been gathered, and any analysis or conclusions based on it, so that she could provide her response.

[14] As noted in *Wu* at para 32: "(i)n the TRP context the Officer considers the [best interests of the child] issue in light of the 'compelling reasons' test for issuing a TRP…" That was the legal context that framed (or, to put it another way, "constrained") the officer's decision in this case. The Officer reasonably considered the evidence and submissions and was not persuaded that the best interest of the child considerations favoured the grant of a TRP. I can find no error in this.

[15] Turning to the country condition evidence, in my view the Applicant's arguments on this ground falter for essentially the same reasons set out regarding the best interests of the child. The Applicant claims that the Officer should be presumed to be aware of the latest information in the Immigration and Refugee Board's National Documentation Package on Lebanon. In the alternative, the Applicant contends that a simple internet search would reveal that the situation in Lebanon is particularly dire, and the Officer should have found this to be a compelling reason to grant the Applicant a TRP.

[16] I am not persuaded.

[17] The onus was on the Applicant to put forward her best evidence and arguments in favour of granting her application for a TRP. While her submissions and the letters of support state in very general terms that the situation in Lebanon is not ideal for her or her son, no further evidence or arguments were advanced. For example, the letter from her uncle states that "(c)ertainly, given the current situation, Lebanon is not in any way a suitable environment for [the Applicant and her son]." No specific evidence was provided about the risks or challenges the Applicant would face on her return to Lebanon. It was not the Officer's responsibility to gather such evidence much less to advance submissions on risk that the Applicant herself did not make.

[18] Based on the evidence that was submitted, and in light of the highly discretionary nature of the decision whether to grant the exceptional relief of a TRP, I am unable to find any basis to conclude that the Officer's decision is unreasonable. The Applicant has not demonstrated any "shortcomings or flaws… [that] are sufficiently central or significant to render the decision unreasonable." (*Vavilov* at para 100): see *Bhairon v Canada (Citizenship and Immigration)*, 2022 FC 739 at para 27).

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

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

JUDGMENT in IMM-1630-23

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

DOCKET:	IMM-1630-23
STYLE OF CAUSE:	ZARIFE CHEHIMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	EDMONTON, ALBERTA
DATE OF HEARING:	JULY 8, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	PENTNEY J.
DATED:	JULY 8, 2024

APPEARANCES:

Simon Trela	FOR THE APPLICANT
Galina Bining	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Capital City Law Edmonton, Alberta	FOR THE APPLICANT
Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT