Federal Court Cour fédérale

Date: 20241008

Docket: IMM-2328-23

Citation: 2024 FC 1587

Toronto, Ontario, October 8, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

ISMAIL FARAH QASIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ismail Farah Qasim [the Applicant], is a citizen of Somalia. He applied for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds [H&C Application] pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Applicant applied based on his establishment in

Canada, the best interests of his five minor children [BIOC] and the hardship he and his family would face if he were forced to return to his country of nationality.

[2] By decision dated February 3, 2023, an Officer of Immigration, Refugees and Citizenship Canada [the Officer] refused the H&C Application [the H&C Decision]. The Applicant brings this application for judicial review of the H&C Decision on the basis that it is unreasonable. For the reasons that follow, I agree. Accordingly, this application for judicial review is granted.

II. Facts

[3] The applicant is a citizen of Somalia who escaped the civil war when he was a teenager and lived in Kenya until he was sponsored to go to the United States in 1994. He lived in the United States with his wife and eight children, and while they obtained status in the United States, the Applicant did not.

[4] The Applicant made a claim for refugee protection in Canada in 2011. He was deemed ineligible to make a claim and returned to the United States. He entered Canada and made a second claim for refugee protection in 2018, but was again deemed ineligible to make a claim. An inadmissibility report was issued against the Applicant in 2018. That same year the Applicant was issued a work permit and given subsequent extensions.

[5] In 2022, the Applicant submitted the H&C Application.

A. *The H&C Decision*

[6] The Officer rejected the H&C Application finding that the granting of an exemption under subsection 25(1) of the *IRPA* was not warranted in the Applicant's case.

[7] The Officer gave positive weight to the following factors: establishment, family ties, BIOC and country conditions in Somalia, including the fact that Somalia is currently the subject of an Administrative Deferral of Removal owing to a situation of humanitarian crisis. The Officer also gave some weight to the emotional support the Applicant was providing to his spouse for her mental health struggles, however, the Officer found the Applicant's anxiety and depression were not made out on the evidence.

[8] The Officer considered the fact that the Applicant's immediate family resides in the United States to be the most compelling factor and he gave it weight, but held that this consideration, like that of the Applicant's establishment, was not enough to warrant an exemption.

III. Legislative Framework

[9] Pursuant to subsection 25(1) of the *IRPA*, the Minister may grant a foreign national permanent resident status or an exemption from any applicable criteria or obligations of the *IRPA* if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national.

[10] A decision made on H&C grounds is both discretionary and exceptional. It is not intended to serve as an alternative path to immigration, and should be applied sparingly (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 23, 85 [*Kanthasamy*]).

[11] The test for relief under subsection 25(1) is whether the Applicant has demonstrated in the circumstances that decent, fair-minded Canadians would find it simply unacceptable to deny the relief sought (*Kanthasamy* at para 101). Subsection 25(1) of the *IRPA* specifically requires consideration of the best interests of a child directly affected.

IV. Issues and Standard of Review

[12] The Applicant has raised the following issues on this application for judicial review:

A. Did the Officer err in the assessment of the Applicant's evidence of establishment?

B. Did the Officer err in the assessment of the BIOC?

[13] I agree with the parties that the applicable standard of review of the Officer's H&C Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 23-25 [*Vavilov*]).

[14] Considerable deference should be afforded to immigration officers exercising the powers conferred by the *IRPA*. Their discretionary decisions are fact-specific and entail the weighing of multiple factors which this Court is neither entitled to reassess nor reweigh (*Vavilov* at para 125). However, while this Court's review is deferential, it is nevertheless a robust review (*Vavilov* at

paras 12-13) which considers both the outcome and rationale of the decision with an eye to the hallmarks of public power which require that it be transparent, intelligible and justified (*Vavilov* at para 15), including to those to whom the decision applies (*Vavilov* at para 127).

V. Analysis

A. *Did the Officer Err in the Assessment of the Applicant's Evidence of Establishment?*

[15] On the issue of establishment, the Officer considered the following evidence: (i) the Applicant's self-employment with a ride-sharing company since December 2018 and supporting tax documentation; (ii) various letters of support from the three community organizations at which he volunteers; (iii) the Applicant's Ontario Secondary School Diploma dated June 25, 2021; and (iv) his enrolment and timetable as a student at an Adult Learning Centre.

[16] The Officer found as follows on the issue of establishment:

> I accept the applicant's efforts to establish himself in Canada, contribute to the community and upgrade his skills. I further accept that the applicant is self-employed and earning an income in Canada. While I give positive consideration to these factors, I note that it is not uncommon for those new to Canada to seek employment and participate in community-based activities, amongst other things. I do not find the applicant's establishment alone would be sufficient to warrant an exemption under 25(1) of the *IRPA*.

[17] The Applicant refers to a number of cases where this Court has consistently held that an officer's finding that an applicant's establishment is "expected" or "typical" is unreasonable (*Jamrich v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 804 at para 29). The Applicant also submits that the Officer set too high a bar in requiring that the Applicant

demonstrate an “extraordinary” level of establishment in Canada with the result that the Officer effectively discredited this factor in assessing the Applicant’s case for exemption.

[18] The Respondent disagrees and submits that the Officer expressly gave positive weight to this factor with the result that the Applicant is effectively asking this Court to reweigh the evidence.

[19] I agree with the Applicant. I find that three aspects of the Officer’s reasons are problematic, thus rendering the Decision unreasonable.

[20] First, I agree that the Officer’s finding that the evidence of establishment was “not uncommon for those new to Canada to seek employment and participate in community-based activities, amongst other things” reveals a failure to consider the evidence within the context of the Applicant’s personal circumstances as required by the jurisprudence (*Ranji v Canada (Public Safety and Emergency Preparedness*), 2008 FC 521 at para 20).

[21] Secondly, by dismissing the Applicant’s establishment evidence as “not uncommon,” I agree with the Applicant that the Officer expected something more than common/ordinary establishment efforts with the result that the Officer would appear to have applied a standard of exceptionality. While the relief offered under subsection 25(1) of the *IRPA* is considered exceptional, it is well settled that an individual’s circumstances do not need to be “exceptional” to warrant H&C relief (*Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 at para 41).

[22] Finally, the Officer failed to provide any insight into the Officer's assessment of the degree of establishment in the Applicant's evidence. The Officer's reasons simply do not allow the Applicant or this Court to understand why the Officer considered the Applicant's evidence insufficient for an exemption, what makes the Applicant's establishment "not uncommon" and what would be an acceptable or adequate level of establishment (*Baco v Canada (Citizenship and Immigration)*, 2017 FC 694 at para 18).

[23] As I have found the Decision unreasonable on the basis of the Officer's consideration of establishment, I find it unnecessary to address the Applicant's arguments relating to the Officer's BIOC analysis.

VI. Conclusion

[24] The Decision is unreasonable and shall be remitted back to another visa officer for redetermination.

JUDGMENT in IMM-2328-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;

2. The matter is returned for redetermination by a different decision maker; and

3. There is no question for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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