Federal Court  Cour fédérale

Date: 20181108

Docket: IMM-1950-18

Citation: 2018 FC 1132

Ottawa, Ontario, November 8, 2018

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ANTONIO EDUARDO DA SILVA FELIX

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] for judicial review of the decision by a representative of the Minister of Citizenship and Immigration [the Officer], dated March 28, 2018, refusing the Applicant's application for permanent residence from within Canada based on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the Act.

II. Background

[2] The Applicant, Antonio Eduardo Da Silva Felix, is a 67 year old citizen of Portugal. He became a permanent resident of Canada in 1960 at the age of 8, and lived the majority of his life in the downtown Toronto area.

[3] The Applicant married and had 4 children in Canada. He has 16 grandchildren, one great-grandchild, and a large extended family, almost all of whom live in the Toronto area.

[4] The Applicant has suffered for much of his life from addictions relating to alcohol and drug use. Not coincidently, he has accumulated over 30 criminal convictions, including assault with a weapon, carrying a concealed weapon, theft, and numerous narcotics-related charges. The evidence before this Court, which was also before the Officer, is that the Applicant has not used illegal drugs since 2012.

[5] The Applicant suffers from multiple serious health problems, including hepatitis C, severe osteoarthritis, major depression with anxiety and panic attacks, and incontinence of both urine and stool. As a result of these health problems, the Applicant uses a motorized scooter and a cane for walking. He requires diapers to address his incontinence. He requires anti-viral treatment for his hepatitis C.

[6] At the time of his deportation, the Applicant lived with his sister, Filomena Felix [Filomena], who acted as a caregiver. Filomena deposed that the Applicant could not walk

without assistance, needed assistance bathing, and is now “more like a little child than a grown man” as a result of his frailties. Filomena also deposed that the Applicant is losing his ability to speak, has difficulty remembering things, and is completely unable to take care of himself. The Applicant deposed that he would be lost without the care of his sister, due to his physical frailties as well as his emotional dependency.

[7] The Applicant also deposed that he is no longer able to speak Portuguese, and remembers very little of his childhood in Portugal.

[8] The evidence regarding the Applicant’s frailties is corroborated extensively by letters from his family doctor, two separate psychiatrists who assessed him, a case worker, and many other people with knowledge of the Applicant, all of which were before the Officer.

[9] In 2001, the Applicant was convicted for trafficking in cocaine, contrary to subsection 5(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19. This conviction resulted, in October 2007, in the Immigration Division of the Immigration and Refugee Board ordering that the Applicant was criminally inadmissible to Canada and issuing a deportation order.

[10] In September 2009, the Immigration Appeal Division [IAD] stayed the deportation order, on several conditions, including that the Applicant not commit any further criminal offences.

[11] In May 2011, the Applicant was charged with trafficking cocaine. He was convicted of the same in June 2012. As a result of this conviction, the stay of the deportation order was cancelled by the operation of subsection 68(4) of the Act.

[12] The Applicant filed an application seeking leave and judicial review of the deportation order in September 2012. This Court dismissed leave in February 2013.

[13] Ultimately, the Applicant was removed from Canada on October 20, 2013, and deported to the Azores, Portugal, where he remains today.

[14] In March 2013, prior to his deportation, the Applicant submitted an application for permanent residence from within Canada based on H&C grounds [the Application]. By way of reasons dated March 28, 2018, the Officer refused the Application [the Decision]. The Applicant now seeks judicial review of the Decision.

III. Issue

[15] The issue is:

A. Is the Officer's decision reasonable?

IV. Standard of Review

[16] The standard of review is reasonableness.

V. Analysis

[17] The Applicant challenges the reasonableness of the decision on three grounds:

A. The Officer's analysis is compartmentalized;

B. The Officer gave too little weight to the quality of the Applicant's establishment and integration in Canada because of his long criminal record; and

C. The Officer ignored key evidence.

A. *The Officer's analysis is compartmentalized*

[18] The Applicant submits that the Officer erred by compartmentalizing his analysis – considering each factor separately – and thereby minimizing the overall impact of the many factors at play. The Respondent does not address this argument.

[19] As outlined in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraphs 45 and 60, an officer should not take a segmented approach, discounting each factor because they each individually fail to meet a threshold of hardship. Rather, an analysis under subsection 25(1) of the Act should be undertaken with regard to an applicant's circumstances as a whole.

[20] However, while the Officer did address factors one at a time, the Applicant does not point to any specific part of the Decision that suggests inappropriate compartmentalization of the circumstances and in this case the approach was reasonable.

B. *The Officer's weighing of evidence*

[21] The Applicant submits that the Officer erred by giving less weight to the quality of the Applicant's establishment in Canada because of his long criminal record. The Respondent does not address this point specifically, but states that it is not for the Court to assess what weight should have been given to the evidence (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 11).

[22] I agree with the Respondent. The Officer's decision to factor in the Applicant's long criminal record when assessing the quality of the Applicant's establishment in Canada is reasonable.

C. *The Officer ignored key evidence*

[23] The Applicant argues that while immigration officers have discretion as to the weight assigned to an applicant's personal circumstances in H&C applications, they cannot disregard key factors (*Koromila v Canada (Citizenship and Immigration)*, 2009 FC 393 at paras 67-69). The Applicant acknowledges that an officer is not required to address every point, but submits that key factors and evidence must be addressed. On this front, the Applicant's position is that the Officer erred by ignoring the Applicant's emotional and physical dependence on his family, as well as evidence of the (un)availability of reasonable health care in Portugal for the Applicant's medical conditions.

[24] At pages 7-8 of the Decision, the Officer noted that the Applicant "had not seen a doctor to treat his hepatitis C" in Portugal. The Officer then consulted one document from the World Health Organization which indicates that all residents of Portugal have access to health care, and concluded:

> I do not have information indicating why the applicant was prevented from seeing a doctor in Portugal to care for his hepatitis C, in the context where the majority of health care seems to be accessible for all citizens and for which the costs seem to be paid by the state.

[25] However, the Officer had evidence before him suggesting that:

a) The Applicant suffered from numerous health conditions, which significantly hindered his mobility as well as limiting his memory and speech abilities;

b) The Applicant required significant aid from his family, and his sister Filomena in particular, in accessing health care when in Canada;

c) The Applicant had no family or friends available in Portugal to provide similar assistance;

d) The Applicant had been repeatedly to see a doctor in Portugal and asked for treatment for his hepatitis C, but that this treatment had not been provided;

e) Health care in Portugal, while publicly available, is under-resourced and unable to meet the needs of the majority of deportees, particularly those with mental and physical health problems, such as those of the Applicant;

f) The Applicant was living in deplorable conditions in Portugal, in a moldy, bug infested rooming house with no electricity or heat, filled with individuals using illegal drugs.

[26] The Respondent argues that the Applicant's submissions amount to a disagreement with the weight the Officer placed on the evidence.

[27] I disagree. The balance of the evidence satisfies me that the Officer had significant evidence relating to why the Applicant has and would continue to have difficulty accessing reasonable health care in Portugal. This evidence was integral to the Applicant's application, and it was ignored. The Officer failed to appreciate the various barriers that prevent the Applicant from accessing adequate health care in Portugal – barriers relating to the Applicant's emotional and physical vulnerabilities in respect of which he is dependent on his family in Canada, as well as barriers inherent in accessing the Portuguese medical system as a deportee. The Applicant is an extremely vulnerable individual; the Officer's reasons show a complete disregard for this vulnerability.

[28] I note that the Officer acknowledged that the Applicant benefited from the support of his family while in Canada, that after deportation he was living in a place that was not safe, and that the Applicant had submitted several documents explaining some of the deficiencies in the Portuguese medical system. The inclusion of these statements in the Decision only serves to reinforce the Officer's fundamental failure to appreciate the barriers the Applicant would face in accessing health care for his medical conditions in Portugal, which renders the decision unreasonable.

JUDGMENT IN IMM-1950-18

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is remitted to a different officer for reconsideration;

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1950-18
STYLE OF CAUSE:	ANTONIO EDUARDO DA SILVA FELIX v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 6, 2018
JUDGMENT AND REASONS:	MANSON J.
DATED:	NOVEMBER 8, 2018

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