Federal Court  Cour fédérale

Date: 20200205

Docket: IMM-2901-19

Citation: 2020 FC 202

Toronto, Ontario, February 5, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

AMAN KHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Aman Khan, seeks judicial review of a decision rendered April 24, 2019 by a Senior Immigration Officer [Officer] refusing his application for permanent residence on humanitarian and compassionate [H&C] grounds.

[2] The Applicant is a citizen of Pakistan. In September 2011, he came to Canada and claimed refugee protection based on his fear of the Pakistani Taliban. The Refugee Protection

Division dismissed the Applicant's claim in July 2013. The Applicant subsequently filed an application for leave and judicial review, which this Court dismissed at the leave stage. The Applicant's application for a pre-removal risk assessment was also denied in May 2018.

[3] The Applicant submitted an application for permanent residence from within Canada on December 6, 2018, based on his establishment in Canada, his family ties in Canada, the lack of any meaningful relationships overseas, the hardship he will suffer if he returns to Pakistan and the best interests of his six (6) grandchildren. On April 24, 2019, his application was refused. The Officer found that the H&C grounds presented were insufficient when considered globally, to warrant an exemption pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[4] The Applicant submits that the decision is unreasonable because the Officer did not properly assess the hardship he would face upon removal to Pakistan, his establishment and family ties in Canada and the best interests of the affected children.

[5] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada held that reasonableness is the presumptive standard of review for administrative decisions (*Vavilov* at paras 10, 16-17). None of the exceptions described in *Vavilov* apply here.

[6] When the reasonableness standard applies, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The reviewing court must

consider “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83) to determine whether the decision 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). Close attention must be paid to a decision maker’s written reasons and they must be read holistically and contextually (Vavilov at para 97). It is not a “line-by-line treasure hunt for error” (*Vavilov* at para 102). If “the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision”, it is not for the reviewing court to substitute the outcome it would prefer (*Vavilov* at para 99).

[7] Moreover, it is well established that an H&C exemption is an exceptional and discretionary remedy (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15) and the onus of establishing that an H&C exemption is warranted lies with the applicant (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45). If an applicant fails to adduce sufficient relevant information in support of an H&C application, he does so at his own peril (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paras 5, 8).

[8] At the hearing, the Applicant conceded that the Officer did not make credibility findings regarding the Applicant’s risks if he returned to Pakistan. However, he argues that the Officer failed to assess the hardship factor through the proper lens. In his view, the Officer should have

considered the fact that the Applicant would be returning to Pakistan as someone whose wife was killed by terrorists in 2014 and someone who, until 2015, was still of interest to the Taliban.

[9] The Applicant's argument is without merit.

[10] The Officer's reasons reflect the submissions made by the Applicant in his H&C submissions as well as the evidence that was before the Officer. In those submissions, the Applicant states that terrorists killed his wife in 2014. He believes that, if he returns to Pakistan, he will be targeted by terrorists and his life will be in danger. To support his allegation of fear, he provided a police report dated August 30, 2014 and a letter from his brother-in-law dated March 13, 2015. The Officer considered the evidence but ultimately found that it did not demonstrate that the Taliban members had a continued interest in the Applicant's whereabouts or that he would be targeted upon return to Pakistan. The Officer also considered the country conditions in Pakistan and acknowledged that they were far from favourable. Noting that an application for H&C relief focuses on a global assessment of the factors presented in the application, the Officer indicated that this factor was weighed in relation to other elements of the application. Since the Applicant did not articulate his H&C submissions in the manner he proposed before the Court, the Applicant cannot blame the Officer for failing to address the Applicant's hardship through this other lens.

[11] The Applicant also argues that, in assessing the Applicant's establishment and family ties in Canada, the Officer diminished the importance of the family bond by engaging in speculation. In the Applicant's view, the Officer speculated when she stated that the Applicant's son has the

option of submitting a parental sponsorship application if he wishes, or he can apply for a super visa to allow the Applicant to remain in Canada for longer stays. Relying on this Court's decision in *Sidhu v Canada (Citizenship and Immigration)*, 2020 FC 133 [*Sidhu*], the Applicant argues that it was unreasonable for the Officer to make this statement.

[12] In my view, the Officer's statement in this case can be distinguished from the officer's statement in *Sidhu*. In *Sidhu*, the officer held that "the Applicant can obtain permanent resident status through normal means from overseas". The Court found that the record did not support this statement given that acquiring permanent resident status was dependent upon a "lottery and chance". In this case, upon considering the context of the Officer's statement, I am satisfied that she is not suggesting with certainty that the Applicant's son would be successful if he submitted a parental sponsorship application or an application for a super visa to allow the Applicant to remain in Canada for longer stays. Moreover, I note that Sidhu can also be distinguished on the basis that there is no evidence in this case that the Applicant has been refused visitor visas in the past. While I acknowledge the Applicant's argument that the removal order against him will likely make it more difficult for him to return to Canada, I am not satisfied that this narrow element of the Officer's reasons is sufficiently central or significant to render the Officer's decision unreasonable (*Vavilov* at para 100). In considering the Applicant's establishment and family ties in Canada, the Officer considered the Applicant's age, the length of time he has been in Canada, his volunteer work, his community involvement and the strong family bond he has with his son and his son's family, who support him both financially and emotionally. However, after considering all of these elements, the Officer determined that family separation was not

necessarily enough to justify the exercise of discretion. The Applicant has not demonstrated that the Officer's analysis is irrational or unjustified in relation to the facts and the law in this case.

[13] The Applicant argues that the Officer made inconsistent findings regarding his relationships with other family members in Pakistan.

[14] I disagree.

[15] On two (2) occasions, the Officer noted the evidence from the Applicant's son that the Applicant does not have good relationships with other family members in Pakistan. The Officer also noted that the Applicant's son did not provide any details regarding these relationships. The record demonstrates that the Applicant's parents, siblings and other children continue to reside in Pakistan, and the Applicant's H&C submissions and evidence contain only bare statements regarding these relationships. In light of these facts, it was not unreasonable for the Officer to conclude that there was insufficient evidence to demonstrate that the Applicant's family members would be unwilling to offer him assistance if he returned to Pakistan.

[16] Finally, the Applicant alleges that the Officer failed to properly assess the impact of his departure on the best interests of his six (6) grandchildren. In his view, his physical presence has no alternative, and his departure will affect the children psychologically and emotionally.

[17] The Applicant has failed to persuade me that the Officer's finding on the best interests of the children is unreasonable.

[18] The Officer's reasons reflect the submissions and the evidence before her. The Officer acknowledged that the Applicant has six (6) grandchildren. She accepted that he plays a role in their lives and that bonds have developed between them. She also accepted that they were learning moral values, culture and language from the Applicant. She explicitly recognized that the presence of a grandparent contributes positively to the growth and development of a child. However, she indicated, with reason, that other than their ages, she had little information about the children. Although the Applicant indicates that he spends a lot of time with his grandchildren by taking them to the park, reading them stories and teaching them moral and cultural values, there is no other information or evidence in the record to put these statements into context and illustrate the extent of the Applicant's involvement with his grandchildren. It was open to the Officer to find that the relationship between the Applicant and his grandchildren could not be characterized as one of interdependency or reliance to such an extent that separation would significantly impact the children's best interests.

[19] To conclude, I am satisfied that, when read holistically and contextually, the Officer's decision meets the reasonableness standard set out in *Vavilov*. The decision is based on internally coherent reasons, and it is justified in light of the relevant facts and the law. The reasons are also transparent and intelligible. The Applicant is essentially asking this Court to reweigh the evidence before the Officer to reach a different conclusion. That is not the role of this Court on judicial review (*Vavilov* at para 125).

[20] Accordingly, the application for judicial review is dismissed.

JUDGMENT in IMM-2901-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. The style of cause is amended to replace the "Minister of Immigration, Refugees and Citizenship" with the "Minister of Citizenship and Immigration"; and

3. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	AMAN KHAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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