Federal Court  Cour fédérale

Date: 20200331

Docket: IMM-3361-19

Citation: 2020 FC 460

Ottawa, Ontario, March 31, 2020

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

PHANSINTHU LALEE

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant is a citizen of Thailand. On May 6, 2019, an immigration officer [Officer] refused her application for Permanent Residence on humanitarian and compassionate [H & C] grounds. She applies for judicial review of this decision pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The application for judicial review is dismissed for the reasons that follow.

II. Decision under Review

[3] The Applicant has had a difficult life. In Thailand, she lived in poverty. She gave birth to two children out of wedlock, leading to social rejection and stigma. Her friends and family shunned her. She came to Canada as a temporary worker in June 2006.

[4] In Canada, she met her future husband, a Canadian citizen, through her workplace at a food production company. They had three children together—one shortly before they were married in 2008, one in 2011, and one in 2014. She and her husband applied for her to receive permanent residence through sponsorship; but their application was rejected in 2017 because they did not perfect it.

[5] The Applicant separated from her husband in June 2018 due to problems with their relationship.

[6] The CBSA interviewed the Applicant in December 2018, informing her that her previous application for permanent residence was rejected. She then applied for a Pre-Removal Risk Assessment and permanent residence based on H & C grounds. Both applications were rejected.

[7] The Officer's decision to reject the H & C application is the subject of this judicial review. As noted in the Certified Tribunal Record [CTR], the Officer considered the Applicant's H & C application, its appended cover letter, the Applicant's Thai passport, the Applicant's work permit, her Canadian children's Ontario birth certificates, her Canadian children's public school attendance confirmation letters, and documents speaking about freedom of religion in Thailand.

[8] The decision letter is dated May 6, 2019. It is accompanied by several pages of reasons, the relevant parts of which are summarized as follows:

- On the best interests of the children, he noted that one of the Applicant's Thai children is now an adult while the other is nearly an adult and currently receives care from his family in Thailand. The focus was on the Canadian children. The Officer found that it would be detrimental to the Canadian children to go to Thailand with their mother; yet, he also noted that he had little information about the extended family's role with the family or the role of the father of the Canadian children. He concluded that, without a more fulsome understanding of the family dynamic, he cannot make a "meaningful assessment" on what would happen should the mother depart Canada without her Canadian children.
- On the Applicant's establishment in Canada, the Officer notes that the Applicant has a modest degree of Canadian establishment that warrants some positive H & C consideration.
- On the risk to the Applicant should she return to Thailand, the Officer noted that she will face some emotional trauma due to the patriarchal nature of Thai society and potential lack of support from her family members.
- The Officer concluded that, although some of the above factors are sympathetic to the Applicant's case, they were not sufficient to warrant granting the application.

[9] The Applicant claims that this conclusion was unreasonable.

III. Issues and Standard of Review

[10] The parties do not contest that the sole issue is whether the decision was reasonable. A reasonableness standard in these circumstances aligns with the Supreme Court's recent restatement of the law in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], in which a reasonableness standard is now to be presumed. I see no reason here to rebut this presumption in these circumstances.

IV. Parties' Positions

A. *Was the decision reasonable?*

(1) Applicant's Position

[11] The Applicant's position is that the Officer should have granted her H & C application. In not granting it, he made several errors.

[12] First, she claims that the decision was made upon improper assumptions. These are (a) "because the Applicant's two children who were born in Thailand are cared for by extended family members, the three Canadian-born children would also be cared for by extended family members", (b) the Officer relied on the results of a previous PRRA application, and (c) that her family in Thailand will have the resources to accommodate her and her three children.

[13] Second, she claims that the Officer failed to consider country condition evidence, or that the Officer failed to engage with it properly. Specifically, she claims that the Officer failed to examine how the country conditions in Thailand would affect the best interests of the children.

[14] Third, she takes issue with the Officer's statement that she will "return as a married person" when her current circumstances are not representative of true relationship status with her husband.

[15] Fourth, she alleges that the Officer was not alert, alive and sensitive to the best interests of her children because he did not determine the impact of her departure on the Canadian-born children. She submits that the Officer, like the officers in *Mulholland v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 597 and *Naredo v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15973 (FC), has made a decision that should be set aside because it is not harmonious with IRPA's objective of reuniting citizens and permanent residents with their close relatives from abroad, which has been given a "large and liberal" interpretation by the Supreme Court in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 68 [*Baker*].

(2) Respondent's Position

[16] The Respondent takes the position that the Officer made no error in assessing the Applicant's H & C application. It submits that the outcome of the decision falls within the range of "possible, acceptable outcomes" envisioned by *Dunsmuir v New Brunswick*, 2008 SCC 9 at

para 47. It further notes that H & C relief is intended to be "exceptional and extraordinary" (see *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 93).

[17] For the Respondent, it acknowledges the sympathetic plight of the Applicant, however, it argues that the Applicant has simply failed to meet the threshold required to demonstrate a valid H & C claim. It notes that the Applicant's application lacked many key documents that might have helped her case. It notes that the onus is on the Applicant to adduce evidence about issues that family members might face (*Ahmad v Canada (Citizenship and Immigration)*, 2008 FC 646 at paras 36-37).

[18] In response to the Applicant's claim that the Officer was not "alert, alive, and sensitive" to the best interests of the children, the Respondent takes the position that the Officer did not err—rather, he performed an analysis with what information was before him. If the Applicant had adduced more extensive evidence, further analysis might have been possible; however, this was not the case. In the Respondent's words, "the Officer's decision is reasonable in light of the record that was before him".

[19] Finally, the Respondent argues that it is not the Court's role in a judicial review application to perform a reweighing of the evidence.

V. Analysis

A. *Was the decision reasonable?*

[20] Reviewing the Officer's Decision and the CTR, I am unable to find a reviewable error. I will address the points in the same order as presented by the Applicant.

[21] Section 25 of IRPA is reproduced below. It allows the Minister to exempt applicants from the its requirements in appropriate circumstances:

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

[22] Deference is owed to officers making H & C decisions. The Court is not able to reweigh the evidence that was before an officer (*Milad v Canada (Citizenship and Immigration)*, 2019 FC 1409 at para 20); although the line appears to be blurred when an applicant contests whether an

officer has applied the correct legal test (see *Cezair v Canada (Citizenship and Immigration)*, 2019 FC 1510 at paras 11-15).

[23] I also note that, for all of the Applicant's concerns about the Decision, I highlight the Respondent's remarks about the scant evidence presented in support of this Application. A review of the CTR shows that the Officer had only the following before him: the H & C application and cover letter, the Applicant's passport and work permit, her children's Ontario birth certificates, her children's elementary school attendance confirmation letters, and a report on religious freedom in Thailand. There is a notable lack of evidence of establishment or matters related to the children such as from family, friends, teachers and others. Although the Applicant has submitted an affidavit before this Court, it is not relevant toward assessing the Officer's decision. I will consider only that which was before the Officer.

[24] The Applicant's allegations relating to the Officer's "assumptions" do not produce a reviewable error. The Officer states that the Applicant's family would "likely" offer support to her and her three children if they turned to Thailand. This seems to stretch the situation slightly—just because the family has previously offered support to the Applicant's Thai children does not necessarily mean they will offer support to her Canadian children. On the other hand, the Applicant had also not provided evidence that they *will not* aid her Canadian children. I find that these "assumptions" are due to the lack of evidence before the Officer.

[25] Regarding the Applicant's allegations that the Officer erred by not analyzing the country condition evidence in light of the best interests of the Canadian children, I do not find that the Officer erred. The Officer is not bound to engage in every line of possible analysis (*Vavilov* at

para 128). The Officer was alive to the fact that the children would face significant hardship if they went to Thailand, as well as the country conditions in Thailand. In fact, he appears to mention it directly: “I note conditions such as patriarchy and gender discrimination would have a negative emotional impact on the children”.

[26] On the third point, this also is not a reviewable error. The Officer was presented with no evidence that the Applicant was married, yet he allowed her the benefit of the doubt. I am not sure how the Applicant expects the Officer to delve into such a detailed analysis when such little information was before him.

[27] On the fourth point, the Applicant alleges that the Officer was not alive and sensitive to the best interests of her children. I do not find this argument persuasive. As noted by the Supreme Court in *Baker* at para 75, the best interests of the children is an important, but not determinative, factor. The Officer mentioned the children many times in the decision and conduced a “best interests of the children” assessment on the limited evidence before him. I find nothing to indicate that he did not give the subject the important treatment that it deserved, or that he did not give the best interests of the children appropriate weight in his decision.

[28] As stated in argument by the Applicant, the Officer appeared to be struggling with this decision. Some positive and negative factors were assessed. The Officer noted the absence of evidence. This additional evidence may have resulted in a different decision.

[29] Unfortunately, the Officer determined that the Applicant did not meet the threshold for an H & C exemption. I am unable to find an error in the decision that renders it unreasonable.

VI. Conclusion

[30] The application for judicial review is dismissed.

[31] No question for certification has been raised and, in my view, none arises.

[32] I make no order as to costs.

JUDGMENT in IMM-3361-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

3. There is no order for costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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