Federal Court  Cour fédérale

Date: 20201020

Docket: IMM-3562-19

Citation: 2020 FC 988

Ottawa, Ontario, October 20, 2020

PRESENT: Mr. Justice Pentney

BETWEEN:

VRENALYN JUAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Vrenalyn Juan, is a Filipino citizen who has lived outside of her country of origin for many years. Between 2004 and 2012, she worked as a caregiver in Saudi Arabia, Kuwait, and Hong Kong. The Applicant arrived in Canada on June 22, 2012, on a work permit issued under the Live-in Caregiver Program. The Applicant's spouse, who has been diagnosed

with chronic kidney disease in addition to other medical conditions, and her daughter still live in the Philippines.

[2] In September 2014, the Applicant applied for permanent residence in Canada, listing her husband and daughter as accompanying dependents on her application. In July 2018, the Applicant received a letter from an immigration officer advising her that her husband had been determined to be a person whose health condition might reasonably be expected to cause excessive demand on health services in Canada. The Applicant retained counsel and made submissions to rebut this, and sought humanitarian and compassionate (H&C) relief in the alternative.

[3] The Applicant's submissions outlined the plan that she and her husband had developed: her husband would stay in the Philippines, where he would continue to receive medical treatment, while their daughter would move to Canada to continue her studies and live with the Applicant. The Applicant indicated that she needed to continue to earn her salary in Canada in order to contribute to the costs of her husband's medical care and to provide for their daughter's education costs. In this way, her husband would not be a drain on the Canadian health care system and the Applicant would have the financial resources to help pay for his medical care and ensure an education for their daughter. In connection with this proposal, the Applicant indicated that she wished to remove her husband from her application, along with his consent to do so.

[4] In the meantime, the Canadian government's policy on excessive burden changed and the Applicant received a second procedural fairness letter. In response, the Applicant filed further submissions, reiterating the proposal outlined above and providing further information.

[5] On April 9, 2019, an immigration officer (Officer) decided that the Applicant did not meet the requirements for permanent residence in Canada. The Officer did not grant the Applicant's request to remove her husband from her application, noting that "removing someone from an application for permanent residence should only be done in exceptional circumstances and should not be done to overcome a known or suspected inadmissibility" (Officer's decision, CTR at 10). Further, based on an assessment of the cost his medical condition might impose on the Canadian healthcare system, the Officer determined that the Applicant's husband was inadmissible, and that the Applicant and her daughter also became inadmissible by extension.

[6] The Officer denied the alternative request for H&C relief, finding that the husband's access to medical care was not dependent on the Applicant's employment in Canada. The Officer also found that the Applicant would be able to re-establish herself and obtain employment in the Philippines. Finally, the Officer found that the Applicant's return to her country of origin would not be detrimental to the best interests of her daughter, because she would be available to support her daughter, and because her daughter would have access to health care and education.

[7] The Applicant seeks to overturn this decision.

II. Issues and Standard of Review

[8] The only issue in this case is whether the Officer's decision is reasonable. This involves two questions: (i) did the Officer fail to consider the individualized care plan for the Applicant's husband; and (ii) was the Officer's analysis of the claim for H&C relief unreasonable because it failed to consider the Applicant's ability to support her husband's medical costs and her daughter's educational expenses if she was returned to the Philippines?

[9] The standard of review that applies to these questions is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[10] When reviewing for reasonableness, the Court asks "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The analysis in the decision must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85).

[11] Based on this framework, a decision will likely be found to be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision-maker's reasoning on a critical point (*Vavilov* at para 103). The burden is on the applicant to show that the decision is unreasonable, and a reviewing court must be satisfied that the shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

[12] The Vavilov framework "affirm[s] the need to develop and strengthen a culture of justification in administrative decision making" by endorsing an approach to judicial review that is both respectful and robust (*Vavilov* at paras 2, 12-13).

[13] One element that is of particular importance in this case is that the decision must be responsive to the evidence and arguments put forward by the parties. The Supreme Court of Canada encapsulates this principle in the following passage:

> [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision

> should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties.
>
> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis", or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion". To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning.
>
> [Citations omitted, emphasis in original].

III. Analysis

[14] The Applicant submitted that the Officer committed two fatal errors: by failing to consider the individualized care plan for her husband, as required by the Supreme Court of Canada decision in *Hilewitz v Canada (Minister of Citizenship and Immigration)*; *De Jong v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57, and by failing to assess the specific basis of her H&C claim. Given that I agree with the Applicant that the Officer's decision on the H&C aspect of her claim is unreasonable, it is not necessary to consider the first question, and I express no opinion on the merits of the Applicant's arguments on medical inadmissibility.

[15] The determinative issue in this case is the Officer's analysis of the H&C claim. The Applicant submits that the Officer erred by failing to consider core elements of her claim for H&C relief, namely: that she would be unable to continue to contribute to her husband's medical expenses or her daughter's educational costs if she returned to the Philippines, where she would be the sole breadwinner for her family. Second, the Applicant submits that the Officer failed to consider the evidence she submitted that she would face age and sex discrimination in seeking employment there.

[16] I am persuaded that the Officer's analysis does not indicate whether or how these elements of the Applicant's claim for H&C relief were considered. I am also persuaded that these lie at the heart of the claim for H&C relief, and therefore the failure to explain how they were considered is sufficiently serious to render the decision unreasonable (*Vavilov* at para 100). Under the *Vavilov* framework, one of the hallmarks of a reasonable decision is that it is responsive to the evidence and arguments advanced by the party seeking review (*Vavilov* at paras 127-28). I find the Officer's analysis to fall short in this regard.

[17] The Applicant's H&C claim was based on three points: her degree of establishment in Canada, the impact of losing her Canadian income on her family if she was forced to return to the Philippines to seek employment, and the best interests of her daughter. On the second point, the submissions of the Applicant are crystal clear:

> Ms. Juan sought work outside of the Philippines because of the low wages and difficulty finding work in that country and the need to financially support her daughter. There is no indication that the economic situation in the Philippines has improved since that time. Further, as a returning worker and a woman in her late 40s, she would likely to face [*sic*] discriminatory hiring practices which are all too common in the Philippines if she had to return. According to the 2017 US Department of State Country Report on Human

> Rights Practices (“the Report”), “women faced discrimination both in hiring and on the job.” The Report further states that “[w]omen and men were subjected to systematic age discrimination, most notably in hiring practices (Tab GG). If Ms. Juan is forced to return to the Philippines, she would be returning to the same economic situation that informed her original decision to leave the Philippines and seek work abroad.
>
> Due to these conditions, Ms. Juan will face difficulty finding suitable employment in the Philippines. If she is able to secure employment, her salary will be vastly lower than what she has been able to earn in Canada. Furthermore, her husband is now unable to work due to his health. As a result, the family’s economic situation would be even more difficult than it was when Ms. Juan previously lived and worked in the Philippines. Prior to her migrating abroad, both Mr. and Ms. Juan were employed and yet could not adequately support their daughter with their combined incomes. If Ms. Juan is forced to return to the Philippines, she will be the sole breadwinner. It is likely that Mr. Juan will not be able to access all of the treatments he requires for this health condition and may suffer serious health consequences as a result. Furthermore, Joan will have to give up her dream of becoming a medical doctor, as her family would have no way of paying for her university studies.
>
> [Applicant’s written submissions to the IRCC, CTR at 35.]

[18] The Officer acknowledges that the Applicant’s claim for H&C relief was founded, in part, on the consequence for her and her family if she was forced to give up her employment in Canada and to return to the Philippines. The Officer appears to have accepted all of the Applicant’s evidence in this regard, and raised no issues regarding the Applicant’s credibility.

[19] The Officer’s analysis of the H&C claim mentions the Applicant’s claim that she would be unable to support her husband and daughter if she was not able to continue to earn her salary in Canada. However, the Officer did not deal with this specific aspect of her claim; rather, the analysis merely focuses on her ability to find employment in the Philippines. The following excerpt from the Officer’s decision sets out the core of the relevant analysis:

> The [Applicant] states that if she departs Canada this will affect her family in a negative way as they will no longer be able to pay for their education and medical needs. I find that this assertion is speculative as the applicant does not put forth evidence that sufficiently supports that she would be unable to secure employment elsewhere following her departure from Canada and continue to pay for her family member's education, medical needs and day to day necessities.
>
> [Officer's decision, CTR at 17.]

[20] On her allegation that she be unable to pay for her daughter's education because she will face age and sex discrimination in seeking employment in the Philippines, the Officer states: "I find this is speculative as the applicant has not put forth objective documentary evidence to support that she will be unable to secure employment in the Philippines" (Officer's decision, CTR at 16-17). The Officer never directly addresses the evidence regarding age and sex discrimination.

[21] Both extracts from the decision cited above demonstrate why this decision is unreasonable. The Applicant did not argue that she would be unable to find work; rather she submitted that given the wages paid in the Philippines for the type of work she was likely to find there, she would be unable to support her family, in particular her husband's medical expenses and her daughter's education. This is not directly addressed in the decision. The Officer only references the difference in wages in the following passage:

> I am not satisfied that the H&C considerations before me justify an exemption under s. 25(1) of the IRPA. While I acknowledge that the PA working in Canada affords her more buying power with the Canadian dollar that [*sic*] the PHP and the ability to secure work upon the PA's return to the Philippines may be unexpected, it is not the intent of s 25 of IRPA to make up for the difference in the standard of living between Canada and other countries.
>
> [Officer's decision, CTR at 17.]

[22] As this makes clear, the Officer treats the wage earning issue as only a reflection of the difference in the standard of living between the two countries. This, in itself, is not a reversible error. The problem with it, in this case, is that it fails to take into account the consequences for the Applicant and her family of losing her wage earning capacity in Canada. She is not complaining that she will experience a lower standard of living, or lose access to certain benefits she enjoys in Canada; rather, the Applicant submitted that this would have a real and direct impact on her husband's medical treatment and her daughter's education.

[23] Furthermore, the Officer's statement that the Applicant failed to put forth objective documentary evidence in support of her allegation ignores the specific evidence that the Applicant cited in her submissions that indicated she would face age and sex discrimination in seeking employment.

[24] The Officer's reasons do not "meaningfully account for the central issues and concerns raised by the parties" (*Vavilov* at para 127). For this reason, the Officer's decision is unreasonable. The Applicant is given no indication why the Officer did not accept her submissions regarding her income-earning potential in the Philippines, measured against her evidence that her Canadian income allowed her to make remittances of approximately $1,000 per month to support her husband and daughter. Nor was there any explanation for how the Officer dealt with the objective documentary evidence that she would face age and sex discrimination in seeking employment in the Philippines. The Officer's analysis falls short of demonstrating that it considered the core of the Applicant's case, as she put it forward. I find this amounts to a reversible error.

IV. Conclusion

[25] The application for judicial review is granted. The Officer's decision is overturned and the matter is remitted back for reconsideration by a different officer.

[26] The parties did not propose a question of general importance for certification, and I find that none arises in this case.

JUDGMENT in IMM-3562-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted back for reconsideration by a different officer.

3. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3562-19
STYLE OF CAUSE:	VRENALYN JUAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 29, 2020
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	OCTOBER 20, 2020

APPEARANCES:

Natalie Drolet	FOR THE APPLICANT
Jocelyne Mui	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Migrant Workers Centre Barristers and Solicitors Vancouver British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT