Federal Court  Cour fédérale

Date: 20211006

Docket: IMM-660-20

Citation: 2021 FC 1037

Ottawa, Ontario, October 6, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ADEDEJI LATEEF AMUDA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Adedeji Lateef Amuda, is a Nigerian citizen who came to Canada on a visitor's visa in June 2015. In the next month, Mr. Amuda made a claim for refugee protection, fearing persecution in Nigeria because of alleged bisexuality. The Refugee Protection Division [RPD] rejected his claim, as did the Refugee Appeal Division [RAD], and the Federal Court dismissed Mr. Amuda's application for leave to judicially review the RAD decision.

[2] In 2018, Mr. Amuda filed an application for permanent residence on the basis of humanitarian and compassionate [H&C] considerations, raising his sexual orientation, health conditions ("brittle" type 1 diabetes), and the best interests of his children [BIOC] as grounds. The H&C application was dismissed on October 10, 2019, and the decision is the subject of this judicial review application.

[3] In the meantime, Mr. Amuda applied for a pre-removal risk assessment [PRRA] in April 2019 citing risk for his bisexuality. The PRRA application was dismissed and Mr. Amuda filed an application for leave and judicial review in November 2019 that is still pending. Because of the negative PRRA decision, Mr. Amuda was scheduled for removal from Canada on January 18, 2020. The request to defer the removal was denied, and the Federal Court dismissed a motion to stay the removal. The removal was cancelled, however, when Mr. Amuda was hospitalized the day before the scheduled removal because of complications with his diabetes.

[4] The sole issue for determination in this matter is whether the H&C decision was reasonable. The presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10. I find that none of the situations rebutting such presumption is present in this matter.

[5] To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov*, at para 99. A decision may be unreasonable if the decision maker misapprehended the evidence before it: *Vavilov*, above at

paras 125-126. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100.

[6] I find that the Applicant has failed to satisfy his onus, and thus, I dismiss this judicial review application for the reasons below.

II. Preliminary Matters

[7] At the outset of the hearing before me, the Applicant moved to adjourn it so that the matter could be heard together with the judicial review of the PRRA application. The Respondent objected because they are two separate matters and because of the lateness of the request. After listening to the parties' submissions, I denied the motion because the leave application to judicially review the PRRA decision has not been determined yet and it is possible that leave may not be granted. Further, I found the last-minute motion prejudicial to the Respondent. I also denied the Applicant's late request to consider the Applicant's Record in connection with his pending leave application regarding the PRRA decision.

[8] The Respondent also objected, both in written and oral submissions, to the Applicant's evidence filed in support of this judicial review application regarding the H&C decision on the basis that some of the documentation was not before the H&C decision maker. In the end, I found it unnecessary to make an admissibility determination in part because the Applicant referred to the certified tribunal record in his oral submissions. In addition, I note that the Respondent did not identify which specific portions of the Applicant's Record, comprised of more than 1200 pages of material, were not before the H&C decision maker. To sustain such an

argument in the face of such a large record, and in the interests of judicial economy, it is incumbent on the party challenging the admissibility of the other party's evidence to do so.

III. Analysis

[9] Mr. Amuda's written and oral submissions have not convinced me that the Officer ignored or misapprehended the evidentiary record in assessing the Applicant's request for an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*], in respect of any of the grounds raised, nor that the Officer's decision is unreasonable under the reasonableness review framework in *Vavilov*.

[10] Noting that Mr. Amuda had been in Canada for only 4 years, a relatively short period of time, and that his immediate family members (his children, mother and siblings) all reside in Nigeria, the Officer found that his material did not establish an exceptional degree of establishment in Canada.

[11] The Officer also concluded that the evidence was insufficient to overcome the adverse credibility findings of the RPD and RAD, or to support Mr. Amuda's asserted sexual orientation. Although the Officer's reasons are silent about whether the Officer specifically took into account the Chairperson's Guideline 9: Proceedings Before the IRB involving Sexual Orientation and Gender Identity and Expression [SOGIE Guideline], which came into effect on May 1, 2017 about one year before Mr. Amuda submitted his H&C application, I am not persuaded that the Officer's reasons are contrary to the guidance provided by the SOGIE Guideline. The Officer acknowledged Mr. Amuda's statement that he is still attracted to men, notwithstanding his

decision not to act on his feelings. The SOGIE Guideline provides, among other things, that the concept of sexual orientation is evolving and that a person's understanding of their sexual orientation may change (Articles 2.5 and 2.6). The Officer also took into account the country conditions with respect to the Applicant's alleged risk of harm in Nigeria because of his alleged bisexuality.

[12] Further, the Officer determined that Mr. Amuda had not provided sufficient evidence to support his claims regarding the risks posed by an unstable electrical grid (which is relevant to the Applicant's necessity to store insulin) and inadequate healthcare in Nigeria. Referring to research reports and articles submitted by the Applicant, the Officer acknowledged the "woefully inadequate" electrical grid in Nigeria. The Officer noted, however that many businesses and households have power generators to ensure a stable source of power, and that there was no evidence indicating Mr. Amuda would not be able to obtain a generator or afford the fuel for it, if he were to return to Nigeria.

[13] The Officer also considered the country conditions documentation provided by the Applicant with respect to the state of healthcare in Nigeria, in particular for people with diabetes. Although the Officer did not mention type 1 (i.e. insulin dependent) diabetes specifically (as opposed to type 2 diabetes which can be treated with oral medications and through diet), the Officer acknowledged Mr. Amuda's reliance on insulin to treat his diabetes.

[14] Finally, the Officer noted that the evidence submitted regarding Mr. Amuda's BIOC claims did not demonstrate that his two children, living in Nigeria with his ex-wife, would be

negatively affected if Mr. Amuda were returned to Nigeria. In arriving at these determinations, the Officer noted that the majority of the written materials before the Officer also were before the RPD and RAD, and previously were determined to be insufficient to support Mr. Amuda's claims.

[15] In my view, the reasons demonstrate that the Officer considered and weighed the Applicant's evidence on record and provided intelligible conclusions that permit the Court to understand the reasoning process. In other words, I find the Officer's determinations are "based on an internally coherent and rational chain of analysis" and justified in relation to the facts and law that constrained them: *Vavilov*, above at para 85.

[16] In addition, it is not the role of the reviewing Court to engage in reassessing and reweighing the evidence that was before the decision maker: *Vavilov*, above at para 125; *Gesite v Canada (Citizenship and Immigration)*, 2017 FC 1025 [*Gesite*] at para 18. I find, however, this is essentially what Mr. Amuda asks of the Court in this matter.

[17] An applicant for exceptional H&C relief has the burden of providing proof in support of any claims on which the application is based, in other words, of "putting their best foot forward." The decision maker thus may conclude the application is baseless, absent sufficient or any evidence (including, as in the case before me, any recent evidence since the negative RPD and RAD decisions): *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5; *Gesite*, above at para 19. Further, an exemption from any applicable criteria or obligations of the *IRPA* on H&C grounds under section 25 is an extraordinary remedy based on

the particular circumstances of the foreign national applicant. It is an exception and not intended to be an alternative immigration route. An H&C officer's decision is owed a significant degree of deference.

[18] I am satisfied the Officer conducted a reasonable and global assessment, as shown by the reasons, of the evidence provided by the Applicant in determining that the humanitarian and compassionate considerations before the Officer do not justify an exemption under subsection 25(1) of the *IRPA*.

[19] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-660-20

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**
***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**

Entering and Remaining in Canada **Humanitarian and compassionate considerations — request of foreign national**	**Entrée et séjour au Canada** **Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
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.

FEDERAL COURT

SOLICITORS OF RECORD

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