Federal Court  Cour fédérale

Date: 20211112

Docket: IMM-2667-21

Citation: 2021 FC 1230

Ottawa, Ontario, November 12, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

YA GUANG HUO

Applicant

And

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of an Officer's decision to reject the Applicant's application for Pre-Removal Risk Assessment ("PRRA"), alleging a fear of persecution as a Christian and member of the Local Church. The Officer deemed the Applicant's evidence to be insufficient to establish that she was a person in need of protection. Both parties agree that this

matter is moot, but the Applicant argues I should exercise my discretion and hear the Application, while the Respondent's position is that I should dismiss it for mootness.

II. Background

[2] The Applicant, Ya Guang Huo, is a citizen of China. She, along with her husband and their daughter, landed as permanent residents in Canada on August 4, 2004. Soon after, she returned to China, where she continued to live for approximately 10 years between 2004 and 2014, spending approximately 100 days in Canada during this time.

[3] In 2009, the Applicant hired New Can Consultants (Canada) Ltd. ("New Can") to assist her with an application for a Permanent Resident ("PR") card renewal. She signed a blank application which New Can completed. In this application, it was stated that she met the residency requirements for a permanent residency renewal when she in fact did not. On October 11, 2017, the Immigration Division ("ID") issued a Section 44 Exclusion Order against her as a result of this misrepresentation. On September 6, 2019, the Immigration Appeal Division ("IAD") dismissed her appeal seeking discretionary relief, confirming the order on the basis that there were insufficient humanitarian and compassionate grounds to warrant special relief. The Applicant submitted a PRRA application alleging risk of harm on return to China due to her religious faith as a Christian and member of the Local Church. This application was refused by a PRRA Officer on June 19, 2020.

[4] The Applicant brought a motion to stay her removal to China based on her underlying judicial review of the PRRA decision. That stay was refused by Justice Pamel, as he found no

serious issue, irreparable harm or balance of convenience, and she was removed in May 2021. The Applicant remains in China. In August 2021, Justice Pamel granted her leave for judicial review of her PRRA decision, after asking for further argument regarding mootness, but not determining the mootness issue.

[5] The Applicant filed another affidavit dated September 1, 2021. In that affidavit, she provided that she was going to file a temporary resident permit ("TRP") application if this judicial review was granted, as she would need to return to Canada to have her PRRA re-determined. I accept this affidavit for this limited purpose only, and correspondingly, other than paragraph 1 and 12, I give the affidavit no weight, as that information was not before the decision-maker and does not fit into any recognized exceptions.

[6] Though moot, the Court has the discretion to hear the matter (*Canada (MPSEP) v Shpati*, 2011 FCA 286 at para 30). The Applicant argued that I should exercise my discretion, given that if the judicial review was granted and sent back for re-determination, the Applicant could then apply for a TRP to return to Canada for the re-determination.

[7] The Supreme Court of Canada in *Borowski v Canada*, [1989] 1 SCR 342 [*Borowski*], set out the test and the factors that the Court is to consider in exercising this discretion.

[8] The first step is for the Judge to determine if the matter at issue is moot. On these facts, the parties and I agree that the matter is moot, given that she was removed from Canada after a negative PRRA.

[9] The second step is to consider whether the Court's discretion should be exercised to hear the matter despite its mootness, in consideration of the factors set out in *Borowski*. These factors are: a) the absence of an adversarial context; b) judicial economy; and c) whether this would constitute the Court's adjudicative function intruding into the legislative role.

A. *Adversarial context*

[10] The Applicant argued that there is still an adversarial context in this case, given that she is going to file a TRP application, and this means there is an ongoing adversarial dispute. The Applicant relied on *Boakye v Canada (Minister of Citizenship and Immigration)*, 2018 FC 831 [*Boakye*], where Justice Southcott heard a PRRA judicial review despite its mootness. In *Boakye* he concluded that there was still an adversarial context existing between the parties in that case as demonstrated by the substantial efforts undertaken by both parties to advance their respective positions both on the merits of the application for judicial review and the interlocutory matters that the Court has been called upon to consider. In this case, I do not find an adversarial context between the parties given there is only a possibility of future TRP application.

[11] Regardless, in the event that I am wrong I note that at paragraph 49, Justice Southcott referenced *Sogi v Canada (Minister of Citizenship and Immigration)*, 2007 FC 108 at paragraph 47, in which the Court held that the adversarial context should be supplemented by at least one of the other two criteria to support an exercise of the Court's discretion. As will be touched on momentarily, I do not find the Applicant meets the other two criteria, either.

B. *Judicial Economy*

[12] Judicial economy does not favour the Applicant's argument here. This factor requires that a court examine the circumstances of a case to determine if it is worthwhile to allocate scarce judicial resources to resolve the moot issue (*Borowski*). The Applicant has had the benefit of a stay application, in which she was not granted a stay due to not meeting the test of serious issue, irreparable harm, or balance of convenience, and she cannot return to Canada for 5 years without Ministerial permission given her misrepresentations. As such, I am of the view that this is a situation wherein scarce judicial resources should not be devoted to rendering a decision where even the usual remedy of redetermination would not be effective in the usual course.

C. *Court's proper role.*

[13] In this case, Parliament has determined the legislative scheme and the Applicant has availed themselves it, by way of a stay application, which was not granted. She is currently inadmissible to Canada. On these facts, the Court may be veering into the legislative role given this Chinese citizen residing in China and has now availed herself of the legislative scheme progression as Parliament has intended. I am also mindful of the fact that this judicial review may amount to more than a mere review of the Officer's decision, but rather could amount to a review of Justice Pamel's dismissal of the Applicant's motion for a stay of removal. This would be problematic. This Court in *Nalliah v Canada (Minister of Citizenship and Immigration),* 2005 FC 759, held that sending a negative PRRA decision back for redetermination after the Applicant is removed would be akin to sitting in review of the merits of the other Justice's decision. This would be similarly the case here.

D. *Conclusion*

[14] I am dismissing this judicial review for mootness. This is a very factual determination, and in my view, the Applicant has made an insufficient (though well argued) case based on the *Borowski* factors as to why I should exercise my discretion to hear this matter despite its mootness.

JUDGMENT IN IMM-2667-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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