

Federal Court



Cour fédérale

Date: 20211117

Docket: IMM-3363-20

Citation: 2021 FC 1251

Ottawa, Ontario, November 17, 2021

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

ABDILLE HASSAN AHMED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review of a decision of an officer [Officer] of Immigration, Refugees and Citizenship Canada denying a humanitarian and compassionate [H&C] application. For the following reasons, the application is dismissed because the Officer's decision is reasonable.

II. Background

[2] The Applicant made an initial claim for refugee protection based on his allegation that he had been kidnapped and tortured by Al-Shabaab for operating a Sufi Muslim school in Somalia.

[3] The Refugee Protection Decision [RPD] rejected the refugee application based on the Applicant's lack of credibility. The RPD found that the Applicant had, in effect, lied in his application and that he failed to rebut the Minister's evidence that he posted pictures of himself on Facebook travelling throughout Africa during the time he claimed to have been detained by Al-Shabaab.

[4] Having failed in his appeal to the Refugee Appeal Division, the Applicant submitted an H&C application.

[5] The Applicant based his H&C application on two grounds – establishment in Canada and risk/ adverse country conditions related to Al-Shabaab. The Officer concluded that based on a global assessment of the proposed H&C factors, H&C relief was not warranted in this situation.

[6] In addressing risk/adverse country conditions, the Officer gave considerable weight to the RPD decision based on the panel's relative expertise and its opportunity to examine the Applicant in detail during the hearing. It is noteworthy that the Applicant did not address the RPD's adverse findings or establish that his family members in Somalia were experiencing hardships with respect to country conditions or Al-Shabaab activities.

[7] Respecting establishment, the Officer placed little weight on the Applicant's evidence and concluded that it is not uncommon for individuals who reside in Canada to be employed, attend classes, participate in church activities or integrate somewhat into their communities.

III. Analysis

[8] There is no doubt that the standard of review is reasonableness in accordance with the framework from *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanhasamy*].

[9] An H&C decision under s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, is a highly discretionary one. The burden of showing that the exercise of discretion is unreasonable rests with the Applicant. As held in *Li v Canada (Citizenship and Immigration)*, 2020 FC 848:

[9] The parties agree, as do I, that the review of an immigration officer's H&C decision attracts the reasonableness standard: *Vavilov* at para 25. The burden of demonstrating that the Decision is unreasonable rests with the Applicant. He must establish that there are sufficiently serious shortcomings in the Decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency, or that the Decision is untenable in light of the relevant factual and legal constraints that bear on it: *Vavilov* at paras 100-103.

[10] Subsection 25(1) of the *IRPA* gives the Minister of Citizenship and Immigration discretion to grant permanent resident status to a foreign national if the Minister is of the opinion that it is justified by H&C considerations relating to the foreign national. Subsection 25(1) does not enumerate specific H&C factors to consider except that the Minister must take into account the best interests of a child directly affected.

[11] Ministerial guidelines list a number of factors to consider in H&C applications, including establishment in Canada, ties to

Canada, adverse country conditions in the applicant's country of origin, and health considerations. The factors listed in the guidelines are not limiting: *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 27 and 31 [*Kanhasamy*].

...

[13] H&C factors should not be considered in isolation; there must be a global assessment of all the relevant factors: *Kanhasamy* at para 28. Officers making H&C determinations must substantively consider and weigh all the relevant facts and factors before them: *Kanhasamy* at para 25.

[10] An H&C decision is an individual assessment of non-exhaustive factors based on the facts of the case, and determines whether an applicant would face “unusual and undeserved or disproportionate” hardship that exceeds the base level of hardship associated with being required to leave Canada.

A. *Risk/Country Conditions*

[11] The Applicant minimally addressed the risk/adverse country conditions issue and did not attempt to rebut or ameliorate the RPD's related findings. It was reasonable for the Officer to rely on the RPD as it had the best information, expertise and opportunity to assess the facts and the Applicant's credibility. It would have been plainly unreasonable for the Officer to ignore the RPD.

[12] The effect of the Applicant's failure to undercut the RPD's decision is the conclusion that, subject to some adjustment on return to Somalia, the Applicant has no basis for challenging the Officer's conclusions on this issue. Therefore, the Applicant was left only with his argument that the Officer's “establishment” determination was unreasonable.

B. *Establishment*

[13] As held in *Kanthisamy*, the Ministerial guidelines for H&C applications list a number of non-exhaustive factors to be considered, including establishment in Canada. The H&C analysis is a global assessment of all relevant factors; no one factor is necessarily paramount nor do any of them have to be “exceptional”. What is exceptional is the relief. The criteria, however, is “underserved, unusual or disproportional harm”.

[14] The Applicant relied on cases such as *Lauture v Canada (Immigration and Immigration)* 2015 FC 336, where this Court has held that it is improper for an officer to analyze an applicant’s significant establishment in Canada in relation to whether they can carry on the same activities in their country of origin. The present case is distinguishable as the Officer did not find the Applicant’s establishment to be significant. It was reasonable for the Officer to consider that securing some employment and having some community connections is not uncommon. It is reasonable to expect to see such social interaction.

[15] The Officer considered the Applicant’s employment, his education and letters of support from relatives, mosque and community centres. However, it was reasonable for the Officer to conclude that separation from these activities and interactions would not cause disproportionate hardship. This seems particularly true given that the Applicant’s wife, children, mother and siblings all still reside in Somalia.

[16] The Officer did not rely on their comments about the Applicant's ability to adapt back to Somali culture to undermine the claim of establishment. The matters, as argued by the Applicant, are pertinent to addressing the issues of risk upon return and country conditions.

[17] There is no basis for disturbing the Officer's conclusions with respect to establishment.

IV. Conclusion

[18] Therefore, viewed as a whole, the decision is reasonable – the conclusions with respect to the specific H&C factors were reasonable. This judicial review is dismissed.

[19] There is no question for certification.

JUDGMENT in IMM-3363-20

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3363-20

STYLE OF CAUSE: ABDILLE HASSAN AHMED v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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