Federal Court Cour fédérale

Date: 20211214

Docket: IMM-6818-19

Citation: 2021 FC 1416

Ottawa, Ontario, December 14, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MONICA DOUGLAS ROBINSON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Monica Douglas Robinson, seeks judicial review of a decision of a senior immigration officer (the "Officer"), dated September 18, 2018, to dismiss the Applicant's application for permanent residency on humanitarian and compassionate ("H&C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant submits that the Officer erred in their analysis of the hardship she would face in Jamaica, her establishment in Canada, as well as the best interest of the child ("BIOC") with respect to the Applicant's daughter. The Applicant also submits that the Officer breached their duty of procedural fairness by introducing evidence that was extraneous to the H&C application and not previously disclosed to the Applicant.

[3] For the reasons set out below, I find the Officer's decision is reasonable and that there was no breach of procedural fairness. I therefore dismiss this application for judicial review.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 61-year-old citizen of Jamaica. The Applicant has three children who live in Jamaica, including her daughter, Asheka, who is now 23 years-old.

[5] The Applicant lived in Jamaica with her husband and children until her husband's sudden death in January 2008. According to the Applicant, her husband was attacked by a man named Mr. Brown, an alleged gang member, and died from his injuries. Since the attack on her late husband, the Applicant alleges that the gang associated with Mr. Brown attacked and threatened her and her children. The Applicant claims that when she contacted the police, they were of little assistance.

[6] On January 19, 2012, the Applicant came to Canada on a temporary resident visitor visa. She claims that her intent was not to remain in Canada permanently. However, this changed when the Applicant learned that her house in Jamaica burned down on April 30, 2014.

[7] Since her three children were still in Jamaica and had lost their home, the Applicant sought out employment in Canada to support them financially. The Applicant worked without a work permit as a part-time relief worker at a nursing home until she was required to stop working due to her health conditions. She made recurrent remittances to her children in Jamaica.

[8] In addition to her pre-existing diagnosis of type-2 diabetes, the Applicant developed several health issues in Canada, including a chronic foot plantar ulcer, high blood pressure, vision complications associated with her diabetes, and an infection in her leg due to a fall in August 2014, which resulted in mobility issues. The Applicant claims that her health conditions prevented her from traveling outside of Canada upon the expiry of her temporary resident visa.

[9] On July 6, 2016, the Applicant submitted her H&C application, in which she included her daughter Asheka as a dependent and argued that it was in Asheka's best interest to be with her mother in Canada. The Applicant also raised concerns of hardship upon her return to Jamaica because of gang violence, access to health care, and the impacts of the house fire.

B. *Decision under Review*

[10] By letter dated September 18, 2018, the Officer refused the H&C application, determining that there were insufficient factors to warrant an exemption on H&C grounds.

[11] The Officer considered the adverse country conditions in Jamaica and the hardship the Applicant would face if she returned to Jamaica, as well as the Applicant's level of establishment in Canada, and the BIOC with respect to Asheka. Upon conducting a cumulative assessment of the evidence submitted with the H&C application, the Officer was satisfied that relief from the requirements of the *IRPA* was not justified.

III. **Issues and Standard of Review**

[12] This application for judicial review raises the following issues:

A. *Whether the Officer's decision is reasonable.*

B. *Whether there was a breach of procedural fairness.*

[13] With respect to the first issue, both parties agree that the appropriate standard of review is reasonableness. I agree that the appropriate standard of review for H&C decisions is reasonableness (*Chen v Canada (Citizenship and Immigration),* 2019 FC 988 at para 24; *Kanthasamy v Canada (Citizenship and Immigration),* 2015 SCC 61 ("*Kanthasamy*") at paras 8, 44-45; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 16-17).

[14] I find that the second issue is reviewed upon what is best reflected in the correctness standard, as it concerns whether the Officer complied with the principles of procedural fairness

(*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[15] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[16] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

[17] Correctness is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company v Canada (Attorney General),* 2018 FCA 69 at para 54).

IV. **Analysis**

A. *Whether the Officer's decision is reasonable.*

(1) Hardship

[18] The Officer assessed the hardship the Applicant would face if she were to return to Jamaica, and found insufficient evidence to support the Applicant's claim that she would be at risk of gang violence. The Officer determined that there was no corroborating evidence to support the claim that Mr. Brown was responsible for the Applicant's husband's death, that she or her family face continued threats from a gang, or that gang members caused the house fire, as the Applicant claims. The Officer reviewed and acknowledged the objective country conditions documents, including information on gang-related violence, and ultimately concluded that these documents address either general country conditions experienced by most Jamaicans, or specific conditions that are not linked to the Applicant's situation.

[19] The Officer accepted the Applicant's evidence that she suffers from several medical conditions, including type 2 diabetes, poor vision, and a chronic foot ulcer from a bone infection, and considered the numerous letters from medical professionals submitted with the H&C application. However, the Officer found that the Applicant had failed to provide corroborating evidence to support the content of the letters, in particular the statements that suggest the Applicant would be unable or unwilling to obtain the same medical care for her health issues in Jamaica, or that her health will deteriorate if she returns to Jamaica. The Officer conducted their own research of public country conditions documents and concluded that health services would

be available to the Applicant in Jamaica, and that there is no indication that she would face undue hardship in accessing these services. The Officer specifically cited a September 2012 article from *The Jamaica Gleaner*.

[20] The Applicant submits that the Officer committed a reviewable error by examining the H&C factors in isolation, rather than conducting a global assessment of the hardship factors. The Applicant also contends that the Officer misconstrued or misapplied the list of factors to be considered in their hardship analysis, as required by the IP-5.11 *Guidelines on Immigration Applications in Canada made on Humanitarian or Compassionate Grounds* (the "*Guidelines*").

[21] Specifically, the Applicant asserts that the Officer failed to consider her lack of family support in Jamaica, the fact that she has an unfinished high school diploma, and the absence of employment prospects in Jamaica, particularly considering her medical conditions. The Applicant submits that the Officer also misconstrued the evidence corroborating her health conditions, specifically how her health would deteriorate if she were to return in Jamaica.

[22] The Applicant further submits that the Officer failed to fully account for the evidence that describes the inequality, gender bias, gang-related crime, corruption, lack of employment and poverty that is prevalent in Jamaica. The Applicant maintains that the Officer erred in concluding that her circumstances would not differ from the situation of other individuals similarly situated to her in Jamaica, as this is not a requirement of the *IRPA* or the *Guidelines*. Finally, the Applicant submits that the Officer ignored evidence that she and her family face gang-related violence in Jamaica. I disagree.

[23] I do not find that the Officer misconstrued, ignored, or failed to consider evidence of undue hardship, as is suggested by the Applicant. The Officer simply did not find that the evidence was sufficient to warrant an exemption on H&C grounds. The Officer acknowledged the country conditions in Jamaica and summarized the evidence submitted by the Applicant, including the letters from her children. Specifically, the Officer found that there was no evidence in the record that the house fire or the Applicant's husband's death or killing were the result of gang-related violence, nor did the letters from the Applicant's children mention that they were the targets of gang-related violence.

[24] I also find that the evidence with respect to the Applicant's health conditions did not demonstrate that she would be unable to access medical care in Jamaica. I find it was reasonable for the Officer to conclude that it was speculative that the Applicant's medical conditions would deteriorate if she returns to Jamaica, and that the evidence submitted by the Applicant was not objective.

[25] When examining the letters submitted from medical professionals, such as the Applicant's doctor, a community health worker, the Applicant's foot care nurse specialist, a psychiatrist, and a registered nurse, all of them state that the Applicant's health conditions would likely deteriorate if she returned to Jamaica and no longer had access to health care in Canada. However, there is no indication as to how or why the Applicant will not be able to receive the same or similar care for her medical issues in Jamaica. While this alone is not sufficient to dismiss the claim of hardship in accessing the required care in Jamaica, these letters were not accompanied by supporting evidence to demonstrate the unavailability of the required health care

in Jamaica, and how this would affect the Applicant specifically. In view of this insufficient evidence, it was rational for the Officer to conclude that this argument was vague and lacking in details.

[26] The Officer cited articles and reports demonstrating that medical, social, and mental health services are available to the Applicant in Jamaica, thereby contradicting the content of the letters provided by the medical professionals. Although I accept that it is possible that the Applicant requires specific health treatments that may be unavailable or inaccessible in Jamaica, and that she would suffer hardship as a result of not having access to these, the Applicant did not provide sufficient evidence to support such a claim. The Applicant's submissions refer to objective reports detailing the serious issues with the Jamaican public health system and its insufficiency, "in particular, for people having serious health issues such as diabetes." Nonetheless, there is no evidence demonstrating how these particular circumstances would apply to the Applicant's personal circumstances. Given the foregoing, I cannot conclude that the Officer erred in their assessment.

[27] One might argue that the Officer's assessment raises a similar issue as that raised in *Kanthasamy* because the Officer accepted evidence from a psychiatrist detailing the Applicant's depressive anxiety symptoms, and "flashbacks" to traumatic episodes, but dismissed it because the Applicant did not provide evidence supporting the facts underlying the psychiatrist's assessment. That is, that gang members killed her husband and she was attacked and threatened by gang members, as well as abused as a child. Indeed, in referencing *Kanthasamy,* this Court in

Montero v Canada (Citizenship and Immigration), 2021 FC 776 ("*Montero*") states at paragraph 27:

> The Supreme Court in *Kanthasamy* affirmed that where mental health diagnoses are accepted, the fact that an individual's mental health would likely worsen if they were removed to their country of origin is a relevant consideration that must be identified and weighed regardless of whether there is treatment available in that country (*Kanthasamy* at para 48). This principle echoes throughout this Court's jurisprudence (see *Esahak-Shammas v Canada (Citizenship and Immigration),* 2018 FC 461 at para 26, and the cases cited therein).

[28] Similar to the aforementioned cases, the Officer did not dispute the Applicant's mental health diagnosis, and referred to the availability of health care in Jamaica to support their determination that the Applicant would not incur hardship should she choose to access mental health services in Jamaica. While I note that the Officer did not thoroughly analyze the hardship that the Applicant would face with respect to her mental health if she returns to Jamaica, I find that there are distinguishing factors in the case at hand. First, the factual matrix is distinguishable from *Kanthasamy* and *Montero* because the mental health diagnoses invoked in these cases involved post-traumatic stress disorder, adjustment disorder, depression, and risks of suicide – none of which were identified in the case at hand. Most importantly, the Officer addressed deficiencies and disputed the findings of the psychiatrist because they were based on facts that were not corroborated by the Applicant in her submissions.

[29] In my view, the Applicant did not meet her burden of presenting sufficient evidence to establish that an H&C exemption was warranted in her case. I therefore find that the Officer's assessment of the hardship factors is reasonable.

(2) Establishment

[30] With respect to the Applicant's establishment in Canada, the Officer acknowledged the personal ties the Applicant has formed while in Canada, yet found that the Applicant had not demonstrated that these relationships are mutually dependent and found that she would be able to maintain contact through email or phone calls without causing hardship. The Officer acknowledged the Applicant's efforts to improve her education, volunteer and participate in a local church, yet also noted that the Applicant had not provided proof of the funds she sent to her children, nor did she present evidence of how she financially supported herself while being unemployed in Canada. The Officer concluded that although it may be difficult for the Applicant to leave Canada after being in the country for six years, the evidence provided did not suggest that her departure from Canada would result in hardship.

[31] The Applicant submits that the Officer misconstrued, ignored, or failed to consider evidence supporting the Applicant's level of establishment in Canada. Specifically, the Applicant submits that the Officer failed to consider the evidence demonstrating her integration in the community, such as her involvement in community organizations and volunteering, and attendance of classes to support her admission in a personal support worker program in Canada. The Applicant further submits that the Officer did not account for her inability to leave Canada because of circumstances beyond her control, including the fire that burned down her house in Jamaica, and the deterioration of her health, which made it difficult to leave when her visitor's visa expired.

[32] I disagree. I find that the Officer considered all of the evidence presented, acknowledged when certain factors demonstrated a level of establishment, and explained why the evidence overall was not sufficient. This was a reasonable assessment of the evidence and is supported by the jurisprudence.

[33] In *Lada v Canada (Citizenship and Immigration),* 2020 FC 270, at paragraph 29, this Court found:

> While the officer repeatedly stated that the applicant had provided insufficient objective evidence to support the H&C factors they advanced, these conclusions were always accompanied by explanations.

[34] I find that the Officer in the case at hand similarly included explanations for each of their conclusions. Furthermore, as established in *Small v Canada (Citizenship and Immigration)*, 2021 FC 930 at paragraph 34:

> It is settled law that an applicant's degree of establishment is not sufficient in itself to justify exempting an applicant from the requirement to obtain an immigrant visa from outside Canada.

[35] Accordingly, I do not believe that the Officer committed an error in their assessment of the Applicant's establishment in Canada.

[36] With respect to the Officer's alleged failure to consider the Applicant's inability to leave Canada due to circumstances beyond her control, this argument was not presented in the

Applicant's submissions before the Officer, and there was scant evidence to support this claim. As affirmed in *Arshad v Canada (Citizenship and Immigration)*, 2018 FC 510 at paragraph 24, it is also established law that:

> […] the onus is on the Applicant to submit relevant evidence and it is not for the Officer to have to mine through the documentation for the jewel that is now presented as being evidence that was not considered. Nor is it the Officer's role to follow "leads" and do further research.
>
> [citations omitted]

[37] Finally, I also disagree with the Applicant's submission that the Officer only considered the H&C factors in isolation. As demonstrated in the Officer's reasons, the Officer conducted a global assessment of the evidence and factors before them:

> Based on a cumulative assessment of the evidence submitted by the applicant, I have considered the extent to which the applicant, given her particular circumstances, would face difficulties if she had to leave Canada in order to apply for permanent residence abroad. As noted above, although there will inevitably be some hardship associated with being required to leave Canada, this alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under subsection 25 (1). In making this humanitarian and compassionate determination, I have substantively considered and weighed all the relevant facts and factors before me.

[38] I find that the Officer came to a reasonable conclusion that the factors of the case at hand did not warrant relief on H&C grounds.

(3) BIOC Assessment

[39] The Officer considered the best interest of the Applicant's daughter, Asheka, who was 18-years old when the H&C application was submitted. The Officer noted that the letter provided by Asheka as evidence of her situation in Jamaica was three years-old and had not been updated. As such, the Officer found that there is no evidence confirming that Asheka still attends school or indicating her current place of residence. The Officer also found insufficient evidence to demonstrate that Asheka would prefer residing in Canada instead of Jamaica. Overall, the Officer found that the evidence on the record did not suggest that Asheka's best interests would be compromised if the Applicant returned to Jamaica.

[40] The Applicant submits that the Officer's BIOC analysis was deficient for not considering that it is in Asheka's best interest to be reunited with her mother in Canada. The Applicant contends that the Officer failed to adequately analyse the potential hardships that Asheka would face in light of the information provided, and that the Officer was required to be alert, alive, and sensitive to the BIOC, including how the Applicant's financial position would affect Asheka's potential access to education, health care, and general security. The Applicant relies on *Singh v Canada (Minister of Citizenship and Immigration),* 2005 FC 718 ("*Singh*"), in which this Court found that ignoring the financial implication of a parent's removal on a child is indicative that an Officer was not "alert, alive and sensitive" to the BIOC (at para 12).

[41] The Respondent contends that the Officer's conclusions on the BIOC were reasonable and proportional to the Applicant's submissions. I agree. The limited evidence provided by the

Applicant made it difficult for the Officer to assess whether Asheka requires the support the Applicant claims she does, or whether she even wishes to leave Jamaica to come to Canada.

[42] The Applicant relies on case law which relates to situations of parents financially supporting their children who were located outside of Canada. However, I find that these cases are distinguishable from the case at hand. The case of *Singh* involved a different factual matrix: the applicant in *Singh* provided oral evidence and an affidavit detailing that he was the primary source of financial support for his Canadian-born child and the child's Canadian mother. As for this Court's decision in *Ranji v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 521, the applicant provided substantial evidence supporting his claim, such as proof that he had accumulated:

> […] a sizable bank account, co-purchase a residence with his brother, develop a significant equity in the residence, purchase an RRSP, financially support his family in India including sending his two children to private school in India, and has provided letters of support from community and social groups for his activities with them (at para 24).

[43] The same cannot be said for the Applicant in this case, as the Officer reasonably found that insufficient evidence was provided to support her submission.

[44] In light of the above, I find the Officer reached a reasonable conclusion with respect to the BIOC analysis.

B. *Whether there was a breach of procedural fairness.*

[45] The Applicant submits that, in arriving at their decision, the Officer relied on evidence extraneous to the H&C application, which was not previously disclosed to the Applicant, nor was the Applicant given an opportunity to respond. Specifically, the Officer relied on a September 2012 article in *The Jamaican Gleaner*, obtained during a Google search. The Officer cited the *Jamaican Gleaner* article when refuting the Applicant's stance that she would be unable to access medical services and care in Jamaica or that she would incur hardship in doing so. The Applicant contends that procedural fairness required the Officer to provide her with an opportunity to know the case she had to meet and to address the Officer's concerns.

[46] The Respondent contends that the Officer's reliance on publicly available documents obtained through a basic Google search does not indicate that there was a breach of procedural fairness. The Respondent relies on *Shah v Canada (Citizenship and Immigration)*, 2018 FC 537, in which this Court affirmed that "consulting open source information was not extrinsic evidence and did not require the Officer to put the evidence to the applicant for a response," (at para 38) and that "objective information gathered by the Officer […] could have been easily accessed by the Applicants, just as they accessed the articles they submitted. Therefore, the Officer had no duty to share those articles with the Applicants." (at para 42).

[47] I agree with the Respondent. I do not find that the Officer breached the duty of procedural fairness by relying on a September 2012 article by the *Jamaican Gleaner* obtained through a Google search to support their analysis. This article was publically available and could

have easily been accessed by the Applicant (*Rutayisire v Canada (Citizenship and Immigration)*, 2021 FC 970, ("*Rutayisire*") at para 83). The information provided in the article was also not novel and for the most part echoed the information contained in the Applicant's own supporting documents. In fact, the Applicant herself submitted an article from the *Jamaican Gleaner* in support of her application, proving that this source is easily available online. Further, I agree with the Respondent, that, ultimately, the onus was on the Applicant to provide sufficient evidence that the unavailability of health care in Jamaica would result in hardship for the Applicant upon her return to Jamaica.

[48] In light of the above, I do not find that the Officer had a duty to share this article with the Applicant or provide her with an opportunity to respond. I find that the Applicant was well aware of the case she had to meet and "had a meaningful opportunity to participate in the officer's decision-making process, including a full and fair opportunity to present his case" (*Rutayisire* at para 81). I therefore do not find that her rights to procedural fairness were breached.

V. **Conclusion**

[49] For the reasons above, I find the Officer's decision to be reasonable and that there was no breach of procedural fairness. I therefore dismiss this application for judicial review.

[50] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6818-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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