Federal Court  Cour fédérale

Date: 20220114

Docket: IMM-3124-20

Citation: 2022 FC 43

Ottawa, Ontario, January 14, 2022

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

NADIA KAMAL HABIB

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Nadia Kamal Habib ("Ms. Habib") is an 89-year-old Coptic Christian female citizen of Egypt and Australia. She sought permanent residence in Canada based upon Humanitarian and Compassionate grounds ("H&C") pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ["IRPA"]. An Immigration Officer refused her application on July

2, 2020. Ms. Habib now seeks judicial review of that decision pursuant to s. 72(1) of the IRPA. For the reasons set out below, I grant the application for judicial review.

II. Relevant Facts

[2] Ms. Habib's only son is a Canadian permanent resident. Her son lives in Canada with his spouse and his children, Ms. Habib's only grandchildren. Ms. Habib has one brother who resides in Canada and a sister who continues to live in Egypt.

[3] In 1993, Ms. Habib immigrated to Australia with her now-deceased husband to join their son and his family. She became an Australian citizen in 1995. She left Australia in 2000 and returned to Egypt, where she had always lived prior to immigrating to Australia. Ms. Habib's son and his family moved to the United Arab Emirates in 2000 where they remained until 2009 when they immigrated to Canada. Ms. Habib entered Canada with a travel visa in May 2018 and filed an H&C application in October of that same year.

[4] Ms. Habib's counsel asserted, in her October 1, 2018 written representations to the Officer that her client's advanced age, family connections, establishment in Canada through family and the local church and discrimination against Coptic Christians in Egypt, justified a favourable ruling on the H&C application. In that same submission, counsel unfortunately made a passing reference to her client being in "relatively good health". This observation appears to contradict evidence included in the application, which accompanied the submissions made by counsel. In a letter of support, James Gordon Horan ("Mr. Horan"), a neighbor of Ms. Habib's son, wrote: "[…] her advanced age and poor health means she is no longer able to live on her

own or care for herself". Ms. Habib's daughter-in-law, Noha Boulos wrote: "she needs the care and warmth of family" […] it is necessary for her to stay with us". Her eldest grandson, Peter Boulos wrote that his grandmother (Ms. Habib) suffers from "anxiety and blood pressure problems".

III. Decision under review

[5] With respect to Ms. Habib's establishment in Canada, the Officer determined that the extent of her establishment was not beyond what would normally be expected in the circumstances. He assigned little weight to that factor.

[6] With respect to Ms. Habib's ties to Canada, the Officer concluded there was insufficient evidence to demonstrate that Ms. Habib's circumstances were distinguishable from similarly situated individuals who also wish to permanently join family members in Canada. The Officer noted that Ms. Habib possessed a valid travel visa, which allowed her to live with her son until March 2021, at which time she could potentially become eligible to be sponsored for permanent residency. The Officer concluded that the rejection of this H&C application would not result in any permanent severing of family ties.

[7] The Officer also found there was insufficient evidence to establish that Ms. Habib would be unable to live independently or that her family would be unable to assist her in Egypt. The Officer made two key findings regarding Ms. Habib's health: 1. "The information that is before me suggests the applicant is an active and able bodied individual"; and 2. "There is no indication

before me that other than a desire to be with her son permanently, that the applicant would be unable to live independently."

[8] With respect to the allegation that Ms. Habib would face hardship in Egypt due to her religion, the Officer found that the evidence did not support that she would face unusual, undeserved and disproportionate hardship upon return. The Officer noted that Ms. Habib has resided in Egypt for the majority of her life, and that she has been practicing her religion freely. The Officer was not satisfied that she would not be able to continue practicing her religion freely should she return to Egypt. While the Officer did give some weight to the negative country conditions in Egypt, he concluded that this factor did not warrant an exemption.

IV. Relevant Provisions

[9] The relevant provision in the present matter is s. 25(1) of *IRPA*, reproduced below:

***Immigration and Refugee Protection Act*, SC 2001, c 27**	***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27**
Humanitarian and compassionate considerations — request of foreign national	**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	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

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.	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.

V. Analysis

[10] The only issue raised is whether the Officer's decision meets the test of reasonableness as set out in *Canada (M.C.I.) v Vavilov*, 2019 CSC 65, 441 DLR (4th) 1 ["*Vavilov*"]. None of the exceptions to the presumption of reasonableness review apply in the circumstances (*Vavilov* at paras 25 and 17). "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). To set aside a decision, the reviewing court must be convinced that there are sufficiently serious shortcomings in the decision, such that any superficial or peripheral flaw will not suffice to overturn the decision (*Vavilov* at para 100). Most importantly, the reviewing court must consider the decision as a whole, and must refrain from conducting a line-by-line search for error (*Vavilov* at paras 85 and 102).

[11] A H&C determination under s. 25(1) of the *IRPA* is a global one where all the relevant considerations are to be weighed cumulatively in order to determine if relief is justified is the circumstances (*Kanthasamy v Canada (Citizenship and Immigration*), 2015 SCC 61, [2015] 3 SCR 909 ["*Kanthasamy*"] at para 28). Relief is considered justified if the circumstances "would excite a reasonable person in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at para 13; *Caleb v Canada (Citizenship and Immigration),* 2020 FC 1018 at para 10). It is also important to note that an H&C determination is highly discretionary and that there is no "rigid formula" that determines the outcome (*Sivalingam v Canada (Citizenship and Immigration*), 2017 FC 1185 at para 7).

[12] In the circumstances, I am satisfied the Officer reasonably assessed Ms. Habib's establishment in Canada and the country conditions as they relate to discrimination against Coptic Christians. However, when I consider the assessment from a global perspective, I am left with lingering doubts about the coherency and rationality of the decision. In reaching the conclusions about Ms. Habib being able-bodied and being able to live independently, the Officer does not mention Mr. Horan's letter, in which he states that Ms. Habib cannot live on her own or care for herself. The Officer also fails to mention Noha Boulos' letter wherein she states that Ms. Habib needs the care of family and it is 'necessary' that she live with their family. Finally, the reference to Ms. Habib being "able-bodied", appears to overlook Peter Boulos' letter in which he refers to his grandmother's "anxiety and blood pressure" problems.

[13] In my view, the evidence of Mr. Horan, Ms. Boulos, and Peter Boulos all contradict the findings made by the Officer regarding Ms. Habib's state of health. Recall that the officer

concluded there was “no” indication before him that Ms. Habib would be unable to live independently. Yet, Mr. Horan’s letter states the exact opposite. It is trite law that an administrative decision maker is presumed to have considered the entirety of the evidence that was before him, and need not refer to every piece of evidence (*Florea v Canada (Minister of Employment and Immigration*), [1993] FCJ No 598 (FCA) at para 1). However, this presumption is nonetheless subject to certain limits. If a decision maker is silent on an important piece of evidence or if it ignores contradictory evidence, a reviewing court can infer that the decision was made without regard to the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration*), [1999] 1 FC 53, 157 FTR 35 at para 17). Here, the Officer not only fails to refer to contradictory evidence, he misstates the evidence. The misstating of Mr. Horan’s evidence and the failure to refer to the observations of Ms. Boulos that Ms. Habib required “care”, combined with the grandson’s observation that Ms. Habib suffers from anxiety and blood pressure problems, lead me to question the rationality and the coherence of the decision.

[14] On November 24, 2021, the Respondent provided post-hearing submissions to the Court. The Respondent argued that the Officer was not required to consider Ms. Habib’s state of health, as this ground was only raised peripherally (*Arunasalam v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1070 at para 10*; Medina Morales v Canada (Citizenship and Immigration*), 2008 FC 1267 at para 15). I have considered the Respondent’s post-hearing submissions. Given Ms. Habib’s counsel did not specifically argue the issue of her client’s state of health, I understand fully why one might consider that to be a peripheral issue. However, the Officer specifically and directly considered it. That being the case, I do not consider the issue to be peripheral.

[15] The Federal Court of Appeal recently observed that when an administrative decision-maker deals with an issue, his or her findings on that issue are subject to judicial review, even where the issue was not specifically raised or challenged by the applicant *(Merck Canada Inc. v Canada (Health)*, 2021 FCA 224 at paras 48 to 51). The Officer's findings that Ms. Habib was able-bodied and could live independently in Egypt were integral parts of his decision to reject the H&C application. These findings were contrary to at least one witnesses' evidence. The Officer did not analyse or reject that evidence, nor did he conduct any analysis of other evidence which was contrary to his finding. I conclude that the intervention of this Court is warranted.

VI. Conclusion

[16] I am satisfied that the Officer's decision is based on a reasoning that is not internally coherent, nor is it rational (*Vavilov, supra*, at para 102). The flaws identified are more than "merely superficial or peripheral to the merits of the decision". Those flaws render the decision, as a whole, unreasonable (*Vavilov, supra*, at para 100).

[17] For the reasons set out above, I allow the application for judicial review and remit the matter to another immigration officer for redetermination.

JUDGMENT

THIS COURT'S JUDGMENT is that the Application for judicial review is allowed, without costs. There is no question certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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