Federal Court  Cour fédérale

Date: 20220203

Docket: IMM-384-21

Citation: 2022 FC 128

Toronto, Ontario, February 3, 2022

PRESENT: Madam Justice Go

BETWEEN:

MICHAEL VUU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Michael Vuu [Applicant] applied for permanent residence on humanitarian and compassionate grounds [H&C application] under s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. He seeks judicial review of the refusal of this application [the Decision] by a Senior Officer [Officer] of Immigration, Refugees and Citizenship Canada.

[2] For the reasons that follow, I allow this application as I find the Officer has made an unreasonable assessment of the Applicant's establishment in Canada.

II. Background

A. *Factual Context*

[3] The Applicant is a citizen of Australia in his late thirties. Growing up, he experienced family violence and depression, to the point of running away from his home and living on the streets. At one point, he attempted suicide. Frequent phone calls and FaceTime calls with his aunt and cousins in Canada gave him encouragement to come here, and he arrived on a working holiday visa in 2010. The visa was then extended to 2017. Aside from a 13-day trip to Europe, he has been in Canada since 2010.

[4] From 2010 to 2016, he worked as a hairdresser in Canada. Since that time, he has supported himself through savings – as he was unable to work legally after his work visa expired. His H&C application contained numerous letters of support from his aunt, nephew, cousins, former customers turned friends, and colleagues.

B. *Decision under Review*

[5] By a decision dated January 7, 2021, the Officer refused the Applicant's H&C application. The Officer found the personal circumstances of the Applicant and his establishment in Canada not sufficient to warrant an exemption on H&C grounds on the basis that, among other things, the Applicant had submitted "insufficient objective evidence to demonstrate an

interdependent relationship" between the Applicant and his family and friends, that it was not "uncommon for individuals in Canada to be employed, pay taxes and form connections and friendships within their community", and that the Applicant "can successfully continue his career in Australia."

III. Issues and Standard of Review

[6] The Applicant raises three arguments in support of his application: (1) the Officer unreasonably assessed his interdependence with family and friends in Canada, (2) the Officer unreasonably used his adaptability to discount his establishment, and (3) the Officer unreasonably discounted his establishment on the basis that it was common.

[7] The parties agree that the standard of review is reasonableness, in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] 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-make: *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.

[9] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. The onus is on the Applicant to demonstrate that the decision is unreasonable.

IV. Analysis

[10] I agree with the Applicant that the Officer unreasonably discounted his establishment on the basis that it was "not uncommon", without providing any justification for their conclusion.

[11] The Officer used the phrase "not uncommon" several times in the Decision, stating that "it is not uncommon for an individual who has resided in Canada for a total of approximately 10 years to form connections within his community", "it is not uncommon for an individual residing in Canada for a lengthy period to form these types of relationships", and "it is not uncommon for individuals who reside in Canada to be employed, pay taxes and form connections and friendships within their community."

[12] The Applicant argues that his circumstances are not common: he faced significant difficulty in Australia, he has resided in Canada for 10 years, he was gainfully employed, he earned a high income, he did not work without authorization, he has close family members with which he shares an interdependent relationship, and he forged many friendships which can also be described as interdependent.

[13] The Applicant relies on *Joseph v Canada (Citizenship and Immigration)*, 2013 FC 993 [*Joseph*] at para 29, in which Justice Annis found that the officer had not explained "why ten

years of residence in Canada, successful employment, multiple close Canadian family members, and deep involvement in the community did not constitute sufficient establishment to render removal an unusual and undeserved or disproportionate hardship."

[14] In addition, the Applicant relies on *Jamrich v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 804 at para 29, in which Justice Blais found that it was unreasonable for the officer to conclude that establishment was "no more than is expected of any refugee who is given similar opportunities in Canada" and could not be considered "so different and significant that it differs from what is expected from any other person who resides in Canada while undergoing the refugee determination process."

[15] In short, the Applicant submits that the Officer's conclusion on establishment was lacking in justification, and that the Respondent has not shown where the justification has appeared in the Decision.

[16] The Respondent reiterates that an H&C assessment is highly discretionary and an H&C exemption is not an alternative stream for immigration to Canada, citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 23 and 25; *Meniuk v Canada (Citizenship and Immigration)*, 2021 FC 1374 at para 43.

[17] As a starting point, I note that while the Officer indicated that they have given "some positive weight" to the Applicant's establishment, the Officer qualified their assessment by

pointing out repeatedly that the establishment is “not uncommon”, without elaborating why that is the case.

[18] As I have recently found in *Quiros v Canada (Citizenship and Immigration)*, 2021 FC 1412 at paras 18-21 [*Quiros*], an H&C officer errs when the officer simply lists the applicant’s establishment factors before concluding that their establishment is not significant or extraordinary presumably due to a certain “norm” or “expectation”, without stating what these norms or expectations are. The same error, in my view, can be found in this case by substituting the words “not significant or extraordinary” with the words “not uncommon.”

[19] The error is even more pronounced in this case, as compared to *Quiros*, given the substantial amount of evidence submitted by the Applicant not only about the close relationships he has built with families, friends, former clients and colleagues in Canada, but also about the past adversities that the Applicant has personally overcome.

[20] Starting with the relationships with families and friends, there is a support letter from his cousin T. Phuong, a single mother with a disability and three children, whom he helps with practical tasks. Her letter stated: “it would be devastating to see [the Applicant] leave our lives.” Another letter is from the Applicant’s friend M. Lynn, who describes him as an “essential” presence in their family and a mentor to her children. She states that the Applicant supported one of her sons through a mental breakdown. Additionally, a letter from the Applicant’s friend D. Pilz describes the Applicant as part of the family: his children refer to the Applicant as “uncle”, the Applicant takes the children to their after school programs, and the Applicant vacations and

spends holidays with the family. Finally, there are other support letters from friends describing the Applicant as part of the family.

[21] The Officer reviewed these letters and concluded there was insufficient evidence of interdependence between the Applicant and his families and friends. Even assuming that not all of these relationships rise to a level of interdependence, the Officer never explained why it is "not uncommon for an individual residing in Canada for a lengthy period to form these types of relationships" [emphasis added]. The types of relationships in this case, as demonstrated in the support letters, were forged between the Applicant and his many relatives, friends (including former customers) and colleagues who felt compelled to write deeply personal support letters displaying their gratitude, love and respect for the Applicant. In my view, the Officer's characterization of the bonds that the Applicant has created between him and these individuals as "common" – in the face of the compelling evidence suggesting otherwise – was unreasonable.

[22] More importantly, the Officer did not question the Applicant's claim that he has experienced abuse, violence, depression, living on the streets and a suicide attempt. Any one of these traumatic events could leave an indelible scar on anyone who has been affected. Yet nowhere in the Decision did the Officer explain why it is "not uncommon" for someone like the Applicant, given his past experience, to be able to rebuild his life to such an extent to "be employed, pay taxes and form connections and friendships within their community."

[23] The Respondent submits that the Officer in this case reviewed all the evidence and found that in the circumstances an exemption was not warranted. Citing *De Sousa v Canada (Minister*

of Citizenship and Immigration), 2019 FC 818 at paras 27-30 and *Thiyqgarasa v Canada (Minister of Citizenship and Immigration)*, 2019 FC 111 at paras 28-32, the Respondent submits that merely because the Applicant was established in Canada did not necessarily justify an exemption, as the evidence did not demonstrate a level of establishment that was beyond ordinary.

[24] I agree with the Respondent's submission in one respect, namely, establishment, in and of itself, would not justify the granting of an exemption on H&C grounds. Rather, whether the "equitable relief" of H&C should be granted depends on whether the circumstances "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another", which is done by an "assessment of hardship": *Kanthasamy*, at paras 21-22.

[25] As such, a decision becomes unreasonable when an officer fails to grapple with the particular circumstances of an applicant in determining whether an exemption is justified: *Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 [*Zhang*] at para 24.

[26] In *Zhang*, after reviewing the case law, Justice Zinn summarized the essential nature of H&C relief and cautioned against the imposition of a comparative standard in assessing an H&C application:

> [23] There is a significant difference between observing that this exceptional relief is provided for <u>because</u> the personal circumstances of some are such that deportation falls with more force on them than others, and stating that the relief is available <u>only to those who demonstrate</u> the existence of misfortunes or other circumstances that are <u>exceptional relative to others</u>. The first explains why the exemption is there, while the second purports to

> identify those who may benefit from the exemption. The second imports a condition into the exception that is not there.
>
> [Emphasis in original]

[27] In other words, the issue is not so much whether the Applicant's establishment is "not common", or "not ordinary", but whether the particular circumstances of the case, including the Applicant's establishment, are such that it would warrant a granting of the equitable relief on H&C grounds.

[28] In this case, by failing to conduct an individualized assessment of the Applicant's application in light of all his personal circumstances, by evaluating the Applicant's achievement against an unspecified and undefined standard of a "common" level of establishment, and by failing to provide justification for their assessment, the Officer has thus erred by discounting the Applicant's establishment in Canada.

[29] As I have found the Decision to be unreasonable on this basis, I need not address the other arguments raised by the Applicant.

V. Conclusion

[30] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision maker.

[31] There is no question for certification.

JUDGMENT in IMM-384-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The matter is referred back for redetermination by a different decision maker.

3. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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