Federal Court  Cour fédérale

Date: 20220211

Docket: IMM-6599-20

Citation: 2022 FC 181

Ottawa, Ontario, February 11, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

NNENNA IKODIYA NWOSU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of a Senior Immigration Officer of Immigration, Refugees, and Citizenship Canada [the "Officer"], dated September 18, 2020, refusing the Applicant's application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds [the "Decision"], pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the "*Act*"].

II. Background

[2] The Applicant, Nnenna Ikodiya Nwosu, is a 74-year-old female citizen of Nigeria. The Applicant arrived in Canada on June 11, 2012. The Applicant has a significant immigration history, including an unsuccessful refugee claim (denied on December 21, 2017; appeal denied on February 1, 2018) and a negative Pre-Removal Risk Assessment [PRRA] application, which is also before this Court for judicial review in File No. IMM-6755-20, heard consecutively with this matter.

[3] On December 19, 2020, the Applicant filed the current H&C application [the "Application"], seeking an exemption from the requirements of the *Act* to facilitate the processing of her application for permanent residence from within Canada. The Applicant sought H&C relief on the following grounds:

i. The Applicant has established herself in Canada;

ii. The Applicant has medical issues that can only be managed in Canada;

iii. The Applicant has no one to care for her; and

iv. The Applicant fears her family in Nigeria.

[4] The Officer refused the Applicant's H&C Application in the Decision, dated September 18, 2020. The Applicant seeks:

i. A writ *certiorari* quashing the Officer's Decision;

ii. An Order referring the matter to a different officer for redetermination; and

iii. Such further and other relief as counsel may advise and this Honourable Court deems just in the circumstances.

III. Decision Under Review

[5] Following consideration of all the evidence before them and an assessment of the Applicant's circumstances cumulatively, the Officer was not satisfied that an exemption under subsection 25(1) of the *Act* was justified and they refused the Applicant's Application.

[6] The Officer found that:

i. Though she has resided in Canada for eight years, the Applicant is not strongly established in Canada:

   a. The Applicant is reliant on social assistance for income; and
   b. The letters submitted by the Applicant's pastor and landlord do not indicate relationships that would cause the Applicant hardship if severed.

i. The Applicant did not provide evidence that she is unable to access the medical services necessary to treat her conditions (hypertension, asthma, osteoporosis, osteoarthritis in her knees) in Nigeria;

ii. The Applicant did not provide evidence that her family in Nigeria are active and motivated in pursing her;

iii. The Applicant was in contact with her daughter, having acquired documents from her in support of both her refugee claim and this Application, and that there was insufficient evidence to indicate that the Applicant could not re-establish contact with her daughter, if necessary; and

iv. The Applicant did not provide sufficient documentation to indicate that she requires or is reliant upon the care of others for her daily life and activities.

[7] The Officer gave "much weight" to the Refugee Protection Division [RPD]'s finding, in their decision denying the Applicant's refugee claim, on the basis that the Applicant had viable internal flight alternatives in Nigeria, including the City of Aba where the Applicant's daughter resides unharmed by the Applicant's family.

IV. Issues

[8] The issue is whether the Officer's Decision was reasonable.

V. Standard of Review

[9] The standard of review is reasonableness [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 25].

VI. Analysis

A. *Preliminary issue – amendment of the style of cause*

[10] As a preliminary issue, the Respondent notes that the Applicant names “The Minister of Immigration, Refugees and Citizenship Canada” as the Respondent. The correct legal term for the Respondent is “The Minister of Citizenship and Immigration.”

[11] The style of cause is hereby amended to: *Nnenna Ikodiya Nwosu v. The Minister of Citizenship and Immigration.*

B. *Whether the Officer’s Decision was reasonable*

[12] Subsection 25(1) of the *Act* provides the Minister the discretionary authority to exempt foreign nationals from the requirements of the *Act* if such an exemption is justified on the basis of H&C considerations. The Applicant bears the onus of establishing that H&C relief is warranted.

[13] An officer must consider and weigh all relevant factors in an H&C application. Although an officer may be guided by a liberal and compassionate approach, subsection 25(1) was not intended to be an alternative to the immigration scheme [*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 23].

[14] The application of the “unusual and undeserved or disproportionate hardship” standard is supported by a non-exhaustive list of factors, such as establishment in Canada, ties to Canada, the best interests of any children affected by their application, factors in their country of origin, health considerations, consequences of the separation of relatives, and any other relevant factors. Relevant considerations are to be weighed cumulatively as part of the determination of whether

relief is justified in the circumstances and should not fetter the immigration officer's discretion to consider all relevant factors.

[15] Absent H&C relief, the Applicant would be required to apply for permanent residence in Canada from Nigeria.

[16] The Applicant argues three key issues in challenging the Officer's Decision:

i. The Officer erred in their hardship analysis in various instances;

ii. The Officer erred by filtering the Applicant's establishment factors through a hardship lens; and

iii. The Officer unreasonably speculated and/or made veiled credibility findings about the ability of the Applicant's daughter to support her in Nigeria, discounting or misapprehending evidence to the contrary.

[17] The Respondent's position is that the Decision is reasonable and that the Officer did not err as claimed by the Applicant. I agree.

[18] With respect to the assessment of hardship, a review of the Officer's Decision demonstrates that hardship was reasonably assessed. The Officer reasonably noted that the Applicant led no evidence regarding the availability of medical treatment in Nigeria. The Officer did not discount the Applicant's medical evidence; they simply determined that the limited

evidence led by the Applicant did not establish that she would suffer hardship due to treatment of her medical conditions in Nigeria.

[19] The Applicant also argues that the Officer erred by importing considerations of risk into the assessment of hardship. However, the Officer specifically stated that "without considering risk," the Applicant had not provided sufficient evidence that the agent of persecution (*i.e.* her family) were pursuing her such as to create hardship. It is reasonable for an Officer to place weight on the findings of the RPD in assessing the likelihood that an Applicant will suffer hardship due to events described in a refugee claim, as long as they are not treated as determinative [*Shah v Minister of Citizenship and Immigration*, 2018 FC 537 at paragraph 54]. Here, the Officer reasonably placed weight on the RPD's findings in conducting an independent assessment of hardship.

[20] In addition, there is no indication that the decision of the PRRA tainted the Officer's Decision. Similar wording is not evidence that a common analysis was conducted for both applications. Here, the Applicant has not established that the similarity in wording between the decisions, without more, indicates an error in the H&C analysis.

[21] Further, the Applicant claims that the Officer failed to consider whether she would experience hardship in Nigeria based on her profile as an elderly widow with limited education and no family support, and ignored the adverse country conditions evidence regarding this point.

[22] The Officer's Decision was responsive to the arguments put forth by the Applicant – namely, her establishment in Canada, her medical issues, and her fear of her family. The Applicant made no submissions in her Application asserting that she would experience hardship in Nigeria on the basis of being elderly, a widow, having limited education, having disabilities, or due to difficulty obtaining employment. An officer is presumed to have considered all of the evidence in the record and is not expected to cite every document in their decision. The Officer is not expected to respond to arguments that were not placed before them in an H&C application and that are being raised for the first time on judicial review.

[23] In regards to the Applicant's establishment in Canada, the Applicant argues that the Officer focused on hardship and discounted her church volunteer work and the relationships she has formed. The Officer reasonably reviewed the two very brief letters from her landlord and pastor – the latter of which simply states that the Applicant has been a volunteer since 2012. The Officer acknowledged the Applicant's volunteer work but found that the Applicant would have access to similar religious services in Nigeria. The Officer reasonably found that the Applicant had not provided evidence to support her claim that she had established significant personal relationships in Canada. The Officer did not import an improper lens of hardship in the context of this H&C matter.

[24] While the Court has sympathy for the Applicant's personal circumstance, the Court's role on judicial review of an H&C decision is not to reweigh the evidence. Here, the Officer gave due consideration to the Applicant's evidence of establishment.

[25] Finally, the Applicant argues that the Officer made veiled credibility findings about her daughter's ability to assist her in Nigeria. A review of the Decision does not demonstrate that the Officer questioned the Applicant's credibility. The Officer accurately referred to the RPD's findings that the Applicant's daughter had continued to reside in the city of Aba unharmed. The evidence provided for this Application demonstrates that the Applicant has difficulty reaching her daughter by phone, not that they are estranged or that she in unsure of where she resides. The Officer never stated that the Applicant's daughter could support her Nigeria, they stated that, if needed, the Applicant could re-establish contact with her daughter. Therefore, the Decision was not premised on an assumption that the daughter would support the Applicant if she returned to Nigeria.

[26] The Officer made reasonable findings based on the limited evidence in the record. The Officer did not indicate any suspicions about the Applicant's personal credibility. There is no indication that the Officer made veiled credibility findings.

VII. Conclusion

[27] For the reasons above, this Application is dismissed.

JUDGMENT in IMM-6599-20

THIS COURT'S JUDGMENT is that

1. The style of cause is hereby amended to name the Respondent as The Minister of Citizenship and Immigration.
2. This Application is dismissed.
3. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6599-20
STYLE OF CAUSE:	NNENNA IKODIYA NWOSU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 9, 2022
JUDGMENT AND REASONS:	MANSON J.
DATED:	FEBRUARY 11, 2022

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