Federal Court  Cour fédérale

Date: 20220211

Docket: IMM-936-21

Citation: 2022 FC 190

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 11, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

BEATE NAHRENDORF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Beate Nahrendorf, is seeking judicial review of a decision made by a senior immigration officer [Officer] on February 6, 2021, rejecting her request for an exemption, on humanitarian and compassionate considerations pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], from the requirement to file her application for permanent residence outside Canada.

[2] The applicant is a citizen of Germany. She entered Canada in 1997, accompanied by her future husband, a German diplomat who represented his country in an international organization. Two children were born from this union, who were 19 and 21 years old at the time of the request for exemption.

[3] In February 2019, the applicant announced to her husband that she wanted a divorce. He threatened to leave his position in Canada so that her privileges as a diplomat's wife would be taken away due to the withdrawal of her diplomatic visa. In April 2019, the applicant filed for divorce. Since her status was linked to her husband's status as a diplomat, she also requested an exemption in May 2019. This was based on her degree of establishment in Canada, the hardship she would experience if she returned to Germany and the best interests of her children. The divorce judgment was rendered in August 2019.

[4] The Officer rejected the request for exemption after concluding that the humanitarian and compassionate considerations, taken as a whole, were insufficient to justify an exemption under subsection 25(1) of the IRPA.

[5] The applicant complained that the Officer assessed each of the humanitarian and compassionate grounds in terms of hardship, without considering a broader range of grounds for special relief, in accordance with *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. She also argued that the Officer conducted a distorted analysis of her degree of settlement in Canada, downplaying the strength of her familial, social and employment

ties due to the lack of evidence of community involvement. Finally, she criticized the Officer for failing to consider her adult children in the analysis regarding the best interests of the children.

[6] The standard of review applicable to an immigration officer's decision whether to grant an exemption on humanitarian and compassionate considerations is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16–17 [*Vavilov*]; *Kanthasamy* at para 44).

[7] When the standard of reasonableness applies, the Court is concerned with "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para. 83). It must consider whether "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The party challenging the decision has the burden of demonstrating its unreasonableness and must satisfy the Court that the decision suffers from serious flaws that are "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[8] Having reviewed the parties' records and considered their submissions, the Court is not persuaded that there is a basis for intervention in this case. Contrary to the applicant's argument, the request for exemption was not considered exclusively from a hardship perspective. Rather, the Officer's findings regarding the degree of establishment as well as the hardship of returning to Germany stem from deficient evidence. The Officer has reasonably considered all of the evidence submitted by the applicant and his analysis responds to the applicant's arguments.

[9] The Court is not convinced that the Officer demonstrated a lack of empathy for the applicant's situation. Although the Officer did not make an explicit finding of marital difficulty, the Court does not think it is sufficient to doubt his analysis.

[10] Regarding the best interests of the applicant's two children, the Officer reasonably noted that at the time of the request, the children were adults. Generally, the best interests of the child test only applies to children under the age of 18. While the jurisprudence of this Court recognizes that the best interests of the child analysis may be considered for adult children (*Chaudhary v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 128 at paras 32, 34; *Noh v Canada (Citizenship and Immigration)*, 2012 FC 529 at para 63; *Yoo v Canada (Citizenship and Immigration)*, 2009 FC 343 at para 32), the Officer had no credible evidence that the applicant's children have special needs or are substantially dependent on the applicant. The request for exemption contained only vague allegations that the bond between the applicant and her children was strong because she had cared for them since their birth and they were still living with her. The burden was on the applicant to identify the special needs of her children, or to demonstrate how her absence would jeopardize their best interests.

[11] Moreover, the evidence of financial support for the applicant's children was rather terse. It showed that the school fees of the youngest child were paid by the applicant's ex-husband and that, in the event of a departure from the family home, an allowance would be paid to her by her father and the applicant until May 2021. The burden was on the applicant to articulate, first, the impact of her departure on the best interests of her children and, second, to provide sufficient

evidence to support her allegations (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paras 5, 8).

[12] The Officer nevertheless considered their interests as family members. The Officer reasonably noted that the adult children had not submitted any documentation to support the consequences that might arise from their mother's departure.

[13] The Officer's reasons reflect the submissions and evidence presented to him. Interpreted holistically and contextually, they bear the hallmarks of a reasonable decision in accordance with the principles set out in *Vavilov*.

[14] Accordingly, the application for judicial review is dismissed. No question of general importance is submitted for certification, and the Court is of the view that there are none in this case.

JUDGMENT in IMM-936-21

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-936-21
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