Federal Court Cour fédérale

Date: 20220323

Docket: IMM-1654-20

Citation: 2022 FC 401

Ottawa, Ontario, March 23, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

VINICIUS MOURA FERNANDES SILVA
DANIELE CUNHA BARBOSA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants challenge a negative decision of a Senior Immigration Officer [Officer] dated January 23, 2020 refusing the Applicants' second application for permanent residence based on humanitarian and compassionate [H&C] grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicants are spouses and citizens of Brazil. They have a lengthy immigration history of entering and leaving Canada, facing exclusion orders, and submitting unsuccessful work permit, temporary resident visa, pre-removal risk assessment and H&C applications.

[3] On September 12, 2018, the Applicants submitted a second H&C application, requesting that the Officer consider their establishment in Canada and the adverse country conditions in Brazil.

[4] On January 23, 2020, the Officer refused the Applicants' second H&C application. The Officer considered the two factors raised by the Applicants, as well as the best interests of a 16-year-old close family friend [Minor] as the Minor had submitted a letter in support of the application (notwithstanding that the Applicants did not raise as a relevant factor the best interests of the Minor).

[5] The Applicants asserts that the Officer's decision was unreasonable on the basis that the Officer erred in relation to their assessment of both the Applicants' degree of establishment and the hardship that would arise if they returned to Brazil, and failed to conduct a holistic assessment of the Applicants' H&C application.

Analysis

[6] Subsection 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of that statute and grant permanent resident status in Canada if the Minister is of the opinion that such relief is justified by H&C considerations. An H&C

determination under section 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 in the circumstances. Relief is considered justified if the circumstances would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another [see *Kanthasamy v Canada (Citizenship and Immigration*), 2015 SCC 61 at paras 13, 28; *Caleb v Canada (Citizenship and Immigration)*, 2020 FC 1018 at para 10].

[7] The granting of an exemption for H&C reasons is deemed to be exceptional and highly discretionary and therefore "deserving of considerable deference by the Court" [see *Qureshi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 335 at para 30]. There is no "rigid formula" that determines the outcome [see *Sivalingam v Canada (Citizenship and Immigration*), 2017 FC 1185 at para 7].

[8] The applicable standard of review of an H&C decision is reasonableness [see *Kanthasamy, supra* at para 44]. In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale, in order to ensure that the decision as a whole is transparent, intelligible and justified [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15].

[9] While the Applicants have raised a number of alleged errors made by the Officer in conducting their H&C analysis, I am satisfied that the error made by the Officer in relation to their assessment of the adverse country conditions in Brazil is sufficiently significant to warrant the granting of this application for judicial review.

[10] The Officer's reasons for determination in relation to the adverse country conditions factor are limited to the following:

> The applicants state that they would be negatively affected by adverse country conditions in Brazil, including poor economic conditions and gender discrimination in the work force. In support of these statements the applicants have submitted excerpts from several research reports concerning country conditions in Brazil. As well, the applicants' H&C submissions state that the applicants were unable to obtain employment during the years that they resided in Brazil after returning from Canada. Accordingly, I find that the applicants' H&C materials indicate that it is likely that the applicants would be negatively affected by poor economic conditions if the applicants were to return to Brazil. However, I note that this is only one of the factors for consideration on this H&C application and that an H&C decision is based on an assessment of all of the factors for consideration that are brought forward.

[11] In conducting an H&C analysis, an officer must determine whether to assign a positive, negative or neutral weight to each factor raised by an applicant. Where a positive or negative weight is assigned, the officer must also determine the amount of weight to assign, often expressed as "significant", "some" or "little" weight. The officer must then conduct a global assessment, where all of the relevant considerations are to be weighed cumulatively in order to determine if relief is justified in the circumstances.

[12] In this case, the Applicants had requested that the adverse country conditions in Brazil be "weighed heavily". While the Officer found that "it is likely that the applicants would be negatively affected by poor economic conditions if the applicants were to return to Brazil", the Officer conducted no analysis of how the adverse country conditions might impact the Applicants and thereafter made no corresponding determination of the weight to be assigned to this factor. In fact, a review of the entirety of the reasons reveals that they are silent as to the weight ultimately

assigned to this factor by the Officer. This deficiency in the Officer's reasons prevents the Court from knowing whether a proper global assessment was conducted.

[13] Accordingly, I find that the Officer's decision is neither intelligible nor adequately justified. As a result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination.

[14] The parties have proposed no certified questions and I agree that none arise.

JUDGMENT in IMM-1654-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is remitted to another officer for redetermination.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1654-20
STYLE OF CAUSE:	VINCIUS MOURA FERNANDES SILVA, DANIELE CUNHA BARBOSA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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