Federal Court  Cour fédérale

Date: 20220404

Docket: IMM-2518-21

Citation: 2022 FC 469

Ottawa, Ontario, April 4, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

DEEPAK KANDA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Deepak Kanda, seeks judicial review of a decision rendered on March 29, 2021, by a senior immigration officer [Officer] refusing to grant him an exemption, based on humanitarian and compassionate [H&C] considerations, from the requirement of having to apply for permanent residence from outside Canada.

[2] The Applicant is a citizen of India. In April 2015, he came to Canada and four (4) months later claimed refugee protection based on his fear of the local police, who allegedly worked under the influence of individuals responsible for his failed immigration proceedings in Australia.

[3] The Refugee Protection Division [RPD] dismissed the Applicant's claim in November 2015. The RPD found that, although the Applicant was not credible on an important element of his claim, he could benefit from an internal flight alternative [IFA]. In August 2016, the Refugee Appeal Division [RAD] upheld the decision of the RPD. The Applicant then unsuccessfully sought leave before this Court.

[4] On March 16, 2020, the Applicant filed an application for permanent residence from within Canada, based on his establishment in Canada, adverse country conditions in India and the best interests of his child. On March 29, 2021, the Officer refused the application on the grounds that there were insufficient H&C considerations to justify an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[5] While he raises several issues in his memorandum of argument, the Applicant is essentially challenging the Officer's assessment of his establishment and the hardship associated with the adverse country conditions in India.

II. Analysis

[6] The decision to grant or refuse an exemption on H&C considerations is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 10, 44 [*Kanthasamy*]). When conducting a reasonableness review, the Court's focus is on "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 ask itself "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 burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[7] The Applicant submits that the Officer failed to mention the evidence supporting his establishment and lists several letters of support. He argues that it was unreasonable for the Officer to discount all his favourable evidence. He also contends that the Officer ignored evidence of his economic establishment.

[8] The Applicant has not persuaded me that the Officer failed to consider any of his evidence of establishment. The Officer did indeed consider the Applicant's letters of support regarding his volunteer work and his involvement in religious organizations. The Officer also considered his support letters from friends and acquaintances. The Officer found, however, that there was little evidence supporting an interdependency and reliance of the Applicant on these

relationships. The Officer also found that the documents were insufficient to demonstrate a significant level of establishment. Contrary to the Applicant's submissions, the Officer did not need to refer to each piece of evidence in its decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[9] Likewise, the Officer did not ignore evidence of the Applicant's economic establishment. The Officer considered the Applicant's evidence regarding his employment but noted that he had only been employed for a period of approximately nine (9) months in the six (6) years he had been in Canada and that there was no explanation for his unemployment the rest of the time, despite his ability to obtain work permits. Furthermore, the Officer observed that the Applicant's financial evidence covered only short periods. The Officer found that the Applicant had not demonstrated a history of stable employment and a pattern of sound financial management.

[10] In addition to considering the evidence regarding the Applicant's economic establishment, his integration into Canadian society and his social ties, the Officer also noted that the Applicant did not have any family in Canada and that all of his family members were still in India. The Officer ultimately found that the Applicant's evidence did not demonstrate significant establishment and gave it little weight in the overall assessment of the H&C considerations.

[11] The Applicant has not identified a reviewable error in the Officer's assessment of his establishment. While the Applicant may disagree with the weight assigned to his evidence, it is not this Court's role on judicial review to reweigh the evidence (*Vavilov* at para 125).

[12] The Applicant also submits that the Officer erred in assessing the hardship that would befall on him should he return to India. He contends that the Officer examined the country conditions evidence through the lens of sections 96 and 97 of the IRPA, focusing on what the Officer wanted the evidence to contain, rather than assessing it for what the evidence established.

[13] The Applicant's arguments are unfounded.

[14] The Officer's reasons demonstrate that the Applicant's evidence was considered through the appropriate lens. The Officer specifically noted that the underlying facts needed to be considered through the lens of hardship and not through the lens of a refugee determination. The Officer also referred to a passage in *Kanthasamy*, in which the Supreme Court of Canada observed that there will inevitably be some hardship with being required to leave Canada and that this alone will not generally be sufficient to warrant relief on H&C grounds (*Kanthasamy* at para 23). After considering the evidence, the Officer noted that the Applicant's allegations of hardship pertained to the same material allegations brought before the RPD, the RAD and before this Court on judicial review. The Officer found that the Applicant had not presented sufficient evidence to establish that he would face any substantial challenges in India. In addition to considering the Applicant's allegations, the Officer also noted in particular that the Applicant would not be returning to an unknown country, as he had spent the majority of his life there. He was also educated and previously employed in India. All of his family still resided there and the Applicant had not been out of the country for a prolonged period, as he left for Canada in 2015. In the end, the Officer found the hardship factor not to be significant and gave it little weight.

[15] The Applicant having raised essentially the same allegations as those he raised in the refugee determination process, the Officer cannot be faulted for acknowledging the similarity in the allegations and noting that the Applicant was unsuccessful in establishing his claim before the RPD, the RAD and this Court on judicial review. Although I agree with the Applicant that evidence of ongoing danger should not be ignored where a claim was refused because of a viable IFA, the RPD and RAD had credibility concerns regarding the Applicant's subjective fear.

[16] Contrary to the Applicant's submissions, the Officer did not ignore the Applicant's evidence of ongoing danger. The Officer considered it but gave it little weight because the evidence contained second-hand information and failed to explain how the person became aware of the information. Moreover, the evidence was vague and insufficient to establish that the Applicant was still being pursued and failed to establish the link with the Applicant's personal situation. The evidence referred to incidents involving other people and did not prove the Applicant's allegations of danger. Given the evidence adduced by the Applicant, the Officer could reasonably find that the evidence did not hold much probative value to establish that the Applicant would face hardship should he return to India.

[17] The Applicant is correct in stating that the Officer did not mention the decision of the High Court of Punjab and Haryana dated 2013. However, this document does not assist the Applicant, as it indicates that the matter between the Applicant and his persecutors was settled in 2013. The RPD considered this evidence when assessing the availability of a viable IFA for the Applicant. The RAD also found not credible the Applicant's allegations that three (3) years after the issuance of the High Court judgment, his persecutors were still pursuing him to seek

vengeance. The Applicant has not satisfied me that this evidence was material in establishing the Applicant's hardship and that the Officer committed a reviewable error in failing to mention it. As stated above, the Officer was not required to refer to every piece of evidence in its reasons.

[18] Having considered the Officer's findings and the evidence on the record, I find no basis for overturning the Officer's decision. While the Applicant may disagree with the Officer's overall assessment of the evidence and the weight given to each H&C factor, it is not open to this Court to reweigh the evidence and attribute a different level of importance to the relevant H&C factors in this application.

[19] Before concluding, I would like to address two (2) other issues that were raised by the Applicant in his memorandum of argument.

[20] Firstly, the Applicant asserted that, as a victim of torture, he has a real and justifiable fear of being subjected to torture or inhuman or degrading treatment upon return to India, and that the decision violates sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, as well as article 3 of the UN *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. This argument has already been addressed and rejected several times, as it is premature at this stage (*Sandhu v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 902 at para 2 (FCA); *Ogiemwonyi v Canada (Citizenship and Immigration)*, 2021 FC 346 at para 39; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 341 at paras 17-18;

Fares v Canada (Citizenship and Immigration), 2017 FC 797 at paras 40-44; *Sidhu v Canada (Minister of Citizenship and Immigration)*, 2004 FC 39 at para 16).

[21] Secondly, the Applicant also indicated in his memorandum that he would be contesting the Officer's conclusions on the best interests of his child. However, he did not articulate any argument on this issue, and his memorandum is silent on this point. Consequently, I have not considered it as an issue in this application.

[22] To conclude, an H&C exemption under subsection 25(1) of the IRPA is an exceptional and discretionary remedy. The onus of establishing that such exemption is warranted lies with the Applicant. In light of the evidence and submissions presented, I am satisfied that the Officer considered and weighed all the factors raised by the Applicant and could therefore reasonably find that they did not justify an exemption from the requirement of having to apply for permanent residence from outside Canada. When read holistically and contextually, I am satisfied that the Officer's decision meets the reasonableness standard set out in *Vavilov*.

[23] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-2518-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper Respondent; and

3. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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