Federal Court  Cour fédérale

Date: 20220407

Docket: IMM-1756-20

Citation: 2022 FC 502

Ottawa, Ontario, April 7, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MERVAT ELSEMIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is an Egyptian citizen with two adult children who reside in Canada with their families. The Applicant applied for permanent residence from within Canada on Humanitarian and Compassionate [H&C] grounds. In a decision dated February 20, 2020, a Senior Immigration Officer [Officer] refused the H&C application.

[2] The Applicant now applies for judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], arguing the Officer's decision is unreasonable.

[3] For the reasons that follow, the Application is granted.

II. Background

[4] The Applicant is a widow in her late sixties. Her family members in Canada include an adult daughter and son-in-law, an adult son and daughter-in-law and three grandchildren. All are either permanent residents or Canadian citizens.

[5] The Applicant's family in Egypt includes siblings, an adult son, a daughter-in-law and grandchildren.

[6] The Applicant has visited Canada multiple times since 2013. She reports she has been motivated to come to Canada frequently in order to care for her adult daughter, who has epilepsy. She last entered Canada as a temporary resident in May 2017. She submitted an H&C application on February 5, 2018.

[7] In seeking H&C relief, the Applicant reported her daughter's health had deteriorated and she was experiencing more frequent and severe seizures. In addition, the Applicant is a Coptic Christian who stated she fears persecution in Egypt.

III. Decision under Review

[8] In assessing the H&C application, the Officer considered: (1) the Applicant's establishment in Canada; (2) the medical condition of the Applicant's daughter; (3) risk in Egypt and adverse country conditions; and (4) the best interests of the Applicant's grandchildren [BIOC].

[9] The Officer found the Applicant did not demonstrate much establishment in Canada. Although the Applicant had visited Canada several times, she had only resided in Canada for two years at the time of the decision. The Officer held the evidence did not demonstrate involvement in the community or the development of Canadian friendships. The Officer acknowledged the Applicant lives with her daughter and was close to her family members in Canada but found there was no evidence to indicate she was not similarly close to her family members in Egypt. The Officer recognized the Applicant supported herself financially and that her Canadian family members were financially stable and willing to provide additional financial support. The Officer noted the evidence did not indicate such support, if needed, could not be sent to the Applicant in Egypt.

[10] The Officer then considered the medical circumstances of the Applicant's daughter and the Applicant's role as her caregiver. The Officer acknowledged it would likely be difficult for the family to find another caregiver should the Applicant return to Egypt because the daughter does not speak English. Despite this, the Officer found the evidence did not establish another caregiver could not be found. The Officer further noted the evidence failed to indicate the

Applicant would be unable to continue renewing her temporary resident status in order to continue caring for her daughter in Canada. Finally, the Officer noted the Applicant's daughter and son-in-law are entitled to sponsor the Applicant for permanent resident status and that a completed sponsorship application was included in the H&C materials.

[11] In assessing the adverse country conditions in Egypt, the Officer considered news articles submitted by the Applicant recounting recent incidents of violence, social discrimination and harassment against Coptic Christians. The Officer noted the Applicant did not provide evidence she had ever faced mistreatment because of her religion or that she feared returning to Egypt after her previous visits to Canada. Regardless, the Officer recognized adverse conditions exist for Coptic Christians in Egypt and conceded the Applicant may be negatively affected because of her religion should she return. However, the Officer noted this was but one factor for consideration.

[12] Finally, the Officer undertook a BIOC analysis centered on the Applicant's grandchildren in Canada and Egypt. The Officer noted there was no evidence to indicate any of the grandchildren are not fully cared for and supported. The Officer acknowledged the Applicant is close with her Canadian grandchildren, but there was no reason to believe the Applicant would be unable to keep in contact with or continue visiting her Canadian grandchildren should she return to Egypt. In considering the grandchildren in Egypt, the Officer found there was no evidence to indicate they would not benefit from having the Applicant present in their lives but acknowledged these grandchildren would also be able to keep in contact with the Applicant should she remain in Canada.

[13] The Officer concluded, after having considered all of the circumstances, that H&C relief was not justified.

IV. Issues

[14] The Applicant has identified two issues. First, the Officer's flawed assessment of the evidence relating to establishment and second, the failure of the Officer to consider the available evidence in assessing hardship relating to her daughter's medical care and adverse conditions in Egypt. The Respondent's submissions are organized under the following three headings which I believe accurately frame the issues and have adopted:

A. Whether the Officer drew appropriate inferences from the Applicant's evidence pertaining to establishment;

B. Whether the Officer reasonably assessed the adverse country conditions in Egypt; and

C. Whether the Officer treated the hardship evidence relating to the care of the Applicant's daughter reasonably.

V. Standard of Review

[15] The parties agree H&C decisions are subject to review on the reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25

[*Vavilov*]). However, counsel for the Respondent has submitted the Officer's factual findings and inferences should be assessed on a palpable and overriding error standard.

[16] I have previously considered this submission and concluded that on judicial review a decision maker's factual findings and inferences are to be reviewed on a standard of reasonableness in accordance with the Supreme Court of Canada's reasons in *Vavilov* (*Liao v Canada (Citizenship and Immigration),* 2021 FC 857 at paras 21-22, citing *Sivalingam v Canada (Public Safety and Emergency Preparedness),* 2020 FC 1078 at paras 23-25, *Xiao v Canada (Citizenship and Immigration),* 2021 FC 386 at paras 8-9 and *AB v Canada (Citizenship and Immigration),* 2020 FC 915 at paras 13-14). I have therefore reviewed and assessed the Officer's factual findings and inferences against the reasonableness standard.

[17] A reasonableness review begins by examining the reasons with "respectful attention" and seeking to understand the decision maker's reasoning process (*Vavilov* at para 84). The reviewing court must determine whether both the reasoning process and outcome are reasonable within the context of the factual and applicable legal constraints (*Vavilov* at paras 87, 99). A reasonable decision is one that is justified, transparent, and intelligible (*Vavilov* at paras 81, 85, 91, 94–96, 99, 127–128).

VI. Analysis

[18] I am not persuaded the Officer committed any error in assessing the Applicant's establishment in Canada or the evidence relating to conditions in Egypt that warrants the Court's intervention.

[19] However, the Applicant submits and I agree the Officer's hardship analysis fails to address the Applicant's evidence relating to her daughter's medical condition and her role as a caregiver. This undermines the transparency and intelligibility of the decision.

A. *The Officer drew appropriate inferences from the Applicant's evidence pertaining to establishment*

[20] The Applicant submits the Officer failed to account for the entirety of the evidence relating to the Applicant's establishment and overemphasized the Applicant's lack of support letters and perceived lack of community involvement. It is further submitted that in light of the evidence indicating numerous trips to Canada in the recent past, it was unreasonable for the Officer to conclude the Applicant has only resided in Canada for two years. The Applicant submits the Officer unreasonably discounted the degree of establishment because that establishment was not "extraordinary or exceptional" and in doing so also failed to identify what would constitute sufficient establishment.

[21] The Officer addressed the Applicant's establishment evidence and reasonably noted the failure to provide any evidence of community involvement or support letters from friends or acquaintances. This observation is consistent with the evidence. Similarly, the Officer's finding that the Applicant had resided in Canada for two years was reflective of the Applicant's submissions, which made reference to the daughter's deteriorating health condition after the Applicant's final entry into Canada. Although the Applicant did reference "5 or 6" prior visits and noted the Applicant had never overstayed, the prior visits were not relied on to demonstrate establishment in Canada.

[22] I am similarly not convinced the Applicant's establishment was discounted on the basis that it was neither exceptional nor extraordinary. The Officer did not indicate an expected level of establishment had not been reached, nor did the Officer compare the Applicant's establishment with that which might be expected from others. Instead, the Officer reviewed the establishment evidence and having done so concluded there was little to show establishment in Canada. This finding was reasonably available to the Officer.

B. *The Officer reasonably assessed the adverse country conditions in Egypt*

[23] The Applicant argues the Officer's hardship analysis was not based on the available evidence and the Officer unreasonably required the Applicant to demonstrate prior persecution in Egypt due to her Coptic faith. The Applicant notes in particular she submitted two updates to the H&C application and the Officer did not address these updates or any evidence contained therein. The Applicant submits this raises a doubt as to whether the Officer considered these submissions.

[24] The Officer benefits from the presumption that all evidence was considered and a decision maker is under no obligation to reference and assess each piece of evidence an applicant might rely on (*Vavilov* at para 128; *Guiseppe Ferraro v Canada (Citizenship and Immigration)*, 2011 FC 801 at para 17). Further, in this instance, the Officer was not silent on the risks to Coptic Christians in Egypt; the decision explicitly acknowledges there have been "recent" incidents of violence and "recent" incidents of societal discrimination and harassment against this group. The Applicant has not demonstrated the Officer failed to consider or was unaware of

all the adverse country conditions evidence as it related to violence against Egypt's Coptic Christians.

[25] Nor am I convinced the Officer required the Applicant to demonstrate prior persecution or blurred the lines between a refugee claim and an H&C application. The Officer accurately noted the absence of any evidence of prior difficulties in Egypt based on faith or of any prior fear of returning to Egypt. The Officer nonetheless accepted the Applicant "might be negatively affected … if she were to return to Egypt." The Officer gave this issue some weight and noted this was a factor to be considered in rendering a decision on the H&C application.

C. *The Officer did err in considering the hardship evidence relating to the care of the Applicant's daughter*

[26] The Applicant argues the Officer's reasons were not responsive to the evidence detailing the seriousness of her daughter's condition and her level of reliance on the Applicant. It is also argued the Officer erred by asking whether her daughter could find a "different" caregiver rather than a "comparable" caregiver and by failing to address the need for an Arabic speaking caregiver.

[27] The Respondent submits the Officer adequately addressed the daughter's medical condition by acknowledging she suffered from epilepsy and the Applicant provided her with assistance and support. The Respondent submits the Applicant's claim that the Officer failed to appreciate the severity of her daughter's condition is simply speculative and the severity of her condition was not consistently reflected in the evidence. The Respondent further argues the

Officer was not obligated to consider whether the Applicant's daughter could find a "comparable" caregiver rather than a "different" caregiver.

[28] In considering the medical condition of the Applicant's daughter, the Officer acknowledges the daughter "has epilepsy and…the Applicant has been providing her with assistance and support that has helped her to manage this medical condition." This statement, while accurate, falls well short of capturing the true nature of the medical evidence before the Officer.

[29] The medical evidence reflected and was consistent with the Applicant's submissions to the effect that the daughter's medical condition had deteriorated in last few years. It indicated the daughter was experiencing ongoing complex partial seizures "almost on a daily basis," her condition had proved resistant to treatment and the combination of her condition and her medication had caused a learning disability and memory impairment. This evidence was also consistent with the Applicant's submissions to the effect that it was risky for her daughter to be left alone as she was unable to perform basic tasks like cooking and driving due to the possibility she may suffer a seizure.

[30] The Respondent has taken issue with the medical evidence on the record, arguing the family doctor's evidence was alarmist and based on the hearsay provided in reports from specialists. I do not find this argument to be particularly persuasive. In any event, it is not for counsel on judicial review to seek to bolster or advance reasons that might support an otherwise unreasonable decision (*Cruz Ugalde v Canada (Public Safety and Emergency Preparedness)*,

2011 FC 458 at para 34). Had the Officer been of the view that the medical evidence was unreliable or inconsistent, as counsel has suggested, then it was for the Officer to so state.

[31] I also agree with the Applicant's view that in limiting the analysis of the impact of the Applicant's departure from Canada on her daughter to a consideration of the availability of a different care provider, the Officer has failed to account for the daughter's unique care requirements and circumstances. The Applicant explained in her submissions that she cooks, keeps her daughter company and ensures she does not injure herself during her seizures. The documentary evidence also indicates the Applicant attends her daughter's medical appointments.

[32] The Applicant's role as a caregiver to her daughter and the nature of the daughter's medical condition were central to the H&C application. The Officer was required to acknowledge and meaningfully grapple with this evidence. The failure to do so renders the decision unreasonable.

VII. Conclusion

[33] For these reasons, I am of the opinion that the Court's intervention is warranted. The Application is granted.

[34] The parties have not identified a question for certification and none arises.

JUDGMENT IN IMM-1756-20

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

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

3. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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