Federal Court  Cour fédérale

Date: 20220510

Docket: IMM-428-21

Citation: 2022 FC 686

Ottawa, Ontario, May 10, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

GIAN KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of a Senior Immigration Officer [Officer] refusing the Applicant's application for permanent residence. The application was based on humanitarian and compassionate [H&C] grounds pursuant to s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, the application is dismissed.

Background

[3] The Applicant is a citizen of India. She is now 68 years old and was widowed in 2018. Her son immigrated to Canada in 2005 and is a Canadian citizen, as are his wife and their two children aged ten (10) and three (3) years old at the time of the H&C application. Since 2009, the Applicant has visited her son and his family in Canada on many occasions. She was approved for a temporary resident visa in October 2014 and last entered Canada in April 2019. She resides here with her son and his family. Since 2017, her son has tried, on three occasions, to sponsor the Applicant as a member of the family class by way of the lottery and quota systems but was unsuccessful each time. In September 2019, the Applicant submitted an application for permanent residence on H&C grounds. Her application was refused by a decision of the Officer dated January 14, 2021.

Decision under review

[4] The Officer considered the H&C factors identified by the Applicant, being her establishment in Canada, family reunification, the best interests of the child, lack of familial support in India and adverse country conditions.

[5] Although the Applicant did not indicate that she had established friendships or that she was engaged in her community over the 4.5 years she has been in Canada, the Officer accepted that she has likely formed some friendships. The Officer found that the Applicant has been financially supported in Canada by her son and daughter-in-law and accepted that the Applicant has, therefore, been financially self-sufficient during her stay here. The Officer concluded that

the Applicant's establishment is at a level that would be expected of a person in her circumstances, and afforded this factor some weight.

[6] With respect to family reunification, the Officer noted the Applicant could maintain contact with her family in Canada through mail, telephone, and the internet, and had previously communicated with her grandchildren via FaceTime when she had returned to India. The Officer acknowledged that in Indian culture it is customary for children to care for their parents, however, noted that family separation became an inherent reality when the Applicant's son immigrated to Canada and her daughter immigrated to the United Kingdom. And, while it would be easier for the Applicant's son to provide and care for the Applicant's financial and emotional needs if she remained in Canada, the Officer was not satisfied that this was sufficient to warrant H&C relief. The Officer also noted that the Applicant has a temporary resident visa valid until January 2023, and that there was no evidence that the Applicant could not continue to visit her family in Canada. While the efforts of the Applicant's son to sponsor the Applicant under the family class have not as yet been successful, as indicted in the sponsorship rejection letters another avenue exists for extended visits, the Parent and Grandparent Super Visa program. The Officer noted that there was little evidence to suggest that the Applicant or her son would not meet the eligibility requirements of that program and, in the meantime, her son could continue to apply to sponsor the Applicant while she resides with him as a temporary resident. Overall, the Officer gave this factor little weight.

[7] With respect to the interests of the Applicant's grandchildren, the Officer acknowledged the Applicant's submission that she has developed meaningful and emotional relationships with

her grandchildren, that she cares for them when their parents are at work and teaches them family and cultural values. However, the Officer found that the Applicant has left Canada on many prior occasions and there was little evidence that the children were not able to adapt. They would continue to have the love and support of their parents during the transitional period and their parents may be able to impart the same cultural knowledge as the Applicant as they were both born in India and spent their formative years there. And, while a long-distance relationship is not a substitute for the Applicant's physical presence in Canada, the Officer was satisfied that the Applicant's bonds with her grandchildren would not be severed by her leaving Canada. Overall, the Officer gave this factor some weight.

[8] Finally, with respect to adverse country conditions and lack of familial support, the Officer considered the Applicant's submissions that the social welfare, health care and elder care systems in India were insufficient. The Officer noted there was little evidence to support that the Applicant's necessities could not be met or that the Applicant was incapable of taking care of herself or would have trouble navigating in India. The Officer also noted that that there was insufficient evidence to establish that the Applicant would be unable to re-integrate or re-establish herself in her community. Further, the Applicant's siblings reside in India and there was little information indicating they would not offer their care and support upon her return, at least on a short-term basis. The Officer gave these factors little weight.

[9] The Officer concluded by stating they had made a global assessment of all of the factors raised by the Applicant and, having considered her circumstances and all of the submitted

documentation, were not satisfied that the H&C considerations justified an exemption under s 25(1) of the IRPA.

Issue and Standard of Review

[10] The sole issue in this matter is whether the Officer's decision was reasonable.

[11] The parties submit and I agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23 and 25). On judicial review, the Court "asks 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).

Analysis

[12] Section 25(1) of the IRPA gives the Minister discretion to exempt foreign nationals from the ordinary requirements of the IRPA if the Minister is of the opinion that such relief is justified by H&C considerations relating to the foreign national, taking into account the best interest of a child directly affected. In this case, if warranted, an H&C exemption would permit the Applicant to obtain permanent resident status without having to leave Canada to apply for that status, which is the normal route when an applicant is seeking to obtain this status (*Titova v Canada (Citizenship and Immigration)*, 2021 FC 654 at paras 20-21).

[13] In that regard, jurisprudence establishes that an H&C exemption is an exceptional and discretionary remedy, which is intended to provide a flexible and responsive exception to the ordinary operation of the IRPA, or, a discretion to mitigate the rigidity of the law in an appropriate case. There will inevitably be some hardship associated with being required to leave Canada, but this alone will not generally be sufficient to warrant relief on H&C grounds under s 25(1). Nor is s 25 an alternative immigration scheme. Rather, s 25 is intended to offer equitable relief in circumstances that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy]* at paras 13, 19, 21, 23; *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313 at paras 12, 15, 16; *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 31; *Del Pilar Capetillo Mendez v Canada (Citizenship and Immigration)*, 2022 FC 559 at para 49).

[14] The onus of establishing that an H&C exemption is warranted lies with the applicant (Kisana v Canada (Minister of Citizenship and Immigration), 2009 FCA 189 at para 45). H&C applicants must put their best foot forward and it is not the role of an immigration officer to fill in the blanks left by an applicant (*Lin v Canada (Citizenship and Immigration)*, 2022 FC 341 at para 22; *Brambilla v. Canada (Citizenship and Immigration)*, 2018 FC 1137 at para 19; *Singh v. Canada (Citizenship and Immigration)*, 2022 FC 339 at paras 24-37). This means that the applicant must provide sufficient evidence to convince the officer to grant this exceptional remedy. What warrants relief will vary depending on the facts and context of each case, but officers making H&C determinations must substantively consider and weigh all relevant facts and factors before them (Kanthasamy at para 25).

[15] Here the Applicant challenges the reasonableness of the Officer's decision on the four basis discussed below.

i. Family separation

[16] First, the Applicant submits that the Officer's finding that there was "insufficient evidence put forth to demonstrate that the relationships between the applicant and her family and others in Canada are to the extent that should separation should occur it would justify granting an exemption" is unreasonable. The Applicant submits that "a relationship as intimate as that between a mother and her son or a grandmother and her grandchildren is *prima facie* a relationship of interdependency and reliance". Further, the Applicant submits the Officer overlooked her evidence and the letters of support from her family detailing that she relies on her family in all aspects of her life.

[17] In my view, in effect, the Applicant's position is that the mere fact of relationship between a mother and son or a grandmother and grandchild will establish a relationship of interdependency and reliance sufficient to warrant H&C relief. This cannot succeed. Were it so, all parents and grandparents would be entitled to this relief. Rather, the Applicant must establish that her personal circumstances are such that they would warrant such exceptional relief. The Officer acknowledged and did not ignore that the Applicant had submitted that she has been emotionally dependant on her family in Canada since the death of her spouse in 2018, and that the letters of support from her family in Canada were provided to establish the family's close relationship.

[18] In that regard, the Applicant's submission to the Officer states that after her spouse's death she was sad and depressed, but when she came to Canada and saw her family, she felt a lot better. She states that her daughter-in-law treats her like her own mother, her grandchildren keep her so busy that she has no time to think about anything else, and they have given her lots of happiness and affection. Her son's letter states that the Applicant was lonely after her spouse died and needed emotional support. She felt better when she came to Canada to stay with his family. She looks after the children while he and his wife work. She helps the children with their studies and teaches them the importance of kindness and human values. They missed her when she had to return to India for three months in 2019 and talked to her on FaceTime two or three times a day. The daughter-in-law's letter of support restates this and adds that the children have a great bond with their grandmother, enjoy her company and feel they cannot live without her. The eldest granddaughter's letter indicates that she and the Applicant take walks, play games and laugh together and without the Applicant she would be bored. Her grandmother also helps her with her school work, is teaching her to sew and is a good cook.

[19] These letters of support were not overlooked by the Officer and serve to establish that the family is close and loving. However, as the Officer found, they do not indicate exceptional circumstances or an exceptional level of interdependency. This Court has held that, without more, the separation between a child and an extended family member such as a grandparent is not sufficient to warrant H&C relief. This hardship is inherent in circumstances where families reside in two different countries (*Khaira v Canada (Citizenship and Immigration)*, 2018 FC 950 at paras 24-25*; Tran v Canada (Citizenship and Immigration)*, 2018 FC 210 at para 11; *Gao v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1238 at paras 30-31). The

question of whether an H&C applicant's family ties in Canada warrant H&C relief is a fact-based determination. The Officer did not err by considering the degree of interdependency and reliance between the Applicant and her family in Canada (*De Sousa v Canada (Citizenship and Immigration)*, 2019 FC 818 at para 31).

[20] The Applicant's letter indicating her sadness after the death of her spouse is, regrettably, what one would expect in that circumstance. However, it does not amount to evidence of "her declining mental state" as submitted by her counsel in their written submissions. Indeed, there was no medical information of any sort submitted by the Applicant in support of her H&C application.

[21] The Officer acknowledged that the Applicant would be missed by her family, and vice versa, and did not err in stating that separation is one of the inherent and unfortunate outcomes which may arise from the immigration process. The Officer also considered that the Applicant has returned to India on several occasions and when she did so she was able to maintain contact with her family via FaceTime. Further, that she has also maintained a clear immigration record and could continue to visit Canada. She could also apply for a Parent and Grandparent Super Visa, and, at the same time, her son could make further sponsorship applications.

[22] The Applicant takes issue with the Officer's statement that there was insufficient evidence to demonstrate that the relationships between the Applicant and her family and others in Canada "are to the extent" that should separation occur it would justify the granting of an H&C exemption. However, the onus was on the Applicant to establish that H&C relief was

warranted and, read in context and in view of the Officer's reasons and the supporting letters, I find no error in the Officer's analysis. The Officer reasonably concluded that the evidence did not establish that exceptional H&C relief was warranted.

ii. Mitigation of hardship

[23] Second, the Applicant submits that the Officer unreasonably mitigated hardship associated with separation because it was an inherent outcome and reality when the Applicant's son and daughter moved overseas. The Applicant states that the Officer indicated there was little evidence to demonstrate that her financial and emotional needs were not met in her son's absence, but ignored the material change in the Applicant's circumstances – the death of her spouse. Should she be returned to India, she would now be left with no familial support.

[24] As discussed above, the Officer acknowledged the death of the Applicant's spouse and her submission that she has been emotionally dependent on her family in Canada since his death, but concluded that the evidence submitted by the Applicant and her circumstances did not warrant an H&C exemption. The Officer then went on to acknowledge that it is customary in Indian culture for children to care for their parents and, in that context, observed that "family separation was an inherent reality when her son immigrated to Canada and when her daughter immigrated to the United Kingdom". The Officer also found that there was little evidence to demonstrate that the Applicant's financial or emotional needs had not been met during her son's absence and, while it would be easier for the Applicant's son and family to now provide and care for financial and emotional needs if the Applicant remained in Canada, this was not sufficient to

warrant H&C relief. And, as will be discussed below, the Officer also addressed the Applicant's submissions concerning hardship upon return.

[25] Nor do I agree that the Officer improperly mitigated the Applicant's hardship by pointing out IRCC had advised her, when her sponsorship applications had not been successful, that another avenue exists for parents and grandparents who wish to reunite with their family members in Canada – the Parent and Grandparent Super Visa program. The Applicant submitted the IRCC letter in support of her H&C application. The Officer observed that while her son's family class sponsorships had thus far been unsuccessful, he could continue to apply while the Applicant resides with him as a temporary resident in Canada.

iii. Hardship upon return

[26] The Applicant submits that the Officer unreasonably found that there was little evidence to demonstrate that her basic needs would not be met without social/financial intervention provided by the Indian government and ignored the letters of the Applicant and her family dealing with the hardships associated with the Applicant living in India alone as an elderly widow.

[27] The Applicant does not refer to any evidence not addressed by the Officer that demonstrated that her financial circumstances are such that she would be dependent upon governmental services, which she submitted were insufficient with respect to social welfare, health care and elder care in India, to meet her basic needs. He son and daughter-in-law now

support her financially and there is no evidence in the record that they would be unable or unwilling to do so should she return to India.

[28] As to hardship on return, the Officer stated that there was little evidence to demonstrate that the Applicant is physically or mentally incapable of taking care of herself or that she requires supervision. On this point, the Applicant's letter to the Officer states only that "For me to live on my own in India is very difficult. I need someone to take care of me as I can not go for shopping or to doctor or to bank alone". This evidence was not ignored and was in fact quoted by the Officer in their reasons. I note, however, that the Applicant offered no explanation as to why she cannot undertake these tasks.

[29] In that regard, the Officer pointed out that the Applicant's counsel had submitted that research has found that the elderly in India have trouble navigating in the crowded streets and face difficulties from lack of infrastructure built to deal with mobility challenges of the elderly. However, the Officer noted that the letter of support from the Applicant's granddaughter indicates the Applicant goes on walks with her. The Officer found that the Applicant was able to take her grandchild for a walk in a city in which she is less familiar and that she has an extensive history of travel abroad. The Officer found that this was indicative of the Applicant's ability to navigate. Further, that there was little evidence to demonstrate that the Applicant has mobility issues. According, the Officer afforded this factor little weight.

[30] I would add that the granddaughter's letter describes taking walks and playing games together with the Applicant as well as going to an amusement park where she and the Applicant

went on the log-ride together. It also states that she and her grandmother both love walks and badminton and that the Applicant participates with her in other activities. This evidence does not suggest that the Applicant has navigational or mobility issues.

[31] And while the Officer did not specifically refer to the other letters of support, I agree with the Respondent that the Officer is presumed to have considered the evidence before them, and is not required to comment on every piece of evidence (*Florea v Canada* (*Minister of Employment and Immigration*), [1993] FCJ No 598 (FCA); *Sing v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 at para 90; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). Further, the other letters of support provide little detail in terms of the hardship to the Applicant on return to India. For example, the letter from the Applicant's son states only that "it is very difficult for her to live alone in India" and "[i]f she stays in India and have some health problems or need any help then I would have to go to India to take care of her". Her son explains that while he feels that it is his duty to care for his mother, this would not be practical. Therefore, it would be better for her to remain in Canada. Similarly, the letter from the Applicant's daughter-in-law states only that the Applicant "is very alone in India" and that "[l]iving alone in India for my mother-in-law is very difficult as she is growing old day by day".

[32] And, as pointed out by the Respondent, the Applicant returned to India from January to April, 2019. This was subsequent to her husband's death but there was no evidence that she had any difficulty managing on her own at during that time.

[33] In my view, the Officer reasonably found that the evidence submitted by the Applicant did not support that the Applicant would suffer hardship because she could not take care of herself in India.

iv. Cultural component

[34] The Applicant submits that there was a significant cultural component or context that the Officer failed to handle with care and sensitivity. This revolves around counsel's submission to the Officer that the only reasonable and culturally appropriate support for the Applicant would be to live with the son. The alleged lack of sensitivity being that the Officer merely noted that the Applicant would be returning to a familiar country where she has spent the majority of her life.

[35] However, the Officer did address this component and explicitly acknowledged that it is customary for children to care for their parents in Indian culture. The Officer weighed this against the fact that the Applicant could continue to visit her family in Canada, she could also apply for a super visa and, at the same time, her son could continue his efforts to sponsor her under the family class. In other words, this factor did not warrant H&C relief because the Applicant can still spend extended time with her family in Canada. I am not persuaded that the Officer failed to consider this submission with sensitivity.

Other submissions

[36] When appearing before me, counsel for the Applicant acknowledged that the Officer had touched on the evidence submitted by the Applicant but argued that the Officer's reasons were

superficial, segmented, callous and lacking in empathy. I do not agree with this submission. The Officer addressed each of the H&C factors raised by the Applicant and was not unsympathetic to her circumstances. Rather, as the Respondent submits, the Applicant failed to meet her onus of establishing that her personal circumstances warranted the exceptional relief afforded by s 25(1) of the IRPA.

[37] Her circumstances, as demonstrated by her supporting documents are, sadly, the circumstances of many parents and grandparents who love and are loved by their children and grandchildren and who would prefer to live with them in Canada. However, this is not a situation, for example, where there is evidence of a highly interdependent relationship, such as where a child is ill or has special needs and/or their parent is unable to care for them, and a grandparent is providing necessary additional care. The grandparent being required to leave Canada in those circumstances may warrant s 25 exceptional relief (see *Le v Canada (Citizenship and Immigration)*, 2022 FC 427 at paras 18, 22).

Conclusion

[38] In conclusion, while, as in most cases, there will be some hardship associated with being required to leave Canada to make an application for permanent residence, the Officer properly considered the H&C factors raised by the Applicant and her supporting submissions. The Officer reasonably found that the Applicant had not met her onus of establishing that her circumstances were sufficient to warrant exceptional relief on H&C grounds under s 25(1).

[39] A reviewable error does not arise with respect to the Officer's assessment of the evidence and the Officer's decision is justified, transparent and intelligible. Accordingly, the Court's intervention is not warranted.

JUDGMENT IN IMM-428-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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