Federal Court Cour fédérale

Date: 20220506

Docket: IMM-216-21

Citation: 2022 FC 663

Ottawa, Ontario, May 06, 2022

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

GHOLAMREZA SHARIFPOURAN

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

I. Overview

[1] The Applicant, Mr. Gholamreza Sharifpouran ("Mr. Sharifpouran") is a 67-year-old male citizen of Iran. He became a permanent resident of Canada in 2005 upon entry as a business investor. In September 2017, he was convicted of importing 3kg of opium into Canada from Iran, contrary to s. 6(1) of the *Controlled Drugs and Substances Act,* SC 1996, c 19. He was sentenced to three years in prison. He was subsequently declared inadmissible in Canada on

grounds of serious criminality pursuant to s. 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“IRPA”]. He became the subject of a deportation order in January 2020. On January 24, 2020, he submitted a Pre-Removal Risk Assessment application, which was dismissed.

[2] On April 6, 2020, Mr. Sharifpouran submitted an application under s. 25 of the *IRPA*, seeking a humanitarian and compassionate (“H & C”) exemption from his criminal inadmissibility. In other words, Mr. Sharifpouraon requested an exception to the usual rule that serious criminality by a permanent resident leads to loss of status and removal from Canada (*Gill v Canada (Citizenship and Immigration*), 2019 FC 772 at para 20). The H & C considerations advanced by Mr. Sharifpouran related to his establishment in Canada and the risk and adverse country conditions in Iran.

[3] With respect to establishment, Mr. Sharifpouran demonstrated that he has resided in Canada for over 15 years, built a successful business in Canada, has important family ties in Canada and that he volunteers in a recreational soccer league.

[4] With respect to risk and adverse country conditions, the Mr. Sharifpouran contended that he would be separated from his family if he were to be removed from Canada, that he would live in poverty in Iran, that he may be re-prosecuted in Iran for his criminal offense, and that the healthcare system in Iran, both inside and outside the prison system, is inadequate. I note that the record indicates that the Mr. Sharifpouran is a recovering opium addict, a heart attack survivor,

and suffers from several heart conditions, such as acute coronary syndrome, coronary artery disease and hypertension.

[5] On October 30, 2020, a Senior Immigration Officer rejected Mr. Sharifpouran's application for an exemption under s. 25 of the *IRPA*. The Officer concluded the H & C considerations advanced by Mr. Sharifpouran were insufficient to overcome his inadmissibility based upon serious criminality.

[6] Mr. Sharifpouran seeks judicial review of the Officer's decision pursuant to s. 72(1) of the *IRPA*. For the reasons set out below, I dismiss the application for judicial review.

II. Decision under review

A. *Establishment*

[7] The Officer accorded positive weight to Mr. Sharifpouran's establishment in Canada. The Officer noted that he has built significant relationships within his community and has many family members living in Canada. The Officer also noted that he started and developed a successful business in Canada, having locations in both Toronto and Vancouver.

B. *Hardship*

[8] The Officer accepted that Mr. Sharifpouran's removal may result in life-long mental, emotional and physical hardship to him and his family. However, the Officer correctly noted that Mr. Sharifpouran has many family members still living in Iran, including siblings, and will be

able to maintain contact with his family and friends in Canada through various forms of communication. Nevertheless, the Officer assigned significant weight to this aspect of the application.

[9] With respect Mr. Sharifpouran's assertion that he would live in poverty in Iran, the Officer recognized that the economic situation in Iran is not ideal, but noted that neither he nor his family members have experienced poverty in Iran. The Officer recognized that Mr. Sharifpouran would be required to find new employment in Iran. However, the Officer noted that Mr. Sharifpouran operated a business in Iran before coming to Canada, and maintained that business while living in Canada, until his arrest on the importation charges. The Officer also noted that Mr. Sharifpouran has gained valuable work experience and entrepreneurial skills in Canada, both of which would assist him in his re-integration into the Iranian economy.

[10] The Officer acknowledged that Mr. Sharifpouran suffers from heart problems. The Officer accepted the documentary evidence offered by Mr. Sharifpouran which demonstrated that Iranian prisons would be unable to provide proper medical care if he were to be re-incarcerated. However, after considering all of the evidence, the Officer concluded it was unlikely Mr. Sharifpouran would be re-prosecuted in Iran for the crime committed in Canada. The Officer afforded little weight to this aspect of the application.

C. *Criminality in Canada*

[11] The Officer acknowledged that the Mr. Sharifpouran expressed his regret about having committed the crime, was remorseful and that he has taken steps to treat his opium addiction.

The Officer found that Mr. Sharifpouraon nonetheless committed a serious offence, which showed a blatant disregard for Canadian law. The Officer assigned significant negative weight to this aspect of the application.

III. Relevant Provisions

[12] The relevant provision in the present matter is s. 25(1) of *IRPA*:

***Immigration and Refugee Protection Act*, SC 2001, c 27**	***Loi sur l’immigration et la protection des réfugiés*, LC 2001, ch 27**
Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d’ordre humanitaire à la demande de l’étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the	25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d’un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c’est en raison d’un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d’un étranger se trouvant hors du Canada — sauf s’il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s’il

Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

IV. Issues and Standard of Review

[13] The only issue in the present application is whether the Officer's decision is reasonable. In assessing the reasonableness of the decision, the following questions will be addressed:

A. *Did the Officer unreasonably ignore and fail to engage with the Applicant's submissions and evidence as it relates to the availability and suitability of healthcare outside of the Iranian prison system?*

B. *Did the Officer unreasonably fail to consider the Minister's Guidelines and the Applicant's rehabilitation when assessing how the criminal conviction factors into the global assessment of the application?*

C. *Did the Officer unreasonably utilize the Applicant's successful establishment in Canada to diminish the hardship that he would experience upon return to Iran?*

[14] The parties agree that the Officer's decision is subject to review on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 CSC 65, 441 DLR (4th) 1 ["*Vavilov*"] at para 25). None of the exceptions to the presumption of reasonableness review apply in the present case (*Vavilov* at para 17).

[15] "A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker"

(*Vavilov* at para 85). To set aside a decision, the reviewing court must be convinced that there are sufficiently serious shortcomings in the decision, such that any superficial or peripheral flaw will not suffice to overturn the decision (*Vavilov* at para 100). Most importantly, the reviewing court must consider the decision as a whole, and must refrain from conducting a line-by-line search for error (*Vavilov* at paras 85 and 102).

V. Submissions of the Parties and Analysis

A. *Did the Officer unreasonably ignore and fail to engage with the Applicant's submissions and evidence as it relates to the availability and suitability of healthcare outside of the Iranian prison system?*

[16] Mr. Sharifpouran contends the Officer's decision is unreasonably silent on the matter of healthcare outside the prison system. He refers to objective evidence he offered which states that the Iranian healthcare system is in a "state of chaos". Despite this, the Officer's decision makes no reference to the type of care that might be available outside the prison system. He relies upon *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 157 FTR 35 at para 17 and *Vavilov* at para 128 in support of his assertion that the Officer failed to engage with a central argument of his case, thereby rendering the decision unreasonable.

[17] It is trite law that an administrative decision-maker must be responsive to an applicant's submissions. Where a submission or argument relates to a central issue or concern, the failure to address it will compromise the transparency and justification of the decision (*Vavilov*, *supra*, at para 128). However, decisions must not be reviewed against a standard of perfection (*Vavilov* at para 91). "The court must be satisfied that any shortcomings or flaws relied on by the party

challenging the decision are sufficiently central or significant to render the decision unreasonable" (*Vavilov, supra,* at para 100).

[18] In the present case, Mr. Sharifpouran's H & C submissions addressed the poor quality of the Iranian healthcare system both inside and outside the prison system. Mr. Sharifpouran is correct when he says the Officer failed to address the issue of healthcare outside the prison system. However, in my view, Mr. Sharifpouran failed to present clear arguments as to how and why the alleged poor quality of the Iranian healthcare system would affect him. He referred to a single article indicating that the Iranian healthcare system is in a "state of chaos", but failed to provide any evidence that he would be unable to obtain proper medical care in Iran or that he would suffer hardship in trying to do so. It is well established that general adverse country conditions, which have no nexus to an applicant's specific and personal situation, do not weigh in favour of humanitarian and compassionate considerations (*Laguerre v Canada (Citizenship and Immigration*), 2020 FC 603 at para 28).

[19] In the present case, Mr. Sharifpouran failed to meet the burden upon him to show a nexus between him and the alleged adverse country conditions. Having said that, I am not convinced that a statement that a healthcare system is in "chaos", without more, meets the standard of an adverse country condition.

B. *Did the Officer unreasonably fail to consider the Minister's Guidelines and the Applicant's rehabilitation when assessing how the criminal conviction factors into the global assessment of the application?*

[20] Mr. Sharifpouran contends the Officer failed to consider the Minister's *Humanitarian and compassionate: Criminal inadmissibilities – A36(1) and A36(2) Guidelines* ["*Guidelines*"]. He says the *Guidelines* suggest that an officer considering H & C applications involving criminal inadmissibility must consider factors such as the type of criminality involved, the sentence imposed, the length of time that has passed since the conviction, whether the conviction is an isolated incident or part of a pattern, and other relevant information about the circumstances of the crime. Mr. Sharifpouran states that the Officer failed to consider the length of time since the offence, the circumstances surrounding the offence, and the solitary nature of the offence. He contends these failures constitute reviewable error. He says the Officer unduly focused on the seriousness of the offence and failed to engage with mitigating considerations such as rehabilitation (*Sivalingam v Canada (Citizenship and Immigration*), 2017 FC 1185 ["*Sivalingam*"] at paras 9 to 12) and risk of reoffending n (*Brar v Canada (Citizenship and Immigration*), 2011 FC 691 ["Brar"] at paras 52 to 61). These failures, according to Mr. Sharifpouran precluded the Officer from reasonably balancing all factors set out in the *Guidelines*.

[21] The Respondent contends that Mr. Sharifpouran is requesting this Court search for minute errors in the decision, as opposed to conducting a review of the decision as a whole (*Vavilov, supra*, at para 102). The Respondent contends that the Officer's findings and weighing of the evidence is reasonable. It adds that an officer is entitled to focus on an applicant's criminal history and to find that it outweighs any H & C considerations (*Chaudhary v Canada (Immigration, Refugees and Citizenship*), 2018 FC 128 at para 25).

[22] I see no error in the Officer's failure to expressly refer to factors listed in the *Guidelines*. It is well established that operational manuals, guidelines and other administrative tools are not law and are not binding on immigration officers (*Frank v Canada (Citizenship and Immigration*), 2010 FC 270 at para 21).

[23] Regardless, I am of the view the Officer did not, as contended by Mr. Sharifpouran, fail to consider rehabilitation. The Officer "recognize[d] that the [A]pplicant has expressed his regret and remorse for committing this crime" and "acknowledge[d] that the [A]pplicant has taken steps to treat his addiction and has included many references as evidence". While it may have been preferable for the Officer to use the word "rehabilitation", I note that administrative decision-makers' reasons must not be assessed against a standard of perfection (*Vavilov, supra*, at para 91). I would add that the reasons demonstrate the Officer was very much aware of the nature of the crime and the date of its commission. The crime is of recent origin, and one for which Mr. Sharifpouran is not yet eligible to seek suppression under the *Criminal Records Act*, RSC 1985, c C-47. Because of those latter two factors, I am of the view that the Officers failure to discuss the passage of time since the commission of the offence would not have had any positive impact upon the application.

[24] This is not a case where the Officer unreasonably focussed on Mr. Sharifpouran's criminal conviction, while giving cursory regard to evidence concerning rehabilitation, as was the case in *Sivalingam* and in *Brar*. I conclude that the Officer showed an appropriate degree of consideration to Mr. Sharifpouran's evidence as it related to rehabilitation.

C. *Did the Officer unreasonably utilize the Applicant's successful establishment in Canada to diminish the hardship that he would experience upon return to Iran?*

[25] Mr. Sharifpouran says that the Officer unreasonably "flipped" his establishment in Canada as a means of negating hardship. He says the Officer erred by accepting that he created a successful business in Canada, but then unreasonably determined that the work and entrepreneurial skills he gained here would help lessen the hardship upon a return to Iran. Mr. Sharifpouran relies on *Lauture v Canada (Citizenship and Immigration*), 2015 FC 336 ["*Lauture*"] at paras 24 to 26 and *Kolade v Canada (Citizenship and Immigration*), 2019 FC 1513 ["*Kolade*"] at para 23.

[26] The Respondent contends that the Officer did not "flip" positive establishment, but rather simply took into account factors that were necessary in assessing hardship. It submits that an applicant's ability to adapt upon returning to another country is a relevant consideration in assessing hardship (*Mashal v Canada (Citizenship and Immigration*), 2020 FC 900 at para 34).

[27] *Lauture* and *Kolade*, relied upon by Mr. Sharifpouran, are distinguishable from the facts in the circumstances. In both of those cases, the Court found that the officers had erred by discounting the applicants' establishment in Canada on the basis of the transferability of skills acquired in Canada. In those cases, the Court found that the Officer had erred by filtering the applicants' establishment analysis through the lens of hardship. This is not what occurred in the present case. The Officer analysed the establishment factor in detail, found that Mr. Sharifpouran was established in Canada, and afforded positive weight to this factor. Separately from this establishment assessment, the Officer analysed the potential hardship that Mr. Sharifpouran

might face if he were to be removed to Iran. In assessing hardship, the Officer found that the work and entrepreneurial skills Mr. Sharifpouran acquired in Canada could help lessen the hardship associated with finding new employment in Iran. By analysing establishment and hardship separately, the Officer did not fall into the error of conflating these two factors, as was the case in *Lauture* and *Kolade*.

[28] It was entirely open for the Officer to proceed as he did in the circumstances (*Mashal v Canada (Citizenship and Immigration*), 2020 FC 900 at para 36*; Shah v Canada (Citizenship and Immigration*), 2022 FC 424 at para 19; *B489 v Canada (Citizenship and Immigration),* 2015 FC 1067 at para 19; *Zhang v Canada (Citizenship and Immigration*), 2020 FC 503 at para 33).

VI. Conclusion

[29] The role of immigration officers in H & C applications is to consider all the relevant factors advanced by an applicant in order to determine whether, from a global perspective, those considerations would "excite in a reasonable man in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes warrant the granting of special relief" (*Kanthasamy* at para 13; *Ahmed v Canada (Citizenship and Immigration*), 2021 FC 1251 at para 13). H & C determinations are fact-driven exercises of discretion. The weight afforded to any particular factor by an officer should generally not be revisited by a reviewing Court (*Arshad v Canada (Citizenship and Immigration*), 2018 FC 510 at para 10).

[30] The Officer demonstrated he was alert to Mr. Sharifopouran's establishment in Canada, was alert to the rehabilitative steps taken by him following the commission of his crime, and

properly weighed the hardship issue. Following a global assessment of the relevant considerations, the Officer concluded H & C relief was not available. It is not the role of this Court to reweigh the evidence or to substitute its preferred conclusion to that of the Officer (*Vavilov* at para 125; *Titova v Canada (Citizenship and Immigration*), 2021 FC 654 at para 35).

[31] For all of the above reasons, I dismiss the application for judicial review.

[32] Neither party proposed a question for certification, and, in my view, none arises from the facts.

JUDGMENT in IMM-216-21

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-216-21
STYLE OF CAUSE:	GHOLAMREZA SHARIFPOURAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 2, 2022
JUDGMENT AND REASONS:	BELL J.
DATED:	MAY 6, 2022

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