Federal Court  Cour fédérale

Date: 20220608

Docket: IMM-2227-20

Citation: 2022 FC 852

Ottawa, Ontario, June 8, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

LAURITO JR. PADERNAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision made on March 19, 2020 by a Senior Immigration Officer in which the Applicant's application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds was refused (the Decision).

[2] The Applicant originally arrived in Canada on January 20, 2009 as a live-in caregiver under the Temporary Foreign Worker Program. The work permit was valid until April 19, 2011. After the permit expired, the Applicant remained in Canada.

[3] For the reasons that follow, I find the Officer erred in their treatment of the Applicant's establishment in Canada. That error led to the Decision being unreasonable. It will be set aside and returned to a different Officer for redetermination.

II. **The H&C Submissions**

[4] At the time the Applicant submitted his H&C application he had been in Canada for just over 10 years. The submissions made to the Officer on behalf of the Applicant focused on his establishment in Canada and the hardship he would face if forced to return to the Philippines.

[5] I have found that the determinative issue in this application is the Officer's treatment of the Applicant's establishment. As such, it is not necessary to outline or consider any of the hardship submissions.

[6] Evidence of the Applicant's establishment included 35 personal letters of support, his tenancy agreement, two letters from former employers, a copy of his T5 showing investment income, various banking documents such as credit card statements, utility and mobile phone plan bills, line of credit statements, a statement from his bank showing their net worth of $62,000 in accounts held with the bank and their IELTS test results showing English proficiency.

[7] The Applicant has been an active member in his Roman Catholic Parish for several years. He has also been involved in volunteering with St. Patrick's shrine church for the last four years. In addition to strong adult relationships, evidenced by the many personal letters submitted, the Applicant has developed familial type relationships with some of the children of adult friends.

III. **Issues**

[8] The issue to be decided is whether the Decision is reasonable. Specifically, the Applicant submits that the issue includes whether the Officer:

(1) failed to consider the establishment of the applicant as a *de facto* family member;

(2) adequately assessed the evidence of establishment;

(3) erred by crediting the establishment to the time spent in Canada;

(4) imposed a heightened standard of proving "exceptional" establishment;

(5) erred by erred by considering lack of status while establishment was achieved; and,

(6) erred by requiring employment letters, pay stubs and tax documents.

IV. **Standard of Review**

[9] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2015 SCC 65 [*Vavilov*] at para 23. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[10] In conducting a reasonableness review, the 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. The court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place: *Vavilov* at para 15.

V. **The Decision**

[11] The Officer failed to address any of the 35 personal letters of support. The letters came from friends, colleagues, church members plus there were 2 from former employers.

[12] A very small, but representative sample, of the statements made in the letters is:

> [The Applicant's] presence and faith has brought comfort and positive changes to many of the people around him . . . over the last 10 years.
>
> I met [the Applicant] in the summer of 2009 through mutual friends. We have been friends since then, and can confirm that he is a hardworking, resilient and hopeful individual.
>
> His story including his upbringing and how he navigated through his childhood all the way to his final destination in Canada touched everyone including myself. Nevertheless, he never once displayed sadness, fear or defeat. Rather, he rendered hope and gratitude to be in the best country in the world. I consider him part of my family, as our friendship over the years brought [us] closer than ever.
>
> He has helped me in my own personal struggles and I absorbed many of his characteristics and thought process.
>
> He is a very kind, honest, reliable and responsible person. It is a great privilege for me to know him and an honor for me to be his friend and like his own sister.

> As our friendship got stronger, we would go for church pilgrimages in Ontario and Quebec, joined prayer group and went to partier (*sic*) together, until today [the Applicant] is a very good friend of mine.
>
> He brings with him nursing and caregiving skills that are invaluable to the recipient along with his compassionate nature.
>
> I have witnessed his passion with his work, providing care for the sick and elderly, and his active involvement and participation in his Religion and spiritual congregation, being a choir member and church volunteer. His dedication to his religious belief has brought him to different pilgrimage all over Ontario and Quebec.

[13] Many of the letters indicated that the Applicant was "like a son/uncle/brother" many others referred to the Applicant as a "good friend of mine". The Applicant submitted to the Officer that the letters, which came from friends in Toronto and throughout Canada, demonstrate "a level of integration akin to a *de facto* family member".

VI. **Analysis**

[14] In summarizing the Applicant's application, under "Establishment in Canada", the Officer said very little about the 35 personal letters of support:

> The applicant attends and volunteers at his church and has many friends in his community (letters on file). As further evidence of his establishment the applicant presented his tenancy agreement, VISA, Fido and Rogers bills, as well as his bank statements indicating over $62,000 in personal savings (on file).

[15] In the Decision and Reasons, the Officer's analysis of Establishment distilled the 35 letters to the following:

> I acknowledge that the applicant has developed valuable friendships during his time in Canada and that the applicant would

> be missed by his friends and vice versa. However, I note that separation is one of the inherent and unfortunate outcomes which may arise from the immigration process, especially when residing in a country without valid status. Furthermore, relationships are not bound by geographical locations and the applicant has the option to maintain contact with his friends in Canada through mail, telephone and via the internet. I note that some of the applicant's friends in Canada do not reside in the same city as he does and that it is likely they maintain contact via telephone or internet. I believe they could continue to maintain this form of contact moving forward. I find that there is insufficient evidence put forth to demonstrate that the relationships between the applicant and his friends in Canada are to the extent that should separation should (*sic*) occur it would justify granting an exemption under humanitarian and compassionate considerations.

[16] In commenting on the foregoing, the Officer remarked:

> I accept that the applicant has demonstrated a level of integration into Canadian society and community. I acknowledge that he has resided in Canada for over 9 years, was employed for most of those years and has been self-sufficient and financially prudent. While I recognize that the applicant likely has obtained a level of establishment in Canada, I find that his establishment is at a level that would be expected of a person in his circumstances to obtain. I give the applicant's factors for establishment some positive weight.
>
> The applicant has been in Canada, without authorization, since April 19, 2011. I find that there is insufficient information or evidence indicating the applicant was prevented from leaving Canada or that the circumstances of his extended residence in Canada were beyond his control. I give this factor some negative weight.

[17] The Applicant argues that the Officer failed to consider the depth of the relationships formed by the Applicant during the past 10 years, and without a proper assessment of establishment, there cannot be a proper assessment of the hardship of returning to the Philippines.

[18] In *Gamboa Saenz*, Justice Campbell found that the decision was unreasonable because "[t]he Officer's words do not accurately portray the quantity and quality of the evidence presented. In fact, as argued by Counsel for the Applicants, before the Officer was 25 support letters and 250 signatures on the petition. Not one word of comment on this evidence appears in the decision under review. I find that the neglect of this cogent evidence renders the decision unreasonable": *Gamboa Saenz v Canada (Citizenship and Immigration),* 2019 FC 713 at para 6.

[19] In this application the Officer acknowledged, without elaboration, that friendships had been developed by the Applicant but then found that the Applicant's level of establishment was "that which would be expected of a person in his circumstances." Ultimately the Officer gives "some positive weight" to the Applicant's establishment.

[20] Mr. Justice Zinn has previously held, conclusively, that "what is required is an analysis and assessment of the degree of establishment of these applicants and how it weighs in favour of granting an exemption. The Officer must not merely discount what they have done by crediting the Canadian immigration and refugee system for having given them the time to do these things without giving credit for the initiatives they undertook. The Officer must also examine whether the disruption of that establishment weighs in favour of granting the exemption.": *Sebbe v Canada (MCI),* 2012 FC 813 [*Sebbe*] at para 21.

[21] The Respondent submits that Officers have "the expertise and experience necessary to permit him or her to identify the level of establishment that is typical of persons who have resided in Canada for the same approximate length of time… and, therefore, to use this as a

yardstick in assessing their establishment": *Villanueva v Canada (Citizenship and Immigration)*, 2014 FC 585 at para 11.

[22] The Respondent is correct that officers are well-placed and entitled to use a compare and contrast methodology to determine the adequate level of establishment. However, this Court has held that it is unreasonable for an officer to simply brush aside an applicant's establishment "as ordinary without any more analysis": *Nagamany v Canada (Citizenship and Immigration)*, 2019 FC 187 at paras 34-35.

[23] Here, the Officer appropriately assigned negative weight to the Applicant's residence and employment without authorization since the expiry of his work permit.

[24] However, crediting the relationships, community involvement, financial self-sufficiency, employment and other factors of establishment that the Applicant has achieved in Canada to be "expected" given the passage of time amounts to doubly punishing the Applicant. Even though the wording of the decision suggests that the Officer assigned "the applicant's factors for establishment some positive weight", the Applicant is not suggesting that the Officer assigned negative weight or dismissed establishment altogether. Rather, the Applicant is arguing that the Officer erred by minimizing the Applicant's efforts at establishment.

[25] The evidence in the record indicates the "circumstances" of the Applicant are those of a beloved, well-respected member of his community and Church, who has been a care-giver for a number of people, who has succeeded in Canada for ten years, has accumulated savings of

$62,000 and has a number of very good friends whom he sees often and travels with on pilgrimages.

[26] The problem with the Officer's finding is that it does not articulate, in any way, what the "expected" level of establishment was for the Applicant.

[27] It is simply not possible to understand how or why the Applicant fell short of an unspecified standard. That renders the Decision unreasonable.

VII. **Conclusion**

[28] Based on the caselaw above and the Officer's cursory analysis on the evidence of establishment that was submitted, I find it was not reasonable for the Officer to have minimized the Applicant's establishment on the basis that it was "expected" without any indication of what this benchmark entails. As Justice Rennie held, adopting this unreasonable analysis would mean that "the more successful, enterprising and civic minded an applicant is while in Canada, the less likely it is that an application under section 25 will succeed": *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at para 26 affirming *Sebbe* at para 21.

[29] Where, as here, a decision maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility: *Vavilov* at para 98.

[30] For all the foregoing reasons, this application is granted and the matter is returned for redetermination by another Officer.

[31] There is no serious question of general importance arising n these facts.

JUDGMENT in IMM-2227-20

THIS COURT'S JUDGMENT is that:

1. The application is granted.

2. The decision is set aside and the matter is returned for redetermination by another Officer.

3. There is no question for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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