Federal Court  Cour fédérale

Date: 20220916

Docket: IMM-4482-21

Citation: 2022 FC 1301

Toronto, Ontario, September 16, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

BRANCO VUJOVIC, DEJANA VUJOVIC, ANASTASIJA VUJOVIC, KSENJA VUJOVIC, STEFAN VUJOVIC

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a June 21, 2021 decision [Decision] of a senior immigration officer [Officer] of Immigration, Refugees and Citizenship Canada. In the Decision, the Officer rejected the Applicants' application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicants argue that the Officer failed to take a global and empathetic approach to the analysis and erred in their assessment of whether the Applicants would face hardship if they returned to Montenegro.

[3] For the reasons that follow, I find the Decision reasonable and that the application should be dismissed.

I. Background

[4] The Applicants are a family of five from Montenegro who last entered Canada in November 2019 as temporary foreign workers. The principal Applicant works as a soccer coach and in the construction industry. The principal Applicant's spouse has worked on and off in retail. The three children are all minors, who entered Canada on temporary resident visas. The Applicants received extensions on their permits; however, their status as workers and visitors expired on November 1, 2020.

[5] On December 2, 2020, the Applicants applied for permanent residence on H&C grounds, relying on their establishment in Canada, including their work history, involvement in the Serbian Orthodox Church, and community involvement; the best interests of their three children [BIOC]; and hardship arising from socio-economic conditions and ethnic and religious tensions in Montenegro. However, the Officer found the requested exemption was not justified by H&C considerations.

[6] The Officer considered the Applicants had been living in Canada continuously for two and half years and had developed some personal ties to the community, but noted that their family ties were in Montenegro. As there was a lack of information about the Applicants' financial situation and ability to be self-sufficient, the Officer gave only moderate positive consideration to establishment.

[7] Similarly, the Officer found that there was too little information to consider that there would be hardship to the Applicants from securing employment upon return, or that their families or social network in Montenegro would be unable or unwilling to provide assistance. The Officer accepted the existence of ongoing tensions between different religious and ethnic groups in Montenegro, and that such tensions could cause some hardship to the Applicants, but found that the Applicants had not demonstrated that they would face significant hardship caused by a removal.

[8] The Officer noted that the Applicants "would not be returning to an unfamiliar place, language or culture that would render re-integration unfeasible". While some weight was given to the BIOC and it was acknowledged that the children would face some adjustment, the Officer found that there was insufficient evidence that the BIOC would be negatively impacted to an extent that warranted H&C relief.

II. Issues and Standard of Review

[9] The sole issue on this application is whether the Decision was reasonable, which breaks down into the following arguments raised by the Applicants:

A. Did the Officer err by failing to adopt an empathetic and holistic approach?; and

B. Did the Officer err in the assessment of hardship/risk?

[10] The substance of an officer's H&C decision is reviewable on the reasonableness standard: *Raju v Canada (Citizenship and Immigration)*, 2022 FC 900 at para 4. None of the situations that rebut the presumption of reasonableness review for administrative decisions are present here: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17.

[11] In conducting a reasonableness review, the Court must determine whether the decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision-maker": *Vavilov* at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

[12] As highlighted by the Applicants, the principles of justification and transparency require that an administrative decision-maker's reasons meaningfully account for the central issues and concerns raised by the parties: *Vavilov* at para 127. While a reviewing court cannot expect an administrative decision-maker to respond to every argument or line of possible analysis, the

failure to meaningfully grapple with key issues or central arguments may call into question whether the decision-maker was actually alert and sensitive to the matter before it: *Vavilov* at para 128.

III. Analysis

A. *Did the Officer err by failing to adopt an empathetic and holistic approach?*

[13] The Applicants argue that the Officer did not demonstrate an empathetic and global understanding of the Applicants' situation, but rather considered the issues in a segmented manner that glossed over the personal history and circumstances of the Applicants, displaying a profound misunderstanding for the key issues. They rely on *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] and *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 [*Damte*] as support for their position.

[14] In *Kanthasamy*, the Supreme Court recognized at paragraph 28, the global approach to be taken in H&C cases and with respect to hardship, where the relevant considerations are to be weighed cumulatively:

> [28] The Guidelines confirm that the humanitarian and compassionate determination under s. 25(1) is a global one, and that relevant considerations are to be weighed cumulatively as part of the determination of whether relief is justified in the circumstances:
>
> > . . . the officer should assess all facts in the application and decide whether a refusal to grant the request for an exemption would, more likely than not, result in unusual and undeserved or disproportionate hardship.
> >
> > . . .

> Individual [humanitarian and compassionate] factors put forward by the applicant should not be considered in isolation in a determination of the hardship that an applicant would face; *rather, hardship is determined as a result of a global assessment* of [humanitarian and compassionate] considerations put forth by the applicant. *In other words, hardship is assessed by weighing together all of the [humanitarian and compassionate] considerations submitted by the applicant.* [Emphasis added.]

(*Inland Processing*, ss. 5.8 and 5.10)

[15] In *Damte* at paragraphs 33-34, the requirement for both an objective and subjective evaluation of hardship, the latter of which applies compassion and requires an empathetic approach to an applicant's situation, was recognized as being necessary for a hardship analysis:

> ....Thus, the Guideline test requires a subjective as well as an objective evaluation of hardship: unusual hardship might only require an objective analysis, whereas undeserved and disproportionate impact hardship requires both an objective as well as a subjective analysis. A subjective analysis requires that the facts be viewed from an applicant's perspective. In particular, a disproportionate impact analysis must reflect an understanding of the reality of life a person would face, in body and mind, if forced to leave Canada. In my opinion, to be credible in determining these essential features, a decision-maker must apparently, and actually, apply compassion.
>
> [34] Applying compassion requires an empathetic approach. This approach is achieved by a decision-maker stepping into the shoes of an applicant and asking the question: how would I feel if I were her or him? In coming to the answer, the decision-maker's heart, as well as analytical mind, must be engaged.

[16] The Applicants assert that the Officer misunderstood the true concern raised by the Applicants, namely that Montenegro is an unstable society divided along ethnic and religious lines and that there is a division between those who consider themselves loyal to Montenegro (and want nothing to do with Serbia) and those who consider themselves Serbian first or simply

loyal to Serbia. The Applicants argue that this flawed approach has led to a fundamental misunderstanding of how the Applicants, as members of the Serbian Orthodox Church, would be affected by the ethnic and religious tensions around these two opposing identities that has in the past led to violence.

[17] I do not agree that the Decision demonstrates a lack of recognition of these tensions or that the Officer has failed to consider how they might affect the Applicants. Nor do I agree with the Applicants' contention that this case is "remarkably similar" to *Paul v Canada (Citizenship and Immigration)*, 2013 FC 1081 [*Paul*]. In *Paul*, the impugned decision contained a number of findings that revealed that the decision-maker misunderstood the nature of the applicants' circumstances, including their advanced age and need for permanent assistance from their children who resided in Canada by considering their issue as one of establishment instead of one of hardship. As stated at paragraphs 6-7 of *Paul*:

> [6] And third, with respect to the issue of establishment, the Officer found as follows:
>
> > The applicant's [sic] establishment in Canada has also been looked at. The applicants have been here for a little over one year. They are at a retirement age and cannot work. Their family in Canada supports them and they are living in their house. They have two sons and their families who visit them and live with them. I am not satisfied that there is a sufficient level of establishment in Canada that it overcomes the fact that there is a lack of other humanitarian factors.
> >
> > [Emphasis added]
>
> I have the following comment about this finding. While establishment in Canada might be a primary factor in granting an H&C application, it is not a factor in the present case. The Applicants are not maintaining establishment. They are maintaining practical and emotional need for support of their

> family in Canada. In the passage quoted, the Officer seems to understand the situation at hand, but pays no attention to it. The last sentence in the passage just quoted is evidence that the Officer believes that there is no merit to the arguments presented. What is so very obvious about the Officer's decision is that it is devoid of any sense of compassion.
>
> [7] As is well recognized in the review of decisions under s. 25 of *IRPA*, decision-making by immigration officers is assisted by the Minister's Guidelines which state as follows:
>
> > A positive H&C decision is an exceptional response to a particular set of circumstances. The hardship of having to apply for a permanent resident visa from outside of Canada would pose, in most cases, an unusual and undeserved hardship that was not anticipated by the Act of Regulations. The hardship in most cases is the result of circumstances beyond a person's control. Or, that the hardship would have a disproportionate impact on the applicant due to their personal circumstances.
> >
> > (IP 5 Operational Manual - Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds)

[18] In this case, there are no comparable misunderstandings that are revealed through the Officer's analysis. Rather, the Decision demonstrates that the Officer understood the ethnic and religious tensions that exist in Montenegro. The Officer made a particular note of tensions between the Montenegrin government and the Serbian Orthodox Church following the introduction of a parliamentary law that the Church claimed would strip it of its property in the country, though that law was later amended:

> Ethnic and Religious Tensions
>
> Counsel submits that since the break-up of Yugoslavia, Montenegro continues to experience serious and deep socio-economic problems, and ethnic tensions. The principal applicant states that as a devoted Member of the Serbian Orthodox Church, he is very uneasy with these tensions. He states that the former regime started pressuring his church to create tensions

between Serbia and Montenegro, which created more tension within Montenegro and that even after the election, which removed Milo Dukanovic from power, the tensions continue between all ethnicities.

The applicants submitted objective documentation on country conditions regarding the ethnic and religious tensions in Montenegro. The articles also establish that the Serbia-Montenegro tensions escalated amid the dispute between the Montenegrin government and the Serbian-Orthodox Church due to a parliamentary law that would strip the Serbian church of their property.

The U.S. 2020 Report on International Religious Freedom for Montenegro states the following:

> The consultation provides for freedom of religion as well as the right to change one's religion. It specifies there is no state religion and stipulates equality and freedom for all religious communities. The law prohibits religious discrimination and hate speech.

The Report also acknowledges the tensions surrounding the property provision law:

> Religious groups, particularly the Serbian Orthodox Church (SOC), continued to state that the laws governing their legal status were inadequate. The SOC organized massive nationwide protests and prayer marches against a religion law – and particularly its property provisions – that went into effect in January. The new law requires religious groups to provide proof of ownership of certain religious property or lose title to it. Religious communities are not required to register but must do so to own property and hold bank accounts. The SOC refused to register. On December 29, the newly elected parliament passed amendments to the law that would remove the proof of property ownership provisions and alter the requirement that existing religious groups register to acquire legal status. The amendments had not become law by year's end. Authorities arrested and detained SOC clergy on multiple occasions for what they said were violations of COVID-19 public health restrictions. Religious groups continued to dispute

> government ownership of religious properties and the transfer of cemetery ownership to municipalities or other entities. The SOC challenged transfers of properties that it said it owned by municipal authorities to the Montenegrin Orthodox Church (MOC) and private individuals. The SOC and MOC continued to dispute ownership of 750 Orthodox sites. A public school teacher in Bar was widely condemned and dismissed for inviting her students to participate in prayer service at the SOC church. The SOC said the Ministry of Interior continued to deny visas to its clergy.

[19] However, the Officer found that there was insufficient evidence to demonstrate that the Applicants would face challenges in practicing their religion or that they would otherwise be directly and personally affected by the country conditions:

> Overall, I accept that documentary evidence establishes the existence of ongoing tensions between different religious and ethnic groups. However, as indicated in the U.S. 2000 Report on International Religious Freedom, there are religious freedoms in Montenegro and laws which prohibit religious discrimination and hate speech. In addition, the applicants have provided insufficient evidence to demonstrate that they have faced any challenges in practicing their religion in Montenegro. I find that the applicants have also provided little evidence that they are personally and directly affected by the country conditions in Montenegro. Without evidence that the generalized country conditions will personally and directly affect the applicants, I cannot find that there is an associated hardship.

[20] The Applicants focus on the Officer's reference to religious freedoms and religious discrimination. They assert that this is not a case about the freedom to practice their religion. Rather, it is about identity and the tensions that arise from the divide between Montenegrins and those that are Serbian Orthodox. However, as noted in the country condition reports, inherent in the identity of those groups is their religion. I do not consider the Officer to have erred by

commenting on religious freedoms and religious discrimination, nor do I read this analysis to be limited to those considerations.

[21] The Officer also goes on in the reasons to address financial and economic implications and the principal Applicant's evidence that he is not political nor associated with any particular political party and the difficulty this creates when trying to seek employment. Similarly, the Officer considers the Applicants' evidence relating to the BIOC and the potential hardships the children might face.

[22] The Officer discusses all of these factors and considers their implication on a global assessment. As concluded by the Officer:

> ... I have considered the concerns regarding employment and financial hardship in Montenegro and its consequences to the applicants. However, insufficient objective evidence was provided to demonstrate the applicants would be unable to secure employment upon their return to Montenegro. I have also considered that the applicants have provided insufficient objective evidence to demonstrate that their establishment in Canada is to such a degree that they could not return to Montenegro and resettle and reintegrated. [*sic*] Due to the lack of information about their financial situation and ability to be self-sufficient, I give moderate positive consideration to the establishment factor. Although I accept the situation concerning ethnic and religious tension in Montenegro can cause some hardship to the applicants, I do not find that the applicants have demonstrated that they would face significant hardship caused by a removal. Therefore, I only assign moderate positive consideration to the risk and adverse country conditions factor. ...

[23] While the Applicants argue that the Officer failed to address the real concerns of the Applicants, I do not agree.

[24] In argument, counsel for the Applicants highlighted a passage from their written submissions filed with the Officer which states:

> ... the applicants at bar fear the overall socio-political and ethnic tension that is the reality in Montenegro. In particular, as members of the Serbian Orthodox Church, the division that have been created by the governments actions against the Serbian Orthodox Church, the tension this creates between Serbia and Montenegro make our clients particularly uneasy. While this may not be grounds for granting refugee protection it needs to be considered vis a vis s. 25 of the IRPA.

[25] In my view, the Officer has shown an understanding of the uneasiness created by the ethnic tensions in Montenegro, has reasonably considered the country condition evidence and the circumstances arising from the tensions, and has taken a global assessment of the H&C factors. I do not consider the Officer to have shown a lack of compassion or to have taken an approach devoid of empathy when conducting their analysis.

[26] The Applicants may have preferred that the Officer view and weigh the evidence differently. However, I agree with the Respondent this does not amount to a reviewable error.

B. *Did the Officer err in the assessment of hardship/risk?*

[27] The Applicants assert that in order to establish hardship, they need only show that they would be likely to be affected by adverse conditions. They argue that the Officer erred in concluding that hardship could not be established without evidence that the generalized adverse country conditions will personally and directly affect the Applicants. They assert with reference to *Kanthasamy,* that reasonable inferences may be drawn from evidence of the experiences of others who share the Applicants' identity, whether or not the Applicants have evidence of being

personally targeted (*Kanthasamy* at para 56, citing *Aboubacar v Canada (Citizenship and Immigration)*, 2014 FC 714 [*Aboubacar*] at para 12):

> [56] As these passages suggest, applicants need only show that they would likely be affected by adverse conditions such as discrimination. Evidence of discrimination experienced by others who share the applicant's identity is therefore clearly relevant under s. 25(1), whether or not the applicant has evidence of being personally targeted, and reasonable inferences can be drawn from those experiences. Rennie J. persuasively explained the reasons for permitting reasonable inferences in such circumstances in *Aboubacar v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 714:
>
> > While claims for humanitarian and compassionate relief under section 25 must be supported by evidence, there are circumstances where the conditions in the country of origin are such that they support a reasoned inference as to the challenges a particular applicant would face on return . . . . This is not speculation, rather it is a reasoned inference, of a non-speculative nature, as to the hardship an individual would face, and thus provides an evidentiary foundation for a meaningful, individualized analysis . . . . [para. 12 (CanLII)]

[28] The Respondent does not contest this principle, but asserts that the mere presence of adverse country conditions is insufficient without evidence to connect the general conditions in the country with the Applicants' personal situation. As stated in *Paramanayagam v Canada (Citizenship and Immigration)*, 2015 FC 1417 at paragraph 19, there must be an established "link" between the adverse country conditions and the applicant:

> [19] However, when applicants rely on country conditions as a basis of their H&C application, they must demonstrate that the "adverse country conditions […] have a direct negative impact" on them (*Caliskan v Canada (Citizenship and Immigration)*, 2012 FC 1190, at para 22, 420 FTR 17; *Kanthasamy* FCA, above at para 76). Put another way, such applicants "must show either that [the adverse country conditions] will probably affect them or, at the very least, that living in [adverse] conditions […] is itself an unusual and undeserved or disproportionate hardship" (*Vuktilaj*,

> above at para 36). H&C applicants must therefore be able to "show a link between the evidence of hardship and their individual situations. It is not enough just to point to hardship without establishing that link" (*Kanthasamy* FCA, at para 48; see also *Lalane v Canada (Citizenship and Immigration),* 2009 FC 6, 338 FTR 224 at para 1).

[29] The Respondent further asserts that it was open for the Officer to assess how the Applicants' particular circumstances relate to the broader country condition evidence, in terms of the degree of risk or extent of harm they may be facing: *Arsu v Canada (Citizenship and Immigration)*, 2020 FC 617 at para 16.

[30] In this case, the Officer considered the adverse country conditions and found that there are ongoing ethnic and religious tensions in Montenegro. However, the Officer did not find that those tensions would inevitably result in religious discrimination for individuals who were Serbian Orthodox. Nor did the Officer find that a reasonable inference could be drawn from the nature of the country condition evidence and the Applicants' circumstances that the Applicants would be likely to suffer significant hardship if they were returned to Montenegro.

[31] Rather, in their conclusion the Officer indicates that although they accept that the situation concerning ethnic and religious tension in Montenegro can cause some hardship to the Applicants, they do not find that the "[A]pplicants have demonstrated that they would face significant hardship caused by a removal."

[32] In my view, it was reasonable for the Officer to rely on the evidence of the Applicants for the purpose of considering the link to the country conditions and it was reasonable to conclude

that the evidence did not demonstrate that significant hardship would be faced by the Applicants if they returned to Montenegro.

[33] I see no reviewable error in the Officer's analysis.

IV. Conclusion

[34] On the basis of these reasons, the application is dismissed.

[35] There was no question for certification raised by the parties and I agree none arises in this case.

JUDGMENT IN IMM-4482-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4482-21
STYLE OF CAUSE:	BRANCO VUJOVIC, DEJANA VUJOVIC, ANASTASIJA VUJOVIC, KSENJA VUJOVIC, STEFAN VUJOVIC v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 7, 2022
JUDGMENT AND REASONS:	FURLANETTO J.
DATED:	SEPTEMBER 16, 2022

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