Federal Court Cour fédérale

Date: 20220921

Docket: IMM-6750-21

Citation: 2022 FC 1308

Ottawa, Ontario, September 21, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ANGELA REGINA OFILI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of an immigration officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC] in which they denied the application for permanent residence of Angela Regina Ofili's [Applicant] made under the Health-care Workers Pathway to Permanent Residence (COVID-19 pandemic) [Pathways Program].

Background

[2] The Applicant is a citizen of the Republic of Nigeria. She entered Canada on June 21, 2018 and claimed refugee protection. Her claim was denied by the Refugee Protection Division [RPD] on January 9, 2020. The RPD found that the claim had no credible basis. The Applicant sought judicial review of the RPD's decision. Following the filing of an informal motion in writing, this Court issued an order on consent of both parties, dated June 25, 2021, setting aside the RPD's decision and remitting the matter back to a differently constituted panel for redetermination [Consent Order].

[3] On July 9, 2021 , the Applicant applied for permanent residence from within Canada under IRCC's Pathways Program, a temporary public policy open to eligible pending and failed refugee claimants:

> In recognition of their exceptional service, Immigration, Refugees and Citizenship Canada (IRCC) put in place a Temporary Public Policy to facilitate the granting of permanent residence for certain refugee claimants working in Canada's health-care sector, providing direct patient care, during the COVID-19 pandemic [Guide 1016- Application guide for Health-care Workers Permanent Residence Pathways (COVID-19 pandemic https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-1016-health-care-workers.html).

[4] Her application was denied by letter dated September 13, 2021; that decision is the subject of this application for judicial review.

Decision Under Review

[5] The refusal letter is a standard form letter advising that the Applicant's application had been assessed based on the conditions (eligibility requirements) of the temporary public policy and, as the Applicant did not meet those requirements, her application had been refused. The letter provides a list of the eligibility requirements which must be, but were not met by an applicant. Two of these were checked off indicating that the Applicant's application was refused because: (1) the Applicant did not work in Canada in one or more designated occupations providing direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organization/agency providing home or residential health care services to seniors and persons with disabilities for the minimum periods set out; and (2) her refugee claim was determined to be manifestly unfounded or with no credible basis.

[6] The Reasons for Decision, of the same date, again identify the above two eligibility requirements as not being met. Further, the Officer noted that the Applicant had worked as Respite Support Staff, National Occupation Classification [NOC] 4412, at the St. Felix Centre from December 13, 2019 to May 9, 2021. The Officer found, based on the organizational profile of the St. Felix Centre and its website description of its work with people experiencing marginal housing and homelessness, that this failed to meet the public policy requirement of "designated occupations providing direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organisation/agency providing home or residential health-care services to seniors and persons with disabilities in private homes".

[7] Further, the Officer noted that the Applicant's refugee claim had been determined by the RPD to have no credible basis while the public policy states, "You're not eligible under this process if your refugee claim was determined to be manifestly unfounded or with no credible basis".

[8] The Officer found that the Applicant did not met Pathways Program eligibility criteria and refused her Application.

Issues and Standard of Review

[9] In my view, the issues raised by the Applicant can be framed as follows:

i. Was the decision reasonable?

ii. Has the Applicant established that the Minister is in contempt of Court?

iii. Should costs be awarded against the Respondent?

[10] The Applicant submits that the Officer's decision was wrong in law because the Officer did not acknowledge the Consent Order. She submits that while the presumption that the reasonableness standard of review applies when the Court is reviewing the merits of an administrative decision, as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 10, 23, 25 [*Vavilov*], the presumption is rebutted in this matter (*Vavilov* at para 17). This is because the Officer, by not acknowledging the Consent Order, "engaged in conduct that is of general importance to the legal profession in as a whole" and is setting a precedent for other officers not to follow the Court's

rulings. Therefore, the correctness standard should apply to the Officer's treatment of the Consent Order, which the Applicant submits rises to the level of contempt of Court.

[11] I note that *Vavilov* sets out two types of situations where the reasonableness standard can be rebutted, one of which is where the rule of law requires that the standard of correctness be applied to certain categories of questions: constitutional questions; general questions of law of central importance to the legal system as a whole; and, questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at para 17). However, in my view, the Officer's failure to acknowledge the Consent Order is not a general question of law that is of fundamental importance with broad applicability and significant consequences for the justice system as a whole, nor does it have implications beyond the decision before me or demand a single determinative answer (see *Vavilov* at paras 59-62).

[12] In my view, the presumptive standard of review of reasonableness applies to the Officer's decision on the merits. 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).

Was the decision reasonable?

[13] The Applicant submits that the Officer misapprehended evidence by ignoring the Consent Order and evidence that indicated the Applicant was a designated worker under the Pathways Program. She further submits that the Officer provided inadequate reasons as they did not: make

clear whether the Applicant's job description was not the appropriate NOC or whether her employer was not an appropriate employer; provide reasons why the Applicant was not a designated worker under the Pathways Program when her NOC 4412 was recognized as an acceptable classification; and provide reasons why the St. Felix Centre did not meet the conditions of the Pathways Program. Finally, the Applicant submits that the Officer erred in finding that St. Felix Centre did not meet the conditions set out in the Pathways Program Policy.

[14] I would first note that the Respondent acknowledges that the RPD's decision in which it found that the Applicant had no credible basis for her refugee claim was set aside by the Consent Order. The Respondent concedes that the Officer therefore erred in finding that the Applicant was not eligible for the Pathways Program on that basis. However, the Respondent submits that the Officer also reasonably concluded that the Applicant's place of employment, the St. Felix Centre, did not qualify as a long-term care home or assisted living facility.

[15] Accordingly, it is necessary only to consider the Applicant's submissions pertaining to the eligibility of her employment.

[16] First, in her written submissions the Applicant asserts that the Officer ignored evidence that supported that she was a designated worker as required by the Pathways Program, without identifying specifically why the Applicant did not meet the designated occupation condition. However, upon review of the decision, it is apparent that the Officer explicitly acknowledged that the Applicant worked as Respite Support Staff, NOC 4412, at the St. Felix Centre from December 13, 2019 to May 9, 2021. The Officer did not take issue with the Applicant's NOC

occupation designation. The stated concern was that the St. Felix Centre did not meet the requirements of the temporary public policy. Accordingly, I do not agree that the Officer ignored or misapprehended evidence pertaining to the Applicant's status as a designated occupation worker.

[17] Similarly, the Applicant submits that it is impossible to determine from the reasons whether the Applicant failed to meet the job classification or her employer failed to be an appropriate employer; the officer "merely ticked that the Applicant did not work in a designated occupation when the evidence the Applicant provided showed the contrary".

[18] The refusal letter does indeed tick the box indicating the Applicant "…did not work in Canada in one or more designated occupations providing direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organization/agency providing home or residential health-care services to seniors and persons with disabilities in private homes". However, as noted above, in their reasons the Officer acknowledged the Applicant's NOC status and did not take issue with her occupational designation.

[19] Further, the Officer's reasons state that the Applicant provided a job description which describes the Organization Profile of St. Felix Centre as:

> St. Felix Centre is a non-profit community centre founded by the Fellcian Sisters, located in downtown Toronto. We provide compassionate service in a safe, welcoming and respectful environment inclusive of all religions, genders, cultures, and abilities. We serve a wide range of clients including adults, seniors, recent immigrants and individuals and families who are experiencing poverty, homelessness and housing, insecurity,

> trauma, violence, abuse, malnutrition, and mental illness. The facilities are pet friendly.

[20] The Officer also noted that the website for St. Felix Center (https://stfelixcentre.org/programs-services/respite-services-program) states:

> St. Felix Centre works to respond to the current needs of people experiencing marginal housing and homelessness. We offer our guests an environment that prioritizes low-barrier access to safe space, emphasizing the importance of compassionate care. By providing service through a person-centered approach we continue to build communities that are more accessible, serving people experiencing poverty and marginalization, including those working through crises and active addictions.

[21] The Officer compared this to the public policy which states, “designated occupations providing direct patient care in a hospital, public or private long- term care home or assisted living facility, or for an organisation/agency providing home or residential health-care services to seniors and persons with disabilities in private homes”.

[22] As such, the Officer found that the St. Felix Center does not meet the requirements set out in the public policy.

[23] Accordingly, there is no merit to the Applicant’s claim that it is impossible to detect which aspect of the relevant eligibility requirements that the Applicant failed to meet. It is clear, even if not explicitly stated, that the concern was that the St. Felix Centre, where the Applicant worked, was not providing direct patient care as a hospital, public or private long-term care home or assisted living facility.

[24] In that regard, the Applicant submits that St. Felix Centre is an assisted living facility but that the Officer failed to appreciate this. When appearing before me, this was the main focus of counsel for the Applicant. I note, however, that the Document Checklist, which constitutes a part of the application package to be submitted to the IRCC, requires, among other things, that an applicant show proof of relevant work experience:

> You must show that you worked in Canada's health care sector in one or more designated occupations (see Annex A of the public policy) providing direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organization/agency providing home or residential heath care services to seniors and persons with disabilities in private homes.

[25] Accordingly, the burden was on the Applicant to demonstrate that she met this requirement. The Document Checklist further outlines examples of various documents an applicant may submit to satisfy this condition, including a description of the employer's principal business activities. While the Applicant included such a description, which was referred to in the Officer's reasons, it made no reference to the St. Felix Centre being an assisted living facility. Further, while her counsel submitted a June 14, 2021 cover letter with the Applicant's application which outlined the ways in which the Applicant claimed to meet each of the eligibility requirements, this did not suggest that that the St. Felix Centre is an assisted living facility.

[26] In her written submissions filed in this application for judicial review, the Applicant refers to the definition of "assisted living" as "a system of housing and limited care that is designed for senior citizens who need some assistance with daily activities but do not require care in a nursing home" as found in Merriam Webster's dictionary. I first note that this – or any

submission pertaining to the St. Felix Centre's status as an assisted living facility – was not made in her application to the IRCC. When appearing before me, counsel for the Applicant submitted that this was because the policy does not define "assisted care facility" and therefore the Applicant was unable to do more than provide the information that she did in support of her application, which included her duties. I note again, however, that if the Applicant was basing her application on the premise that the St. Felix Centre was an assisted living facility, then the onus was on her to demonstrate this in her application.

[27] Further, and more significantly, what the Officer had to assess was whether the Applicant, by way of her employment position with St. Felix Program, provided *direct patient care in a hospital, public or private long-term care home or assisted living facility*, or for an organisation/agency providing home or residential health-care services to seniors and persons with disabilities in private homes. Based on the St. Felix Centre's own description of itself as "a non-profit community centre" that "works to respond to the current needs of people experiencing marginal housing and homelessness" offering its "guests" an environment that prioritizes low-barrier access to safe space, emphasizing the importance of compassionate care, the Officer reasonably found that the work the Applicant did, albeit as a designated occupation, failed to meet the eligibility criteria as set out in the public policy.

[28] In that regard I would also note that in the document entitled "St. Felix Centre – Job Description", submitted by the Applicant in support of her application, St. Felix also describes itself as a non-profit community centre serving a wide range of clients including adults, seniors, recent immigrants and individuals and families who are experiencing poverty, homelessness and

housing insecurity, trauma, violence, abuse, malnutrition and mental illness. Support staff "in the 24-hr respite program will be responsible for providing respite services to guests at St. Felix Centre (SFC) including: facilitating access to resting spaces, meals, harm reduction supports, health resources and other community services". This is more suggestive of community respite available to persons in many different difficult circumstances than an assisted care facility. The Applicant points to the list of responsibilities for support staff and relies on one of these responsibilities which requires support staff to "facilitate access to services such a storage, showers, meals, sleeping space etc." as evidence that the St. Felix Centre is an assisted care facility because it has sleeping space. However, viewing the information in the record as to the work that the St. Felix Centre does, as a whole, I am not persuaded that the Officer erred.

[29] Thus, while the Applicant now argues that St. Felix Centre is an assisted living facility, her submissions to the Officer did not demonstrate that to be the case.

[30] In sum, the Officer erred in ignoring the Consent Order and in finding that the Applicant was not eligible for permanent residence under the Pathways Program because her refugee claim was found to have no credible basis. However, this was only one of two reasons for the refusal. The Officer reasonably concluded that the Applicant's work at the St. Felix Center did not provide direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organisation/agency providing home or residential health-care services to seniors and persons with disabilities in private homes. Therefore, the Applicant was still not eligible for permanent residence under the Pathway Program.

Contempt of Court

[31] The Applicant submits that the Minister has demonstrated contempt of court by the Minister's repeated failure to acknowledge the Consent Order despite the fact that the Applicant provided an update on the RPD decision in her application to the IRCC; enclosed the Consent Order with her application; and, enclosed a letter from counsel for the Minister, in which the Respondent consents to setting aside the RPD decision. The Applicant relies on the IRCC's webpage, which states, "[f]ailure to comply with a court order can place the Minister at risk of being found in contempt of the court order".

[32] Conversely, the Respondent submits that the Applicant has failed to explain how the Officer, in deciding an application for permanent residence under the Pathways Program, has breached the Consent Order directing the RPD to set aside her refugee claim decision. The fact that the Officer failed to appreciate the Consent Order meant that the Officer could not rely upon the previous negative credible basis finding to deny the application under the public policy. This is an error of fact.

[33] I would first note that pursuant to the *Federal Courts Rules*, SOR/98-106, Rule 466(b), a person is guilty of contempt of court who disobeys a process or order of the Court. However, before a person may be found in contempt of court, they must be served with an order, made on the motion of a person who has an interest in the proceeding, to: appear before a judge at a time and place stipulated in the order; be prepared to hear proof of the act with which the person is charged; and present any defence that the person may have (Rule 467(1)). Alternatively, the

person alleging contempt may move for the order under Rule 467(1) on an *ex parte* basis (Rule 467(2)).

[34] The Applicant has taken no steps to obtain a contempt order. Accordingly, the Court cannot make a finding on this issue. In any event, the Applicant's assertions are ill-founded. The Officer certainly erred by overlooking or ignoring the Consent Order. However, the impact of this error is simply that the Officer's Pathways Program eligibility finding, based on the RPD's finding that there was no credibly basis for her claim, is unreasonable. The Officer was not ordered to do anything by the Consent Order. The RPD was ordered to redetermine the Applicant's claim. There is no evidence before me that the RPD or the Minister have refused to do so.

Costs

[35] The Applicant submits that, in light of the Officer's unreasonable behaviour in ignoring the Consent Order and IRCC's refusal to reconsider the decision – which forced her to bring this application for judicial review – costs should be awarded against the Respondent. The Applicant relies on *Begum v Canada (Minister of Citizenship and Immigration)*, 2013 FC 550.

[36] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, states that no costs are to be awarded to any party in respect of an application for judicial review unless the Court so orders for special reasons. In *Ndungu v Canada (Citizenship & Immigration)*, 2011 FCA 208 at para 6 [*Ndungu*] the Federal Court of Appeal identified special reasons that would warrant costs against the Minister. This matter, however, is not a

circumstance identified in *Ndungu* – such as where an immigration official circumvented an order of the Court or the Minister unreasonably opposed an obviously meritorious application for judicial review. Further, *Begum* is distinguishable on its facts. Here, while the Officer did ignore or overlook the Consent Order, unlike in *Begum*, the Respondent conceded that the Officer erred on this point, and it was not upon this point that the Respondent disputed this application for judicial review. Also, as the Respondent submits, the fact that an immigration officer may have been wrong is not enough to overturn the basic no cost regime of immigration judicial reviews (*D Souza v Canada (Citizenship and Immigration)*, 2021 FC 1430 at para 38; *Ge v Canada (Citizenship and Immigration)*, 2017 FC 594 at para 40; *Iftikhar v Canada (MCI)*, 2006 FC 49 at paras 10-13, 17*; Cortes v Canada (MCI)*, 2008 FC 642 at paras 26-27).

[37] The special reasons exception contemplated by Rule 22 is a "high bar" (*Sisay Teka v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 314 at para 41). The Applicant has not met that bar in this case.

JUDGMENT IN IMM-6750-21

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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APPEARANCES:

Adela Crossley	FOR THE APPLICANT
John Loncar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor Crossley Law Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT