Federal Court  Cour fédérale

Date: 20220422

Docket: IMM-1914-21

Citation: 2022 FC 590

Ottawa, Ontario, April 22, 2022

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

MIKHAEL MANDEL LAMONT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] Mr. Mikhael Mandel Lamont is a citizen of Trinidad and Tobago who entered Canada on a study permit in 2007. He eventually obtained a post-graduate work permit but his Application for permanent residency under the Canadian Experience Class was rejected in August 2018. In July 2020, he submitted an Application for permanent residence on humanitarian and compassionate grounds [H&C Application], which was also rejected by an Immigration Officer.

[2] He now seeks judicial review of that negative decision, arguing that the Officer applied the wrong test when assessing his level of establishment in Canada, and that she failed to assess the impact of removal on the Applicant's mental health.

II. Decision Under Review

[3] The Officer alternatively examined three factors: the Applicant's establishment in Canada, the adverse country conditions and the medical care available for the Applicant in Trinidad and Tobago.

[4] The Officer first finds that the Applicant submitted insufficient evidence to indicate that his relationships and involvement in Canada were so significant that his departure from Canada would negatively affect the Applicant or negatively affect his friends in the community; she instead suggests that any relationships could be continued virtually. The Officer gives positive consideration to the Applicant's establishment in Canada but is unable to find that he achieved an "exceptional degree of establishment."

[5] She then turns to adverse country conditions in Trinidad, including the Applicant's history of having experienced racism there. She notes that the government of Trinidad is making serious efforts to combat the issue of racism and violence, but finds that the Applicant has not demonstrated with sufficient evidence that the country conditions would have a direct, negative impact on him or cause him difficulties such that an exemption would be justified.

[6] With respect to the Applicant's medical issues, the Officer acknowledges his diagnosis of depression and anxiety, but states that the Applicant did not demonstrate that medical treatment is not available to him in Trinidad.

[7] Finally, the Officer notes that a rejection of his H&C Application would not prevent the Applicant from applying to return to Canada in the future.

III. Issues and Standard of Review

[8] This Application for judicial review raises the following issues:

A. *Did the Officer apply the wrong test for assessing the Applicant's level of establishment in Canada?*

B. *Did the Officer fail to properly consider the impact of removal on the Applicant's mental health?*

[9] I agree with the parties that the standard of review is one of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

IV. Analysis

A. *Did the Officer apply the wrong test for assessing the Applicant's level of establishment in Canada?*

[10] The Applicant submits that the Officer erred when she required the Applicant to demonstrate an exceptional or extraordinary level of establishment for his Application to be

granted. While acknowledging that the measure is in itself an exceptional one, it does not require that it be exercised on an exceptional basis or that the Applicant, himself, be exceptional, citing *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at para 21. The Applicant maintains that this constitutes the imposition of a discrete, elevated standard that contravenes the teaching from the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61. As will be seen later, the Applicant proposes a question for certification in relation to that first issue.

[11] First, it is uncontested that the exemption provided for by section 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, [IRPA] can be qualified as exceptional or extraordinary; it is the exception not the rule.

[12] Although it is not a standard of proof that an applicant must meet for each one of the factors that are being considered, an applicant must establish reasons as to why this exceptional measure must apply to him or her. The officer's duty is to weigh each factor individually and assess whether, globally, the test is met.

[13] With respect to the Applicant's establishment in Canada, the Officer notes that since he arrived in 2007, the Applicant has been self-sufficient. She acknowledges that he has made many friends and relationships in Canada (he has filed numerous letters of support) but that these need not end if the Applicant departs Canada. Finally, the Officer considers the fact that the Applicant volunteered as a member of the Ontario Water Polo Association Board of Directors but notes the lack of evidence that the organisation would face adversity should the Applicant depart Canada.

[14] After having shortly reviewed the Applicant's evidence, the Officer states she does consider the connections and relationship but that she is unable to find that the Applicant achieved an exceptional degree of establishment in Canada.

[15] With respect, I have some difficulties with the Officer's assessment of this factor. I have reviewed the lengthy declaration the Applicant gave in support of his Application and I only see positive factors. The Applicant has shown an extensive establishment in Canada during the last 13 years. While acknowledging this, the Officer undermines this positive factor with general statements like the fact that he can maintain his relationship upon departure. Although giving it positive consideration, she states it is not exceptional. However, it does not need to be exceptional to weigh in favour of granting the Application. It needs to be positive.

[16] It is when all the factors are considered globally and weighed against one another, that the Officer should determine whether the test is met.

[17] In the case before me, the Officer gave all the factors some positive weight; none weighs negatively in the balance. Does that mean she had to grant the Applicant's Application? I do not believe so. Considering the exceptional nature of the remedy and the Officer's discretion, it would still have been open to the Officer to find that the Applicant's circumstances were not exceptional.

[18] However, what makes the decision unreasonable in my view is the Officer's assessment of the Applicant's medical conditions that she considered under the heading "Lack of Medical Care."

B. *Did the Officer fail to properly consider the impact of removal on the Applicant's mental health?*

[19] The Applicant has provided substantial evidence of the abuse and discrimination he suffered from his mother as a child and the impact this abuse had and still has on his mental health. The Applicant has provided evidence of the progress he has made through therapy since he is in Canada and on the impact returning to Trinidad and Tobago would have on him.

[20] Yet the Officer ignores this evidence and rather examines whether the Applicant could receive medical care in his country. That was not the question before the Officer.

[21] In *Kanthasamy*, the Supreme Court of Canada found it improper for an officer to focus exclusively on the availability of treatment in the country of origin and to ignore the effect of removal from Canada on mental health (para 48).

[22] In *Kanthasamy*, the Applicant "suffered from post-traumatic stress disorder and adjustment disorder with mixed anxiety and depressed mood resulting from his experiences in Sri Lanka" (para 46). In the present case, the Officer accepted that the Applicant has depression and anxiety and accepted that he had experienced traumatic events as a child in Trinidad. As in *Kanthasamy*, the Officer inexplicably discounted the Applicant's psychological report and

completely ignored the negative impact of removal on the Applicant's diagnosed medical conditions. This, in my view, constitutes an unduly narrow and unreasonable analysis of this important factor.

[23] This error, in my view, is dispositive of the matter before me and does warrant the intervention of the Court.

V. Certified question

[24] As indicated above, the Applicant proposes the following question for certification, in relation of the first issue raised by this Application:

> In making a determination under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, does an administrative decision-maker fetter their discretion by requiring an applicant to establish circumstances that are "exceptional" to justify granting humanitarian and compassionate relief?

[25] Yet, I see two reasons not to certify this question. First, it would not be dispositive of an appeal: the determinative issue is the lack of consideration for the Applicant's medical condition. Second, t does not lack decided binding authority: in *Kanthasamy*, the Supreme Court of Canada provided extensively as to how section 25 of the IRPA should be interpreted and applied.

VI. Conclusion

[26] For the above reasons, I am granting this Application for judicial review. The Officer's omission to consider the impact of removal on the Applicant's mental health creates a gap in the

chain of analysis that, in my view, makes the decision unreasonable. The above question the Applicant proposes is not determinative of this case and will not be certified.

JUDGMENT in IMM-1914-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted;
2. The Immigration Officer's decision dated March 18, 2021 is set aside and the matter is sent back for redetermination by a different officer;
3. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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