

Federal Court



Cour fédérale

Date: 20221017

Docket: IMM-2500-21

Citation: 2022 FC 1415

Toronto, Ontario, October 17, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

STEFAN STOJILJKOVIC

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Stefan Stojiljkovic is a citizen of Serbia. He seeks judicial review of a decision by a Senior Immigration Officer [Officer] to refuse his request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] Mr. Stojiljkovic is 28 years old. He plays soccer at a professional level. His request for H&C relief was based upon his establishment in Canada and adverse country conditions in Serbia, including the corruption and violence afflicting professional soccer clubs.

[3] The Officer reasonably found that adverse country conditions in Serbia, including those faced by professional soccer players, would not result in unusual, undeserved or disproportionate hardship for Mr. Stojiljkovic personally if he were to apply for permanent residence from outside Canada. The application for judicial review is dismissed.

II. Background

[4] Mr. Stojiljkovic is originally from Vranje, a city in southern Serbia close to the disputed border with Kosovo. He has two brothers, a sister, an aunt, and an uncle residing in Canada, while his parents and extended family remain in Serbia.

[5] Mr. Stojiljkovic arrived in Canada in June 2016 on a work permit that was valid until August 2019. His first application to extend his work permit was refused on October 25, 2019. He submitted a second application to extend the work permit on January 23, 2020.

[6] Since his arrival in Canada, Mr. Stojiljkovic has worked as a residential painter in the Greater Toronto Area, and has started his own company. He plays soccer professionally with the Scarborough Soccer Club. He earned just under \$20,000 in 2019. According to his counsel, this was all derived from playing soccer.

[7] Mr. Stojiljkovic submitted his H&C request in October 2020. He noted that he had spent more than five years in Canada, shown sound financial management, improved his English, maintained a good civil record, and integrated himself into the community with numerous friendships and regular attendance at the Holy Transfiguration Serbian Orthodox Monastery.

[8] Mr. Stojiljkovic claimed he would suffer undue hardship if he returned to Serbia, including discrimination due to the tensions between ethnic Serbs and Albanians in the southern regions of Serbia close to the Kosovo border. He also maintained that he would have difficulty finding a job due to Serbia's high unemployment rate.

[9] Mr. Stojiljkovic relied on systemic corruption and hooliganism afflicting soccer clubs in Serbia. In addition, he cited the increase in political and economic instability due to the COVID-19 pandemic, and the risk of exposure to depleted uranium left over from the Kosovo conflict in 1999.

[10] The Officer gave "some weight" to Mr. Stojiljkovic's establishment in Canada, noting that he had secured employment, become involved in his community, and formed ties with family and friends. While the Officer accepted that Mr. Stojiljkovic might face some initial hardship in finding employment and re-establishing himself in Serbia, the Officer also found he would be returning to the country where he was born, raised, educated, and previously employed. The Officer remarked that Mr. Stojiljkovic's immediate family in Serbia, including his parents, would help to mitigate the hardship of returning.

[11] The Officer considered evidence of adverse country conditions and acknowledged that Serbia is less stable economically and politically than Canada. However, the Officer noted that these were general conditions faced by the entire population. The Officer concluded that Mr. Stojiljkovic had failed to provide sufficient evidence to demonstrate he would be personally and directly affected by the adverse conditions.

[12] The Officer rejected Mr. Stojiljkovic's request for H&C relief on March 31, 2021.

III. Issue

[13] The sole issue raised by this application is if the Officer's decision was reasonable.

IV. Analysis

[14] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[15] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls

within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[16] Mr. Stojiljkovic relies on the Supreme Court of Canada's decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, for the proposition that an H&C assessment must include a consideration of all factors globally (at para 28). He says the Officer was insufficiently empathetic to his circumstances (citing *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 at para 34 and *Paul v Canada (Citizenship and Immigration)*, 2013 FC 1081 at paras 8-9).

[17] Mr. Stojiljkovic argues that the Officer tended to minimize the obstacles he would face in Serbia, and "missed the very nature of the request". While the Officer did give some weight to Serbia's high unemployment rate, every other adverse country condition was accorded little weight.

[18] The Officer assessed adverse country conditions as follows:

The applicant raised numerous adverse country conditions in his application, including corruption, violence, exposure to depleted uranium, and ethnic tensions in the south of Serbia. The applicant has provided little evidence with his application that he faces the aforementioned risks in Serbia. Despite this, having read and considered all the information presented by the applicant and his counsel as well as publicly available documentation, I find that the evidence before me does not support that the applicant is personally and directly impacted by country [conditions]. As such, I find the grounds raised relating to adverse country conditions in returning to Serbia do not justify granting an exemption.

[19] In oral submissions, counsel for Mr. Stojiljkovic emphasized the violence and corruption endemic to professional Serbian soccer clubs, particularly in the southern region where Mr. Stojiljkovic used to live. According to an article published in 2014 on the website www.eurosport.com, the International Federation of Professional Footballers, known by its French acronym FIFPro, and the Serbian Players' Association [SPFN] confirmed that eight of the sixteen teams in Serbia's top soccer league had their accounts blocked by the Serbian national bank, making them unable to pay players and other employees:

“We hate to do this but it is our job to protect the players,” FIFPro secretary general Theo van Seggelen said in a statement.

“Players haven't been paid for months and encounter serious financial problems. Clubs are on the verge of going bankrupt.”

“On top of that, I received the shocking news that one of the clubs totally disrespects players' rights and even allows hooligans to threaten their players.”

[20] According to the article, the SPFN president warned footballers against coming to Serbia: “Therefore we must send a message to all countries and recommend all foreign footballers not to come to Serbia, because there are no guarantees that they will be paid.”

[21] A Serbian report published in 2013 asserted that soccer-related fan violence and crime are systemic problems the Serbian government has failed to address. The prevalence of criminal organizations' connections to soccer was a longstanding issue, and the fan clubs' close ties to soccer teams and ownership groups made them difficult to control. Combined with low levels of pay, this had led to high levels of corruption, further eroding public confidence in all institutions.

[22] The Officer concluded as follows:

I accept that corruption is an issue in Serbia, and that soccer hooliganism is an issue for soccer players and fans. However, I find that the applicant has presented little in the way of documentary evidence that he has personally been affected by these issues in Serbia. Therefore, I give this consideration little weight.

[23] Mr. Stojiljkovic says the Officer unreasonably required him to demonstrate a direct and personal impact of adverse country conditions on his particular circumstances. I disagree. As Justice Denis Gascon observed in *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 [*Ibabu*], H&C applicants must demonstrate a sufficient link between evidence of generalized risk and an applicant's personal situation (at para 44):

In H&C cases, hardship must be unusual and undeserved or disproportionate. In *Kanthisamy*, the Federal Court of Appeal held that undue, undeserved or disproportionate hardship must affect the applicant personally and directly (at para 48). There must be a link between the evidence of hardship and the individual situation of the applicant (*Lalane* at para 42).

[24] While the hardship does not have to be unique to the applicant, there must be a link between the applicant's personal circumstances and the hardship alleged (*Ibabu* at paras 45-46):

The bare assertion of general adverse conditions in the country of removal would not be enough. While risk factors considered under sections 96 and 97 of the IRPA may be used, the officer must examine the facts relevant to the risk allegations through "a lens of hardship". The legal test to be applied concerning the analysis of hardship is whether Mr. Ibabu is personally and directly suffering unusual and undeserved or disproportionate hardship in having to apply for permanent residence from outside of Canada (*Kanthisamy* at para 75; *Joseph v Canada (Citizenship and Immigration)*, 2015 FC 661 at para 48).

[25] Having conducted a global assessment of the evidence, the Officer reasonably found that adverse conditions faced by professional soccer players in Serbia would not result in unusual, undeserved, or disproportionate hardship to Mr. Stojiljkovic personally. While Mr. Stojiljkovic plays soccer at a professional level in Canada, his earnings to date have been modest. He adduced little evidence to demonstrate that the difficulties encountered by professional soccer players in Serbia exist throughout the country, or continue to this day.

[26] Counsel did not emphasize the numerous other adverse country conditions advanced by Mr. Stojiljkovic in support of his request for H&C relief, such as high rates of unemployment, ethnic tensions, and exposure to depleted uranium. The Officer reasonably found these too were conditions faced by the population as a whole, and Mr. Stojiljkovic would not personally and directly suffer unusual and undeserved or disproportionate hardship if he were to apply for permanent residence from outside Canada.

[27] At the urging of the Court, Mr. Stojiljkovic did not pursue his allegation of bias against the Officer.

V. Conclusion

[28] The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

JUDGMENT

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

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2500-21

STYLE OF CAUSE: STEFAN STOJILJKOVIC v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN TORONTO
AND OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 21, 2022

JUDGMENT AND REASONS: FOTHERGILL J.

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