Federal Court Cour fédérale

Date: 20221025

Docket: IMM-1175-21

Citation: 2022 FC 1451

Ottawa, Ontario, October 25, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MOHANDAI LEANNA JIWANRAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Leanna Jiwanram, is a citizen of Guyana who came to Canada in 2017. Since then, she has been looking after her elderly mother. She applied for permanent residence on humanitarian and compassionate grounds (H&C) but her application was denied. She seeks judicial review of that decision.

I. Background

[2] The core of the Applicant's H&C request related to the ongoing care and support she was providing to assist her mother who was 85 years old at the time of the H&C claim and who had several health conditions. This was supported by statements of her brother and sisters in Canada, who indicated that their work and family obligations had made it increasingly difficult to provide the care their mother needed, and they all stated that their mother's condition had improved since the Applicant began providing full-time care. This was also supported by a Doctor's letter.

[3] The H&C application also detailed the Applicant's close relationship with her immediate family in Canada, as well as her active participation in church activities. In addition, the application emphasized the Applicant's involvement in her church when she was in Guyana, her efforts to improve her education and open a hairdressing business in Guyana, and her overall good character.

[4] The Officer recounted the various elements of the Applicant's claim, and acknowledged that the Applicant had been her mother's primary caregiver since her arrival in Canada in 2017. The Officer also noted the other immediate family members' statements about the improvement in the mother's condition and that she would have to be placed in a retirement home if the Applicant was required to leave Canada. However, the Officer found that the mother had been living in Canada since 2005 and prior to the Applicant's arrival she had been cared for by various siblings.

[5] The crux of the Officer's decision relates to the lack of specific evidence about the mother's deteriorating condition and why the siblings could not care for her. The Officer mentions the evidence that the brother and sisters had found it increasingly difficult to provide the care their mother needed, but went on to find "a scarcity of information to elaborate any material change in their circumstances or their mother's circumstances which now warrant additional assistance." The Officer also found that the Doctor's letter did not provide specific information on the mother's physical limitations or otherwise indicate a degree of dependency on the Applicant. After performing a "global assessment of the H&C factors presented…" the Officer concluded that the Applicant had failed to provide "sufficient evidence to establish that a positive exemption is warranted on H&C grounds."

II. Issues and Standard of Review

[6] The only issue in this case is whether the Officer's decision denying the H&C request is unreasonable.

[7] This question is to be assessed under the framework for analysis set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. This framework seeks to reinforce a culture of justification in Canadian public administration by requiring administrative decision-maker's reasons to be "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and the law that constrain the decision maker" (*Vavilov* at para 85). A reviewing court must ask "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).

[8] The burden is on the party challenging the decision to show that it is unreasonable, by satisfying the court that "any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Furthermore, "(i)t is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings" (*Vavilov* at para 125). A sense of the type of factual error that may warrant overturning a decision is provided in the following passage: "The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

III. Analysis

[9] The Applicant argues that the Officer's decision fails to grapple with the evidence that was submitted; in particular, the sworn statements of her siblings, plus that of her mother. She says that this evidence is consistent on several points: that her mother's health condition has deteriorated since she arrived in Canada in 2005; that the family members had worked together to provide care for their mother in the past, but that this had become increasingly difficult because they all work and have families of their own; and that the mother's condition had improved since the Applicant began to take care of her.

[10] The Applicant argues that the Officer's decision does not analyze this evidence in sufficient detail or depth. She notes that the Officer acknowledged the mother's declining health,

the prior efforts of the family, and their statements that if the Applicant was forced to leave Canada, the mother will have to be placed in a retirement home because she can no longer stay at home by herself. The Officer went on to conclude, however, "…I find a scarcity of information to elaborate any material change in [the siblings'] circumstances or their mother's circumstances which now warrant additional assistance."

[11] The Applicant argues that this statement ignores the uncontradicted sworn evidence of all of the family members to the effect that the mother's health and quality of life had substantially improved since the Applicant's arrival in Canada. She says the objective evidence in the Doctor's letter supports this. The Applicant contends that the Officer's failure to discuss any of this falls short of the type of engagement with the evidence that is required under *Vavilov*.

[12] I am not persuaded that the Applicant has demonstrated the type of flaw in the factual assessment of the Officer that would warrant overturning the decision. On this point, it must be emphasized that the question on judicial review under the *Vavilov* framework is not whether a reviewing court would have reached the same conclusion as the decision maker, but rather whether the decision is justified with reference to the factual and legal constraints that apply. Under this approach, I am unable to conclude that the Officer's decision is unreasonable.

[13] The Applicant submits that the Officer failed to give sufficient weight to the family members' sworn statements or the Doctor's evidence. However, a close examination of that evidence tends to support the Officer's finding that the evidence did not detail specific changes in the mother's condition or the siblings' personal circumstances that would explain why it was essential that the mother continue to receive the Applicant's care.

[14] It is not necessary to review all of the evidence in detail to demonstrate this point. Instead, a description of the supporting letter of the Applicant's brother will suffice. In this letter, the brother indicates that his mother has lived with him and his family since her arrival in Canada, as has the Applicant upon her arrival in Canada. He states that he and his wife have the financial resources needed to continue to support the mother and the Applicant. He describes the close relationship between the Applicant and his mother, and that his mother requires daily assistance, which had become increasingly difficult for him and his siblings to provide. The brother then describes the improvement in his mother's condition since the Applicant's arrival in Canada, and his belief that without this support his mother would have to be placed in a retirement home.

[15] The brother continues:

> If Leanna were not allowed to remain in Canada and acquire Canadian permanent resident status to continue to provide for full time care for my mother we would have to resort to other means to have my mother assisted throughout the day. Before Leanna arrived in Canada we were very worried about leaving my mother alone at home during the day. My mother could not continue to stay in our family home without full-time assistance. We have not availed ourselves to any government grants or program to provide my mother with assistance and will not do so as long as Leanna is present in Canada and can undertake this vital role.

[16] While other details are set out in the letters from the other siblings and the Applicant's mother, the foregoing summary of the brother's evidence aptly captures the essence of the information that was placed before the Officer. Simply put, the evidence shows a loving family facing increasing challenges caring for an aging mother with various health conditions, and the many advantages they all experienced after the Applicant became a full-time caregiver following

her arrival in Canada. However, the evidence does not provide specific examples of how the mother's needs have increased, or why the family cannot continue to arrange for her care if the Applicant was required to depart Canada. The mother's health conditions have existed for some time: for example, she had knee replacement surgery in 2009, and has been taking medication for other health conditions for an indeterminate period.

[17] In addition, the family's evidence is consistent regarding their belief that if the Applicant leaves, the mother will have to be placed in a setting where she can receive the daily personal care and support she needs. The evidence does not demonstrate, however, efforts by the family to explore alternatives or options to continue to care for their mother at home, or why the Applicant's continued presence was vital to their mother's well-being. In a similar way, the Doctor's evidence demonstrates that the mother has various medical conditions and requires daily assistance with her medication, but it does not specify any recent significant change in her circumstances.

[18] The Officer cannot be faulted for noting these gaps in the evidence, in particular given the acknowledgement in the decision about the statements made by the siblings and the Doctor regarding their mother's situation and the care and support provided by the Applicant. The Applicant does not claim that the Officer ignored this evidence, but rather that it was given insufficient weight. That is not a basis to overturn the decision, under the framework for analysis set out in *Vavilov*.

[19] In addition, the Applicant argues that the Officer failed to apply the type of analysis demanded by the Supreme Court in *Kanthasamy v Canada (Minister of Citizenship and*

Immigration), 2015 SCC 61, which requires an equitable consideration of the situation, and a consideration of whether the circumstances of the case demand relief for the misfortunes of the claimant (often called the "Chirwa factors").

[20] Again, I am not persuaded. The Officer's decision demonstrates empathy towards the mother and the family members in Canada, including the Applicant. This is not a situation where the decision indicates that the Officer failed to consider "not just hardship but humanitarian and compassionate factors in the broader sense" (*Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 33). Rather, in this case the Officer grappled with the key evidence in the record, namely that the mother had been in Canada for many years and had been cared for by her children; that since the Applicant's arrival in 2017 her situation had improved; and finally that there was no indication of a particular change in either her medical condition or the situation of the brothers and sisters to indicate why they could not continue to arrange care for her if the Applicant's request was denied.

[21] Although a different officer could certainly have reached a different decision on the evidence of this case, I am unable to find that the Applicant has demonstrated that the result or the reasoning in this case are unreasonable.

[22] The application for judicial review is therefore dismissed.

[23] There is no question of general importance for certification.

JUDGMENT in IMM-1175-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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