Federal Court Cour fédérale

Date: 20221214

Docket: IMM-6540-21

Citation: 2022 FC 1727

Ottawa, Ontario, December 14, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

TUYOROMAJO OSCARLINE HANGERO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Tuyoromajo Oscarline Hangero, seeks judicial review of a decision by a senior immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada dated August 31, 2021, denying the Applicant's application for permanent residence on humanitarian and compassionate ("H&C") grounds.

[2] The Applicant based her H&C application on her establishment in Canada, the best interests of her child ("BIOC"), and the risk and adverse country conditions in Namibia. The Officer found insufficient evidence to warrant H&C relief under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[3] The Applicant submits that the Officer erred in failing to account for central issues and evidence, and provided inadequate reasons for the decision.

[4] For the reasons that follow, I find that the Officer's decision is reasonable. This application for judicial review is therefore dismissed.

II. Facts

A. *The Applicant*

[5] The Applicant is a 33-year-old citizen of Namibia.

[6] The Applicant was adopted by her maternal grandmother when she was a baby. As there was no high school where her grandmother lived, the Applicant left her grandmother's home and went to live with her biological father and stepmother.

[7] The Applicant claims that she suffered years of physical abuse at the hands of her father. She was unable to return to live with her grandmother because her grandmother did not know that she had dropped out of school and she was afraid of her father.

[8] When she was 18 years old, the Applicant's father arranged her marriage to her cousin, Virikehije Mungunda (Mr. "Mungunda"), who was 31 years old. When she began living with Mr. Mungunda, the Applicant was in a secret relationship with Vezembe Nguvauva (Mr. "Nguvauva"). The Applicant claims that Mr. Mungunda physically and sexually abused her from the time they moved in together.

[9] In July 2009, the Applicant learned she was pregnant with Mr. Nguvauva's child. When Mr. Mungunda learned this, the Applicant claims that he threatened to kill her and the baby. In October 2009, the Applicant fled Mr. Mungunda's home and returned to her father's house. When her father learned of her situation, he expressed that he was ashamed of her. The Applicant claims she left her father's home and went to live with her sister for a brief period, before eventually returning to live with her grandmother.

[10] On February 15, 2010, the Applicant gave birth to her eldest son. Due to ongoing threats from Mr. Mungunda, Mr. Nguvauva took the child away to ensure his safety. The Applicant's eldest son still resides in Namibia. The Applicant claims that she attempted suicide, but her grandmother stopped her. She claims that she had no family left in Namibia and was afraid of Mr. Mungunda.

[11] The Applicant arrived in Canada on April 24, 2011 and made a claim for refugee protection, which was denied on February 4, 2013.

[12] On December 16, 2013, the Applicant gave birth to her second son in Canada.

[13] In 2014, the Applicant failed to appear for an interview with Canada Border Services Agency ("CBSA"). On October 27, 2014, a warrant was issued for the Applicant's arrest. On October 23, 2020, the Applicant applied for permanent residence on H&C grounds. The arrest warrant was executed on June 22, 2021, when the Applicant was arrested in Timmins, Ontario.

B. *Decision Under Review*

[14] In a letter dated August 31, 2021, the Officer refused the Applicant's H&C application. The Officer's reasons address each of the Applicant's three factors for consideration: her degree of establishment in Canada, the BIOC, and the hardship of returning to Namibia. The Officer ultimately found that these considerations do not sufficiently warrant H&C relief in the Applicant's case, in light of the evidence and the BIOC.

(1) Establishment

[15] The Officer considered that the Applicant has been in Canada for ten years, and has established herself through her ongoing employment, membership in a church, and friendships in her community. The Officer found that while these are positive factors, this level of establishment is to be expected of a person in her circumstances.

[16] The Officer acknowledged that the Applicant developed valuable friendships during her time in Canada, but that separation is one of the "inherent and unfortunate outcomes" arising from the immigration process and the Applicant could maintain contact with her friends through other means.

[17] The Officer also considered the warrant issued for the Applicant's arrest, stating that in the notes for the warrant's execution on June 22, 2021, CBSA noted that the Applicant is residing in Timmins. However, the Applicant provided little evidence as to when she had moved there, whether she is employed, and how she is providing for herself and her son. The Officer further noted that one of the conditions of the Applicant's release is that she not work without authorization, and she does not have a valid work permit at this time. The Officer ultimately gave negative weight to this factor.

(2) BIOC

[18] The Officer noted that the Applicant presented little evidence regarding the best interests of the Applicant's Canadian-born child, despite the onus she bears to provide evidence to support the factors in her application. The Officer acknowledged that this child attends school in Canada, participates in extracurricular activities, and has made friends, but ultimately found insufficient evidence to show that his best interests would not be to return to Namibia, where he will have his mother and, possibly, his older brother. The Officer found little evidence to support the Applicant's claim that she would be unable to provide for her child's school activities and other needs, or unable to receive support from others if needed.

(3) Risk and Adverse Country Conditions

[19] The Applicant stated that she left Namibia following years of abuse and violence, because of the "adopted societal practices of gender discrimination and cruel treatment of her gender," as described in the Officer's reasons. The Applicant also stated that she had to endure

these difficult circumstances without guidance or support, even from her family. The Officer stated their sympathy for the Applicant, but found that “she is now an adult and does not have to return to, or live near, her family if she chooses not to.”

[20] The Officer also noted that the Applicant’s claim that she would lose her independence and ability to work while providing for her son if returned to Namibia. The Applicant’s representative referenced a fact sheet from the United Nations International Children's Emergency Fund (“UNICEF”), stating that women and children in Namibia face high rates of poverty, violence, inability to access healthcare or education. The Applicant’s representative did not provide this report in the evidence, nor indicate the date it was written and where it can be found on the Internet. The Officer found that although many countries are not as fortunate to have the same social supports as Canada, the purpose of H&C relief is not to compensate for differences in the standard of living but to provide an “exceptional response to a particular set of circumstances which are unforeseen by the IRPA.” The Officer acknowledged that re-establishing herself in Namibia would be difficult for the Applicant, but that her familiarity with the Namibian culture and language, and the potentially transferable skills and experience obtained through her work in Canada, may ease this transition.

[21] The Officer ultimately concluded that, in light of the three factors for consideration presented by the Applicant, the Applicant’s circumstances do not warrant H&C relief, stating, “the fact that Canada is a more desirable place to live than the country of return is not a determinative of an H&C assessment.”

III. **Issue and Standard of Review**

[22] This application for judicial review raises the sole issue of whether the Officer's decision to refuse the H&C application is reasonable.

[23] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[24] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[25] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or

peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason,* 2021 FCA 156 at para 36).

IV. **Analysis**

[26] The Applicant submits that the Officer erred in assessing the Applicant's establishment in Canada, the BIOC, and the risk and adverse country conditions in Namibia, rendering the decision unreasonable as a whole. In my view, the Officer's assessment of each of these three factors is reasonable and supported by intelligible and transparent reasons.

A. *Establishment*

[27] The Applicant submits that the Officer failed to provide intelligible reasons for granting little weight to her establishment in Canada, specifically the fact that she has lived in Canada for ten years, her employment history in Canada, and her friendships and connections here. The Applicant submits that the Officer conducted a comparative analysis between her time in Canada and the level of establishment expected of someone in her position, rather than conducting an individualized assessment of her establishment and the hardship her removal would create, citing *Truong v Canada (Citizenship and Immigration)*, 2022 FC 697 ("*Truong*"). The Applicant contends that the Officer's reasons on the issue of establishment exhibit a failure to properly engage with her evidence, particularly regarding her relationships, her membership in a church, and her volunteer efforts. The Applicant submits that the Officer did not consider the hardship she would face if returned to Namibia.

[28] The Respondent first notes that the Applicant's affidavit, submitted on leave stage, contains various unsupported assertions. These include certain statistics about Namibian society and the Applicant's community work, and does not explain her apparent relocation from Alberta to Ontario, where she was arrested. The Respondent therefore relies on the facts as stated in the Officer's reasons and evidence as contained in the certified tribunal record.

[29] The Respondent also submits that this affidavit submitted by the Applicant on leave, which the Applicant repeatedly cites in her submissions on judicial review, was not before the Officer when rendering the decision and, therefore, cannot be considered by this Court.

[30] On the issue of establishment, the Respondent submits that a majority of the Applicant's establishment, from 2014 to 2021, occurred while she was in Canada unlawfully and was not entitled to work here, after having evaded removal. The Respondent further submits that the Applicant appears to have relocated from Alberta to Ontario, which undermines her submission that she was integrated into a community in Alberta, since she apparently disrupted her own establishment. The Respondent contends that these two factors, coupled with the minimal evidence provided to explain her move to Ontario and whether she was employed there, reasonably support a negative finding with respect to the Applicant's establishment.

[31] I agree with the Respondent on the issue of the evidence before the decision-maker. The Applicant's submissions on judicial review contain many references to her affidavit, which was submitted on leave and details a narrative containing information and references to evidence that were not before the Officer. This Court cannot assess the reasonableness of the decision in light

of evidence that was not before the decision-maker, and the Applicant may not bolster her evidence after the fact (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 18-20).

[32] I also find that the Officer reasonably assessed the facts and evidence regarding the Applicant's establishment in Canada. The Officer acknowledged the Applicant's positive establishment, including her ten years in Canada, her employment, her church membership, her friendships in her community, and the difficulty that her separation would cause. The Officer reasonably considered this positive establishment against the circumstances that warrant negative weight, including the Applicant's failure to appear for her CBSA interview, and her failure to explain or provide evidence regarding her apparent relocation to Ontario, despite her information-exhibiting establishment in her Alberta community. The Officer's reasons clearly and intelligibly consider the totality of the Applicant's evidence regarding her establishment, and make reasonable findings concerning the circumstances.

[33] The Applicant relies on this Court's decision in *Truong* to submit that the Officer unreasonably failed to address the impact on the Applicant of leaving her establishment in Canada. In *Truong*, the applicant submitted that the officer erred by failing to address whether disruption to her establishment in Canada weighs in favour of granting H&C relief (at paras 14-15). This Court found that the officer unreasonably failed "to consider the degree of hardship that would be occasioned if Ms. Truong was to return to Vietnam" and "whether the level of disruption favours the relief sought" (*Truong* at para 14). The issue "is not the level of

establishment found by the Officer, but rather the Officer's failure to consider the impact upon Ms. Truong of having to disrupt that establishment" (*Truong* at para 15).

[34] In the Applicant's case, however, the Officer did not ignore this analysis. The Officer grapples with the potential disruption to the Applicant's establishment, and weighs the degree of this disruption against other factors. Reasonableness review is concerned with whether certain factors were considered and grappled with, not whether the analysis led to a particular conclusion (*Vavilov* at paras 116, 121). The Officer "acknowledge[s] the applicant has developed valuable friendships during her resident in Canada and that the applicant will be missed by her friends in Canada and vice versa," but appears to assess the level of disruption to this establishment when stating she may continue contact with her friends through other means. The Officer also acknowledges that the Applicant's Canadian-born child is established in school and other activities, but weighs this against the existence of his mother as a support system in Namibia. Unlike the officer's reasons in *Truong*, the Officer in this case did not fail to assess the hardship that the Applicant would face upon disruption to her establishment and, rather, reasonably weighed the factors, in light of the evidence proffered by the Applicant.

[35] In *Truong*, the applicant also submitted that the officer unreasonably compared the applicant's establishment to the typical level of establishment of a similarly situation individual (at para 11). Similar to the Applicant's case, the officer in *Truong* stated in their reasons that the applicant "demonstrated a typical level of establishment for a person in similar circumstances" (*Truong* at para 12). This Court found that "the Officer did not apply a higher threshold in the

assessment of Ms. Truong's establishment by the use of the word 'typical'" and that this accords with the required approach for assessing H&C applications (*Truong* at para 13).

[36] Applying the same reasoning in the Applicant's case, I do not find that the Officer erred in stating that her level of establishment is expected of a person in her circumstances. The Officer transparently considered the factors of this establishment, gave these factors positive weight, and reasonably described these factors as expected of someone in her situation, particularly when weighed against the negative factors in her establishment. The Officer's assessment of the Applicant's establishment is ultimately reasonable.

B. *BIOC*

[37] The Applicant submits that the Officer was not alert, alive and sensitive to the BIOC, as required, and minimized her Canadian-born child's best interests in their analysis. She submits that her younger son is attending school in Canada, is well adjusted in his life here, and moving to Namibia would be a large disruption in his life. In Canada, she is able to independently provide for her child, which she claims she cannot do in Namibia, with no family members to rely on for help. The Applicant notes that the reviewable error is not in the Officer's reasons, but the failure to grapple with the Applicant's evidence regarding the BIOC. These incudes the letters of support indicating support systems for her child, as well as documents showing his enrolment in educational and extracurricular programs. The Applicant submits that that the Officer did not adequately consider this evidence and erroneously determined that there was little documentary evidence presented regarding her child's best interests.

[38] The Respondent maintains that the Applicant provided little evidence pertaining to the BIOC and made submissions regarding the BIOC that were largely boilerplate. The Respondent submits that the Officer could not have conducted a detailed analysis of the BIOC in the absence of specific submissions and evidence about her son. The onus is on the Applicant to proffer sufficient evidence to support her application and she failed to do so with respect to the BIOC.

[39] I agree with the Respondent. I do not find that the Officer's reasons exhibit a failure to grapple with evidence regarding the BIOC. The Officer acknowledged the initial difficulty that the Applicant's Canadian-born child may face in integrating into life in Namibia, socially and economically. This assessment adequately reflects the documentary evidence regarding the child's life in Canada. The Officer properly assessed this factor against the other factors in the Applicant's H&C application, and reasonably determined that the evidence regarding the BIOC was insufficient to show that his best interests would be compromised such that this factor favours granting H&C relief.

[40] The Respondent submits, and I agree, that the Officer reasonably found there to be minimal evidence regarding the difficulties that the Applicant's Canadian-born child would face in Namibia. The Applicant has an older son currently in Namibia, and evidence may have been proffered regarding the hardships that her older son faces there, which she claims that her younger Canadian-born son is likely to face. No such evidence was provided to the Officer regarding the difficulties of the Applicant's similarly situated older son. As my colleague Justice Rochester found in the case of *Ketjinganda v Canada (Citizenship and Immigration)*, 2021 FC 1072, the officer reasonably noted that "there is little evidence on file to indicate that the

Applicants or their children would face the alleged hazards, […] or that the Namibian born child was in fact experiencing the various hazards" (at para 30). I find the same reasoning applies here.

[41] An immigration officer must examine the BIOC "with a great deal of attention," but it is the officer's discretion to "determine the appropriate weight to be accorded to this factor in the circumstances of the case" (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 23, citing *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at paras 11-12). The Court's role on reasonableness review is not to re-weigh the evidence or factors (*Vavilov* at para 125). In my view, the Officer was alive, alert and sensitive to the BIOC in the Applicant's case, and reasonably assessed this factor in light of the available evidence.

C. *Risk and Adverse Country Conditions*

[42] The Applicant submits that the Officer unreasonably assessed the risk and adverse country conditions in Namibia, and erred in concluding that the Applicant is no longer a child and does not have to live with or near her family if she does not want to. The Applicant cited a UNICEF fact sheet to submit that Namibia has a poor economy, women are subject to rampant sexual violence, and human rights issues are prevalent. On review, she submits that it is unclear whether the Officer accepted this UNICEF evidence in their assessment of this factor, and it is important to know whether it was accepted to understand if hardship was adequately considered.

[43] The Applicant further submits that the country conditions are such that the Officer can make “reasonable inferences” regarding the challenges an applicant would face upon return, citing *Aboubacar v Canada (Citizenship and Immigration)*, 2014 FC 714. The Applicant contends that she has experienced these conditions firsthand and this should have been considered by the Officer when assessing risk and adverse country conditions.

[44] The Respondent reiterates that an applicant bears the onus to show that they would be affected by adverse conditions in their country of origin, citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 (“*Kanthasamy*”). While the Respondent notes that an officer may draw reasonable inferences from the experiences of similarly situated individuals in the country of origin, the Applicant did not provide specific or concrete evidence showing how similarly situated individuals are treated. The Respondent also notes that the affidavit with the Applicant’s personal narrative, submitted on leave, was not before the Officer, and the Officer therefore had only general allegations upon which to base their analysis.

[45] The Officer’s assessment of the risk and adverse country conditions is reasonable. The Officer addressed the Applicant’s experiences of abuse, her lack of family supports, and the documentary evidence indicating the different standard of living in Namibia. The Officer considered the UNICEF report, despite noting that it was not included as evidence or specifically cited. The Officer reasonably stated that while Namibia may not have access to the same social supports, the purpose of H&C relief is not to compensate for differences in the standard of living between Canada and the Applicant’s country of origin (*Kanthasamy* at para 108). It is reasonable, based on the evidence before the Officer, to find that the Applicant provided

insufficient evidence showing a link between the generalized country conditions and her situation upon return.

V. **Conclusion**

[46] This application for judicial review is dismissed. The Officer's reasons for the decision assessed each of the three factors for consideration, in light of the evidence provided, and was therefore justified, transparent and intelligible. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6540-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6540-21
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