Federal Court Cour fédérale

Date: 20221209

Docket: IMM-1094-21

Citation: 2022 FC 1703

Ottawa, Ontario, December 9, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

BELMIRO JOSE CARDOSO VAZ
ASCENSAO RODRIGUES
MARIA ALEXANDRA RODRIGUES VAZ
MARIA ANA RODRIGUES VAZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family of four who seek judicial review of the February 4, 2021 denial of their application for permanent residence based on humanitarian and compassionate grounds [Decision].

[2] The principle applicant, Belmiro Jose Cardoso Vaz (PA) , is a 49 year old Portuguese national, who initially entered Canada as a visitor in April 2011. He has been residing in Canada since he re-entered in May 2014. Included in this application are his wife, 47 year old Ascensao Lima Rodrigues, 18 year old daughter, Maria Alexandra Rodrigues Vaz, and 14 year old daughter, Maria Ana Rodrigues Vaz.

[3] For the reasons that follow, this application is granted.

II. **The Decision**

[4] The Applicants sought permanent residence based on their establishment in Canada, the best interest of their two daughters, country conditions in Portugal, and the hardship they will face if they are required to leave Canada.

[5] The Officer accepted that the PA and his spouse have been employed and self-supporting while in Canada.

[6] In May 2018, they established a successful butcher business called Cabreira Meats where they have worked ever since opening it.

[7] The Officer noted that the Applicants had submitted letters of support from cousins, friends, the President of the Portuguese Cultural Centre, their Pastor, and various school personnel from their daughters' school.

[8] The Officer also noted that the Applicants are attendants at the Portuguese Cultural Centre since 2012 and the St. Clare Roman Catholic Church since 2011.

[9] Documentary evidence was submitted regarding donations the Applicants made to the Red Cross and the Portuguese Cultural Center.

[10] Submissions included photos of the Applicants with their friends, family, and community.

[11] In addition, it was noted that the PA and SA enrolled in ESL classes as of November 2018. Their submissions included report cards for the Applicants' daughters. The Applicants submitted bank statements dated from September 2018 to February 2019.

[12] Regarding economic establishment, the Officer noted the applicants have been employed during their stay in Canada, although they did not have authorization to do so. Submissions showed that the PA was employed as a landscaping labourer from April 2011 to June 2011. The PA was employed as a butcher from June 2011 until January 2013, and again from March 2014 to January 2015. The PA worked as a roof installer from January 2015 to October 2015, and then again as a butcher from October 2015 to April 2018.

[13] The Officer noted that the SA worked as a butcher from October 2011 until January 2013, and again from June 2014 until August 2015. The Officer notes the Applicants established their own business, Cabreira Meats, in May 2018, and had worked there as butchers since then.

[14] Submissions to the Officer included a certificate of incorporation for Cabreira Meats, as well as copies of rent receipts for their business. The Officer noted the Applicants were self-supporting. Although the Officer gave that positive weight, they found that "doing so illegally does not demonstrate that they deserve an exceptional exemption leading to PR status."

[15] As set out below, the Officer concluded that the evidence did not support that the Applicants were integrated to the extent that their departure would cause hardship that was beyond their control.

III. **Analysis**

[16] A review of the reasons, read holistically, fails to reveal a rational chain of analysis with respect to the Applicants' establishment in Canada. In the establishment analysis, the Officer notes "the applicants are self-supporting, and although I give this positive weight, doing so illegally does not demonstrate that they deserve an exceptional exemption leading to PR status" and concludes that their establishment is "modest".

[17] The Respondent suggests, without any accompanying analysis, that "it can easily be implied from the Reasons that the Officer's assessment on establishment demonstrates why it found it to be modest".

[18] I disagree.

[19] The Officer reviews the extensive evidence of community involvement, friendships, stable employment and entrepreneurship and, without noting any negative factors, makes the following concluding remarks on establishment:

> While I commend this family's involvement in their community, <u>based on the evidence presented on a whole</u>, their establishment is modest. The evidence submitted does not support that they have integrated into Canadian society to the extent that their departure would cause hardship that was beyond their control and not anticipated by the IRPA.
>
> (My emphasis)

[20] There are two errors with this statement.

[21] The first is that the reasons as they are presented in the Decision do not make it possible to trace the decision-maker's reasoning in a meaningful manner. While the reasons ought to be read holistically, the wording in the statement underlined above has little, if anything, to do with the characterization of the Applicants' establishment as "modest".

[22] The phrase "based on the evidence presented on a whole" is an empty reason in that it is not possible to understand the decision-maker's reasoning on this critical point: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*) at para 103.

[23] The second error in the establishment analysis is that the Officer "improperly filters establishment through the lens of hardship".

[24] While the Officer found that the Applicants' entrepreneurial achievements in Canada were not enough to counter their "modest" establishment, they were enough to support the finding that the Applicants would be able to "secure a source of income even when employment prospects are dim" in Portugal.

[25] That logic mirrors what Justice Rennie, then a member of this, Court identified in *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 (*Lauture*) at para 26:

> In other words, an analysis of the applicants' degree of establishment should not be based on whether or not they can carry on similar activities in Haiti. Under the analysis adopted, the more successful, enterprising and civic minded an applicant is while in Canada, the less likely it is that an application under section 25 will succeed. My colleague Justice Russel Zinn made the point well in *Sebbe v The Minister of Citizenship and Immigration,* 2012 FC 813 (*Sebbe*) at para 21:
>
> > …However, what is required is an analysis and assessment of the degree of establishment of these applicants and how it weighs in favour of granting an exemption. The Officer must not merely discount what they have done by crediting the Canadian immigration and refugee system for having given them the time to do these things without giving credit for the initiatives they undertook. The Officer must also examine whether the disruption of that establishment weighs in favour of granting the exemption.

[26] Here, the Officer suggests that the PA's "resourcefulness" could overcome any adverse country conditions in Portugal so long as the Applicants continued to be the self-supporting people they have demonstrated themselves to be in Canada.

[27] Not only does this show a failure by the Officer to examine the severe consequences of the disruption of their establishment, the Officer then engages in incoherent reasoning by treating establishment as the double-edged sword identified by Justice Rennie in *Lauture*: "the more successful, enterprising and civic minded an applicant is while in Canada, the less likely it is that an application under section 25 will succeed."

[28] In *Singh v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1633 (*Singh*), Justice Diner encapsulated the problem this way at paragraph 23: "To turn positive establishment factors on their head is unreasonable. The Officer cannot, as they do here, use the Applicants' shield against them as a sword."

[29] In *Singh*, Justice Diner also noted that this Court has consistently warned against using the degree of establishment in Canada to undermine the hardship faced on removal: *Li v Canada (Minister of Citizenship and Immigration)*, 2020 FC 848 at para 22; *Marshall v Canada (Minister of Citizenship and Immigration)*, 2017 FC 72 at para 35; *Jeong v Canada (Minister of Citizenship and Immigration)*, 2019 FC 582 at para 53; *Lopez Bidart v Canada (Minister of Citizenship and Immigration)*, 2020 FC 307 at para 34.

[30] As Justice Ahmed observed, "[o]ne would expect that the message has been received at this point.": *Singh v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1142 at para 37.

[31] Establishment means establishment in Canada. The Officer should have assessed the Applicants evidence of establishment in Canada on its own. The Officer then should have considered whether such establishment whether weighed in favour of, was neutral, or weighed against the application: *Lauture* at para 23.

IV. **Conclusion**

[32] The jurisprudence cited above and the Decision serve to illustrate a logical fallacy in which an applicant's resourcefulness is doubly calculated in the global assessment to result in a net zero.

[33] The Officer determining an H&C application is tasked with examining an applicant's establishment in Canada in addition to an applicant's hardship in their country of origin.

[34] In this matter, the Officer in essence assigned the Applicants' resourcefulness positive weight in the establishment analysis and negative weight in the Applicants' hardship analysis.

[35] When the Decision is read as a whole, this reasoning leads to the absurd result that the Applicants' resourcefulness is then treated as a negligible factor, which then militates in favour of a refusal by the Officer to exercise their H&C discretion.

[36] For the reasons above, I find that the Decision is unreasonable as it reveals an irrational chain of analysis such that the reasons provided fail to add up: *Vavilov* at para 104.

[37] This application is granted. The Decision is set aside to be returned for redetermination by a different Officer.

[38] No serious question of general importance was posed by the parties and I find none exists on these facts.

JUDGMENT in IMM-1094-21

THIS COURT'S JUDGMENT is that:

1. The Application is allowed and the Decision is set aside to be returned for redetermination by a different Officer.
2. There is no question for certification

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	BELMIRO JOSE CARDOSO VAZ, ASCENSAO RODRIGUES, MARIA ALEXANDRA RODRIGUES VAZ, MARIA ANA RODRIGUES VAZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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