Federal Court  Cour fédérale

Date: 20221228

Docket: IMM-4786-20

Citation: 2022 FC 1799

Ottawa, Ontario, December 28, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

BEATA TOROK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of Hungary, brings this application for judicial review under section 72 of the *Immigration and Refugee Protection Act,* SC 2001, c27 [*IRPA*], of a decision made by a Senior Immigration Officer (Officer) on September 17, 2020, refusing her application for permanent residence on humanitarian and compassionate [H&C] grounds [Decision].

[2] The Applicant also requested a 5-year Temporary Resident Permit [TRP] should the H&C application be denied. The Officer reviewed the TRP application and refused to issue one.

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

II. Background facts

[4] The Applicant first entered Canada as a tourist in 2000 and submitted a claim for refugee status. Her application was denied in 2002.

[5] In 2003, the Applicant married a permanent resident of Canada. Her husband then submitted a spousal sponsorship application. It was refused due to the Applicant's deemed inadmissibility for criminality. Following the issuance of a removal order, the Applicant departed Canada in 2003.

[6] The Applicant has resided in Canada since 2005. In 2006, she married a permanent resident of Canada, Imre Toth, whom she had known when they were both in Hungary. She gave birth to their child in Canada in 2017.

III. The Decision

[7] The Officer considered the Applicant's 13 years of establishment in Canada, her deemed criminal rehabilitation, that she had qualified as a personal trainer and she had worked as one steadily after her marriage.

[8] The Officer also considered that the Applicant was in a long-term relationship with her Canadian husband and she would normally be eligible for spousal sponsorship but for having re-entered Canada without obtaining permission.

[9] The Officer considered adverse country conditions in Hungary and hardship should the Applicant have to relocate to Hungary, including submissions concerning the best interests of her 3-year old Canadian born son.

[10] Regarding the best interest of her young child, the submissions to the Officer focussed on two problems: (1) the child being separated from one or both of his parents if the Applicant was removed to Hungary; (2) the loss of opportunities in Canada in both education and a future career.

[11] After noting the various family members residing in Hungary, the Officer found the Applicant has more ties to Hungary than to Canada as well as knowing the language, customs, and habits of Hungary.

[12] The Officer concluded the Applicant's establishment was not to the degree that severing her ties to Canada to apply for permanent residence from abroad would favour granting an exception.

[13] The Officer noted the Applicant's husband was born and raised in Hungary and there was little information to suggest the husband would be unable or unwilling to accompany the Applicant to Hungary to re-establish themselves there.

[14] With respect to the TRP application, the Officer reviewed the evidence put forward by the Applicant. The Officer concluded the Applicant had not met her onus to show she had an exceptional circumstance with compelling reasons such that a TRP was required.

IV. Issues

[15] The issues for determination are whether the Officer reasonably decided that the Applicant (1) did not warrant a permanent residence exemption based on H&C grounds and (2) failed to meet her onus to prove she qualified for a TRP.

V. Standard of Review

[16] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23.

[17] The focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and at least as a general rule, to refrain from deciding the issue themselves: *Vavilov* at para 83.

[18] 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. The

reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

VI. Analysis

[19] The Applicant has raised a number of issues with the Officer's findings. I find it sufficient to address only the main arguments concerning establishment and best interest of the child [BIOC].

A. *Establishment*

[20] The Officer found little evidence had been provided to show the Applicant was well established.

[21] The Applicant's submissions concerning establishment relied on her employment, qualifications as a personal trainer and letters of support from friends and family. Based on the record and the Applicant's submissions, the Officer makes two separate findings with respect to her employment.

[22] The first finding notes that, at all points in time, her employment in Canada "was not given valid authorization from Canadian immigration officials to engage in employment… Given that that [*sic*] the applicant has been working in Canada without valid immigration status for a period of approximately 9 years, I find this to be a serious negative consideration as it demonstrates the applicants' failure to comply with the immigration laws of Canada."

[23] To support her employment history the Applicant submitted her Personal Trainer Certification. It had expired in 2014. The Officer found there was little information before them to suggest that the applicant updated her training or was certified as a personal trainer following 2014.

[24] The second finding by the Officer was that "there is little supporting evidence such as rates of pay, or details on the terms of employment for either the applicant's job as a personal trainer or as a live out nanny." This is a finding of insufficiency of evidence, not credibility.

[25] The written submissions of the Applicant are limited. With respect to establishment, the submissions consist of the following two paragraphs:

> Since coming to Canada, Beata has become well-established in Canada. She has earned qualifications as a personal trainer, and has worked steadily in this capacity after her marriage to Imre. She has come to know a wide circle of people and formed many close friendships here. Beata has also made connections through her work as a personal trainer, and through her brother's and husband's connections here. She also annual (sic) filed income tax returns here up to two years ago.
>
> I would refer you particularly to the reference letters enclosed with this application. It is clear that she has made her life here, with her husband and child, and her many close personal relations with their friends here. Once their child is older, and her status settled, she wishes to return to working as a personal trainer.

[26] A review of the record shows that it was open to the Officer to find the Applicant's income tax returns over several years were inconsistent with her submission that she was "self-supporting".

[27] There is no accompanying letter or affidavit from the Applicant to corroborate the nature and extent of the Applicant's employment experience in Canada. It was reasonable for the Officer to assess the limited evidence before them and take note of the inconsistencies.

[28] The Applicant states the Officer makes no mention of the very close ties between the Applicant's brother, a Canadian citizen, living near the Applicant, and the Applicant and her family.

[29] Contrary to the Applicant's assertion, the Officer acknowledged the Applicant's brother who resides in Ontario. The Officer noted "he enjoys being Theodor's uncle and that he currently works for the applicant's husband". This is acknowledged along with the various letters of support from friends in Canada and extended family in Hungary. For example, Aradszki Janosne, the Applicant's mother wrote: "I hope this letter will be of help, and my daughter could soon visit me with her family, Imre, Theo their relatives in Hungary and the family and relatives of Imre, too."

[30] Toth Imrene, the Applicant's father-in-law, wrote: "I sincerely hope that my son and Bea could come home soon with their family because my mother, the great-grandmother is 86 years old and she'd like to meet Theo in person."

[31] Despite well-intentioned letters of support, the letters do not demonstrate the Applicant's establishment in Canada nor hardship if removed to Hungary.

[32] I find it was reasonable for the Officer to conclude that "the documentary evidence which speaks to close family relationships is indicative of the applicant's family ties being willing and able to provide the applicant and her spouse with support, if only emotional, while they re-establishes (*sic*) themselves in Hungary, should they choose to remain together".

B. *BIOC*

[33] In her submissions to the Officer, the Applicant stated that taking into account the best interests of her son and the immigration policy of recognizing the hardship involved in the separation of spouses and common-law partners, she should be granted the relief she sought.

[34] The written submissions to the Officer on BIOC state:

> Theodor is young and totally dependant on his parents. Refusing Beata's application means he must either grow up without one of his parents present in his life, or the family must be uprooted and moved to Hungary. This would work a considerable hardship on the family as a whole, stemming at least in part from the fact that Imre and Beata have made all their personal and business connections in Canada for at least the last 12 years. It is not realistic to expect the family to leave Canada in order to remain together as a family. Theodor has only known life in Canada, and would be a cultural stranger in Hungary, despite his parents' speaking with him in Hungarian at home. Children are rarely, if ever, deserving of any hardship (Hawthorne v Canada 2002, FCA 475), and circumstances which may not warrant H & C relief for an adult may nonetheless entitle a child to H & C relief (Kanthasamy). When all these factors are considered, there is little doubt that it will be in Theodor's best interests to remain in Canada with both his parents.

[35] The Officer found that aside from statements made by counsel, there was very little information about the applicants' son. No evidence was provided with respect to the child's daily life, attendance in daycare or school or in any other kind of activity or community programs in

Canada. The Officer noted that neither the applicant nor her husband provided letters explaining how Theodor would be impacted if the applicant were to leave Canada.

[36] The Officer noted that "family reunification is an important BIOC factor and it appears that the vast majority of the applicants' families resides (sic) in Hungary, including the child's two grandmothers, who both indicate their desire to have a close relationship with their grandson."

[37] The Officer acknowledged that it is in Theodor's "best interest to remain with both of his parents in a caring and loving environment" but found there was insufficient evidence "that the applicant's spouse would be unable or unwilling to re-establish himself in Hungary together with his wife and minor child, or that either the applicant, her spouse, or her minor son would face hardship in doing so".

[38] After reviewing the arguments and evidence, the Officer concluded "I find that the weight accorded to the BIOC is not enough to justify an exemption because of the insufficient evidence demonstrating a negative impact on the child if the applicant leaves Canada. I find there is insufficient evidence to establish that the applicant's son's wellbeing or development would be significantly impacted for the negative."

[39] I agree with the Officer's finding. The onus was on the Applicant to prove her case but she failed to put in the necessary evidence to support her argument.

C. *Temporary Resident Permit*

[40] The primary TRP submissions are “If you do not believe that this application meets the criteria for positive consideration on Humanitarian and Compassionate grounds, due to Beata's inadmissibility on criminal or other grounds, or due to her failure to obtain authorization to return to Canada before doing so, in the alternative I would ask that you issue a temporary resident permit for a period of five years, pursuant to s 24. She is not inadmissible under any of the grounds under: security [A34], violation of human or international rights [A35] serious criminality [A36(1)], organized crime [A37], and has resided here continuously for the last 13 years. For nearly all of this time, she was married to Imre, and is now mother to a Canadian child, Theodor.” Thereafter reference is made to other factors already put forth in the establishment and BIOC submissions.

[41] Given the TRP evidence and submissions, I find the Officer reasonably determined that the Applicant had not satisfied her onus to show she had an exceptional circumstance with compelling reasons requiring issuance of a TRP.

VII. Conclusion

[42] Considering the evidence that was submitted, the Officer’s establishment, BIOC and TRP findings are reasonable. They are transparent, intelligible and justified.

[43] The reasons are internally coherent and there is a rational chain of analysis that is justified in relation to the facts and law that constrained the Officer. As such, I am required to defer to the Officer’s decision: *Vavilov* at para 85.

[44] This application is dismissed.

[45] Neither party proposed a question for certification nor does one exist on these facts.

JUDGMENT in IMM-4786-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4786-20
STYLE OF CAUSE:	BEATA TOROK v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 11, 2022
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	DECEMBER 28, 2022

APPEARANCES:

Marvin Moses	FOR THE APPLICANT
Matthew Siddall	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MARVIN MOSES Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT