Federal Court  Cour fédérale

Date: 20230103

Docket: IMM-7858-21

Citation: 2023 FC 1

Ottawa, Ontario, January 3, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JUNKO IZUMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Junko Izumi, seeks judicial review of a decision dated October 12, 2021, by a Senior Immigration Officer (the "Officer") with Immigration, Refugees and Citizenship Canada ("IRCC"). The Officer refused the Applicant's application for permanent residence on humanitarian and compassionate ("H&C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Officer found that the Applicant provided insufficient evidence to indicate that she would experience hardship upon removal to warrant relief on H&C grounds.

[3] The Applicant submits that the Officer erred in applying the statutory test for exercising discretion under section 25 of *IRPA*, engaged in an improper consideration of the Applicant's evidence, and conducted an imbalanced assessment of the application as a whole.

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

II. Facts

A. *The Applicant*

[5] The Applicant is a 53-year-old citizen of Japan. Throughout her childhood, the Applicant, her mother, and her brother were subject to domestic violence by her father.

[6] The Applicant claims she pursued travel and education abroad as soon as she was able, to escape these circumstances. In 1991, the Applicant obtained a bachelor's degree in linguistics at Konan University in Kobe, Japan. She worked as an office administrator for three years and then traveled to Australia. In 1995, the Applicant obtained a language/tourism certificate from the Williams Business School in Sydney, Australia.

[7] After completing her education in Australia, the Applicant returned to Japan and worked as a secretary at a language school for one year, while living in her parents' home. Her father was continually abusive during this time.

[8] The Applicant first entered Canada on a working holiday visa in March 1999, which was extended until March 2000. She had a valid visitor visa between February 21, 2000 and August 21, 2000.

[9] In her H&C application, the Applicant submitted that she returned to Canada in 2004. She claims she has called Canada home and worked here since 2004 as a cook. She also owns an income-producing property in Japan, which she has owned since 2001.

[10] The Applicant had another valid visitor visa between January 15, 2008 and May 10, 2008. The Applicant remained close to her mother and in 2010, she returned to Japan to be with her mother, who was sick with ovarian cancer. Her mother passed away in June 2010.

[11] The Applicant has had the same address in Toronto, Ontario since March 2009. Her passport and her statement filed in support of her application indicate that she would leave Canada for several weeks at a time to travel abroad, re-entering Canada as a visitor and working here without authorization. Despite this travel, the Applicant claims she had established her home in Canada, with a community and ongoing employment.

[12] The Applicant was granted a multiple-entry extended stay temporary resident visa ("TRV") on December 3, 2016, which was valid until November 30, 2021. In 2016, the Applicant returned to Japan for three weeks when she needed surgery and stayed at her father's home during this time. She claims that her father became more abusive to her during her stay.

[13] The Applicant's father passed away in 2019. The Applicant's brother resides in Japan and now runs the family roofing business. She does not have a positive relationship with her brother or his family.

[14] In August 2019, at the request of Applicant's counsel, a clinical psychologist conducted an independent psychological assessment for the Applicant. This involved a clinical interview and a psychological test known as the Minnesota Multiphasic Personality Inventory F-PTSD Scale ("MMPI"). The assessment concluded that the Applicant continues to experience the "deleterious psychological after-effects" of being "trapped in a psychologically destructive, abusive family in Japan." The assessment also resulted in the Applicant's diagnosis of stressor-related disorder with prolonged duration, with dissociative and stress-response symptoms, requiring ongoing mental health treatment.

[15] The Applicant claims that Canada has provided her with a safe place away from her abusive upbringing in Japan and has allowed her to pursue the process of overcoming the ongoing negative impacts of this abuse.

[16] The Applicant first applied to regularize her status in Canada in December 2019, submitting her initial application for permanent residence on H&C grounds. This initial application was refused in a decision dated March 19, 2021 ("March 19, 2021 Decision"). The Applicant filed an application for judicial review of the March 19, 2021 Decision, which was settled and sent back for reconsideration.

[17] On reconsideration, the Applicant filed further documents in support of her application, including 20 letters of support from people in her community and updated H&C submissions by her counsel. The application was again refused in a decision dated October 12, 2021 ("October 12, 2021 Decision"). This decision is the subject of this application for judicial review.

B. *Initial Decision*

[18] In the March 19, 2021 Decision, the initial officer found that the Applicant should not be able to benefit from the time she has spent working illegally in Canada since 2004, as this would encourage people to remain in Canada illegally in order to better position themselves for H&C relief, citing *Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904. The officer therefore gave little weight to the Applicant's establishment in Canada from 2004 onwards, and attached negative weight to her "disregard for the immigration laws of Canada."

[19] The officer then considered the Applicant's submissions and evidence regarding her experience of domestic violence and the psychological assessment indicating the need for ongoing treatment. The officer noted that the Applicant neglected to continue treatment, despite the recommendation to do so, as she cited the lack of funds for continued mental health treatment

despite providing evidence of financial stability. The officer pointed to accessible counselling resources for Japanese nationals and visitors to Canada. The officer did not find the Applicant's experience of abuse to be an exceptional circumstance warranting H&C relief.

[20] The officer considered the Applicant's income-producing property in Japan, her financial self-sufficiency, and her ability to travel. The officer found insufficient evidence to demonstrate that the Applicant would be unable to apply for permanent residence from outside Canada, and determined that her decision to remain in Canada is a personal choice. The officer therefore found that an H&C exemption was not warranted.

[21] The Applicant applied for judicial review of the March 19, 2021 Decision. The matter was settled and reconsidered by another officer.

C. *Decision Under Review*

[22] In the October 12, 2021 Decision, the Officer began by noting that H&C relief under subsection 25(1) of *IRPA* requires consideration of whether relief is justified by the Applicant's circumstances, taking into account the best interests of a child directly affected. The Officer also noted that the Applicant bears the onus to provide sufficient evidence to substantiate H&C grounds, that officers are not required to elicit information or satisfy that grounds exist, and that evidence of hardship upon removal is not itself sufficient to warrant H&C relief.

[23] The Officer identified three factors as the basis for the application: potential hardship upon return to Japan due to her experiences with domestic violence at the hands of her father, personal ties to Canada, and her establishment in Canada.

[24] With respect to hardship, the Officer outlined the Applicant's personal history, particularly her experiences with domestic violence in Japan, and considered the Applicant's psychological assessment. The Officer highlighted that the assessment was based on a single interview rather than an ongoing relationship, it was done at the request of the Applicant's counsel, and the Applicant did not seek mental health treatment during her 20 years in Canada. The Officer determined that the psychologist's opinion that the Applicant's mental health would deteriorate upon her turn to Japan is speculative, and found insufficient evidence to demonstrate that the Applicant could not access mental health treatment in Japan.

[25] The Officer also noted that the assessment was performed prior to the death of the Applicant's father in 2019, and it is therefore reasonable to assume that the threat of harm in Japan is now nonexistent. The Officer concluded that although it would be emotionally difficult for the Applicant to return to Japan, it is reasonable to expect that reintegration would be minimal.

[26] On the second factor of personal ties, the Officer considered the letters of support provided as evidence of the Applicant's personal ties in Canada. While the reasons state that these letters are afforded some positive weight, the Officer noted that the letters do not explain how the supporters would assist the Applicant in Canada or what hardship she would experience

if forced to leave. The Officer found insufficient evidence to show a mutual dependence between the Applicant and her personal ties such that her departure would cause difficulties, or an inability to maintain contact with her personal ties through other means.

[27] On the third factor of establishment in Canada, the Officer noted that the Applicant's employment, volunteerism, and connections in Canada are afforded some positive weight, but a certain level of establishment is reasonably expected given that she has been traveling to Canada for more than 20 years. The Officer did not find that the Applicant's establishment in Canada is sufficient to warrant H&C relief, stating that it is not unusual compared to others who have been here for a similar amount of time, nor does it indicate a level of integration into Canadian society to the extent that hardship upon her removal would be beyond her control.

[28] The Officer noted that the Applicant's desire to remain in Canada and her unwillingness to return to Japan are not determinative of an exemption on H&C grounds. The Officer ultimately found that the Applicant provided insufficient evidence to justify granting H&C relief.

III. Issue and Standard of Review

[29] This application for judicial review raises the sole issue of whether the Officer's decision is reasonable.

[30] 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.

[31] 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).

[32] 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

[33] The Applicant submits that the Officer erred in the following ways: by applying the incorrect statutory test for granting H&C relief pursuant to subsection 25(1) of *IRPA*, by improperly assessing the Applicant's psychological report and other evidence, and by unfairly conducting an imbalanced assessment of the application as a whole. My analysis focuses on the

assessment of the psychological report, which I find is improper and renders the decision as a whole unreasonable.

[34] The Applicant submits that the Officer erred in their assessment of the psychological report by undermining the report in favour of irrelevant considerations, such as the assessment resulting from a singular visit and the assessment being performed at the request of Applicant's counsel, instead of a medical professional. The Applicant submits that the Officer misunderstood the purpose of the assessment: to establish the Applicant's mental health situation and corroborate her assertions that she is continually impacted by her past experiences, and not to provide ongoing therapeutic treatment. The Applicant further submits that the Officer erroneously found the psychologist's opinion that the Applicant's mental health would deteriorate upon her return to Japan to be speculative, because this assertion negates the psychologist's expertise and the thoroughness of the assessment, which included the performance of a MMPI psychological test.

[35] The Applicant also submits that the Officer's overall assessment of the H&C application as a whole was unfair and imbalanced. The Officer asserted that the Applicant did not wish to return to Japan due to her fear of being further harmed there, but that no such harm exists because her father passed away in 2019. However, the Applicant never pleaded a fear of harm in Japan and, rather, based her application on her establishment in Canada, her negative memories associated with Japan, and her ability to effectively heal from her past in Canada. The Applicant also submits that the Officer's finding regarding her "not wishing to return" undermines the core of her application, which is rooted in her experiences of abuse and her positive establishment in

Canada. She submits that the Officer was unreasonably dismissive of the 23 letters of support proffered in support of her application and of her extensive establishment in Canada.

[36] The Respondent maintains that the Officer engaged in a reasonable assessment of the evidence and the application as a whole. On the psychological report, the Respondent relies on this Court's decision in *Garcia Diaz v Canada (Citizenship and Immigration)*, 2021 FC 321 ("*Garcia Diaz*") to submit that an officer is not required to agree with psychological reports submitted in an H&C application and is entitled to give them little weight, so long as there are clear reasons for doing so (at para 97). The Respondent contends that the Officer provided a reasonable explanation for undermining the Applicant's psychological assessment. The Respondent further submits that the Officer did not misunderstand the purpose of the psychological assessment and, rather, reasonably found that the Applicant's reintegration in Japan would be minimal because she does not face a threat, she owns property, potential support from her brother, and familiarity with the language and culture.

[37] The Respondent maintains that the Officer carried out a reasonable and balanced assessment of the Applicant's circumstances as a whole, based on a cumulative assessment of the evidence. The Respondent submits that the support letters proffered by the Applicant were brief, and the Officer reasonably found that they provided limited evidence that the Applicant's removal would cause difficulties for those involved, or that she would be unable to maintain contact with her connections from Japan. The Respondent submits that the Applicant's submissions on the Officer's assessment of the application as a whole are merely a request to reweigh the evidence, which is not this Court's role on review.

[38] I note that the Officer's reasons state that the Applicant's traumatic experiences of abuse at the hands of her father were "given substantial weight in the assessment." However, stating so is not the same as doing so. This statement does not mean that the decision, when reviewed as a whole, exhibits an attentiveness and consideration for the Applicant's situation, assessing H&C factors holistically (*Vavilov* at para 15). In my view, the Officer's assessment of the psychological report lacks consideration for the true extent of the impact of abuse on the Applicant and therefore contains gaps in reasoning.

[39] The psychological report contains a detailed assessment of the Applicant's mental health and the negative impact that her removal would have on her ability to effectively heal from her past. This evidence, extracted from a thorough psychological assessment of the Applicant for the purposes of corroborating her application, is central to the H&C factors that the Officer ought to have considered in assessing the Applicant's circumstances. However, the Officer undermines this evidence by stating that the assessment was based on a singular visit rather than an ongoing therapeutic relationship, and that the assessment was performed at the request of Applicant's counsel.

[40] I do not find that these considerations are relevant to an assessment of the risk to the Applicant's mental health upon her return to Japan. The fact that the assessment was based on a single visit, or that the assessment was completed upon counsel's request, are not factors that undermine the thoroughness, credibility and value of the psychological assessment of the Applicant and the resulting diagnosis. Although entitled to grant a psychological report little weight, there must be clear and well-founded reasons for doing so (*Garcia Diaz* at para 97). In

my view, the Officer failed to adequately consider a central aspect of the Applicant's evidence, connected to the core of her H&C application, based on reasons that are not well founded, rendering the assessment of the Applicant's evidence regarding her mental health unreasonable.

[41] I also take issue with the Officer's assertion that the psychologist's opinion that the Applicant would face negative effects to her mental wellbeing if removed to Japan is speculative. First, I agree with the Applicant that this unfairly undermines the credibility of the report, based on an unsupported assertion. Second, I find this finding particularly problematic because it constitutes a failure to account for the foundation of the Applicant's claim and reflects a narrow lens of the effects of domestic abuse on survivors, unfairly assuming that a risk to a survivor's wellbeing is strictly connected to the risk of further physical harm. Neither the Applicant's submissions nor the psychological report assert that the ongoing threat to the Applicant's mental health is the physical embodiment of this abuse in Japan: her father. The Applicant does not claim that she fears returning to Japan because she will be physically abused there. In fact, the Applicant's H&C application clearly states:

> While she may not have realized it before, Ms. Izumi is seeking safe haven, where she could finally make a firm break from her family, could health and could establish a home, free from the pain she endured growing up and free from the memory 'triggers' surrounding her in Japan. […]
>
> Ms. Izumi still needs to address the impact of the abuse on her as Dr. Devins recommends. She wants to do this, but she is still paying the balance of her medical bills and, aside from the cost, she really needs secure status to enter into a long-term program of therapy. She has managed to cope and make strides in overcoming some of effects of the abuse on her. She feels safe in Canada. The harsh memories of her past are in a distant country, Japan. Unfortunately, Japan is the only country where she has status to live permanently: she does not feel that she could cope with a

> return there. It holds only bitter memories for her. She has only her brother in Japan. He is married with children and she is not part of their lives and does not want to be.
>
> [Emphasis added]

[42] The psychological report also states that Japan "holds bitter memories" for the Applicant, and that during her life in Canada, she is "finally finding it possible to trust a man," she is "gainfully employed, finds meaning and satisfaction in her work, and has established an active, stimulating and satisfying life." The report states that these "hard-won gains augur well for Ms. Izumi's future mental health" but these gains "will be lost, however, should Ms. Izumi be refused permission to stay in Canada." Contrary to the Officer's finding, these opinions go beyond the existence of the threat of physical violence in Japan. Despite this, the Officer's reasons appear to assume that no threat exists to a survivor of abuse such as the Applicant, as long as the physical threat of violence no longer exists. The Officer's reasoning creates the unfair expectation that the lasting impacts of abuse are limited to the physical threat of continued violence, thereby ignoring the significant psychological footprint that abuse leaves behind. This is an unreasonable line of reasoning, and fails to adequately grapple with the consequences of removal on the Applicant (*Vavilov* at paras 102, 134).

[43] On numerous occasions, the Officer's reasons characterize the Applicant's H&C application as being "a wish" to remain in Canada. In oral submissions, the Applicant's counsel stated, and I agree, that the Officer mischaracterized and undermined the core of the Applicant's claim by labeling it as a simple wish to live in Canada. In my view, the Applicant's claim amounts to more than a mere wish. The evidence shows that she is facing lasting psychological impacts of abuse at the hands of her father, affecting her ability to return and reintegrate into a

country that holds nothing but painful memories. She has established an extensive community in Canada, evidenced by the 23 letters of support on the record. The Officer's consistent undermining of the core aspects of the Applicant's claim and failure to grapple with the key evidence renders the decision as a whole unreasonable.

V. Conclusion

[44] The Officer's decision is unreasonable because the Officer engaged in an improper consideration of the Applicant's evidence, particularly relating to her psychological assessment. This application for judicial review is granted.

JUDGMENT in IMM-7858-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a different officer.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Barbara Jackman	FOR THE APPLICANT
Ian Hicks	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jackman & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT