Federal Court Cour fédérale

Date: 20230104

Docket: IMM-1263-21

Citation: 2023 FC 16

Ottawa, Ontario, January 4, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

THINUJA SATKUNANATHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a naturalized citizen of Canada. Since 2011, she has been trying to sponsor her parents and her three adult siblings for permanent residence in Canada but has been unable to meet the Minimum Necessary Income ("MNI") requirement for doing so.

[2] In 2019, the Immigration Appeal Division ("IAD") of the Immigration and Refugee Board of Canada dismissed the applicant's appeal of a visa officer's determination that the applicant did not meet the MNI requirement and, further, that Kirupaharan Paranirupasingam, someone who the applicant had identified as her common-law partner, could not be added as a co-signer to the sponsorship application. In her appeal, the applicant did not seek special relief on the basis of humanitarian and compassionate ("H&C") considerations under paragraph 67(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[3] The applicant applied for judicial review of the IAD's decision on the basis that she had received ineffective assistance from her counsel before the IAD. She contended that her former counsel had failed to advise her properly concerning an appeal on H&C grounds under paragraph 67(1)(c) of the *IRPA*.

[4] This Court (per Pamel J) allowed the application for judicial review and ordered that the appeal be redetermined: see *Satkunanathan v Canada (Citizenship and Immigration)*, 2020 FC 470. Since the applicant had not contested the IAD's determinations confirming the visa officer's findings that she did not meet the MNI requirement and that Mr. Paranirupasingam could not be added as a co-signer, the redetermination was limited to the issue of whether the appeal should be allowed under paragraph 67(1)(c) of the *IRPA*.

[5] In a decision dated February 4, 2021, the IAD dismissed the appeal, concluding that there were insufficient H&C considerations to warrant special relief from the MNI requirement.

[6] The applicant now applies for judicial review of this decision. She contends that the decision was made in breach of the requirements of procedural fairness and that it is unreasonable.

[7] For the reasons that follow, I do not agree. This application will, therefore, be dismissed.

II. BACKGROUND

[8] The applicant arrived in Canada from Sri Lanka in 2007 and obtained refugee protection on the basis of the risks she faced in Sri Lanka due to her Tamil ethnicity.

[9] In 2011, the applicant applied to sponsor her parents and three siblings for permanent residence in Canada. After delays in processing the application, in February 2017 the applicant was informed that she did not meet the MNI requirement for sponsorship set out in sub-paragraph 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"). (This provision is reproduced in the Annex.)

[10] The applicant then requested that Mr. Paranirupasingam be added as a co-signer and that her application be reconsidered. In making this request, the applicant stated that the two of them had begun living together on January 23, 2017. The request to add Mr. Paranirupasingam was refused because he and the applicant had not lived together for at least one year, which is the minimum length of time to qualify as common law partners: see *IRPR*, section 1 *s.v.* "common-law partner".

[11] The applicant submitted several requests for reconsideration but the refusals were confirmed.

[12] The applicant's first appeal to the IAD was heard on April 18, 2019. Both the applicant and Mr. Paranirupasingam testified at the appeal hearing.

[13] The focus of the appeal was the visa officer's refusal to add Mr. Paranirupasingam as a co-signer. The IAD upheld this determination. The IAD found that the evidence concerning the relationship between the applicant and Mr. Paranirupasingam was not credible. The IAD member noted that the applicant had explained that in her first request to add Mr. Paranirupasingam as a co-signer she stated that they had lived together since January 23, 2017, at the suggestion of a co-worker even though this was not true. The member stated: "Her claim that she knowingly provided false information to the visa post on the suggestion of a co-worker did not enhance her overall credibility." The member also found that both the applicant and Mr. Paranirupasingam had given different accounts of their relationship at different times. As well, their evidence before the IAD concerning when they had begun living together was mutually inconsistent. In the IAD's view, the two had been untruthful under oath, either in their testimony before the IAD, in a joint affidavit they swore in 2017 "or possibly both." As a result, the IAD was "unable to determine when they might have been considered a common law couple under the Regulations." The IAD also found that it was clear from the financial information provided that, without a co-signer, the applicant fell short of the MNI requirement. The IAD dismissed the appeal accordingly.

[14] The re-hearing of the appeal took place on December 8, 2020. Once again, both the applicant and Mr. Paranirupasingam testified. By this point, they had had three children together, ages five, three, and one year old. As well, the applicant's parents and sister were living with her in Scarborough, Ontario. The applicant's parents were in Canada on extended multiple entry visas and her sister was on a study permit that was valid until 2023. The applicant's two brothers were still in Sri Lanka.

[15] The applicant provided updated financial information to the IAD. While the extent of her shortfall from the MNI requirement was a point in dispute, there was no issue that the applicant's income fell below the necessary threshold given the size of her family.

[16] In support of her contention that she should be granted special relief from the MNI requirement, the applicant presented evidence of her financial circumstances which, she contended, mitigated the risk associated with the MNI shortfall. She also cited her need for help with childcare from her parents and her sister (particularly because of a medical condition from which she suffers), the risks her brothers were facing in Sri Lanka, and the hardships her parents were experiencing as they tried to support family members in both Canada and Sri Lanka. The applicant also contended that it would be in her children's best interests for their grandparents and their aunt to be in Canada.

III. DECISION UNDER REVIEW

[17] The IAD member found that there was a "sizable" shortfall between the applicant's income and the MNI requirement and, as a result, "significant" mitigating factors and H&C considerations had to be established for special relief to be warranted.

[18] The IAD member found that there were insufficient factors to mitigate the financial risk posed by the applicant's sponsorship of her family members for the following reasons:

- The member considered Mr. Paranirupasingam's testimony concerning his willingness and ability to assist financially with the resettlement of his in-laws but gave that evidence little weight because Mr. Paranirupasingam is not a co-signer. In any event, even if his income were combined with the applicant's, this would still fall short of the MNI requirement.

- The applicant testified that her income was depressed between 2017 and 2019 because she had been on maternity leave. The member agreed that her income was now on a stable upward trajectory but found that a shortfall would nevertheless persist for the foreseeable future.

- An unaudited balance sheet for the business owned by the applicant and Mr. Paranirupasingam (Leela Supermarket, a store in Scarborough) showed annual revenues of approximately $6 million. However, this did not mitigate the shortfall for three reasons. First, the statement was not reliable evidence because it did not indicate who had prepared it. While the applicant testified that it had been prepared by an

accountant, the adverse credibility finding in the prior IAD decision with respect to both the applicant and Mr. Paranirupasingam gave rise to concerns about the reliability of the financial statement. Second, even if the statement was reliable evidence, the financial circumstances of the business did not mitigate the risk. Any net profits of the business would be expected to be reinvested in the business and not to be used as a source of settlement funds for the applicant's family members. If the profits were used to support the applicant's family members, this might harm the viability of the business and, as a result, put the applicant's income at risk. Third, in assessing the financial health of the business as a potential mitigating factor, the member also took into account that there was an outstanding business loan of $200,000.

- The applicant testified that she owned three rental properties as well as the home in which she lives with her family. The modest net rental income generated by the properties had been taken into account in determining the applicant's income. As for the properties themselves, the IAD was not satisfied that these assets mitigated the financial risk of the sponsorship for three reasons. First, the member expressed doubts about whether the applicant actually owned all three rental properties as she had claimed since only one of the lease agreements named her as a landlord; the other two named only Mr. Paranirupasingam. Second, the member noted that the "credibility concern" from the first appeal carried over to the applicant's evidence about how much property she owns. Third, in any event, even if it were demonstrated that the applicant owned all three rental properties, their mitigating effect on the financial risk of the sponsorship would be limited because all three properties were highly leveraged with large outstanding mortgages. Relatedly, while there was no issue as to ownership of the family home,

which the member considered to be a positive factor, it too was encumbered with a large mortgage.

[19] Turning to the H&C considerations cited by the applicant, the IAD member was not persuaded that they were sufficient to warrant special relief. In particular:

- The symptoms of the applicant's medical condition do not appear to be preventing her from working and generally leading a normal life.

- The challenges the applicant faces in balancing work and childcare responsibilities are not out of the ordinary. "Most working families balance work and childcare, and some do so while managing serious health issues."

- The member accepted that the applicant is genuinely concerned about the safety and security of her brothers in Sri Lanka but there was no objective evidence of the risks they are facing. Significantly, no evidence from the brothers about their recent experiences in Sri Lanka was presented.

- The applicant's father is 75 years of age. Her mother is 58. They are both in good health. Simply asserting that travel between Canada and Sri Lanka is difficult for them because they are "old" is insufficient to demonstrate hardship that warrants special relief.

- Many of the applicant's goals in the sponsorship are being met because her parents and her sister are residing in Canada on a long-term basis. While not ideal, this does reasonably address the applicant's objectives and mitigates the challenges she has identified.

[20] Finally, the IAD member concluded that the best interests of the applicant's children did not warrant special relief. The applicant and Mr. Paranirupasingam are the children's primary caregivers and this would continue to be the case even if the applicant's parents and sister had to leave Canada. While the presence of their extended family in Canada is positive for the children, this is not critical to the children's well being. Moreover, dismissing the appeal would have little immediate impact on the children's interests since their grandparents and their aunt would still be able to remain in Canada for extended periods of time.

[21] For these reasons, the IAD member concluded that there were insufficient grounds on which to grant special relief under paragraph 67(1)(c) of the *IRPA*. The appeal was dismissed accordingly.

IV. STANDARD OF REVIEW

[22] There is no dispute as to the applicable standards of review.

[23] The presumptive standard of review of the substance of the IAD's decision is reasonableness: see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10. None of the recognized exceptions to this presumption apply here.

[24] 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). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the

reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review (*Vavilov* at para 13). 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).

[25] The onus is on the applicant to demonstrate that the IAD's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[26] With regard to whether the requirements of procedural fairness were met, the reviewing court must conduct its own analysis of the process followed by the decision maker and determine for itself whether the process was fair having regard to all the relevant circumstances, including those identified in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28: see *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 54; and *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14. This is functionally the same as applying the correctness standard of review: see *Canadian Pacific Railway Co* at paras 49-56 and *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35.

[27] The burden is on the applicant to demonstrate that the requirements of procedural fairness were not met. The ultimate question is whether she knew the case to meet and had a full and fair chance to respond: see *Canadian Pacific Railway Co* at para 56.

V. ANALYSIS

[28] The applicant's argument that the requirements of procedural fairness were not met is limited to the IAD member's reliance on the earlier adverse finding concerning the applicant's credibility. The applicant also contends that the member's reliance on that finding is unreasonable. Since her submissions in these respects are closely connected, I will consider them together before turning to the overall reasonableness of the decision.

A. *The Member's Reliance on the Adverse Credibility Finding*

[29] As set out above, the IAD member who heard the applicant's first appeal made a strong adverse finding concerning the credibility of evidence provided by the applicant and by Mr. Paranirupasingam about their relationship. The first member even went so far as to state that the two had been untruthful under oath on at least one and possibly more than one occasion. This finding was not challenged in the applicant's first application for judicial review.

[30] In the present application, the applicant cites three instances where, she submits, the second IAD member relied on this adverse credibility finding to her detriment: (1) in casting doubt on the reliability of the financial statement for Leela Supermarket; (2) in casting doubt on the truthfulness of the applicant's evidence concerning how many properties she owns; and (3) in

finding that there was insufficient evidence that the applicant's brothers were at risk in Sri Lanka. The applicant contends that, in each of these respects, the IAD member's reliance on the earlier adverse credibility finding breached the requirements of procedural fairness because she had no notice that the member was considering relying on the earlier finding. She also contends that, in any event, the member's reliance on the adverse credibility finding is unreasonable.

[31] I begin by noting that I do not agree that the member relied on the earlier credibility finding to the applicant's detriment – or even at all – in assessing the evidence relating to the risk to the applicant's brothers in Sri Lanka. It is true that the member states that in assessing the available evidence in this regard, "the circumstances of the case, the totality of the evidence, the credibility of the parties, and the explanations for the lack of corroborating evidence" must be taken into account. However, the member then goes on to expressly accept that the applicant honestly believes that her brothers are at risk in Sri Lanka. The difficulty for the applicant was that she did not have first hand knowledge of her brothers' recent experiences and there was no evidence from her brothers themselves. The problem identified by the member was not the credibility of the applicant's evidence concerning her brothers but, rather, the reliability of this evidence because it was, at best, second hand. The earlier adverse credibility finding thus had nothing to do with the member's determination that the evidence concerning the circumstances of the applicant's brothers was insufficient.

[32] On the other hand, I do agree that the member relied to at least some extent on the earlier adverse credibility finding in the other two respects identified by the applicant. However, I do not agree that this reliance was either unfair or unreasonable.

[33] Looking first at the issue of procedural fairness, the applicant advances a very narrow argument. She contends that, as a matter of procedural fairness, the IAD was required to give her notice that it was considering applying the earlier adverse credibility finding, which was made with respect to one issue (how long she and Mr. Paranirupasingam had been in a conjugal relationship), to other issues (the reliability of the financial statement and how many properties the applicant owns). The applicant cites no authority to support this proposition and I am aware of none.

[34] It also seems to me that the applicant is parsing the member's reasons much too finely. Whether the issue is how long the applicant and Mr. Paranirupasingam had been in a conjugal relationship, the financial health of their business, or the number of properties the applicant owns, they all relate to the applicant's capacity to meet her financial obligations as a sponsor. The first IAD member concluded that the applicant's evidence in this regard was not credible. Even within the context of an appeal based on paragraph 67(1)(c) of the *IRPA*, the applicant (who was represented by very experienced counsel) must have understood that the credibility of her evidence concerning her ability to meet her financial obligations could be called into question in other respects given the strong adverse finding of the first member (which, to repeat, was not challenged in the first application for judicial review). I am satisfied that the applicant

knew the case she had to meet and had a full and fair opportunity to do so. There was no breach of the requirements of procedural fairness.

[35] For similar reasons, the applicant has not persuaded me that it was unreasonable for the second member to rely on the earlier adverse credibility finding. As the member stated, the eligibility of Mr. Paranirupasingam to be a co-signer, the financial circumstances of the applicant's business, and the number of properties the applicant owns all relate to the same underlying issue – mitigation of the financial risk posed by the applicant's sponsorship of her family members given that she falls short of the MNI requirement. As found by the first member, there were serious reasons to doubt the credibility of the applicant's evidence about a factor she had presented to mitigate that risk – namely, that she and Mr. Paranirupasingam were conjugal partners. This could reasonably support concerns about the credibility of the applicant's evidence about other factors the applicant was presenting to mitigate that risk. In my view, the member reasonably determined that the earlier adverse credibility finding was relevant to the issues at play in the redetermination of the appeal. Consequently, I am not persuaded that the member's reliance on that factor was unreasonable.

[36] Finally, it is worth noting that the earlier adverse credibility finding was not a significant factor in the member's ultimate analysis in any event. Most importantly, the member concluded that even accepting the applicant's evidence concerning the financial circumstances of her business and the number of properties she owned, this still would not significantly mitigate the financial risks associated with the sponsorship. Thus, even if the member had erred in relying on

the earlier adverse credibility finding (which I have found is not the case), this would not have called the overall reasonableness of the decision into question.

B. *The Reasonableness of the Decision*

[37] The applicant submits that the member failed to properly balance the degree to which she fell short of the MNI requirement with the H&C factors present in her case. Specifically, she contends that the member focused unduly on the shortfall to the exclusion of other considerations. The applicant places particular emphasis on the ability and willingness of Mr. Paranirupasingam to support his in-laws in Canada in arguing that the financial risk of the sponsorship was not as great as the member found and that, as a result, the member unreasonably determined that the H&C considerations were insufficient to warrant special relief.

[38] I do not agree. The member did consider the potential role of Mr. Paranirupasingam in supporting the sponsorship. However, the fact that he was not a co-signer meant that he was not legally obliged to assist and this "diminishes the weight" that can be attributed to his income in the financial analysis. This was a reasonable determination. In any event, the member expressly stated that even if Mr. Paranirupasingam were a co-signer, "the couple's combined income in the relevant years under review would still fall short of the required income." Contrary to the applicant's submission, the member clearly took the family's global financial situation into account when determining whether special relief was warranted.

[39] The member considered all the factors relied on by the applicant. There is no suggestion that the member misapprehended or overlooked any relevant evidence or drew unfounded

inferences from the evidence. The member's weighing of the factors relied on by the applicant is explained in a clear and cogent fashion. Undoubtedly, the applicant is disappointed with the IAD's decision; however, she has not demonstrated any basis for judicial intervention.

VI. CONCLUSION

[40] For these reasons, the application for judicial review is dismissed.

[41] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-1263-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

ANNEX "A"

Immigration and Refugee Protection Regulations, SOR/2002-227

Requirements for sponsor

133 (1) A sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor

[…]

(j) if the sponsor resides

(i) in a province other than a province referred to in paragraph 131(b),

(A) has a total income that is at least equal to the minimum necessary income, if the sponsorship application was filed in respect of a foreign national other than a foreign national referred to in clause (B), or

(B) has a total income that is at least equal to the minimum necessary income, plus 30%, for each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application, if the sponsorship application was filed in respect of a foreign national who is

(I) the sponsor's mother or father,

(II) the mother or father of the sponsor's mother or father, or

(III) an accompanying family member of the foreign national described in subclause (I) or (II), and

[…]

Exigences : répondant

133 (1) L'agent n'accorde la demande de parrainage que sur preuve que, de la date du dépôt de la demande jusqu'à celle de la décision, le répondant, à la fois :

[…]

j) dans le cas où il réside :

(i) dans une province autre qu'une province visée à l'alinéa 131b) :

(A) a un revenu total au moins égal à son revenu vital minimum, s'il a déposé une demande de parrainage à l'égard d'un étranger autre que l'un des étrangers visés à la division (B),

(B) a un revenu total au moins égal à son revenu vital minimum, majoré de 30 %, pour chacune des trois années d'imposition consécutives précédant la date de dépôt de la demande de parrainage, s'il a déposé une demande de parrainage à l'égard de l'un des étrangers suivants :

(I) l'un de ses parents,

(II) le parent de l'un ou l'autre de ses parents,

(III) un membre de la famille qui accompagne l'étranger visé aux subdivisions (I) ou (II),

[…]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1263-21
STYLE OF CAUSE:	THINUJA SATKUNANATHAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 25, 2022
JUDGMENT AND REASONS:	NORRIS J.
DATED:	JANUARY 4, 2023

APPEARANCES:

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