Federal Court  Cour fédérale

Date: 20230220

Docket: IMM-9776-21

Citation: 2023 FC 249

Ottawa, Ontario, February 20, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JAMIE CARREON PANAGA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jamie Carreon Panaga, seeks judicial review of a decision of the Immigration Appeal Division ("IAD") dated December 14, 2021, dismissing the Applicant's appeal of his removal order.

[2] The IAD found that the Applicant provided insufficient evidence to substantiate humanitarian and compassionate relief ("H&C") in the form of a stay of removal.

[3] The Applicant submits that the IAD erred by ignoring central evidence in its assessment of the best interests of the child ("BIOC") affected by his removal.

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

A. *The Applicant*

[5] The Applicant is a 30-year-old citizen of the Philippines and permanent resident of Canada. He arrived in Canada in 2009, at the age of 17.

[6] The Applicant has a two-year-old son in Canada. The Applicant and his son's mother, Krystle Magallanes (Ms. "Magallanes"), were in a relationship for four years prior to their separation in 2021. The Applicant also has a 12-year-old daughter in the Philippines. His mother, grandmother, aunt, and brother all reside in Canada.

[7] On July 27, 2018, the Applicant was convicted of one count of theft of a motor vehicle, contrary to subsection 331.1(1) of the *Criminal Code*, R.S.C., 1985, c. C-46. As a result of his conviction, CBSA reported the Applicant inadmissible to Canada on October 17, 2018, on the grounds of serious criminality under subsection 36(1) of the *Immigration and Refugee Protection*

Act, SC 2001, c 27 ("*IRPA*"). The Applicant has had seven criminal convictions in Canada, dating back to 2016.

[8] An Enforcement Officer (the "Officer") with the Canada Border Services Agency ("CBSA") prepared a report under subsection 44(1) of *IRPA*, dated April 8, 2020, referring the Applicant for an admissibility hearing at the Immigration Division ("ID") and recommending that he be found inadmissible on the grounds of serious criminality. The Officer's report stated that the Applicant "is a repeat offender," "has a history of non-compliance and continues to disregard court imposed restrictions." The Officer also stated that the Applicant "continues to re-offend without any regard to the severity of his actions as evident by his criminal history and propensity to reoffend," and that he had failed to provide CBSA with submissions regarding his narrative and any relevant H&C factors, despite numerous requests for submissions sent to the Applicant.

[9] The admissibility hearing before the ID resulted in a removal order issued to the Applicant on October 9, 2020. The Applicant appealed the removal order to the IAD. On appeal, the Applicant did not dispute the legal validity of the removal order, but sought relief in the form of a stay of removal on the basis of H&C considerations.

[10] At the IAD hearing, held on October 15, 2021, the Applicant testified about the circumstances of his criminal convictions. For the offence of possession of property obtained by crime, the Applicant explained that his friend had stolen a motorcycle, which the Applicant then

borrowed. For the offence of theft of a motor vehicle, the Applicant explained that he was stranded at a casino parking lot and stole a running car to drive home.

[11] The Applicant also testified that he was a crystal meth user for about four years and his drug use had played a role in his convictions. He testified that he had completed a substance abuse counselling program and had not used drugs for several years. He also testified that he had been involved in caring for his two-year-old son alongside Ms. Magallanes, and that he wanted to "change [his] life" to eventually be able to sponsor his daughter from the Philippines.

B. *Decision Under Review*

[12] In a decision dated December 14, 2021, the IAD dismissed the Applicant's appeal of his removal order.

[13] On appeal, the Applicant sought relief on H&C grounds in the form of a stay of the removal order for a period of no more than two years. The Respondent sought dismissal of the appeal on the basis that there were insufficient H&C grounds to warrant special relief and, alternatively, that four years would be a more appropriate length for a stay of the removal order, if one was granted.

[14] The IAD's analysis of the H&C considerations was guided by the factors outlined in *Ribic v Canada (Minister of Employment & Immigration)*, [1985] I.A.B.D. No. 4, as endorsed by the Supreme Court of Canada in *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, and as addressed by the IAD in turn.

(1) Seriousness of the Offence

[15] The IAD found that the seriousness of the Applicant's offence weighs against special relief in this case, noting that this offence is "not an isolated incident but forms part of the Appellant's criminal history." The IAD agreed with the Applicant that the relatively light sentence for the underlying offence of theft of a motor vehicle mitigated its seriousness, but ultimately found that the Applicant's cumulative criminal record is an aggravating factor, weighs in favour of removal, and raises doubts about the Applicant's potential for rehabilitation.

(2) Potential for Rehabilitation

[16] The IAD found that the Applicant had displayed some potential for rehabilitation, weighing in favour of special relief. The IAD noted the Applicant's completion of a substance use program, his testimony that he had stopped using drugs even prior to completing the program, and the fact that he had not committed an offence in over three years, which are factors that weigh in favour of relief. That being said, the IAD also noted that the Applicant displayed "little insight" into the impact of his offences, expressed "little remorse" for his actions, and "casually detailed the circumstances of these incidents." The IAD found that this raises concerns about whether the Applicant would take such actions again if he felt the need. The IAD further noted that the Applicant has a history of failing to comply with conditions, which raises concerns about the suitability of a stay of removal in his case.

(3) Establishment in Canada

[17] The IAD found that the Applicant provided little evidence of positive establishment or his efforts to integrate into Canada in the 12 years he has been here. The IAD noted that the Applicant dropped out of school after six months, and provided no evidence to support his claim of short-term periods of employment or to indicate community involvement. The IAD found that despite the Applicant's family's statements indicating that he has the desire and potential to find a decent job and provide for his family, the Applicant has shown little efforts to do so since being in Canada. The Applicant did not show efforts to seek work since his last job in 2019. For these reasons, the IAD found that the Applicant's establishment in Canada did not weigh in favour of granting relief.

(4) Available Support

[18] The IAD found that the Applicant provided little evidence to show community support to assist with his rehabilitation. The IAD noted that although his family is a support system, they have not been able to prevent the Applicant from criminal involvement.

(5) Family Ties

[19] The IAD found that the Applicant's family ties weigh in favour of granting special relief, seeing as his immediate family and some extended family are in Canada. The IAD found this to be mitigated by the little evidence to show that the Applicant's family would be dislocated by his removal from Canada.

(6) Potential Hardship Upon Removal

[20] Considering the country condition evidence provided by the Applicant, the IAD found that the situation likely facing the Applicant in the Philippines does not amount to hardship such that H&C relief is warranted. The Applicant submitted that he would face difficulty finding work in the Philippines, given the evidence of a poor economy and high levels of poverty, but the IAD noted that the Applicant is unemployed and supported by his mother, who also supports family members in the Philippines. There is nothing to indicate that such support would not continue upon his removal.

[21] The Applicant also submitted that if he were to engage in crime or drug use in the Philippines, he would face a serious risk of harm, given the evidence of poor prison conditions in the Philippines and the government's war on drugs. The IAD noted the Applicant's testimony that he had only used drugs recreationally, that he had displayed potential for rehabilitation in the past few years, and that any risk flowing from his involvement in crime and drug use in the Philippines is speculative in nature.

(7) BIOC

[22] The IAD noted that two minor children, the Applicant's son in Canada and daughter in the Philippines, were identified as being affected by his removal, but noted that the Applicant provided little evidence in his role in each of his children's lives. The IAD stated that financial support to the children was provided by their mother, given the Applicant being unemployed.

[23] The IAD acknowledged the Applicant's assertion that he provided a primarily caregiving role to his two-year-old son, while he was living with the child and Ms. Magallanes (the Applicant's then-partner) in shelters. This was corroborated by a letter from Ms. Magallanes describing the role he played in the child's life. However, the IAD noted that the letter is unsigned, unaccompanied by any supporting identity documents, and that the Applicant testified that he is no longer in touch with Ms. Magallanes, thereby mitigating the letter's weight in the BIOC analysis.

[24] While recognizing that it is generally in the BIOC to have access to both parents and staying the Applicant's removal would provide his son with access to his father, the IAD found that the Applicant proffered minimal evidence to show that he was actively involved in his son's day-to-day life. The IAD noted that the Applicant sees his son every weekend, though little evidence was provided to support this assertion, and that all financial support for the child came from the child's mother. The IAD further noted that while the Applicant expressed a desire to sponsor his daughter from the Philippines, no such effort has yet been made and the Applicant's return to the Philippines would allow for more involvement in his daughter's life. For these reasons, the IAD found that the best interests of his son weighed only mildly in favour of relief, and that the best interests of his daughter in the Philippines did not weigh in favour of relief.

[25] The IAD ultimately found that, weighing the above factors, the Applicant had failed to establish sufficient H&C grounds to warrant relief, taking into account the BIOC affected by his removal.

II. Issue and Standard of Review

[26] The sole issue is whether the IAD's decision is reasonable.

[27] 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.

[28] 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).

[29] For a decision to be unreasonable, the 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).

III. Analysis

[30] The Applicant challenges the reasonableness of the IAD's decision on the sole basis that it erred in its assessment of the BIOC affected by the outcome. The Applicant submits that the IAD ignored and misapprehended the evidence regarding his relationship with his Canadian son, thereby rendering a determination on the BIOC that failed to accord with the evidentiary record.

[31] The Applicant submits that, contrary to the IAD's finding that he provided little evidence to show an ongoing relationship with his Canadian son, the Applicant provided ample evidence. For instance, the Applicant testified at the IAD that he had been a primary caregiver for his son from his birth, that the Applicant and Ms. Magallanes would both care for the child together, and that upon the Applicant's separation with Ms. Magallanes, he spent every weekend with his son. The Applicant's mother, grandmother, and Ms. Magallanes each provided letters attesting to the close attachment between the Applicant and his son, and the impact the Applicant's removal would have on the child. The Applicant submits that despite this evidence, the IAD erroneously found that he provided no evidence to establish an ongoing relationship between him and his son, exhibiting a failure to view the evidence in its totality. The Applicant submits that the IAD further erred in undermining the weight to be given to Ms. Magallanes's letter on the basis that she and the Applicant are no longer in touch, as this does not reflect a material change in the relationship between the Applicant and his son. The Applicant contends that if the IAD found

his evidence and testimony regarding his son to lack credibility, it was required to provide reasons for this credibility finding, but failed to do so.

[32] The Applicant submits that the IAD's determination on the BIOC offends the principles outlined in *Vavilov*, specifically the proposition that "where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (at para 133). The Applicant contends that separation from his Canadian son poses high stakes, and the IAD therefore bears a heightened responsibility to provide clear reasons in its analysis of the BIOC. The Applicant submits that the IAD failed to fulfil this responsibility, rendering the decision unreasonable.

[33] The Respondent maintains that the IAD's assessment of the BIOC is reasonable in light of the Applicant's scant evidence and that the Applicant's submissions amount to a request that this Court reweigh the evidence, which is not its role on reasonableness review. The Respondent submits that the IAD assessed the available evidence pertaining to the Applicant's relationship with his Canadian son, and reasonably found that it warranted mild weight in the overall analysis. Relying on this Court's decision in *Latif v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 104, the Respondent submits that simple disagreement with the weight to be given to the BIOC in the assessment is not sufficient grounds to intervene in the IAD's decision (at para 55).

[34] The Respondent submits that, based on the evidentiary record, the IAD reasonably found there to be little information related to the Applicant's current role in his children's lives, by way

of his physical presence and in financial support. The Respondent notes that the unsigned letter from Ms. Magallanes was written prior to a material change in her connection to the Applicant. The Respondent contends that these findings are supported by the record.

[35] The Respondent further notes that although the Applicant submits that he was in a relationship with Ms. Magallanes for four years, the two began to cohabit in a city shelter in or around December 2019, and stopped cohabiting when they each left the shelter for their respective mothers' homes, approximately a year later. Their formal separation occurred in July 2021, when Ms. Magallanes began another a relationship, and the two are no longer speaking. The Respondent submits that the Applicant has therefore not visited his son's new home and "has little knowledge of his son's current life." The Respondent notes that despite the Applicant's claim that he sees his son every weekend, he provided no other details of what he does with his son other than taking him to the park, and testified that he provides no financial support for his son. The Respondent submits that the Applicant's mother's letter does not mention that she arranges pick up and drop off for the child on weekends, as the Applicant attests, and there is therefore nothing in the letters to substantiate the Applicant's claim of an ongoing relationship with his son.

[36] I agree with the Respondent that the IAD's assessment of the BIOC is reasonable. I do not find that the Applicant's evidence, including the supporting letters written by his mother and Ms. Magallanes, are sufficient to compensate for the lack of information regarding the extent of his ongoing relationship with or support for his son. While I agree that financial support is not the sole means of demonstrating an ongoing relationship between a father and son, the

Applicant's evidence shows only that he sees his son every weekend, with little detail about what these visits look like. Any consistent connection between the Applicant and his son is facilitated by his mother and Ms. Magallanes, who appear to be the child's central sources of support.

[37] I further note that the Applicant's Canadian son is not the Applicant's only child. The Applicant has a 12-year-old daughter in the Philippines, regarding whom there is no evidence or information. The Applicant has not provided evidence of any effort to support his daughter in the 12 years he has been in Canada. He claims that he wishes to sponsor his daughter to Canada, but the record does not indicate any efforts to do so, let alone to maintain an ongoing relationship with his daughter. In light of this, the IAD reasonably found that when considering the best interests of both the Applicant's children, the BIOC did not weigh significantly in favour of granting relief.

[38] For these reasons, I find that the IAD reasonably assessed the BIOC in the Applicant's case and found that it warranted little weight in favour of granting H&C relief in the form of a stay of removal.

IV. Conclusion

[39] This application for judicial review is dismissed. The IAD engaged in a reasonable assessment of the BIOC in its decision to dismiss the Applicant's appeal of his removal order. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-9776-21

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

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