Federal Court  Cour fédérale

Date: 20230222

Docket: IMM-4423-22

Citation: 2023 FC 260

Ottawa, Ontario, February 22, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

MUHAMMAD ZEESHAN AND MUHAMMAD AZAM QURESHI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Muhammad Zeeshan, is a national of Pakistan who currently resides in Pakistan. His father, Mr. Muhammad Azam Qureshi, is also from Pakistan. In 2017, Mr. Qureshi filed a first refugee claim in Canada, and submitted a second and updated one in 2018. His claim was accepted in 2018, at which point he applied for permanent residence and included his spouse and

his youngest son, Mr. Zeeshan, in his application. Mr. Zeeshan was 24 years old when his father filed his refugee claim and 25 years old when he was included in his father's application for permanent residence.

[2] On October 29, 2021, a procedural fairness letter was provided to the Applicants noting that, by virtue of his age, Mr. Zeeshan did not meet the definition of a "dependent child" under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The letter invited the Applicants to provide information and evidence to support a request for consideration of the application on humanitarian and compassionate [H&C] grounds, should they wish.

[3] Mr. Qureshi, his spouse, and his eight children are Ahmadi Muslims. In his submissions, Mr. Zeeshan highlighted his connection to Canada through his parents, the freedom of religion in Canada, his circumstances in Pakistan, and the situation for Ahmadis in Pakistan.

[4] On April 27, 2022, an officer of Immigration, Refugees and Citizenship Canada in London, England [Officer] denied Mr. Zeeshan's application on the basis that the H&C considerations did not justify granting him an exemption from the requirements of the IRPA [Decision].

[5] The Applicants assert that the Officer erred: (a) by failing to provide a reasoned explanation for the Officer's treatment of the systemic discrimination of the Ahmadis; (b) in the handling and weighing of Mr. Zeeshan's personal experience, especially in light of his father's

experience; and (c) by applying the wrong test and not considering all of the H&C factors in play.

[6] The Respondent submits that while the Officer specifically acknowledged that discrimination against the Ahmadi community occurs in Pakistan, he reasonably concluded, taking all the H&C factors into account, that an exemption was not warranted. The Respondent pleads that the Officer reasonably found that Mr. Zeeshan has family support as he can be financially supported by his parents from Canada and lives with his three older siblings.

[7] For the reasons that follow, this application for judicial review is dismissed.

II. Standard of Review

[8] The parties agree that the applicable standard of review is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85).

[9] It is the Applicants who bear the onus of demonstrating that the Officer's decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court 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", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100). As emphasized by Mr. Zeeshan during the

hearing, “a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis” (*Vavilov* at para 103).

[10] The focus must be on the decision actually made, including the justification offered for it, and not the conclusion the Court itself would have reached in the administrative decision maker’s place. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

III. Analysis

A. *Preliminary Issue – New Information*

[11] In their pleadings and at the outset of the hearing, the Respondent raised the issue that information contained in the affidavit of Shafia Bhatti dated December 19, 2022, specifically paragraphs 3 and 4, should not be considered on the basis that this information was not before the Officer.

[12] Mr. Zeeshan submits that the information was included to assure the Court that the matter is not moot.

[13] The general rule is that the evidentiary record before this Court on judicial review of an administrative decision is restricted to the evidentiary record that was before the administrative decision maker (*Association of Universities and Colleges of Canada v Canadian Copyright*

Licensing Agency (Access Copyright), 2012 FCA 22 at para 19 [*Access Copyright*]). While there are exceptions to the general rule (*Access Copyright* at para 20), none apply in the present case.

[14] The information in paragraphs 3 and 4 of Ms. Bhatti's affidavit will not be considered, however, I note Mr. Zeeshan's concern about mootness and confirm that this is not at issue in the present matter.

B. *The Decision is Reasonable*

[15] The Officer found that Mr. Zeeshan did not qualify as a "dependent child" as defined in the *Immigration and Refugee Protection Regulations*, SOR/2002-227, as he was over 22 years of age when his father's application was filed. Consequently, the Officer assessed Mr. Zeeshan's request on the basis of H&C considerations pursuant to subsection 25(1) of the IRPA.

[16] An exemption under subsection 25(1) of the IRPA is an exceptional and discretionary remedy (*Fatt Kok v Canada (Citizenship and Immigration)*, 2011 FC 741 at para 7; *Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 at paras 19-20). Subsection 25(1) of the IRPA confers broad discretion on the Minister to exempt foreign nationals from the ordinary requirements of that statute and to grant permanent resident status to an applicant in Canada if the Minister is of the opinion that such relief is justified by H&C considerations. The H&C discretion is a flexible and responsive exception that provides equitable relief, namely to mitigate the rigidity of the law in an appropriate case (*Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 at paras 13-14 [*Rainholz*]).

[17] H&C considerations are facts, established by evidence, that would excite in a reasonable person in a civilized community the desire to relieve the misfortunes of another provided these misfortunes warrant the granting of special relief from the otherwise applicable provisions of the IRPA (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 13, 21 [*Kanthasamy*]). As noted by my colleague Justice Andrew D. Little, "subsection 25(1) has been interpreted to require that the officer assess the hardship that the applicant(s) will experience on leaving Canada. Although not used in the statute itself, appellate case law has confirmed that the words 'unusual', 'undeserved' and 'disproportionate' describe the hardship contemplated by the provision that will give rise to an exemption" (*Rainholz* at para 15).

[18] It is the H&C applicant, in this case Mr. Zeeshan, who bears the onus of establishing that an H&C exemption is warranted. Where there is a lack of evidence or a failure to adduce relevant information in support of such an application, this is at the peril of the applicant (*Rainholz* at para 18).

[19] The Officer accepted that discrimination against the Ahmadi community occurs in Pakistan, but found that there was insufficient evidence that Mr. Zeeshan's personal situation warranted an exemption. Mr. Zeeshan pleads that this finding is unreasonable given the materials submitted from the National Documentation Package, the experiences of Mr. Zeeshan, and the fact that his father was granted refugee status on the basis of similar experiences. Mr. Zeeshan submits that the Decision lacks the requisite rational chain of analysis.

[20] The Respondent submits that Mr. Zeeshan's argument is effectively the following - once the Officer concluded he was Ahmadi, the Officer ought to have granted the H&C application. The Respondent highlights that there was limited evidence in the record and the factors, when taken cumulatively, did not meet the threshold. The Respondent pleads that the factors taken into account by the Officer, in addition to the discrimination, included the fact that he was pursuing a university education, lives with his three older siblings, and has a family network in Pakistan.

[21] I am not persuaded that the Decision is unreasonable. I agree with the Respondent that the test is not whether the Court would have arrived at the same conclusion as the Officer. The Supreme Court has clearly stated that a Court is to refrain from deciding the issue afresh and instead must consider only whether the decision, including the decision maker's reasoning process and the outcome is reasonable (*Vavilov* at para 83).

[22] In the present matter, taking into account the record before the Officer, I am satisfied that the Officer's reasoning can be followed without any serious flaws in its rationality or logic. In other words, there is a rational chain of analysis and no flaws that would serve to undermine the requirement that the Decision be justified, intelligible, and transparent.

[23] I agree with Mr. Zeeshan that the Officer did not specifically mention certain instances of discrimination that Mr. Zeeshan detailed in his letter entitled "Supplementary Information (Update) IMM 5283" to the Officer. Nevertheless, I do not find that this rises to the level of a reviewable error when the Decision is read holistically. In addition, there is a presumption that a

decision maker has weighed and considered all the evidence brought before them (*Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 38).

[24] While Mr. Zeeshan highlights that his father was granted refugee status, I am not persuaded that this is sufficient to render the Decision unreasonable. There are material differences in the legal and factual considerations between a claim for refugee status by Mr. Qureshi and the Officer's assessment of Mr. Zeeshan's H&C application.

[25] I disagree with Mr. Zeeshan, that the Officer failed to apply the correct test by failing to consider all the H&C factors in play, notably reuniting him with his family, his cultural view that he is still a dependent, and the emotional and financial support his parents could provide. I find that the Officer specifically mentioned Mr. Zeeshan's submissions that he was culturally and financially dependent on his parents, and then addressed the issue of finances and the family network with whom he resides. Ultimately, I find Mr. Zeeshan's argument on this point amounts to an impermissible request to reweigh the evidence considered by the Officer, which I decline.

IV. Conclusion

[26] For the foregoing reasons, I conclude that the Officer's reasons meet the standard of reasonableness set out in *Vavilov*.This application for judicial review is therefore dismissed. No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-4423-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review is dismissed; and

2. There is no question for certification.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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