Federal Court  Cour fédérale

Date: 20230224

Docket: IMM-1587-21

Citation: 2023 FC 268

Ottawa, Ontario, February 24, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

STEFAN RUDAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of a Senior Immigration Officer of the Human Migration and Integrity Division of Immigration, Refugees, and Citizenship Canada (the "Officer"), dated February 25, 2021 . The Officer refused the Applicant's application for permanent residence from within Canada on humanitarian and compassionate ("H&C") grounds

(the "Decision") pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

II. Background

[2] The Applicant, Stefan Rudan, is a 32-year-old male citizen of Serbia. He arrived in Canada on a work permit in April 2018. This permit was extended several times with the most recent extension expiring in October 2020. The Applicant and his twin brother are both professional soccer players. During their time in Canada, the Applicant and this brother played soccer for Scarborough SC and they worked as roofers at their other brother's roofing company, Rudan Roofing.

[3] The Applicant submitted this H&C application in April 2020, seeking an exemption from the requirement to apply for permanent residence outside of Canada. His twin brother submitted a similar application (court file IMM-1586-21; application for leave and judicial review dismissed). The Applicant sought H&C relief on the following grounds:

A. His establishment in Canada by way of his employment and community involvement.

B. The hardship he would face returning to Serbia due to the difficulty in obtaining employment.

III. Decision under Review

[4] The Officer refused the Applicant's H&C application in the Decision dated and communicated on February 25, 2021. The Officer found that the Applicant had a limited level of establishment in Canada and attached a minimal level of weight to the hardship he would face if he returned to Serbia. As a result, he found that there were insufficient grounds to justify an exemption under subsection 25(1) of the *IRPA*.

[5] The Officer first considered the extent of the Applicant's establishment in Canada. The Applicant submitted evidence outlining his economic establishment as well as his community and social integration. This evidence included:

A. information about the Applicant's job training related to roofing;

B. documents relating to his brother's roofing business;

C. documents showing the Applicant had savings in his bank account and had been making credit card and bill payments; and

D. two support letters from people in the Applicant's community who claimed to know him. The first from a real estate agent that assisted the Applicant's elder brother in buying a home and attended church with the Applicant. The second from a mortgage agent who knows the Applicant from the Serbian Orthodox community.

[6] From this evidence, the Officer viewed the Applicant's level of financial establishment favourably. Although the Applicant had established some relationships in Canada, the Officer found that his level of community integration was modest. As such, the Officer gave limited weight to the Applicant's establishment in Canada. The Officer also noted that while the Applicant's brothers were in Canada, some of his family remained in Serbia.

[7] Next, the Officer considered the hardship the Applicant would face if forced to return to Serbia. The Applicant points to economic barriers that would prevent him from earning a decent living. Namely, the Applicant claims that politics, crime and business are interconnected in Serbian soccer as in all areas of Serbian society. The Applicant claims this coupled with his lack of experience working as anything other than a professional soccer player would make it difficult for him to find employment. The Applicant also raised various concerns with the general country conditions in Serbia.

[8] The Officer reviewed the Immigration and Refugee Board's publicly available National Documentation Package (the "NDP") for Serbia. The NDP reported that there was significant human rights abuses, political strife and government corruption in Serbia.

[9] The Officer found that conditions in Serbia are not ideal due to the ongoing human rights issues. Further, the Officer accepted that, if returned, the Applicant would face challenges to find employment due to his lack of experience working as anything other than a professional soccer player and the high unemployment rate in Serbia. However, the Officer also found that the skills the Applicant gained during his time in Canada would assist him in obtaining employment. As a

result, the Officer was not convinced that the Applicant would not be able to find employment if returned to Serbia. Thus, the Officer attached minimal weight to this factor.

[10] Having attached modest weight to the Applicant's establishment in Canada and minimal weight to the hardship the Applicant would face back in Serbia, the Officer concluded against granting H&C relief.

IV. Issues

A. Was the Decision reasonable?

B. Did the Officer violate the duty of procedural fairness by raising a reasonable apprehension of bias?

V. Standard of Review

[11] The presumptive standard of review of this Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]). Nothing in this case warrants a departure from this standard.

[12] Issues that relate to procedural fairness are reviewed on a standard of correctness or a standard with the same import *(Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35, 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

VI. Analysis

A. *Was the Decision Reasonable?*

[13] Under subsection 11(1) of the *IRPA* a foreign national must apply for a visa before entering Canada. Subsection 25(1) of the *IRPA* provides the Minister with the discretion to exempt foreign nationals from this requirement on H&C grounds, allowing them to apply from within Canada.

[14] The Applicant bears the burden of establishing that H&C relief is warranted and that his personal circumstances are such that having to go outside of Canada to apply for a visa would cause a degree of hardship that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 21 [*Kanthasamy*]).

[15] The Applicant argues that the Officer's decision was unreasonable. He claims, primarily, that the Officer failed to adopt a global and empathetic approach as required under *Kanthasamy*. Further, the Applicant claims that the Officer violated the principle that when considering an applicant's establishment in Canada an officer should not look to the potential for an applicant's establishment elsewhere. He urges that the Officer committed this error several times, including when he considered the potential for the Applicant's employment in Serbia.

[16] The Respondent argues that the Officer fully and fairly considered the Applicant's request.

[17] H&C relief under subsection 25(1) entails global determination (*Kanthasamy* at paras 28, 60). An officer should not consider the various H&C grounds on which an applicant relies in isolation, but ought to weigh the grounds together to determine if relief is warranted.

[18] The Officer failed to do so in this case. The Applicant applied for H&C relief based on his establishment in Canada and the hardship he would face in Serbia. The Officer attached modest weight to the Applicant's establishment in Canada and minimal weight to the hardship in Serbia concluding that, considered together, the H&C considerations did not justify an exemption under subsection 25(1) of the *IRPA*.

[19] However, I find that the Officer failed to holistically or contextually consider the myriad of factors raised by the Applicant concerning hardship and instead narrowly focussed on the Applicant's employment prospects. The Applicant raised several hardship factors including human rights issues, political instability, rampant corruption and poor economic conditions, however, the Officer did not adequately address these factors and instead too narrowly focused on the Applicant's employment prospects if returned.

[20] With respect to the establishment factor, after concluding that the Applicant had not shown that he had a high level of integration and deep ties within the community, the Officer

noted that although the Applicant has two brothers in Canada, he also has family members in Serbia.

[21] While generally dealing with questions of establishment, one should only consider the Applicant's establishment in Canada during this part of the analysis, the Officer's observation with respect to family in Serbia does not make the Decision unreasonable on this front. Reasonableness review requires consideration of the decision as a whole and is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102, quoting *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). While the Officer noted the fact that the Applicant had family in both Canada and Serbia after already concluding that the Applicant's level of community integration was modest, the Officer was not unreasonable. The facts in the cases of *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 and *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 relied upon by the Applicant are distinguishable from the facts in this case. The rationale of the Officer is reasonably based on the evidence.

B. *There is no Reasonable Apprehension of Bias*

[22] The Applicant argues that the Officer's decision raises a reasonable apprehension of bias. In support of this, the Applicant cites the Officer's "overall lack of empathy" and a Toronto Star article stating that the Minister refused 70 percent of H&C applications during the first two months of 2021.

[23] The Respondent argues that statistical evidence is not enough to demonstrate bias.

[24] The test for determining if there is a reasonable apprehension of bias is found in *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 at 394:

> [T]hat test is what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.
>
> [Internal Quotations Omitted]

[25] There is no reasonable apprehension of bias in the present case. This Court has held on many occasions that statistical evidence is not sufficient to establish bias (see for instance *Turoczi v Canada (Citizenship and Immigration)*, 2012 FC 1423 at paras 13-15; *Cina v Canada (Citizenship and Immigration)*, 2011 FC 635 at paras 53-57).

VII. Conclusion

[26] Having found that the Officer was unreasonable in the hardship analysis, the application for judicial review is allowed.

JUDGMENT in IMM-1587-21

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter referred to a different officer for reconsideration.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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