Federal Court Cour fédérale

Date: 20230511

Docket: IMM-5410-22

Citation: 2023 FC 672

Ottawa, Ontario, May 11, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

SANJAY KUMAR VERMA
MAMTA VERMA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. and Ms. Verma seek judicial review of the denial of their application for permanent residence based on humanitarian and compassionate [H&C] grounds. I am dismissing their application because the officer did not turn positive establishment into a negative factor nor was required to conduct an independent review of their immigration history. The officer's decision is reasonable.

I. Background

[2] Mr. and Ms. Verma are citizens of India. They are spouses. While in India, Mr. Verma operated a trading and marketing business and a tourism business. Ms. Verma worked with him.

[3] They came to Canada in 2014 and claimed asylum, alleging that they were persecuted by Ms. Verma's ex-husband. Both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dismissed their claims. They applied for judicial review, but my colleague Justice Cecily Strickland dismissed their application: *Verma v Canada (Citizenship and Immigration)*, 2016 FC 404. They also applied for a pre-removal risk assessment [PRRA], which was denied.

[4] Mr. and Ms. Verma then applied for H&C relief. In support of their application, they invoked their establishment in Canada, in particular the fact that they opened a touristic business and an Indian restaurant in Toronto, employing five persons, as well as volunteer work. They also relied on adverse conditions in India. They highlighted the difficult economic situation caused by the COVID-19 pandemic, in particular for entrepreneurs, as well as the high rate of unemployment. They also argued that Ms. Verma, as a woman, would be exposed to gender-based violence and discrimination and they provided statistics in this regard.

[5] Mr. and Ms. Verma's application was dismissed. The officer gave high positive weight to their establishment in Canada. However, the officer found that there was insufficient evidence that they would have difficulty finding work upon returning to India. To reach this conclusion,

the officer relied on Mr. Verma's education and business experience and Ms. Verma's employment history in India and Canada. The officer also reviewed the allegations regarding gender-based violence and found that Ms. Verma's circumstances and the fact that she did not suffer such violence while in India tend to show that she would not be exposed to the conditions described in the country condition evidence.

[6] Mr. and Ms. Verma now seek judicial review of this decision.

II. Analysis

[7] An H&C decision is discretionary. The officer must weigh several relevant factors, but there is no rigid algorithm that determines the outcome. On judicial review, my role is not to assess the relevant factors myself or exercise the discretion anew, but simply to verify that the officer turned their mind to the relevant factors and gave them due consideration. To use the concepts put forward by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653, the decision must be based on internally coherent reasoning and comply with the relevant legal and factual constraints. If it does not, it is unreasonable and will be struck down.

[8] In this process, this Court's jurisprudence has identified certain categories of problematic reasoning that tend to show that a decision is unreasonable. For example, it is usually unreasonable to find that a document is forged solely because forged documents are easily available in a particular country. However, these are not absolute rules, but rather guidelines helping the Court accomplish its ultimate task, which is to decide whether the decision under

review is reasonable. Often, these guidelines identify a particular kind of faulty logic: in the example above, an abusive generalization. In the end, however, the reasonableness of a decision must be assessed by analyzing the reasons as a whole. Identifying a pattern of problematic reasoning previously criticized by this Court is a useful component of this exercise, but is not dispositive.

A. *Using Establishment Factors Against the Applicants*

[9] Mr. and Ms. Verma first argue that the officer mistakenly used positive establishment factors to negate the unfavourable conditions they would face upon returning to India, contrary to decisions of this Court such as *Sosi v Canada (Citizenship and Immigration)*, 2008 FC 1300 at paragraph 18; *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at paragraphs 21–26; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1142 at paragraph 37; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at paragraphs 23–28.

[10] I do not agree that the officer made such a mistake. The faulty logic highlighted in the above-mentioned cases is the abstract equation between an applicant's ability to find employment in Canada and their ability to do the same in their home country. If this is not supported by evidence, a positive factor is turned into a negative one in a manner that my colleague Justice Robert Barnes called "Catch-22 thinking": *Aguirre Renteria v Canada (Citizenship and Immigration)*, 2019 FC 134 at paragraph 8.

[11] In this case, however, there was evidence of Mr. and Ms. Verma's employment and businesses in India. This is simply not a case where boilerplate language was used to transform

evidence of establishment in Canada into proof that adverse conditions in the home country would not affect the applicant. When the officer's reasoning is carefully analyzed, one can see that it was buttressed by evidence pertaining to Mr. and Ms. Verma's actual circumstances in India. There was no "Catch-22" in this case.

[12] Simply put, the officer was required to assess the adverse conditions in India and cannot be faulted for considering direct evidence of how Mr. and Ms. Verma would be affected by these conditions. See, by way of example, *Zhou v Canada (Citizenship and Immigration)*, 2019 FC 163 at paragraph 17.

B. *Failure to Review Prior Immigration Decisions*

[13] Mr. and Ms. Verma also argue that the officer should have reviewed the prior decisions regarding their claim for asylum, including Justice Strickland's judgment. Such a review would have revealed that Ms. Verma had in fact been victim of gender-based violence before she divorced from her ex-husband in 2002, which would have led to an entirely different analysis of this factor.

[14] There are two major obstacles to this submission. First, this issue was never raised in Mr. and Ms. Verma's H&C application. They relied exclusively on the idea that Ms. Verma, as a woman, would be exposed to gender-based violence like all women in India. Their lawyer expressly stated that there was no evidence that Ms. Verma had been victim of such violence herself. It is trite law that on judicial review, a decision-maker cannot be faulted for failing to address an argument that was never made before them. The Federal Court of Appeal stated that

H&C applicants must clearly set out the grounds on which they rely and bear the onus of establishing the underlying facts: *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 FCR 635.

[15] Second, the previous decisions do not establish that Ms. Verma was victim of gender-based violence. It bears repeating that Mr. and Ms. Verma's claim for asylum and PRRA application were dismissed. The RPD found them not credible. The RAD decided that they had an internal flight alternative [IFA] and declined to address credibility issues. Of course, when the RAD does so, it assumes, for the sake of argument, that a risk exists in one part of the country. This kind of reasoning, however, does not amount to a positive finding about the risk. Rather, it is a finding that there is no risk elsewhere in the country. The RAD's comment that the risk is "local in nature" must be read in this context. On judicial review, Justice Strickland found that the RAD reasonably considered that IFA was the determinative issue and thus did not need to address credibility issues affecting proof of the risk. In reality, there is barely any reference to gender-based violence in these decisions.

[16] Given these insuperable obstacles, I need not address Mr. and Ms. Verma's submission that they had a legitimate expectation that the officer would independently review the prior decisions regarding their claim for asylum, despite the fact that they were not appended to the H&C application and the submissions did not refer to them.

C. *Failure to Address Contrary Evidence*

[17] Mr. and Ms. Verma argue that the officer did not address evidence that contradicted its findings regarding economic conditions. This, they say, is contrary to the principle established in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paragraph 17.

[18] I disagree. While the reasons do not address every aspect of the close to 700 pages of documentation submitted in support of the H&C application, the officer did not disregard the factual constraints bearing on them.

[19] The officer acknowledged the high rate of unemployment in India, but cited excerpts from a report of Australia's Department of Foreign Affairs and Trade [DFAT] to buttress the proposition that India's economy is growing quickly and is recovering from the effects of the COVID-19 pandemic. More generally, the officer found that Mr. Verma could either start a business or find employment in India. Mr. and Ms. Verma argue that in reaching these conclusions, the officer failed to address other parts of the DFAT report that are less favourable and other evidence that was mentioned in their lawyer's submissions.

[20] In my view, the reasons of the officer on this topic, while brief, sufficiently show that the officer was aware that there was evidence on both sides of the issue. In these circumstances, the weight given to adverse country conditions is very much for the officer to decide. It is not for the Court, on judicial review, to substitute its own assessment.

D. *Discrimination Against Women and Gender-Based Violence*

[21] Lastly, Mr. and Ms. Verma impugn the officer’s treatment of the issue of discrimination against women and gender-based violence. They argue that the evidence demonstrates that women in India face a very high level of discrimination and violence. In their view, the officer failed to appreciate the seriousness of the situation and erred in discounting this evidence merely because of their view that Ms. Verma’s personal circumstances would largely insulate her from these adverse conditions.

[22] Again, I do not agree. Of course, it is a mistake to disregard adverse country conditions because they are generalized rather than personalized, thus importing concepts more relevant to the determination of refugee status: *Marafa v Canada (Citizenship and Immigration)*, 2018 FC 571. Nevertheless, applicants must show, by evidence or reasonable inferences, that “they would likely be affected by adverse conditions such as discrimination”: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 56, [2015] 3 SCR 909. In the present case, it was reasonable for the officer to inquire into Ms. Verma’s circumstances and to find that she would likely not be exposed to the kinds of hardships described in the lawyer’s submissions. See, by way of analogy, *Quiros v Canada (Citizenship and Immigration)*, 2021 FC 1412 at paragraphs 32–35.

III. Disposition

[23] Mr. and Ms. Verma have failed to show that the impugned decision is unreasonable. For this reason, their application for judicial review will be dismissed.

JUDGMENT in file IMM-5410-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Arghavan Gerami	FOR THE APPLICANTS
Aman Owasis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gerami Law Professional Corporation Ottawa, Ontario	FOR THE APPLICANTS
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT