Federal Court  Cour fédérale

Date: 20230523

Docket: T-1395-22

Citation: 2023 FC 717

Toronto, Ontario, May 23, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

MOHAMED AHMED HASSAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This Application seeks the judicial review of a Decision by the Minister's Delegate [MD] to refuse to grant Mr. Hassan citizenship pursuant to subsection 5(4) of the *Citizenship Act*, RSC 1985, c C-29 [*Act*]. The MD found Mr. Hassan's work to be neither of exceptional value to merit an exercise of discretion under that discretionary power to grant citizenship, nor that he faces special and unusual hardship that could only be alleviated through such a grant. I do not find that

the Decision was unreasonable, or that the Decision suffered from any other reviewable error, for the following reasons.

II. Background

[2] Mr. Hassan is a citizen of Somalia. He became a permanent resident [PR] of Canada in 2010, immigrating under the Federal Skilled Worker class with his wife and children. His wife and children have since obtained their Canadian Citizenship.

[3] At the time of his PR application, Mr. Hassan was working as an Administrative and Finance Manager for UNICEF in Ghana. After arriving in Canada in August 2010, Mr. Hassan spent about two months applying for jobs in Canada to support his family, but eventually returned to his employment with UNICEF, which requires him to work in different countries for his posts.

[4] On March 29, 2019, Mr. Hassan submitted an application for Canadian citizenship, in which he declared to have been absent from Canada for 1,252 days during the five years immediately preceding the date of his application and to have been physically present in Canada for 574 days. As Mr. Hassan did not meet the physical presence requirement under subsection 5(1)(c)(i) of the *Act*, he requested that his application be given discretionary consideration under subsection 5(4) of the *Act*.

[5] On June 10, 2022, the MD issued the Decision to refuse to grant Mr. Hassan citizenship pursuant to subsection 5(4) of the *Act*. The MD pointed out that there is a high threshold for the

exercise of discretion under s. 5(4), and that Mr. Hassan did not satisfy either of the two bases for its exercise. First, the MD found Mr. Hassan had not demonstrated how his work at UNICEF constituted services of exceptional value to Canada.

[6] Second, on special and unusual hardship, the MD concluded that Mr. Hassan had failed to establish that his skills would not be transferable in finding employment that would allow him to meet the physical presence requirement to be granted Canadian citizenship. The MD also considered the best interests of the children [BIOC] but found that Mr. Hassan was never prevented from returning to Canada to be with his children, thus the BIOC could not constitute the basis for special and unusual hardship that can only be alleviated through a discretionary grant of citizenship.

III. Analysis

[7] Section 5(4) of the *Act* states that "the Minister may, in his or her discretion, grant citizenship to any person to alleviate cases of statelessness or of special and unusual hardship or to reward services of an exceptional value to Canada" [emphasis added]. Thus, to be granted discretionary citizenship, applicants have the onus to demonstrate that either their work is of exceptional value to Canada and deserves to be rewarded, or that they face special and unusual hardship that can only be alleviated through a grant of citizenship.

[8] This Courts has held that there is a high threshold for the exercise of discretion under s. 5(4) (*Tabori v Canada (Citizenship and Immigration)*, 2022 FC 1076 at para 29 [*Tabori*], citing *Chen v Canada (Citizenship and Immigration),* 2012 FC 874 at para 19).

[9] The Parties agree that the MD's Decision is reviewable under the standard of reasonableness, as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

A. *Determination that Mr. Hassan's services were not of an exceptional value to Canada*

[10] Mr. Hassan submits that the MD erred in not considering his work for UNICEF as work of exceptional value to Canada. He explains that he was responsible for the management of financial and administrative support for humanitarian and development programs for vulnerable populations in Sudan, Ghana, Comoros, North Korea and Vietnam and maintains that his work with UNICEF is of exceptional value to Canada, because some of the programs he helped to implement are funded by the Government of Canada. For example, he points out that the Nutrition program for vulnerable and hard to reach children in Ghana was fully funded by the Canadian International Development Agency, and that the Humanitarian programs to women and children in North Korea is co-funded by the Government of Canada.

[11] Mr. Hassan contends that the MD erred by failing to indicate what would constitute "exceptional value" and by unreasonably distinguishing his case with that of the applicant in *Halepota v Canada (Citizenship and Immigration)*, 2018 FC 1196 [*Halepota*]. He notes that there, Ms. Halepota worked for an agency of the United Nations, the UNHCR. Mr. Hassan contends that in light of this Court's decision in *Halepota*, people who work for the United Nations or an affiliate organization must be recognized as providing services of exceptional value to Canada.

[12] I cannot agree with this argument: the MD did not need to set out what would have constituted exceptional value to Canada, as Mr. Hassan contended. Indeed, in *Halepota*, Justice Grammond held that "[w]hile [the decision-maker] was not required to articulate a "test" beyond the language of subsection 5(4), she had to explain what features of Ms. Halepota's work disentitled her from consideration under that provision."

[13] In addition, this case differs markedly from *Halepota* because there, the decision-maker failed to address the central submissions of the applicant as to her exceptional value, unreasonably comparing her UNHCR work to that of "any individual that is employed with an international humanitarian organization."

[14] Here, by contrast, the MD considered Mr. Hassan's personal situation by looking in a comprehensive manner at the job responsibilities with UNICEF. The MD noted in the lengthy and detailed Decision that "[d]ecisions rendered under subsection 5(4) of the *Act* are made on a case-by-case basis and the onus is on Mr. Hassan to demonstrate that they are deserving of a grant of citizenship on the basis of the statutory criteria."

[15] In my view, this conclusion was open to the MD. I cannot agree with Mr. Hassan's proposition that this Court has recognized in *Halepota* that all people who work for the United Nations or an affiliate organization must be recognized as providing services of exceptional value to Canada. Accepting Mr. Hassan's argument would mean that all employees of UNICEF, regardless of their duties, would satisfy the threshold. This would dilute and undermine the requirement to establish "exceptional" value. Not all employees of UNICEF meet this high bar.

[16] Furthermore, the decision in *Halepota* was incoherent since the decision-maker recognized that Ms. Halepota's work was providing valuable services to vulnerable population groups in under privileged countries, and aligned with Canada's humanitarian assistance mandate (*Halepota* at para 12), but then concluded that it did not constitute services of exceptional value to Canada for the purposes of s. 5(4).

[17] Justice Grammond pointed out that the rationale of the MD in that case was problematic in various ways, including the justification provided by the respondent in *Halepota*—that work for the UNHCR/United Nations outside of Canada had "no nexus to Canada", given that they were international organizations (*Halepota* at para 17). The decision in that case and these arguments were held to be fundamentally flawed for various reasons, including the devaluing of her work on the basis of it being internationally-oriented.

[18] Here, on the other hand, the MD did what the decision-maker failed to do in *Halepota*—namely considered precisely what the Applicant had done for the international organization (UNICEF, in this case). The MD never intimated the fact that working abroad for an international humanitarian organization could not qualify as being of exceptional value to Canada.

[19] Rather, here the MD simply found that the nature of Mr. Hassan's duties had not met the threshold of being exceptional. He thus failed to meet his onus—finding that: "[w]hile it appears that the Applicant has worked for many years with UNICEF and that he has performed his duties and responsibilities well, the Applicant has not reasonably explained nor do the documents he

has provided demonstrate how his duties and responsibilities as an employee of UNICEF are exceptional services to Canada."

[20] Based on these observations, the MD concluded that Mr. Hassan's work with UNICEF, which mainly consisted of tasks in logistics and coordination as reflected by his job titles and responsibilities, did not amount to work of exceptional value to Canada—despite it being for an agency of the United Nations. The MD determined that the Government of Canada's funding to UNICEF could not form the basis on which Mr. Hassan should receive a discretionary grant of citizenship, because these financial contributions alone do not establish that the Applicant's work is of exceptional value to Canada.

[21] In short, the MD's reasons do not suffer from the same flaws as the of *Halepota* case. Here they are entirely coherent, and "add up" under a *Vavilov* analysis. The MD was justified in finding that Mr. Hassan's work duties for UNICEF abroad—in management of financial and administrative support—did not meet the exceptionality required by s. 5(4) of the *Act*. Again, the case law has consistently held that discretionary grants of citizenship made under that provision are made only in very exceptional cases (*Tabori* at para 30).

[22] Mr. Hassan also relies on the decisions in *Lee (Re)*, 1997 CanLII 16799 (FC) [*Lee*], *MH (Re)*, 1996 CanLII 11920 (FC) [*MH*] and *Collier v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1511 [*Collier*] to argue that since the work performed by the applicants in those cases was recognized as being of exceptional value to Canada, so should the work of Mr. Hassan for UNICEF because his work is comparable in value "if not even more."

Mr. Hassan argues that if Canada was prepared to provide citizenship to a professional athlete, such as in the cases of *Collier* and *MH*, then Canada should grant citizenship to him on the basis that he is a United Nations employee who is assisting Canada in furthering its humanitarian goals.

[23] Again, I remain unpersuaded by these arguments. First, Mr. Hassan mistakenly relies on decisions that share little in common with this judicial review either on the facts or the legal issue in question. The granting of previous applications on different facts does not bind this Court on future cases with distinct sets of facts. Each decision rendered under s. 5(4) of the *Act* is made on a case-by-case basis, with regard to the applicant's individual circumstances.

[24] *Collier* and *Lee* do not stand for the principle that all volleyball players or all environmental engineers are entitled to a discretionary grant of citizenship for exceptional service under s. 5(4). Likewise, they do not extend to completely different jobs or careers.

[25] Second, I note that the legal context out of which those two cases arose under the prior citizenship regime (different physical criteria) was distinct from the current physical residency requirements. Thus, both the factual and legal underpinnings of those three cases differ from Mr. Hassan's.

B. *Determination that there was no special and unusual hardship*

[26] Mr. Hassan raises a second issue, namely that the MD erred by failing to accord proper weight to the hardships he would face if his grant of citizenship were delayed, due to having to

leave his work at UNICEF in order to fulfill the current residency requirement, which would in turn affect his family, including undermining the best interests of his children. Mr. Hassan contends that his PR status would be thrown into jeopardy, and if lost, would lead to removal to Somalia, as well as the hardship of not being able to travel while renewing his PR card.

[27] These arguments fail to be any more convincing than those Mr. Hassan raises on the first issue (services of exceptional value to Canada). The notion of "special and unusual hardship" under s. 5(4) of the *Act* is an exacting one, as explained by Justice Russell in *Ayaz v Canada (Citizenship and Immigration)*, 2014 FC 701 at para 50:

> While there is no firmly established test for "special and unusual hardship" under s. 5(4) of the *Act*, in my view, the following remarks by Justice Walsh in *Re Turcan* (T-3202, October 6, 1978, FCTD), as quoted by him in *Naber-Sykes (Re)*, [1986] 3 FC 434, 4 FTR 204 [*Naber-Sykes*] remain valid and serve as a good starting point:
>
> > The question of what constitutes "special and unusual hardship" is of course a subjective one and Citizenship Judges, Judges of this Court, the Minister, or the Governor in Council might well have differing opinions on it. Certainly the mere fact of not having citizenship or of encountering further delays before it can be acquired is not of itself a matter of "special and unusual hardship", but in cases where as a consequence of this delay families will be broken up, employment lost, professional qualifications and special abilities wasted, and the country deprived of desirable and highly qualified citizens, then, upon the refusal of the application because of the necessarily strict interpretation of the residential requirements of the Act when they cannot be complied with due to circumstances beyond the control of the applicant, it would seem to be appropriate for the Judge to recommend to the Minister the intervention of the Governor in Council…
>
> [Emphasis added]

[28] With regard to his employment with UNICEF, the MD concluded that he could find comparable employment in Canada, noting that Mr. Hassan had transferable work experience and skills to become economically established in Canada. Mr. Hassan submits that in so finding, the MD speculated about his ability to find comparable employment.

[29] In contrast to Mr. Hassan's assertions, the MD reasonably assessed his circumstances. The MD explained his concerns:

> While the Applicant has provided a few examples of applying for jobs in Canada, he has not provided any documentation or information such as letters of rejection which indicate he was unsuccessful in his job search in Canada on the basis that his skills were not transferable or due to his age. Rather, the information and documentation provided by the Applicant demonstrates that he returned to his employment with UNICEF only a few months after becoming a permanent resident of Canada. The Applicant made a voluntary and personal choice to leave Canada and return to his employment with UNICEF, and any hardship that he has experienced as a result of this decision has not affected his status in Canada as a permanent resident.

[30] This rationale was open to the MD and there were no reviewable errors in his conclusions. The MD properly pointed out that Mr. Hassan had not substantiated his claims of an inability to find work in Canada with evidence. It was his choice to continue to work abroad for UNICEF, as he had before he immigrated to Canada.

[31] In addition, the MD considered Mr. Hassan's submission regarding the possible loss of his PR status and the inability to travel while awaiting his new PR card, but concluded those assertions were speculative. Mr. Hassan provided no evidence to support his argument that the risk of losing his PR status warranted the granting of citizenship in order to alleviate any special

and unusual hardship. Given the lack of evidence, the MD reasonably found the residency requirement neither onerous nor burdensome to the point that it would require the discretionary granting of citizenship (*Tabori* at para 37).

[32] The MD equally found Mr. Hassan failed to provide any evidence to support that he would be unable to travel or work outside of Canada during the processing of his PR card renewal, particularly because of the evidence that since obtaining PR status is 2010, Mr. Hassan was able to renew his PR status twice, once in 2016 and again in 2021, both on Humanitarian and Compassionate [H&C] grounds. He was also able to travel during the processing of his PR card renewals by obtaining a Canadian Travel Document from a Canadian Embassy while abroad. Thus, there was nothing unreasonable about the MD concluding that Mr. Hassan's arguments that he would not be able to renew his PR status were speculative.

[33] Lastly, Mr. Hassan argues the MD's assessment of his establishment and other H&C considerations was unreasonable because the MD did not give proper weight to the evidence supporting Mr. Hassan's connection to Canada. However, as noted by the MD, an assessment under s. 5(4) of the *Act* does not require an assessment of an applicant's connection to Canada. The assessment under the "special and unusual hardship" ground of s. 5(4) is not equivalent to a humanitarian and compassionate assessment under s. 25(1) of *Immigration and Refugee Protection Act*, SC 2001, c 27.

[34] In short, the MD reasonably concluded that Mr. Hassan failed to meet his onus to demonstrate how his establishment warranted a discretionary grant of citizenship under s. 5(4). Mr. Hassan simply disagrees with the MD's weighting of the evidence.

IV. Conclusion

[35] The Decision was reasonable, raising no reviewable errors. The Parties propose no question of general importance for certification, and I agree that none arises.

JUDGMENT in file T-1395-22

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.

2. No questions for certification were argued and I agree none arise.

3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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