Federal Court  Cour fédérale

Date: 20230512

Docket: IMM-447-22

Citation: 2023 FC 680

Ottawa, Ontario, May 12, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

RASHID RAHMOND CLARKE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Rashid Rahmond Clarke [Applicant] seeks judicial review of a Senior Immigration Officer's [Officer] May 31, 2021 decision wherein the Officer refused the Applicant's application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds [Decision]. The Officer, having assessed the Applicant's establishment, the best interest of the children [BIOC], and the risk and adverse country conditions, found insufficient

H&C considerations to justify an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The application for judicial review is allowed. The Officer's assessment of the Applicant's establishment was unreasonable.

II. Background Facts

[3] The Applicant is a 25-year-old citizen of Grenada. In 1997, at the age of two, the Applicant arrived in Canada with his mother. Since his arrival, the Applicant has resided in Toronto with his mother and three younger siblings, aged 10, 12, and 17 at the time of the Decision.

[4] In 2009, the Applicant was granted permanent resident status. In 2014, at the age of 18, the Applicant was involved in an incident that led to criminal charges. On November 22, 2017, the Applicant was convicted of two counts of robbery. He was sentenced to 7 years and 6 months' imprisonment, less 1 year and 8 months of pre-sentence custody.

[5] Following an admissibility hearing, the Applicant was found to be criminally inadmissible to Canada pursuant to paragraph 36(1)(a) of *IRPA* and his permanent resident status was revoked. On November 15, 2018, the Applicant was issued a deportation order.

[6] On September 4, 2019, the Applicant submitted a Pre-Removal Risk Assessment [PRRA]. The PRRA was refused on September 30, 2019.

[7] On January 11, 2021, the Applicant submitted an application for permanent residence on H&C grounds. On July 19, 2022, Justice Heneghan ordered the stay of the Applicant's removal pending the final disposition of this application for judicial review.

III. The Decision

[8] On May 31, 2021, the Officer refused the Applicant's H&C application. Having considered the Applicant's establishment, the BIOC, and the risk and adverse country conditions, the Officer found insufficient H&C grounds to warrant relief.

[9] In first assessing the Applicant's establishment, the Officer gave considerable weight to the Applicant's lengthy residence in Canada and some positive weight to the emotional hardship the Applicant would experience if separated from his family. The Officer accepted the Applicant's documentary evidence surrounding his involvement in the organization "Pathways to Education", his scholarship, and his employment as a positive endorsement of his personality traits. However, the Officer found little objective documentary evidence to corroborate the Applicant's employment, and insufficient evidence that the Applicant was well established from an economic perspective. Similarly, the Officer found insufficient evidence to indicate that the Applicant was well established from a community integration or familial perspective. Overall, the Officer concluded that the evidence did not indicate that the Applicant was well established.

[10] Turning to the BIOC, the Officer acknowledged the minor siblings' letters and accepted that the Applicant has played an important role in their lives. However, the Officer noted that there was little evidence of how the Applicant continued to play a fatherly role during his

detention, and that there was insufficient evidence that the Applicant's mother had not been and could not continue to be the primary caregiver of the siblings. Further, the Officer found a scarcity of objective documentary evidence to corroborate the siblings' psychological hardship and involvement with a social worker. Overall, the Officer found insufficient evidence to indicate that the Applicant's absence would adversely affect his siblings' lives. The Officer further noted that there was little evidence to indicate why the Applicant could not communicate with his siblings through modern communication tools or why his siblings could not visit him.

[11] As for the hardship that the Applicant would experience in Grenada, the Officer accepted that the Applicant would face challenges in establishing himself in Grenada due to his overall lack of ties. However, the Officer found that the Applicant's personality traits, future educational aspirations, and government support services assist to mitigate such hardship. The Officer also acknowledged Grenada's unemployment and poverty rates, but found that the Applicant's age and health could mitigate these factors. Lastly, the Officer found insufficient evidence to support the Applicant's personalized hardships based on his profile as a deportee with past criminal activity.

[12] The Officer concluded with a global assessment of the factors. The Officer gave the Applicant's establishment little weight. While the Officer noted that the Applicant has resided in Canada since he was a toddler, the Applicant provided little evidence to suggest that he is well-established. Further, the Officer gave considerable positive weight to the Applicant's strong family ties in Canada and lack of family ties in Grenada. The Officer also accepted the important role of the Applicant in his siblings' lives; however, the Officer drew a negative inference from

the Applicant's conviction, finding that it did not reflect positively on his character. The Officer found that this factor was determinative, as it outweighed the positive factors in the application. Lastly, the Officer balanced the Applicant's remorse with the seriousness of his conviction and assigned this factor negative weight.

IV. Issues and Standard of Review

[13] After considering the parties' submissions, the sole issue is whether the Decision is reasonable. The relevant sub-issues are:

1. Was the Officer's assessment of the Applicant's establishment reasonable?
2. Was the Officer's assessment of the BIOC reasonable?
3. Was the Officer's assessment of the Applicant's criminal convictions reasonable?
4. Was the Officer's global assessment of all H&C factors reasonable?

[14] Both parties submit that the standard of review for the merits of an administrative decision is reasonableness. I agree. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] arise in this matter (at paras 16-17). Further, due to their exceptional and highly discretionary nature, H&C decisions warrant significant deference (*Alghanem v Canada (Citizenship and Immigration)*, 2021 FC 1137 at para 20).

[15] A reasonableness review is a robust form of review that requires the Court to consider both the outcome of the decision and the underlying rationale to assess whether the decision, as a whole, bears the hallmarks of reasonableness — justification, transparency and intelligibility —

and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 13, 15, 87, 99). However, a reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (AG)*, 2018 SCC 31 at para 55). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether the decision falls within the range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Analysis

[16] As noted above, the Applicant advanced four issues with the Officer's Decision. In light of my determination that the Officer's assessment of the Applicant's establishment was unreasonable, I will only summarize the parties' submission on this issue.

A. *Was the Officer's assessment of the Applicant's establishment reasonable?*

(1) Applicant's Position

[17] The Officer's assessment of the Applicant's establishment was unreasonable. First, the Officer did not explain why the evidence surrounding the Applicant's economic and community integration was insufficient (*Magonza v Canada (Citizenship and Immigration),* 2019 FC 14 at para 35 [*Magonza*]; *Sarker v Canada (Citizenship and Immigration),* 2020 FC 154 at para 11; *Shekari v Canada (Citizenship and Immigration),* 2022 FC 70 at para 24 [*Shekari*]). This lack of transparency leaves this Court in the dark as to the Officer's reasoning process.

[18] Further, the Officer overlooked positive establishment factors, including the Applicant's lengthy period of residence and studies the same community, contrary to Immigration, Refugees, and Citizenship Canada's Guidelines [Guidelines]. While the Guidelines are not law, they play an important role in assessing the reasonableness of decisions (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 32 [*Kanthasamy*]). The Respondent's suggestion that an officer is entitled to ignore the Guidelines in favour of what they deem appropriate runs contrary to the jurisprudence.

[19] Lastly, and most significantly, the Officer failed to appreciate the context of the Applicant's 20-year establishment in Canada. Although the Officer acknowledged that the Applicant's residence in Canada has been "lengthy", the Officer does not appreciate that this "lengthy" residence consisted of the entirety of the Applicant's formative years. The Applicant grew up in Canada, studied at Canadian schools, made Canadian friends, acquired Canadian culture, and is wholly a product of Canadian society (*Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 at para 25).

(2) Respondent's Position

[20] The Applicant has failed to identify a reviewable error of the Officer's assessment of the Applicant's establishment. The Applicant's submission on the Guidelines is an attempt to re-weigh the evidence. An Officer must not fetter their discretion by treating the Guidelines as legally binding, but should consider the specific circumstances of the case (*Kanthasamy* at para 32). The Officer considered the Applicant's integration into Canadian society and found it to be overall limited.

[21] Contrary to the Applicant's assertions, the Officer did not minimize his 20-year establishment in Canada. The Officer gave considerable weight to the fact that the Applicant has resided in Canada for most of his life. The Officer also considered the Applicant's employment, scholarship, volunteerism, and family ties in Canada. However, weighing against the Applicant is the existence of little objective documentary evidence to corroborate his economic, community, or familial establishment. Where there is insufficient evidence, it is open for the Officer to find that the claim is not established (*Owusu v Canada (Citizenship and Immigration)*, 2004 FCA 38 at para 8 [*Owusu*]). Further, an applicant's degree of establishment is not sufficient in and of itself to justify an H&C exemption (*Singh v Canada (Citizenship and Immigration)*, 2009 FC 11 at paras 51-52).

(3) Conclusion

(a) *Legal Principles*

[22] Subsection 25(1) of *IRPA* provides the Minister of Citizenship and Immigration [Minister] with the ability to grant a foreign national permanent resident status or an exemption from any applicable criteria or obligations where the Minister is of the opinion that such relief is justified by H&C considerations, including the best interests of the children. H&C considerations are facts, as established by evidence, that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at para 21, citing *Chirwa v Canada (Minister of Manpower and Immigration)* (1970), 4 IAC 338 (Imm App Bd) at 350). Subsection 25(1) serves to provide equitable relief in such circumstances (*Kanthasamy* at paras 21-22, 30-33, 45).

[23] The Applicant has the onus of establishing that an H&C exemption is warranted (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45).

(b) *Analysis*

[24] The Officer's assessment of the Applicant's establishment was unreasonable.

[25] It is true that H&C applicants are required to put their best foot forward, and the failure to do so is at their own peril (*Owusu* at para 8; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 339 at paras 33-37). Decision-makers are also entitled to significant deference where sufficiency findings surrounding evidence are involved, so long as they are explained (*Magonza* at para 35; *Shekari* at para 24).

[26] In the present matter, the Officer repeatedly rejects the Applicant's submissions concerning his economic and community integration on the basis that there is "insufficient evidence" or "insufficient objective documentary evidence". Having reviewed the record, I find this particularly troubling in terms of the Applicant's community integration. While the Applicant did not advance additional evidence beyond his written submissions to support his asserted employment, income, or participation in competitive sports, he did provide a letter from a Community Revitalization Assist speaking to his volunteer work with Toronto Community Housing from April 2014 to July 2015. The Officer failed to explain why the evidence was insufficient to support counsel's submissions that the Applicant volunteered his time in the community. Absent such explanation, the Court is unable to discern why the Officer reached their conclusion. Accordingly, the Decision is not justified (*Vavilov* at para 86).

[27] Turning to the Applicant's remaining assertions, I agree that the Officer further erred in failing to consider the Applicant's history and evidence in light of the legal principles articulated above. The Applicant concedes that the Guidelines are not legally binding and are not intended to be exhaustive or restrictive; however, they may be useful in assessing the reasonableness of a decision (*Kanthasamy* at para 32). The Guidelines set out various factors for officers to consider in assessing an applicant's degree of establishment in Canada, including whether the applicant has remained in one community or has undertaken "any professional, linguistic or other studies that show integration into Canadian society." Related to this argument is the principle that, where a decision-maker is silent on contradictory evidence, an inference can be drawn that such evidence was overlooked (*Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, [1999] 1 FC 53 at para 17, [1998] FCJ No 1425).

[28] Here, the Officer's consideration of the Applicant's establishment was devoid of human implication considerations. While the Officer noted that the Applicant resided in Canada for most of his life and gave this factor considerable weight, there was no acknowledgement that his 20 years in Canada represented his formative years, having arrived in Canada at the age of two. Further, the Officer did not consider the possible positive factors of the Applicant's integration into Canada. For instance, the Applicant's H&C application and submissions, as well as letters from family members, spoke to the fact that the Applicant had never lived outside of Toronto and that he completed 12 years of education at various Toronto Catholic schools. This was the nature of the analysis required of the Officer. Failure to consider this evidence further renders the Decision unjustifiable.

[29] The above errors are sufficient to dispose of the application.

VI. Conclusion

[30] The application for judicial review is allowed. The Decision was unreasonable as the Officer erred in their assessment of the Applicant's establishment.

[31] The parties have not proposed a question for certification and none arises.

JUDGMENT in IMM-447-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted to another officer for re-determination.
2. There is no question for certification.
3. There is no order for costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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