

Federal Court



Cour fédérale

Date: 20230912

Docket: IMM-799-22

Citation: 2023 FC 1235

Ottawa, Ontario, September 12, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ABDURRAHMAN ABDALLA BEN AMER

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Abdurrahman Abdalla Ben Amer, seeks judicial review of a decision by a Senior Immigration Officer (the “Officer”) dated January 11, 2022, denying her application for permanent residence on humanitarian and compassionate (“H&C”) grounds, pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Officer found that the Applicant provided insufficient evidence of establishment in Canada and potential hardship in Libya on the basis of adverse country conditions such that H&C relief is warranted.

[3] The Applicant submits that the Officer erred in assessing both H&C factors, rendering the decision unreasonable.

[4] For the reasons that follow, I find that the Officer's decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. The Applicant

[5] The Applicant is a 32-year-old citizen of Libya. His parents and four siblings all reside in Libya. The Applicant identifies as an atheist.

[6] The Applicant arrived in Canada on a study permit and multiple-entry temporary resident visa ("TRV") on September 26, 2012. He began pursuing aviation studies at Centennial Flight Centre in September 2012 and studied English at the University of Alberta from September 2012 to May 2014. The Applicant completed three academic courses in the Centennial Flight Centre over the course of two academic years.

[7] The Applicant was then accepted to Moncton Flight School, where he studied from September 2014 to September 2017 and during which he also completed an English Skills Study Program at McKenzie College from June to August 2016. The Applicant claims that when the war began in Libya in 2014, his father could no longer support his studies and he eventually had to stop his studies. He wrote the aviation exam in 2017 but failed. The Applicant claims that at this time, he had fallen into a depression and his health was suffering.

[8] The Applicant visited his uncle in Texas from September 2017 to October 2017, where he sought medical attention and was prescribed medication. He claims that he was very depressed. In October 2017, he returned to Canada to continue his studies at the University of Alberta until January 2018. In the same month, he began working as a delivery driver with Skip the Dishes, also until January 2018.

[9] In February 2018, the Applicant travelled back to Tripoli, Libya to visit his family and renew his passport. He claims that this took longer than expected and he spent a longer period of time in Libya than he expected. He returned to Canada in or around June 2018, at which point he enrolled in the Edmonton Flying Club until May 2019. He resumed work with Skip the Dishes from July 2018 to July 2019. According to his affidavit, the Applicant claims that he was sending money to his family in Libya during this time.

[10] The Applicant again travelled to Tripoli from July 2019 to September 2019. According to his affidavit, he instantly regretted returning to Libya, felt unsafe there, never left the house, and knew that he could not return there again.

[11] The Applicant resumed work with Skip the Dishes upon his return to Canada. This employment was on and off from September 2019 until May 2021. He was enrolled at the centennial Flight Centre in January 2020, but the duration of this enrolment is unclear. The Applicant began working as a delivery driver with Bird in August 2021.

[12] The Applicant submitted his H&C application in May 2021. He claims that his personal circumstances warrant H&C relief on the basis of his establishment in Canada and the potential hardship he would face in Libya as an atheist and due to the adverse country conditions.

B. *Decision under Review*

[13] In a decision dated January 11, 2022, the Officer found that the factors raised by the Applicant, namely his establishment in Canada and the potential hardship facing him upon return, did not warrant an H&C exemption.

[14] Regarding establishment, the Officer found that despite living in different communities, the Applicant provided little evidence of integration into these communities such as volunteer work, community engagement, or strong ties. The Officer noted that the Applicant attended three different aviation schools over his nine years in Canada. Although the Officer accepted that the Applicant's father, who was financially supporting his education, was eventually unable to continue paying for his studies, the Applicant provided no explanation for why he was unable to complete his studies during the time that his father was still supporting him. The Applicant had employment only during some of the intervals during which he was able to work, only began

working several months after his father started experiencing financial difficulties, and provided little evidence to demonstrate financial stability or sound financial management.

[15] The Officer acknowledged the difficulties faced by the Applicant's father in 2016 and his inability to support the Applicant at that time. However, the Officer found that the Applicant provided little evidence of when this situation came about, how he was eventually able to resume his studies, and why he did not seek employment during his course work as was permitted under his study permit issued in January 2016. The Officer noted that by the time his father was no longer able to support him, the Applicant had been in Canada for approximately four years and could reasonably have obtained some aviation licenses or certifications. The Officer found limited evidence regarding his finances, studies, inability to complete the latter, and whether he was able to complete any aviation certification within nine years of being in Canada.

[16] While the Officer granted moderate weight to the Applicant's friendships in Canada, they also noted the lack of original support letters or identification information about these individuals. For these reasons, the Officer ultimately granted modest weight to the Applicant's hardship in Canada, finding that he provided insufficient evidence to demonstrate integration in Canada such that removal would cause hardship.

[17] With respect to the adverse country conditions, the Applicant claims that he fears returning to Libya due to the insecurity, lack of employment opportunities, poor public systems, and hardships associated with his atheist identity. The Officer also conducted further research of country conditions in Libya, which demonstrates that although "hundreds of thousands of

Libyans are in need of assistance, and that, as in most crises, vulnerable and marginalized populations are the most affected,” the “landscape began to shift” near the end of 2020.

[18] The Officer found that on the basis of this objective evidence, the humanitarian situation in Libya is improving but remains a concern. However, the Officer balanced this finding against two elements: 1) that Libya has experienced a period of stability for several months, with a holding ceasefire, and 2) that the Canadian government has enforced Administrative Deferral of Removals (“ADR”) for Libyans until the humanitarian situation in Libya stabilizes, meaning that a refusal of the Applicant’s H&C application would not result in the Applicant’s immediate removal and he would remain in Canada until the ADR is lifted. The Officer further found little evidence proffered by the Applicant to demonstrate that he would be unable to secure employment in Libya or that his family members and connections would be unable to assist him in securing employment.

[19] The Officer considered the Applicant’s stated fear of being forced to fly planes for militias and found that not only is the Applicant not yet licensed as a pilot, but there is little evidence to support this claimed fear and that there is currently a ceasefire in Libya that is holding.

[20] Regarding the Applicant’s claim that he fears hardship in Libya based on his atheist beliefs, the Officer acknowledged that some objective reports indicate that minority groups face some difficulties and the Applicant may therefore experience some hardship as an atheist. That being said, the Officer found that the Applicant provided insufficient evidence to support that the

Applicant has ever faced threats, intimidation, or difficulties as an atheist during his visits to Libya, and therefore granted this factor moderate weight.

[21] For these reasons, the Officer found that the Applicant's personal circumstances and evidence do not warrant H&C relief.

III. Issue and Standard of Review

[22] The sole issue raised in this application is whether the Officer's decision is reasonable.

[23] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[24] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[25] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[26] The Applicant submits that the Officer unreasonably assessed both H&C factors raised in his application: the Applicant’s establishment in Canada and the hardship he would face upon removal, on the basis of his atheist beliefs and the adverse country conditions. In my view, the Applicant has not raised a reviewable error in the decision. To the contrary, the Officer reasonably assessed the relevant factors and available evidence.

A. *Establishment*

[27] The Applicant submits that the Officer erroneously assessed his establishment in Canada through the lens of hardship and that establishment is not a competition but, rather, a factor to weigh holistically. The Applicant submits that the importation of the hardship analysis into other H&C factors reflects an unreasonable use of hardship as a benchmark for assessing an H&C application and offends the decision by the Supreme Court of Canada in *Kanthisamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 (“*Kanthisamy*”). The Applicant further submits

that the Officer's decision demonstrates a failure to adequately consider the multiple pieces of evidence pointing to his establishment.

[28] The Respondent submits that the Applicant's submission on this point reflects a mischaracterization of the Officer's assessment, which is reasonable and justified. The Respondent submits that the Officer reasonably reviewed the Applicant's limited evidence of establishment in Canada and found that this was insufficient to grant more than moderate weight in the overall H&C assessment, which must be read as a whole. The Respondent cites *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313 for the proposition that H&C officers must balance the hardship factor along with other factors and that "the absence of hardship will require that the other considerations be much more acute" (at para 29). The Respondent submits that the Officer's assessment of establishment was responsive to the evidentiary record and the jurisprudence.

[29] I agree with the Respondent. The Officer explicitly acknowledged positive aspects of the Applicant's establishment, including his English language training and intermittent employment periods, but reasonably found that the Applicant provided minimal evidence to demonstrate integration into his communities to attract more than moderate weight in the assessment. The Officer reasonably found little evidence of financial stability, a history of stable and ongoing employment, a history of stable studies or academic progress, or any evidence to support the Applicant's assertions of his friendships in Canada. The Officer provided clear and cogent reasons for the finding regarding establishment and thoroughly considered the evidence

provided. I find that the Applicant has failed to raise a reviewable error in the Officer's assessment of his establishment.

B. *Hardship*

[30] The Applicant submits that the Officer improperly considered the factor of hardship facing him upon removal to Libya, both in terms of hardship on the basis of his atheist beliefs and due to the adverse country conditions.

[31] On the issue of hardship on the basis of his atheist identity, the Applicant submits that despite acknowledging the evidence demonstrating that atheists face difficulties in Libya as a minority group, the Officer unreasonably found that the Applicant could be expected to hide his beliefs to mitigate hardship. The Applicant relies on this Court's decision in *Sitnikova v Canada (Citizenship and Immigration)*, 2016 FC 464 and *Su v Canada (Citizenship and Immigration)*, 2022 FC 615 for the proposition that the Officer's expectation of the Applicant to hide his identity is unreasonable. The Applicant submits that the Officer's consideration of hardship on the basis of his atheist identity runs contrary to the principles of empathy and compassion that are central to the H&C assessment, as per the Supreme Court in *Kanthisamy*.

[32] On the issue of adverse country conditions, the Applicant submits that the Officer unreasonably considered these conditions in light of the existence of an ADR for Libya. The Applicant submits that the Officer failed to adequately consider that the reason for the ADR in the first place is the severity of the conditions in Libya. He submits that the Officer unreasonably relied on the existence of the ADR to supplant a proper consideration of the

adverse country conditions and the hardship this would cause to the Applicant. The Applicant references previous decisions by immigration officers in which the existence of the ADR has been a ground upon which to grant H&C relief and submits that while officers are not bound by other decisions, “they surely need to explain why they are adopting such a divergent approach to the same objective evidence.”

[33] The Respondent maintains that the Officer reasonably assessed both issues pertaining to the factor of hardship. First, the Respondent submits that the Officer acknowledged the Applicant’s stated belief in atheism and clearly articulated the rationale for why this belief does not warrant granting the H&C application. The Respondent submits that the Applicant’s contention with this particular finding amounts to a disagreement with the degree of weight granted to the Applicant’s evidence on this issue, which is not a valid ground for judicial review (*Vavilov* at para 125). The Respondent submits that the Officer reasonably found little evidence to demonstrate that the Applicant’s atheist identity would result in hardship for him upon removal sufficient to ground H&C relief.

[34] Second, the Respondent submits that the Officer reasonably considered the adverse country conditions raised by the Applicant, including all the factors and evidence beyond the existence of an ADR for Libya. The Respondent notes that the Officer acknowledged the fact that an ADR means that the situation in Libya remains concerning and additionally found that due to the ADR, a refusal of the Applicant’s H&C application would not result in immediate removal and therefore, he would not be forced to return there during a time when the Canadian government has recognized it as destabilized. The Respondent further submits that this was one

consideration and the Officer goes on to consider several other aspects of country conditions raised by the Applicant, including the forced recruitment of pilots to fly militia planes, the treatment of atheists, and lack of employment opportunities. The Respondent submits that the mere presence of an ADR does not necessitate a positive H&C decision, citing *Ndikumana v Canada (Citizenship and Immigration)*, 2017 FC 328 (“*Ndikumana*”).

[35] I agree with the Respondent that the Applicant has not raised a reviewable error in the Officer’s assessment of hardship, both in terms of the Applicant’s atheist beliefs and the adverse country conditions. I first note that the Applicant’s submissions on this issue largely appear to take issue with the degree of weight the Officer granted to certain evidence and, in so doing, seek that this Court reweigh the evidence that was before the Officer. However, this is not this Court’s role on reasonableness review (*Vavilov* at para 125). Rather, this Court must review the decision as a whole to determine whether it contains “an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

[36] Reviewed as a whole, the Officer transparently and intelligibly reviewed all aspects of the evidence raised pertaining to the potential hardship the Applicant may face in Libya. On the issue of his atheist identity, it is open to the Officer to find that the Applicant failed to provide sufficient evidence that his atheist beliefs would result in hardship, particularly during his trips to Libya. The Officer’s reasoning with respect to this issue establishes a clear and rational line of reasoning that is reasonable in light of the evidence available.

[37] Furthermore, I find that the Applicant's submission regarding the Officer's assessment of the country conditions and the ADR for Libya reflects a selective review of the Officer's reasons, which extend far beyond the sole consideration of the ADR and thoroughly consider all aspects of the country conditions raised by the Applicant, reasonably finding that these factors and evidence do not militate in favour of granting H&C relief. First, the Officer is not bound by other decisions, based on entirely different set of facts and scenarios, in which the ADR may have provided a positive factor weighing in favour of an applicant. In any event, the mere existence of an ADR does not necessitate granting H&C relief (*Ndikumana* at paras 18-19). Second, the Officer's reasons do not say that the Applicant would not face hardship *because* of the existence of an ADR but, rather, that a delay of the Applicant's removal until the ADR is lifted would mean that he "will not have to deal with current conditions" in Libya, given that it would only be lifted if the situation improves (*Ndikumana* at para 19). This is a reasonable and rational analysis of the evidence.

[38] For these reasons, I find that the Applicant has not raised a reviewable error in the Officer's assessment of his establishment in Canada or the potential hardship in Libya. The Officer's decision is therefore reasonable.

V. Conclusion

[39] This application for judicial review is dismissed. The Officer's decision is responsive to the Applicant's evidence and bears all the hallmarks of reasonableness as per *Vavilov*. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-799-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-799-22

STYLE OF CAUSE: ABDURRAHMAN ABDALLA BEN AMER v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 12, 2023

JUDGMENT AND REASONS: AHMED J.

DATED: SEPTEMBER 12, 2023

APPEARANCES:

Richard Wazana FOR THE APPLICANT

Michael Butterfield FOR THE RESPONDENT

SOLICITORS OF RECORD:

Wazana Law FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario