Federal Court  Cour fédérale

Date: 20231016

Docket: IMM-3153-22

Citation: 2023 FC 1374

Ottawa, Ontario, October 16, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

DEGUAN XUE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Deguan Xue, seeks judicial review of a decision of a Senior Immigration Officer (the "Officer") of Immigration, Refugees and Citizenship Canada, dated June 25, 2021, denying his application for permanent residence on humanitarian and compassionate ("H&C") grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 ("*IRPA*").

[2] On the basis of the Applicant's establishment in Canada, the best interests of the child ("BIOC") in relation to the Applicant's infant son, and the country conditions for Christians in China, the Officer was not satisfied that an H&C exemption was warranted in this case.

[3] The Applicant submits that the Officer failed to meaningfully account for his connection to his religious community, failed to account for his connections and ties to Canada, and failed to properly consider the BIOC in relation to the issue of citizenship.

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

II. Facts

A. *The Applicant*

[5] The Applicant is a 38-year-old citizen of China. He is married to Xiu Juan Chen, who is also a citizen of China. The Applicant and his wife have an infant son, Aiden Xue, who was born in Canada.

[6] The Applicant and his wife arrived in Canada on August 20, 2017, and made a claim for refugee protection. In March 2018, the Refugee Protection Division ("RPD") determined that they were neither Convention refugees nor persons in need of protection. The Refugee Appeal Division ("RAD") upheld this decision in September 2019, in part finding that documentary

evidence confirmed that the Chinese government, and particularly the government in the liberal province of Fujian, was generally tolerant of groups that meet in homes or small groups.

[7] On June 25, 2021, the Applicant submitted an application for permanent residence on H&C grounds.

[8] The Applicant's aunt, sister-in-law, niece, and nephews reside in Canada. While in Canada, the Applicant and his wife have developed friendships. Since April 2018, the Applicant and his wife have been working at a sushi restaurant in Kitchener and are financially independent.

B. *Decision under Review*

[9] The Officer found the Applicant's circumstances did not warrant H&C relief pursuant to subsection 25(1) of *IRPA*.

[10] In evaluating the Applicant's establishment in Canada, the Officer considered the Applicant's employment, financial ties, family ties, and community ties. The Officer assigned some positive weight to the Applicant's employment and financial ties because they found that the Applicant demonstrated that he and his wife gained lawful employment for a significant period in Canada and were both self-sufficient and financially stable.

[11] The Officer assigned little weight to the Applicant's family and community ties because "the evidence did not indicate a level of interdependency with the Applicant's family members

that would justify an exercise of discretion." The Officer also found that there are various avenues for the Applicant and his wife to maintain contact with their family. While the Officer found some hardship associated with leaving Canada, they ultimately concluded that communicating through telephone, mail, and online would assist the Applicant and his wife to maintain their relationships.

[12] The Officer also assigned little weight to the fact that the Applicant had made donations to the Ontario Society for Prevention of Cruelty to Animals, finding little evidence that the Applicant could not make donations internationally or make similar donations locally.

[13] The Officer did not find that the BIOC warranted an H&C exemption. The Officer found little to corroborate the discrimination against Canadian-born children in China. The Officer also found little evidence suggesting that Aiden would be adversely impacted if the family returns to China, or that Aiden would be unable to obtain Chinese citizenship through his parents.

[14] The Officer was not persuaded that the Applicant had a current health issue that required continued treatment in Canada. The Officer also noted that the evidence did not suggest that the Applicant would not be able to access medical treatment in China.

[15] The Officer also did not find that the Applicant faced a serious possibility of hardship in China. Given that the Applicant provided no additional evidence since the RPD and RAD decisions that he would face persecution in China for his religious beliefs, the Officer referred to the RPD and RAD's conclusion that the Applicant was not at risk for such persecution. The

Officer also stated that there was little evidence tending to the "personalized situation or experiences of the applicant" and that they were "unable to conduct a meaningful assessment" on the Applicant's discrimination claim. While the Applicant put forward that the persecution facing him in China would deprive him and his family of social welfare, the Officer found that the Applicant provided little evidence to corroborate that individuals in China are deprived of social assistance due to being Christian.

[16] The Officer also found little evidence to suggest that the Applicant would be disadvantaged if he returned to China for work. He found that prior to coming to Canada, the Applicant was previously employed as kitchen staff and that his work experience at the sushi restaurant in Kitchener was transferrable.

[17] For these reasons, the Officer concluded that an H&C exemption was not warranted.

III. Issue and Standard of Review

[18] This application raises the sole issue of whether the Officer's decision is reasonable.

[19] The parties agree the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 16–17, 23–25). I agree. This is consistent with the Supreme Court of Canada's decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 44.

[20] 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).

[21] For a decision to be unreasonable, the 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).

IV. Analysis

[22] In my view, the Applicant has raised several reviewable errors in the Officer's decision that, when viewed cumulatively, render the decision unreasonable and warrant this Court's intervention.

[23] The Applicant submits that in assessing his establishment in Canada, the Officer repeatedly granted "some" weight to specific factors and evidence, without indicating how much

"some" weight constitutes, what specific factors were considered, and the rationale for assessing the evidence in this manner. The Applicant submits that this belies the requisite degree of justification and undermines the rationality of the decision, as per the principles enumerated in *Vavilov*. The Applicant submits that he is unable to ascertain the degree of weight granted to certain evidence in his application.

[24] The Applicant submits that the Officer's decision lacks proper consideration for contextual country conditions of China. The Applicant submits that the Officer's assessment of the Applicant's community ties and his finding that he could rely on modern technologies to maintain his relationships demonstrates a failure to consider the country conditions in China, which would involve a high degree of censorship and state control over religious practice. The Applicant submits that the Officer must consider the country of return when attempting to assess the harm and difficulty associated with removal.

[25] The Applicant further submits that the Officer fails to adequately distinguish between the Applicant's religious and secular communities when assessing his establishment in Canada. The Applicant contends that a central aspect of his claim is his religious identity, and it was therefore incumbent on the Officer to consider his secular ties *and* his ties to his religious community, which necessarily affects the assessment of whether he could maintain such community ties internationally using technology.

[26] The Applicant makes a number of arguments relating to the reasonableness of the Officer's conclusion on the BIOC. First, the Applicant submits that when considering Aiden's

legal status and his best interests, the Officer ought to have considered the fact that China does not recognise dual citizenship. While the Officer concludes that there was no evidence indicating that Aiden's right to return to Canada would be compromised if he returned to China, the Applicant argues that Aiden would be required to take up Chinese citizenship in order to be entitled to full access to China's rights and benefits. The Applicant submits that this would require him to renounce his Canadian citizenship. Since the Officer's assumptions about Aiden's ability to keep Canadian citizenship or acquire Chinese citizenship are incorrect, the Applicant contends that the Officer's H&C assessment is based upon a misapprehension of the applicable law, which undermines the whole decision.

[27] The Respondent maintains that the Officer's decision is reasonable. The Respondent submits that the Officer's assessment of the Applicant's establishment in Canada is reasonable and provides transparent reasoning as to the degree of weight granted to each factor. The Respondent submits that it is open to the Officer to find that the Applicant was not established in Canada to a degree that was uncommon given the amount of time he spent in Canada.

[28] In response to the Applicant's submission regarding the Officer's obligation to account for the broader context of China as the country of removal, the Respondent submits that the Applicant did not expressly reference such evidence before the Officer. The Respondent submits that the Applicant bears the onus to present evidence necessary to support his application.

[29] Regarding the BIOC factor, the Respondent submits that the Officer reasonably found little evidence to demonstrate that the Applicant's son would be adversely impacted upon

relocation to China. The Respondent contends that the Officer reasonably found little evidence of discrimination against Canadian-born children in China, the high costs of education in China or that the Applicant could not afford such costs, that Aiden was unable to obtain Chinese citizenship, or that he would be unable to return to Canada if he were to return to Canada with his family.

[30] I agree with the Applicant that there are reviewable errors in the Officer's decision. While each error may alone be insufficient to warrant this Court's intervention, I find that when viewed cumulatively, these reviewable errors undermine the overall reasonableness of the Officer's decision.

[31] First, I find that the Officer's reasons lack the requisite degree of justification with the respect to the degree of weight granted to certain evidence and factors in the H&C assessment. It is trite law that the Officer is entitled to weigh the evidence and this weighing exercise affords considerable deference (*Vavilov* at para 125). That being said, this Court has found the following in *Nadarajah v Canada (Citizenship and Immigration)*, 2022 FC 171, in the context of an officer's assessment of evidence in a Pre-Removal Risk Assessment application:

> [10] I find that the PRRA officer's risk analysis is unreasonable, because the officer did not provide intelligible reasons for assigning little weight to most of the evidence submitted by Ms. Magonza. Moreover, the officer's conclusion that the evidence was insufficient is unreasonable, as it can only be explained by ascriptions of weight that were themselves flawed.
>
> [11] In saying that, I am mindful that decisions of PRRA officers usually deserve a high degree of deference (*Perampalam v Canada (Citizenship and Immigration)*, 2018 FC 909 at para 14 [*Perampalam*]). Nevertheless, reasonableness

> requires "justification, transparency and intelligibility within the decision-making process" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). This means that PRRA officers must explain, in their reasons, the justification for their findings of fact. This must be done in an intelligible manner, which means that this Court must be able to understand the logical path followed by the PRRA officer, even though we need not agree with each and every choice made by the officer along that path. Only then can we assess whether the decision under review "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).
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> […]
>
> [18] It is trite law that broad statements about insufficiency cannot stand and findings of insufficiency must be explained. The Officer's overall assessment of the documentary evidence is, in essence, an assertion that the Applicant had provided insufficient evidence of his perceived association to the LTTE, despite the Officer's acceptance of the Applicant's account of the events and the absence of issues of credibility. The Officer diminishes the evidence of the Applicant's well-founded fear of persecution without a reasonable foundation to do so, based on insufficiency, which the Officer "blurs" with implicit credibility concerns.
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> [Emphasis added]

[32] I find that the same reasoning applies to the Officer's assessment of the evidence in the case at hand. While the Officer's exercise of weighing the evidence is afforded deference, a finding that the evidence is insufficient to grant certain weight must be reasonably justified. I agree with the Applicant that the Officer's reasons pertaining to the sufficiency of evidence, particularly the repeated language referring to the evidence is warranting "some" weight, are not clearly justified and do not clearly communicate the underlying rationale for the degree of weight granted to certain factors and, in turn, the underlying rationale for the decision as a whole (*Vavilov* at para 84).

[33] Second, I agree with the Applicant that the Officer failed to assess his application and the relevant factors in the broader context of China as the country of return, which is inextricable from his circumstances. While I acknowledge the Respondent's submission that the Applicant bears the onus to put forward country condition evidence that is relevant to his application, I find that the Officer explicitly recognized the significance of country conditions when undertaking a global H&C assessment, stating the following:

> […] Nevertheless, I am aware that elements related to hardship must also be examined that could include adverse country conditions that have a direct negative impact on the applicant. Adverse country conditions are assessed on a forward-looking basis and a successful H&C application requires that the associated hardships faced by the applicant be personalized.

[34] In my view, this reflects the Officer's own acknowledgement of the importance of country context when reviewing H&C factors, particularly in assessing the hardship the Applicant may face upon return. The Officer makes this explicit recognition but fails to follow suit, assessing the factors of establishment and hardship without consideration of how these factors are impacted by the specific context of China, which includes rampant censorship or the suppression of religious freedoms, both of which directly relate to the Applicant's claims and influence the Officer's findings. Although this evidence may not have been put forward by the Applicant, the Officer is not entitled to consider an H&C application in a contextual vacuum.

[35] For these reasons, I find that the Officer's decision lacks the requisite degree of reasonableness as per the principles in *Vavilov*.

V. Conclusion

[36] This application for judicial review is granted. The Officer's decision lacks justification, transparency, and intelligibility (*Vavilov* at para 99). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-3153-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted and the matter is remitted back for redetermination by another officer.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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