Federal Court  Cour fédérale

Date: 20231018

Docket: IMM-3478-21

Citation: 2023 FC 1387

Ottawa, Ontario, October 18, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

GENET YEMANE WOLDEMARIAM
NAOMI YEMANE WOLDEMARIAM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Genet Yemane Woldemariam, and her minor daughter, Naomi Yemane Woldemariam, seek judicial review of a decision made by a Senior Immigration Officer of Immigration, Refugees and Citizenship Canada (IRCC) on April 30, 2021, rejecting the Applicants application for an exemption to apply for permanent residence status in Canada on

Humanitarian and Compassionate (H&C) grounds pursuant to Subsection 25(1) of *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*].

[2] For the reasons that follow, I am allowing this application.

II. **Background**

[3] The Applicant and her 13-year-old daughter are citizens of Ethiopia.

[4] Before moving to Canada, the Applicant owned and operated a small business in Ethiopia and she was detained for participating in a strike against an un-proportional tax imposed on small business owners.

[5] Violating the condition of her release, the Applicant and her daughter left Ethiopia and travelled to Sudan with the assistance of human smugglers.

[6] From Sudan, the Applicant and her daughter arrived in Canada on September 5, 2017.

[7] On November 20, 2017, the Applicant and her daughter submitted a refugee claim, which was denied by the Refugee Protection Division (RPD) on February 11, 2019.

[8] The Applicant appealed the decision, which was denied by the Refugee Appeal Division (RAD) on July 30, 2020.

[9] On January 12, 2021, IRCC received the Applicant's request for a Temporary Resident Permit (TRP) and the H&C application.

[10] In a decision dated May 7, 2021, both requests were refused.

III. **Decision under Review**

[11] The IRCC Officer reviewed the documents submitted, including factors relating to establishment in Canada, hardships, and best interests of the child (BIOC).

A. *Establishment in Canada*

[12] Overall, the Officer assigned moderate positive considerations to the Applicant's extra-curricular activities, such as community involvement and volunteer work, including the Applicant's continued efforts in working in vulnerable communities during the pandemic.

[13] The Officer noted that the Applicant has made friends and built strong relationships within her community in Canada. For example, the supporting letter from her best friend, Genet, stated that the Applicant has been a friend and sister to her family. The Officer assigned moderate weight to this establishment.

[14] Although the Officer gave credit to the Applicant for her efforts and involvement in the community, the Officer also noted that establishment is generally created by way of an extended

stay in the country. The Officer further noted that the moderate amount of positive establishment is not sufficient to warrant relief based on H&C grounds.

B. *Hardships*

[15] The Officer noted that the Applicant has provided little explanation as to why she is not covered by existing legislation. For example, immigrating to Canada as a skilled worker through the express entry system or provincial nominee program. The Officer noted the Applicant has some degree of fluency in the English language and has a Canadian certificate, which could be beneficial in her immigration application(s). Therefore, the Officer found that having to wait until the Applicant qualifies as a permanent resident under another process is not a great hardship. The Officer further noted that the Applicant has a valid work permit that expires on 2022/01/06. The Officer therefore noted the Applicant could request to extend her work permit if she wishes and she has approximately eight (8) months to arrange for departure from Canada and arrival in Ethiopia.

[16] The Officer noted that insufficient evidence had been provided to demonstrate that as an Amhara person the Applicant faces barriers or limitations in accessing basic services such as housing, employment, medical or educations services. Therefore, the Officer assigned low levels of hardship for the Applicant's fear that her ethnicity as an Amhara person will expose her and her daughter to risk.

[17] The Officer noted that very little information was provided regarding how the Applicant was marginalized and ostracized by her family since changing her religion from Orthodox to

Pentecostal Christianity. The Officer further noted that the Applicant indicated that she was not on speaking terms with her family and was shunned by them, but she provided insufficient evidence to demonstrate how and why she is reliant or dependant on her family and without their support she faces unreasonable hardships. For these reasons, the Officer assigned low levels of hardships, based on a balance of probabilities.

[18] Regarding the Applicant's hardship associated with the father of her child (Assailant), the Officer noted that the RPD has already determined that the Applicant could not establish an on-going threat from the Assailant and gave considerable weight to the RPD's findings as an expert body in the determination of risk. The Officer found that the Applicant's narrative reiterated the same facts while providing little new personalized probative evidence to support the statements made. For example, the applicant did not indicate she had any communication with the Assailant and did not indicate he was still looking to harm the Applicant or her child.

[19] Furthermore, the Officer noted it has been 3.5 years since the Applicant came to Canada and it is unclear how the Assailant will know when the Applicant and her daughter would arrive in Ethiopia, where they will reside and how they will get there. The Officer understands that the Applicant may have medical and psychological impediment from disclosing her harassment from the actions of the Assailant but found that the lack of information/evidence of an on-going threat significantly impedes the Officer's ability to fully assess the hardships. Overall, the Officer found that insufficient evidence had been provided to demonstrate that the Assailant continues to seek out the Applicant and her daughter. For these reasons, the Officer assigned low levels of hardships.

[20] The Applicant expressed concerns about state laws in Ethiopia limiting Christian activities. The Officer noted that these laws would not affect established churches, and the Applicant will continue to have a place of worship as a Pentecostal Christian. Based on a balance of probabilities, the Officer assigned low levels of hardships.

[21] Counsel for the Applicant provided various country reports that stated due to political tensions Ethiopia is unstable and there is a higher frequency of people who are killed and displaced. The Officer acknowledged the Applicant's concern regarding violence and killings, but noted that the Applicant has provided insufficient evidence to demonstrate that she is more likely to be impacted by these killings than other Amhara groups living in Ethiopia. The Officer further noted that the Applicant has resided in the capital city of Addis Ababa and has not indicated that it is unsafe to reside there as she previously has due to these violence and killings. The Officer found that the Applicant has provided little evidence that returning to Ethiopia would be improbable, unsafe, or unreasonable and therefore placed little associated hardship for the above mentioned reasons.

C. *Best Interests of the Child*

[22] Counsel for the Applicant argued that removal of the Applicant's daughter would expose the child to violation of her basic human rights. The Officer found counsel's statements to be vague and that no country documentation was provided regarding children not being able to access basic human rights in Ethiopia. Therefore the Officer assigned little weight to this matter. The Officer acknowledged that the Applicant's daughter will have some difficulties adjusting to Ethiopia while adapting to her new surroundings. However, the Officer noted that there is

insufficient evidence to establish that the wellbeing or development of the Applicant's daughter would be significantly impacted for the negative.

[23] Having considered the circumstances of the Applicant and having examined all of the submitted documentation, the Officer was not satisfied that the H&C considerations justified an exemption under section 25(1) of *IRPA*. Therefore, the Officer rejected the Applicant's application for permanent resident status in Canada.

IV. **Issues and Standard of Review**

[24] The Applicant submits that the Officer's decision to refuse the Applicant's application for an exemption to apply for Permanent Residence under subsection 25(1) of *IRPA* on H&C grounds is unreasonable and unjustified.

[25] The Applicant also submits that the Officer erred in assessing her significant establishment in Canada.

[26] The Applicant further submits the Officer erred in assessing the hardship she would face if required to apply for a permanent residence from outside Canada.

[27] The Applicant submits that the Officer erred in assessing the best interest of her 13-year-old daughter.

[28] The parties agree, as do I, that the standard of review is reasonableness. The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, no exception to the presumption is present here.

[29] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

V. **Analysis**

[30] For the following reasons, I find that the Officer unreasonably concluded that the Applicant's H&C application should be refused.

A. *Establishment in Canada*

[31] I agree with the Respondent that the Officer gave due consideration to the Applicant's establishment in Canada. The Officer considered many factors including her involvement in the church community, her efforts to improve her English and educational credentials, her commendable volunteer efforts and the strong friendships she has built during her 3.5 years in

Canada. The Officer's reasons demonstrate an understanding of the facts and consideration of the evidence submitted including letters of support from her volunteer organizations and friends who have become her family in Canada. The Officer gave moderate positive consideration to the aforementioned factors, which they were entitled to do. The Applicant's disagreement with the assigned weight is not a valid reason for the intervention of this court upon judicial review.

B. *Hardships*

[32] The submissions before the Officer detailed a number of hardship factors including the Applicant's traumatic experience of being sexually assaulted as a young woman by the Assailant and thereafter giving birth to her daughter, marginalization from her friends and family due to her conversion from Orthodox Christianity to Pentecostal Christianity and the discrimination and violence she will face as an ethnic Amhara individual. In considering the last factor, the Officer concluded, "While I understand the applicant's concern regarding violence and killings, I find that the applicant has provided insufficient evidence to demonstrate that she is more likely to be impacted by these killings than other Amhara groups living in Ethiopia."

[33] That is the wrong test. The Officer applied a higher threshold for hardship by requiring the Applicant to establish a personal risk beyond that faced by other individuals in Ethiopia.

[34] This Court has articulated this principle in a long line of cases clearly distinguishing between a personal section 97 risk analysis and a general section 25 hardship analysis. An H&C officer's role is to assess whether an applicant would face "unusual and undeserved or disproportionate hardship" if required to apply for permanent residence outside of Canada; it is

both incorrect and unreasonable to require that an applicant establish that the circumstances he or she will face are not generally faced by others in their country of origin: *Shah v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1269 at para 73; *Diabate v Canada (Minister of Citizenship and Immigration)*, 2013 FC 129 at para 36. To apply such a standard is tantamount to importing into section 25, a requirement of section 97 and consequently eviscerating section 25 of its purpose: *Aboubacar v Canada (Minister of Citizenship and Immigration)*, 2014 FC 714 at para 4.

[35] The Officer further erred by not only requiring evidence of hardship not faced by the general population in Ethiopia, but by requiring evidence of hardship not faced by the Amhara population in Ethiopia. Again, the Officer applies an unreasonable test that erodes the meaning of section 25. The Officer cannot acknowledge the dangers facing Amhara people in Ethiopia and then dismiss them because it affects all Amhara people: *Maroukel v Canada (Minister of Citizenship and Immigration)*, 2015 FC 83 at para 32.

[36] While the above errors are sufficient to find the Decision unreasonable. I will briefly address the Officer's BIOC analysis.

C. *Best Interests of the Child*

[37] The Applicant noted that the Officer's decision regarding the child's return to Nigeria as opposed to Ethiopia is the first indication that the decision is a generic denial copied from another decision. The Applicant also noted that the Officer seems to have been unaware of the immigration status of the child by stating that the child could be placed in Canada under a

Canada-based guardian. The Applicant noted that the child does not have any status in Canada and could not be placed under a Canada-based guardian.

[38] I disagree with the Respondent's characterization of the error as a simple typo. Nigeria was incorrectly identified as the country of origin and the child's relationship to Canada was treated as that of a status-holder. While I am prepared to concede that the former is indeed an error on the basis that there are multiple references to Ethiopia throughout the decision in comparison to this one mention of Nigeria, I do not find that the latter can be dismissed so lightly. A proper BIOC analysis demands the interests of children to be well identified, defined and examined with a great deal of attention in light of all the evidence: *Kanthasamy v Canada (Citizenship and Immigration*), 2015 SCC 61 at para 39.

[39] A full BIOC analysis requires consideration of a multitude of factors relating to a child's emotional, social, cultural and physical welfare, such that "[w]here a child is to be sent to a place where conditions are markedly inferior to Canadian standards and where the expected hardship is still found to be insufficient to support relief, there must be a meaningful engagement with the evidence": *Aguirre Renteria v Canada (Citizenship and Immigration)*, 2019 FC 133 at para 8.

[40] The child's lack of status in Canada affects the assessment of all the alleged factors concerning impact of her removal to Ethiopia. As noted above, she does not, as stated by the Officer, have the ability to remain in Canada to access our health and education system if placed "in the care of a Canada-based guardian." Her removal to Ethiopia will be a permanent one, cutting off the ties that she has forged in this country in a manner entirely different than that of a

Canadian child with the right of return. The effect of a misapprehension of essential facts in a humanitarian and compassionate application cannot be understated. A reasonable decision is one that is justified in light of and responsive to the evidentiary record and the general factual matrix that bears on its decision: *Vavilov* at para 126.

VI. **Conclusion**

[41] For the reasons set out above, this application for judicial review is allowed.

[42] The Decision is set aside and this matter is to be returned for redetermination by a different Officer of Immigration, Refugees and Citizenship Canada.

[43] There is no serious question of general importance for certification on these facts.

JUDGMENT in IMM-3478-21

THIS COURT'S JUDGMENT is that:

1. This application is allowed and the Decision is set aside.
2. This matter shall be returned for redetermination by a different Officer of Immigration, Refugees and Citizenship Canada.
3. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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