Federal Court  Cour fédérale

Date: 20231213

Docket: IMM-11382-22

Citation: 2023 FC 1687

Toronto, Ontario, December 13, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Ilyn Albertha WRAY-HUNT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ilyn Albertha Wray-Hunt, is a Jamaican citizen. She has family in Canada, the United States of America, Jamaica and Cuba. She entered Canada in 2007, initially on a visa and visitor record that was extended once. Subsequent extension requests were not granted. The Applicant nonetheless remained in Canada without status, eventually providing care

to her father (starting when he was 84 years old—he is now 100), among other work and volunteer endeavours. With the passage of time, she now faces her own health challenges.

[2] In January 2021, the Applicant submitted an 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*]. (This provision is reproduced in Annex "A" below.) Her application was denied. A first judicial review application settled with the matter redetermined by another senior immigration officer [Officer], resulting in refusal again. This judicial review challenges the redetermination decision.

[3] The overarching issue for the Court's consideration is the reasonableness of the redetermination decision. There is no disagreement that the presumptive reasonableness review standard applies to this matter. An administrative decision is reasonable if it is justified, in the context of the applicable factual and legal constraints, transparent and intelligible. The party challenging the decision has the burden of showing that it is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25, 99-100.

[4] I am satisfied that the Applicant has met her onus. For the more detailed reasons below, the redetermination decision will be set aside with the matter to be redetermined yet again.

II. Analysis

[5] I am persuaded that the Officer did not view the Applicant's situation, as disclosed by the evidence, through a *Chirwa* lens. By that, I mean that the redetermination decision does not

reflect that the Officer considered whether the Applicant's circumstances "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another": *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 21, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 at 350 [*Chirwa*].

[6] Put another way, the redetermination decision does not manifest "a decision-maker hav[ing] the ability to empathize with an applicant for relief by placing [them]self in the applicant's shoes to clearly understand and be sensitive to the applicant's circumstances": *Dowers v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 593 [*Dowers*] at para 3; *Bawazir v Canada (Citizenship and Immigration)*, 2021 FC 1343 at paras 34, 39; *Helalifar v Canada (Citizenship and Immigration)*, 2022 FC 1040 at para 32.

[7] Simply expressing sympathy with the Applicant's family situation, in itself, is insufficient in my view, especially when considered in the context of the overall decision.

[8] Further, I find that the Officer's repeated pattern of acknowledging a positive, followed by a recitation of negatives, serves here to emphasize the Officer's unreasonable focus on what the Applicant's evidence did not say, rather than what it did: *Dowers*, above at para 7; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 49; *Hussain v Canada (Citizenship and Immigration)*, 2022 FC 1379 at para 19.

[9] For example, the Officer attributes positive weight to the care the Applicant has provided to her father during her time in Canada and acknowledges that she was her father's primary

caregiver between 2011 and 2017. The Officer then determines that the Applicant no longer was the primary or sole caregiver based on "objective professional evidence" (i.e. a clinical counsellor's 2018 support letter) that indicates the Applicant's siblings had been involved in their father's care since 2017, and does not indicate that the siblings would be unable or unwilling to care for their father in the Applicant's absence.

[10] Leaving aside for the moment the speculation inherent in this determination, in my view it is contradicted by the siblings' more current support letters, and by the evidence that the siblings decided to arrange for the Applicant to live with their father. While it was open to the Officer to prefer one piece of evidence over others, it was unreasonable to do so without explaining why, particularly when the other evidence contradicts the preferred evidence, as is the case here.

[11] Further, as alluded to above, the Officer unreasonably focused on the absence of an indication in the clinical counsellor's letter about the inability or unwillingness of the siblings to assist with their father's care. The Officer engaged in unacceptable speculation that the siblings would be able and willing to assist with their father's care if the Applicant were to return to Jamaica, in the face of evidence that they had arranged for the Applicant to live with their father, meaning that she could provide daily care and companionship.

[12] As another example, although the Officer states that the Applicant's credibility is not in issue, the Officer discounts the support letters from the Applicant's siblings and children. With the exception of one of the son's letters, these letters post-date the clinical counsellor's support

letter by about two years. However, the Officer discounts them because they are typed and unsigned (in the case of the children's letters), as well as unsworn and not accompanied by the authors' identity documents. Leaving aside the fact that two of the sons' letters bear actual signatures, in my view, the Officer's unreasonable focus on form over substance here is entirely inconsistent with the notion of putting oneself in the H&C claimant's shoes.

[13] In sum, the Officer unreasonably failed to address the central evidence contained in these support letters or veered into unacceptable speculation. As another example of the latter, the Officer speculates that the two sons living in Jamaica would be able and willing to assist with the Applicant's reestablishment, if only emotionally, notwithstanding their evidence that they do not own their own homes and are not able to support their mother.

[14] Additionally, the Officer not unreasonably concludes that the Applicant's siblings supported her financially, based on the evidence that the Applicant has not worked for 13 of the 15 years she has been in Canada. The Officer then speculates again, however, that this means the siblings could continue to support the Applicant if she were to return to Jamaica. This unreasonable finding does not account for the evidence that the Applicant lives with her father and the siblings' support is for that combined living arrangement.

[15] I further find that the Officer unreasonably views the Applicant's 15-year period in Canada, i.e. the establishment factor, almost exclusively through the lens of non-compliance, concluding that her disregard for Canada's immigration laws does not support the approval of the application. This is not consistent, in my view, with the purpose of section 25 of the *IRPA*. While

officers are entitled to consider immigration status, this Court has recognized that H&C applications are often predicated on the fact that applicants do not have status in Canada. Accordingly, it is an error for an officer for focus unreasonably on an applicant's unauthorized status and repeatedly discount positive establishment factors for this reason: *Samuel v Canada (Citizenship and Immigration)*, 2019 FC 227 at para 17; *Small v Canada (Citizenship and Immigration)*, 2021 FC 390 at para 35.

[16] While the Officer does give positive attribution to the Applicant's care of her father when assessing establishment, the Officer fails, however, to account for the impact of the Applicant's return to Jamaica on her frail father who depends on her for daily assistance and companionship. I find this omission is inconsistent with the *Chirwa* approach.

[17] I further find that the Officer does not engage meaningfully with the Applicant's evidence regarding establishment outside her family relationships, including her active participation with multiple community organizations. Rather than weighing the positive aspects of this evidence, the Officer concludes that she provided "little evidence" regarding her community involvement and that her establishment is "not unusual" compared to similarly-situated individuals. In my view, requiring an "unusual" amount of establishment is equivalent to requiring an "exceptional" amount of establishment. While H&C applications are an exceptional form of relief, this Court has confirmed that it is an error to require exceptional circumstances from an Applicant: *Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 at para 28; *McDonald v Canada (Citizenship and Immigration)*, 2022 FC 394 at para 22, citing *Jimenez v Canada (Citizenship and Immigration)*, 2021 FC 1039 at para 28.

III. Conclusion

[18] For the above reasons, the Applicant's judicial review application is granted. The redetermination decision is set aside, and the matter will be remitted for a fresh redetermination by a different officer.

[19] Neither party proposed a question for certification, and I find that none arises in the circumstances.

JUDGMENT in IMM-11382-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is granted.
2. The October 20, 2022 decision of the Senior Immigration Officer refusing the Applicant's application for permanent residence in Canada on humanitarian and compassionate grounds is set aside.
3. The matter will be remitted to a different officer for redetermination.
4. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27.**
***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27.**

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35, 35.1 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35, 35.1 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35, 35.1 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

FEDERAL COURT

SOLICITORS OF RECORD

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