Federal Court  Cour fédérale

Date: 20240205

Docket: IMM-2450-20

Citation: 2024 FC 176

Montréal, Québec, February 5, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

JUSTIN NATHAN CRAWFORD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Justin Nathan Crawford [Applicant], seeks judicial review of a humanitarian and compassionate [H&C] decision rendered pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*]. The officer [Officer] refused the Applicant's claim on the basis that the hardship upon his removal to Liberia was insufficient to warrant H&C relief.

[2] For the following reasons, I dismiss this application for judicial review. The Applicant has not demonstrated that the decision was unreasonable.

II. Background

A. *Facts*

[3] The Applicant and his family left Liberia in 2001, receiving temporary protected status in the United States. The family left Liberia because their uncle was a member of Charles Taylor's government, who was found guilty in April 2012 of war crimes and crimes against humanity.

[4] The Applicant remained in the United States until 2009, leaving as a result of two misdemeanour offences that would have interfered with his temporary protected status. His parents and half-siblings still reside in the United States.

[5] Upon arrival in Canada, the Applicant sought Convention refugee status. The Applicant's refugee claim was denied in 2011 because Liberia's political situation and availability of state protection had improved. The Applicant's judicial review of this denial was dismissed in 2012, and a subsequent Pre-Removal Risk Assessment [PRRA] application was denied in 2013.

[6] In 2013, while working in a tire factory, the Applicant sustained a crush injury to both his feet. He underwent treatment and therapy, but has ongoing pain. The type of work he can undertake is restricted as a result of the injury. He made an H&C application on July 13, 2016.

B. *Decision under Review*

[7] In a decision issued on March 11, 2020, the Applicant's H&C application was denied.

[8] The Officer first noted that the grounds for which the Applicant has based his H&C application are essentially the same as those heard and assessed by the Refugee Protection Division (RPD) and in the PRRA application. The Officer stated the Applicant did not provide evidence to counter the RPD's findings related to the actual or perceived persecution due to political affiliation and/or ethnicity.

[9] The Officer considered the Applicant's submissions and objective country evidence related to the Ebola outbreak in 2015, but found that there was insufficient evidence to support that the Ebola virus was currently a concern in Liberia or that the Applicant faces hardship as a result. Little weight was given to this factor.

[10] With respect to the crush injury, the Officer considered information from medical professionals, physiotherapists, and the Workplace Safety and Insurance Board [WSIB]. The Officer found that the Applicant sustained this injury, will never completely heal, and has work restrictions as a result. However, the Officer determined that while the Applicant has a permanent injury, the WSIB approved him to work in sedentary duties with limited standing and walking. The Applicant remained unemployed since 2013 despite having a valid work permit through October 2020. Without a reasonable explanation for the applicant's lack of employment over the past several years, the Officer drew a negative inference.

[11] Concerning the care required for the Applicant's permanent injury, the Officer concluded that the only evidence provided was an assertion that the Applicant did "not think" that he would "have access to rehabilitation specialists or proper pain management in Liberia." The Officer found that there was insufficient evidence relating to the medication, pain management, or rehabilitation that the Applicant needed or whether these needs could not be met in Liberia.

[12] The Officer found that when the Applicant arrived in Canada, he did not state that he had any support systems and yet claims that he was able to successfully integrate into Canadian society. The Officer also found that, while the Applicant indicated that his father came to visit him when he was injured, the evidence did not indicate whether the Applicant continued to maintain contact with him or the rest of his family. The Officer concluded that there was insufficient evidence to demonstrate that separation from his family would cause him hardship.

[13] The Officer gave some weight to the Applicant's length of time and efforts establishing himself in Canada. While the Officer acknowledged the Applicant's injury in 2013, they concluded that his evidence did not support that he could not travel, or would incur hardship, and did not support a mutual dependence between him and his ties to Canada or the United States. The Officer found that the evidence demonstrated that the Applicant was capable of obtaining employment with restrictions and training and that the evidence did not support he was unable or unwilling to obtain employment in Liberia in line with his physical limitations or would incur hardship in so doing.

[14] For these reasons, the Officer concluded that the Applicant's circumstances did not warrant H&C relief.

III. Relevant law

[15] Section 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of the *IRPA* if the Minister is of the opinion that such relief is justified by humanitarian and compassionate reasons, taking into account the best interests of a child directly affected.

[16] Justice Little summarized relevant considerations in *Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 [*Rainholz*] at paragraphs 14 to 18 (citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 13, 21) in respect of H&C assessments and equitable relief contemplated by subsection 25(1) of the *IRPA*. This includes the consideration of facts, established by the evidence, which would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes "warrant the granting of special relief" from the effect of the provisions of the *IRPA*. The purpose of the H&C provision is to provide equitable relief in those circumstances.

[17] The onus of establishing that a H&C exemption is warranted lies with the applicant (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45 [*Kisana*]). Lack of evidence or failure to adduce relevant information in support of an H&C application is at the peril of the applicant (*Rainholz* at para 18).

[18] The officer is not required to research and provide evidence to support the H&C application in the absence of updated medical records or other updated documentation (*Montalvo v Canada (Citizenship and Immigration)*, 2018 FC 402 at para 16 [*Montalvo*]). It has been consistently held that, in the context of H&C applications, an officer is under no duty to highlight weaknesses in an application or request further submissions (see for example *Kisana* at para 43-45).

[19] It is not sufficient to establish the existence or likely existence of misfortunes relative to Canadian citizens and permanent residents of Canada. It would be expected that most persons facing removal to or currently living in a country where living standards are significantly below those in Canada would face relative misfortune. There will inevitably be some hardship associated with being required to leave Canada, and with being an unsuccessful applicant for H&C relief. The Applicant bears the onus to demonstrate the existence or likely existence of misfortunes or other H&C considerations that are greater than those typically faced by others who apply for permanent residence in Canada (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 [*Huang*] at paras 17-20).

[20] In assessing whether an applicant has established sufficient H&C considerations to warrant a favourable exercise of discretion, all of the relevant facts and factors advanced by the applicant must be considered and weighed (*Kanthasamy* at para 25). The words “unusual and undeserved or disproportionate hardship” should be seen as instructive, but not determinative (*Kanthasamy* at para 33).

IV. Standard of review

[21] Although procedural fairness was plead in the Notice of Application, the Applicant confirmed that he would not be advancing this argument.

[22] The parties both state that the issue on judicial review is whether the Officer's decision is reasonable. I also agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23; *Kanthasamy* at para 44).

[23] A reviewing court does not ask what decision it would have made in place of that of the administrative decision maker. It is "an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers" (*Vavilov* at para 13).

[24] A reviewing court does not attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis, or seek to determine the "correct" solution to the problem (*Vavilov* at para 83).

[25] The law is to the effect that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its

factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125).

[26] A reasonable decision is one 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. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85).

[27] The onus is on the party challenging the decision to show that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *Parties' Submissions and Preliminary Issues*

[28] At the hearing, the Applicant described the Officer's errors as follows:

a) The Officer did not engage in the analysis of a lack of immediate family in Liberia. Instead, the Officer cited and relied on one of the Applicant's support letters that stated the Applicant had "a very small support system" in Liberia. The Officer also erred in not understanding the context and impact of the involvement of the Applicant's uncle with the Charles Taylor government, and his affiliation as part of the Congo tribe. These go to the argument that the Applicant would have little support in Liberia.

b) The Officer did not properly consider the Applicant's crush injury, the permanent nature of his injuries, the pain management that he will need, and the fact that he has permanent employment restrictions. The Officer did not recognize that the Applicant suffers from asthma since childhood and will need constant monitoring and medication. The Applicant's affidavit indicated that he will never be pain-free and has a poor prognosis.

c) The Officer did not consider the fact that the Applicant's 23 years in Liberia was during a time of conflict, and during his formative years as a young person who

was not established independently in a position of employment, and did not have his own social network or any friends in Liberia when this factor was assessed. The Applicant asserts he has no support system in his own country as a result of this background, which was not considered by the Officer.

d) The Officer misapprehended the information submitted relating to Ebola. The information submitted was intended to identify the underlying health conditions, the lack of health infrastructure, and lack of access to health care. The articles clearly demonstrated that there is insufficient health infrastructure in Liberia.

[29] The Respondent submitted that the Applicant asks this Court to reweigh the evidence. Some arguments made on judicial review were also not advanced before the Officer in the H&C application. Finally, the Officer's decision was reasonable on the following basis:

a) The arguments related to the uncle's involvement with Charles Taylor and the Congo Tribe as factors for the H&C application were not placed before the Officer. It was the Applicant's onus to identify the factors that he wished to be considered.

b) The most recent medical reports in the record were dated September 29, 2015. The Officer accepted the diagnosis, and the complications from the crush injury that the Applicant sustained in 2013. However, the question that the Officer had to address was to what degree could the Applicant work, and what were his specific medical requirement and needs. The only statement to that effect was his counsel's submissions that "he will never be pain-free" and other vague statements without supporting objective evidence. The December 2014 report did not confirm chronic regional pain syndrome. There was also evidence that the Applicant could work, and the Officer considered his workplace-related restrictions in the decision.

c) A support letter stated he had "small supports" in Liberia and it was reasonable for the Officer to rely on this assertion. The evidence demonstrated that when he arrived in Canada as a young adult, he was alone, as his immediate family (father, mother and half siblings) all remained in the United States. There was no evidence of any ongoing contact with his immediate family and it was reasonable for the Officer to find that the Applicant was self-sufficient in Canada without family support.

d)

e) The Applicant's H&C application was based on very broad and general information about Liberia, and did not deal specifically with his needs (which were not identified in any event) and how his needs could not be met, or that there were challenges to meet his needs, in Liberia. Specifics were required as to his

> needs and part of his concerns were speculative. General information about the lack of proper health infrastructure in Liberia is not sufficient to assess how his needs cannot be met and how this amounts to unusual hardship. Furthermore, the Applicant did specifically plead, and submitted affidavit evidence citing, Ebola as a factor of concern and hardship which is why the Officer dealt with this issue.

[30] A judicial review is not a forum for new evidence, the reviewing Court is limited to the evidentiary record that was before the decision maker. The non-exhaustive exceptions to this general rule include evidence that:

a) provides general background information to the issues relevant to the judicial review, but care must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker.

b) identifies procedural defects to assist the judicial review court to fulfil its role of reviewing for procedural unfairness; or

c) demonstrates a lack of evidence before the decision-maker. (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at paras 19-20)

[31] The Applicant's submission about his uncle and the fact he belongs to the Congo tribe were identified at the hearing as a lack of immediate family support or support generally in Liberia. Having reviewed the record, I agree that the Applicant's refugee claim arguments about his uncle were not factors advanced in the H&C application. I do not find that the exceptions set out in *Access Copyright* have been met. Accordingly, with respect to the Applicant's arguments or facts that were not before the Officer, I cannot consider these in assessing the reasonableness of the decision.

B. *The Applicant's Medical Conditions*

[32] Two of the four factors advanced by the Applicant in his H&C application are connected because they address his medical conditions. This includes his asthma and crush injury and the lack of adequate health care in Liberia. The Applicant's position overall is that he sustained a serious and permanent injury and it was unlikely that he would return to his baseline condition. This constituted hardship. The Applicant argued that the information before the Officer was clear that the healthcare system in Liberia was non-existent or insufficient. As a result, based on the Applicant's medical conditions, he would suffer hardship if he returned to Liberia. The Applicant submits that the Officer erred in not accepting this as hardship, which qualified them for the H&C exemption.

[33] The Applicant submitted documentation about the general conditions in Liberia up to 2016, which includes information about the country's healthcare infrastructure. The record is lacking, however, in evidence that provides any link to how the country's conditions would adversely impact or cause hardship to the Applicant based on his medical and physical needs and requirements. The record provided little or no information about his actual needs and requirements in Canada, much less how he would suffer hardship by returning to Liberia based on these needs and requirements.

[34] The Applicant directed the Court to a report dated August 29, 2014 from Dr. Tom Trajkovski, an orthopedic surgeon. Dr. Trajkovski commented that the Applicant's injuries "will likely cause him permanent dysfunction," that "it is unlikely that he will return to his baseline," that he "would benefit from seeing a pain specialist to consider blocks in that area," and that "he may have developed a component of reflex sympathetic dystrophy and will leave that up to the

pain specialist to work up and treat if they do believe that is contributing to his problem." The Applicant submitted that this demonstrated hardship, that his condition was permanent, and would require continuous medical care.

[35] In his affidavit to the H&C application dated July 13, 2016, the Applicant asserted that: "I have also been told by the doctors that I will need medication, rehabilitation and treatment from time to time for the rest of my life. This made me angry and depressed but I am now getting help for this. Each day is better than the last." There was no other evidence submitted that corroborated the medication, rehabilitation and treatment mentioned in the affidavit.

[36] The Applicant also stated in his affidavit in support of his H&C application that "I do not think that I will have access to rehabilitation specialists if I have to return to Liberia. I do not think I will have proper pain management if I am returned to Liberia." The Officer found that there was no evidence corroborating these statements. There was also no evidence that described the type of rehabilitation or pain management that the Applicant required.

[37] The last records from the pain clinic in the Applicant's submissions were dated February 25, 2015 (after Dr. Trajkovski's report was prepared). The pain clinic records indicated that the Applicant's pain medication was discontinued due to side effects. The pain specialist did not make any further appointments for or follow up with the Applicant after February 2015. There was no other evidence that addressed whether the Applicant requires any pain management or rehabilitation in Canada.

[38] The Applicant stated in his application that he suffered from asthma and "currently require[s] constant monitoring and intake of medication to control the Asthma." At the hearing, the Applicant pointed to some references in the medical record associated with the Applicant's hospital Emergency Room attendance for the crush injury that listed prescriptions for asthma and a handwritten note that stated "asthmatic" on the document. There were no references in the record to support the assertion that he required constant monitoring and intake of medication.

[39] Respondent's counsel referred the Court to the last medical record in the Applicant's materials, a "Functional Abilities Evaluation" dated September 29, 2015 (the date of assessment being September 23, 2015). The Respondent submitted that this report had objective findings that did not support the severity of the Applicant's complaints and expressed a distorted belief about pain. The materials up to this date demonstrated that there seemed to be improvement and no evidence that he could not work. The record contained reports from the pain specialist who saw the Applicant, but no plans or prescriptions were described in these reports.

[40] General conditions related to Liberia's healthcare system were provided in the H&C application. These articles related to the Applicant's position that he was concerned about the Ebola outbreak, and that the outbreak was exacerbated due to Liberia's inexistent healthcare infrastructure, lack of access to physicians and reliable medication.

[41] At the hearing, the Applicant argued that given his medical conditions, Liberia's inexistent healthcare infrastructure, lack of access to physicians and reliable medication would therefore cause him hardship.

[42] Based on the Applicant's documents and records, it was open for the Officer to conclude that the Applicant's references to asthma, rehabilitation and pain management were vague, speculative, not supported by corroborating evidence, and that his evidence did not demonstrate any need for medication or physiotherapy much less how these needs are not available to him or that he would incur hardship in accessing them in Liberia.

C. *Ability to Work*

[43] The Applicant also argued that he would not be able to find work in Liberia that would accommodate his medical conditions. However, there was no evidence on this issue in the record. In fact, the WSIB found him fit for sedentary duties with limited standing and walking, and provided him with vocational rehabilitation training in customer service. The Applicant was awarded a 17% Non-Economic Loss Award which can be reviewed every three years for changes in the level of his injury beyond the baseline.

[44] In *Sharma v Canada (Minister of Citizenship and Immigration*) 2023 FC 1396 (at paras 25 and 26), the evidence tendered by the applicants in that case stated that they "might" be adversely impacted by the conditions they identified in their H&C application rather than supporting a reasonable inference in relation to those challenges. Chief Justice Crampton reiterated the established onus of an applicant in an H&C to provide sufficient evidence to support a reasonable inference of an adverse impact or hardship.

[45] As such, it is not sufficient to advance that the Applicant might be affected by a country's general conditions relative to other applicants who apply for permanent residence from within

Canada or abroad. There must be a reasonable inference to the effect of the specific circumstances of the individual seeking H&C exceptional relief.

D. *Other Factors*

[46] The other factors raised in the H&C application dealt with the Applicant's time away from Liberia and his supports in Canada and the United States. Evidence included letters of support from individuals in Canada and a letter from his mother, and the Applicant submitting that he did not live in Liberia long and had no support system there.

[47] The Officer noted that at the time of the application, the Applicant was in Canada for more than 10 years and that during this time "a certain level of establishment is expected to have occurred." The Officer gave this some positive weight for establishment but found it was not exceptional compared to others who have been in Canada for a similar amount of time. Furthermore, there was no objective evidence provided in support of the assertion that the Applicant had not lived long in Liberia and had no support system there. There was also no other evidence of family support, such as the frequency and mode of contact with his family members, nor the hardship that he may incur in relation to this family in the United States if he were to depart Canada.

[48] Based on the record before the Officer, it cannot be said that the Officer did not engage with the factors set out in his H&C application. Decisions under subsection 25(1) of the *IRPA* are highly discretionary and are entitled to deference. The Court cannot substitute its view even if it

would have reached a different conclusion or it considers the result unpalatable (*Kaur v Canada (MCI)*, 2017 FC 757 at paras 54-55).

[49] Finally, the Officer also identified the fact that the Applicant's medical records were provided up to the date of September 29, 2015 with no updated records. There was no other evidence to support the issue of establishment or family support in Canada and the United States. While not determinative in the global assessment of the H&C exemptions, this did have an effect on the weight given to the factors advanced in the application.

[50] The Applicant indicated at the hearing that he was not required to submit any updated records between the time his H&C application was submitted in 2016 and the time his application was considered in 2020. Nothing had changed.

[51] The Officer was required to consider all of the factors that the Applicant put forward in his H&C application. It was the Applicant's onus to provide evidence for his application or to clearly draw the Officer's attention to relevant factors and evidence. Based on a review of the record, the Officer addressed and analyzed all of the factors and canvassed the evidence submitted.

[52] Regrettably, the H&C application contained vague, broad statements and assertions without sufficient objective evidence to support a reasonable inference that the Applicant's circumstances would result in hardship by the factors raised in his application. It was therefore

open to the Officer to find that the record did not justify the exceptional H&C relief in these circumstances.

VI. Conclusion

[53] I cannot find that it was unreasonable for the Officer to conclude that the Applicant did not meet the burden required for exceptional relief in an H&C application. The decision falls within the legal and factual framework that constrained the officer.

[54] The Applicant's arguments amounted to disagreeing with the Officer's findings and asking the Court to reweigh or reassess the evidence that was before the Officer. This Court cannot do so on judicial review.

[55] In the circumstances, the Applicant did not persuade me that the Officer's decision was unreasonable. The decision is intelligible, transparent, and justified (*Vavilov* at paras 10, 25, 99). Accordingly, this application for judicial review must be dismissed.

[56] Both parties confirmed that there was no question for certification, and none arises.

JUDGMENT in IMM-2450-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There are no questions for certification.

"Phuong T.V. Ngo"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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