Federal Court  Cour fédérale

Date: 20240209

Docket: IMM-12196-22

Citation: 2024 FC 223

Toronto, Ontario, February 9, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

MARYAM ARVAN
SAM HOUSHMAND

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Ms. Maryam Arvan, accompanied by her minor son, Sam Houshmand, are citizens of Iran. In December 2021, they applied for permanent resident status pursuant to section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. This provision gives the Minister of Citizenship and Immigration [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 [H&C] considerations, including the best interests of any child directly affected. On November 17, 2022, a senior immigration officer [Officer] of the Immigration and Refugee Board of Canada [IRB] denied their request, finding that they had failed to demonstrate that their personal circumstances justified granting a discretionary exemption based on H&C grounds [Decision].

[2] Ms. Arvan submits that the Officer erred in assessing new evidence that was submitted to support their religious identity as Christians returning to Iran. She concedes that it was open for the Officer to justify its finding regarding the considerable amount of new evidence. However, she posits that it was an error to fail to provide any justification, and that this error is sufficiently serious to render the Decision unreasonable. Ms. Arvan further contends that the Officer erred in his assessment of the best interests of her child.

[3] For the following reasons, the application for judicial review will be denied. In my view, the H&C Officer was alive to the issues raised by Ms. Arvan with respect to the new evidence submitted and the best interests of her child. The Officer simply weighed the evidence differently than how she would have liked. The Decision is reasonable and the intervention of this Court is not required.

II. Background

A. *The factual context*

[4] Ms. Arvan arrived in Canada with her family on July 29, 2017. A few months later, she filed a refugee claim on religious grounds, claiming they would face persecution in Iran as they had recently converted to Christianity. The Refugee Protection Division [RPD] of the IRB refused their refugee claims in December 2018. The family's claim was denied because the RPD found that the interpreter working for Ms. Arvan's lawyer had copied aspects of her claim from another file, and that Ms. Arvan and her son's motivations for submitting a refugee claim were not genuine. More specifically, the RPD concluded that Ms. Arvan and her family were not genuine Christians.

[5] Ms. Arvan filed an appeal, but the Refugee Appeal Division [RAD] rejected it in September 2020. Shortly after receiving their negative RAD decision, the family applied for leave and for judicial review to this Court. That application was dismissed in March 2021.

[6] In December 2021, Ms. Arvan applied for permanent residence from within Canada and sought an H&C exemption from the 12-month bar rule for H&C applications—which requires an individual to wait 12 months after an unfavourable leave decision from this Court. At the time Ms. Arvan applied for H&C, she and her son had been in Canada for less than four years.

B. *The H&C Decision*

[7] As the 12-month bar for submitting an H&C application ended in March 2022, the Officer considered Ms. Arvan's application on the merits. Ms. Arvan sought the exemption on

the basis of her establishment, the risk and adverse country conditions in Iran—notably, related to her newfound Christian identity—, her family ties, and the best interests of her child. On November 17, 2022, the Officer rendered his Decision and concluded that, in the overall circumstances of this case, an exemption to process Ms. Arvan's application for permanent residence from within Canada on H&C grounds was not warranted.

[8] With respect to the issues of establishment and family ties, the Officer determined that little weight should be afforded to Ms. Arvan's work history, as she was unemployed during much of her time in Canada and her husband returned to Iran in 2017 to find work there. The Officer did however consider that Ms. Arvan's community involvement with their church in Canada was a positive factor in this assessment. The Officer further noted that some of the hardships that would be related to reacclimatizing to Iran were alleviated by the fact that the child's father is in Iran, where he has been working as the CEO of a construction company since September 2017, and that they have a large extended family in Iran.

[9] With respect to the risk and adverse country conditions in Iran stemming from Ms. Arvan's conversion to Christianity, the Officer observed that the RPD had found Ms. Arvan not credible in this regard, that the RAD had agreed with the RPD, and that the evidence she submitted (however voluminous) did not provide new information that had not already been addressed by the RPD or the RAD, even though such evidence post-dated the RPD decision, the RAD decision, and this Court's leave decision. Consequently, the Officer found that it was insufficient to overcome the adverse credibility findings made by the RPD and the RAD.

[10] With respect to the best interests of the child, the Officer accepted that Ms. Arvan's son had become somewhat established in Canada, given he had completed schooling in Canada since

the age of nine, and his stepbrother was helping him learn English. However, the Officer also concluded that Ms. Arvan would not be perceived as a Christian convert upon return to Iran, and that it would therefore not be apparent that her son would be treated as a dissident's child in Iran. Furthermore, the Officer noted that the son would be returning to Iran to be reunited with his father and be in the company of both his parents, and that they have a large extended family to support him in his transition back to Iran.

C. *The standard of review*

[11] It is well accepted that the standard of review applicable to the assessments made by H&C officers is reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 44–45 [*Kanthasamy*]; *Nyabuzana v Canada (Citizenship and Immigration)*, 2021 FC 1484 at para 18; *Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 21; *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 757 at paras 24–25). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in all judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[12] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision 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; *Mason* at para 64). The reviewing court must therefore ask whether the "decision bears the hallmarks of

reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[13] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach and begin its inquiry by examining the reasons provided with "respectful attention", seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[14] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

III. Analysis

A. *H&C applications*

[15] In *Kanthasamy*, the Supreme Court confirmed that an H&C application is not meant to be an alternative immigration scheme (*Kanthasamy* at para 23). An applicant seeking exceptional H&C relief must demonstrate the existence or likely existence of misfortune or other H&C considerations that are greater than those typically faced by others who apply for permanent

residence in Canada (*Kanthasamy* at para 23; *Meniuk v Canada (Citizenship and Immigration)*, 2021 FC 1374 at para 22 [*Meniuk*]).

[16] Exemptions for H&C reasons are discretionary and an applicant is not entitled to a particular outcome (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 24 [*Kisana*]). Moreover, it is not the role of the reviewing court to substitute its own view of a preferable outcome or reweigh factors that were properly considered by an H&C officer (*Kisana* at para 24; *Gan v Canada (Citizenship and Immigration)*, 2019 FC 985 at para 9).

B. *The Decision is reasonable*

[17] Ms. Arvan submits that the Officer erred in assessing the new evidence that was submitted to support her religious identity as a Christian returning to Iran. She concedes that it was open for the Officer to justify its finding regarding the new evidence. However, she claims that the Officer failed to provide any justification and that this error is sufficiently serious to render the Decision unreasonable. She further submits that the Officer erred in assessing the best interests of her child upon an eventual return to Iran.

[18] I am not persuaded by Ms. Arvan's arguments.

(1) *New evidence on religious identity*

[19] With respect to the new evidence submitted to support her religious identity as a Christian returning to Iran, and the risks associated with being Christian in Iran, the purpose of an H&C inquiry is to consider whether an applicant would likely be affected by adverse conditions. In this case, the Officer conducted this exercise. In his reasons, the Officer analyzed

the new evidence placed before him and found that it was incapable of overcoming the adverse credibility findings already made by the RPD and the RAD. More specifically, the Officer found that Ms. Arvan's numerous letters of support failed to provide new information that had not already been considered by the two previous decision-makers. As highlighted by counsel for the Minister at the hearing before the Court, the new evidence provided by Ms. Arvan, however well-intentioned, did not address the credibility issues identified by the RPD with respect to her Christianity and her activities.

[20] It is true that the Officer did not expressly mention each piece of evidence, and notably each of the numerous letters of support filed by Ms. Arvan. However, even though the Officer did not discuss every piece of evidence, a decision maker is not obliged to refer explicitly to all the evidence. It is a well-settled principle that administrative decision makers are presumed to have weighed and considered all the evidence before them unless proven otherwise (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). In the same vein, a failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16; *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 28). Here, the Officer contended with the evidence, but ultimately concluded that it did not provide new information that was not before the RPD or the RAD. As such, it could not overcome the adverse credibility findings against Ms. Arvan.

[21] It is also true that, when an administrative decision maker does not properly deal with evidence squarely contradicting its findings of fact, the Court may intervene and infer that the

decision maker overlooked the contradictory evidence when reaching its conclusion (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) at para 17). However, the failure to consider specific evidence must be viewed in context, and it is only when the evidence is critical and squarely contradicts the decision maker's conclusion that the reviewing court may determine that the tribunal disregarded the material before it (*Torrance v Canada (Attorney General)*, 2020 FC 634 at para 58). Ms. Arvan has not convinced me that the Officer omitted to consider evidence that specifically contradicted his findings.

[22] In his reasons, the Officer continued on to review the country conditions evidence as it affected Christian converts in Iran, since H&C officers are expected to assess "how an applicant's particular circumstances relate to the broader country condition evidence, in terms of the degree of risk or extent of harm they may face" (*Meniuk* at para 40, citing *Arsu v Canada (Citizenship and Immigration)*, 2020 FC 617 at para 16). The Officer then considered how Ms. Arvan's particular circumstances as a Christian convert related to the broader country conditions evidence on conversion to Christianity and related religious activities, particularly concerning the degree of risk or the extent of harm they may face in Iran. Ultimately, the Officer concluded that there was no evidence showing that Ms. Arvan's religious activities would come to the attention of Iranian authorities in such a way that they would cause her to face a serious possibility of persecution in Iran. To this effect, the Officer considered the documentary evidence, which demonstrated that it is largely protesters and religious leaders who are negatively affected or targeted for their Christian identities, not persons having the profile of Ms. Arvan.

[23] Again, the Officer's reasons demonstrate that Ms. Arvan's degree of risk was assessed, that he considered the additional evidence related to Ms. Arvan's religious identity, and that Ms. Arvan did not present sufficient evidence to challenge the documentary evidence or to establish that she had the profile of protesters or religious leaders. Further to my review of the Decision, I find that the Officer's conclusions are reasonable with respect to the risk associated with Ms. Arvan's conversion to Christianity.

[24] In sum, Ms. Arvan is simply expressing her disagreement with the Officer's assessment of the evidence and is asking the Court to reweigh and reassess the Officer's conclusions with respect to the evidence. However, it is not the role of a reviewing court to do so on judicial review (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1715 at para 66, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). Ms. Arvan's mere disagreement with the Officer's conclusions and weighing of evidence are not grounds justifying the intervention of the Court.

(2) *Best interests of the child*

[25] Turning to the Officer's assessment of her son's best interests, Ms. Arvan submits that the Officer's conclusion on the insufficiency of evidence demonstrating a negative impact of a return to Iran on her child erroneously minimizes the adverse effect that such a removal would have on her son. Moreover, Ms. Arvan argues that her son will experience educational setbacks if he is returned to Iran due to his lack of knowledge in reading and writing in Farsi—the official language of Iran—, and that he would lose important ties in his life—notably, his ties to his grandmother and adult half-brother, who live in Canada.

[26] With respect, these arguments also cannot stand.

[27] As the Minister notes, the Officer expressly considered the concerns about educational setbacks and the close relationship between the son and his adult stepbrother in his reasons, before acknowledging that it would be in the best interests of the child to remain in Canada. However, the Officer concluded that the weight assigned to best interests of the child considerations was not enough to justify an exemption because of insufficient evidence demonstrating a negative impact on the child. Moreover, as was noted before, this Court has "rejected the notion that consideration of the [best interests of the child] simply requires that the officer determine whether the child's best interests favours non-removal, as this will almost always be the case" (*Meniuk* at para 26, citing *Zlotosz v Canada (Citizenship and Immigration)*, 2017 FC 724 at para 22 [*Zlotosz*]; *Garraway v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 286 at para 46).

[28] Here, the Officer considered the issues related to reacclimatizing to Iran, but determined that these hardships did not amount to difficulties beyond what might be normally expected when a person leaves one country for another. Furthermore, the Officer observed that some of these hardships were alleviated by the fact that the child's father is in Iran, where he has been working as the CEO of a construction company since September 2017, and that they have a large extended family in Iran. In light of these findings, it is clear that the Officer did not ignore or minimize the impact that returning to Iran would have on the child. The Officer further acknowledged that the child had lived in Iran and went to school in Iran for the first nine years of his life. Indeed, "the law is clear that the onus rests squarely with the applicant to provide sufficient evidence on which to exercise positive H&C discretion" (*Zlotosz* at para 22). In the

case at bar, much like in *Zlotosz*, the Officer applied a contextual approach to the best interests of the child analysis and found that Ms. Arvan failed to provide evidence sufficiently compelling to support the requested exemption. I find nothing unreasonable in this reasoning.

[29] In his oral submissions to the Court, relying on *Menjivar Melgar v Canada (Citizenship and Immigration)*, 2022 FC 1490 at paragraph 70, counsel for Ms. Arvan stated that it is an error to "minimize the best interests of a child", sufficient to render a decision unreasonable. I do not dispute this principle. However, I do not agree that this is what the Officer did in this case. The Officer instead adopted a calibrated approach, balancing the various factors at stake in assessing the best interests of Ms. Arvan's child, both in the section of the Decision dealing specifically with the best interests of the child and in his conclusion. I find no indicia of a minimizing attitude in the Officer's reasons, quite the contrary.

[30] H&C is an exceptional and discretionary measure. The Court should not interfere with the weight given to the relevant factors by an H&C officer, even if the Court might have weighed them differently. A significant degree of deference must be accorded to officers exercising this duty (*Cieslak v Canada (Citizenship and Immigration)*, 2018 FC 579 at para 8, citing *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15; *Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4).

IV. Conclusion

[31] For these reasons, this application for judicial review is dismissed. The H&C Officer was alive to the issues raised by Ms. Arvan and simply weighed the evidence differently than how she would have liked. There are no grounds justifying the Court's intervention.

[32] There are no questions of general importance to be certified.

JUDGMENT in IMM-12196-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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