Federal Court Cour fédérale

Date: 20240610

Docket: IMM-737-23

Citation: 2024 FC 885

Ottawa, Ontario, June 10, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

REZA KAMARRUSTA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

[1] The Applicant seeks judicial review of a decision of a Senior Immigration Officer [Officer], dated January 3, 2023, denying his application for permanent residence on humanitarian and compassionate [H&C] grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] For the reasons set out below, I am allowing the application because the Officer's assessment of the Applicant's establishment was unreasonable. In particular, the Officer failed to

engage with the Applicant's circumstances and efforts to regularize his status after his refugee status was vacated in May 2019.

[3] There is no dispute that the standard of reasonableness applies. 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. It must further exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at para 59.

[4] In this case, while the Officer concluded that the Applicant's establishment in Canada merited positive weight, the Officer discounted the Applicant's establishment based on his non-compliance with immigration laws since the vacation of his refugee status in May 2019:

> I note, however, that since May 2019, when the decision to grant him refugee status was vacated, the applicant has been without status in Canada. Based on the evidence before me, he has also been working without authorization in Canada since that time as well. The applicant provides little explanation of why he has continued working without authorization or why he has made little effort to regularize his status in Canada before submitting the instant application. I note that while H&C applications will often necessarily involve some degree of non-compliance with IRPA, I attribute some negative weight to the applicant's non-compliance from May 2019 onwards.
>
> Humanitarian & Compassionate Grounds Reasons for Decision dated January 3, 2023 at p 3 [Officer's Reasons].

[5] I agree with the Applicant that the Officer failed to engage with the evidence in finding that the Applicant provided "little explanation" as to why he made "little effort to regularize his status in Canada before submitting the instant application". This error alone is enough to vitiate

the Officer's decision. As the Supreme Court has made clear, where the decision-maker fails to account for the evidence before them, the decision is unreasonable: *Vavilov* at paras 125-126.

[6] Here, the evidence before the Officer was that the Applicant had taken steps to regularize his status in Canada. After the Applicant's refugee status was vacated in May 2019, he filed an H&C application five months later in October 2019. That application was refused in February 2020. The Applicant then sought judicial review of that decision, but ultimately discontinued his application after receiving the H&C officer's reasons. The Applicant subsequently filed the H&C application at issue in April 2021. The Officer refused this application in January 2023.

[7] In light of this evidence, the Officer's decision is neither intelligible, transparent, nor justified. It was incumbent on the Officer to grapple with the evidence and explain why the steps taken by the Applicant to regularize his status in Canada between May 2019 and April 2021 were not sufficient and what more was expected of him: *Trinidad v Canada (Citizenship and Immigration)*, 2023 FC 65 at para 37; *Dela Pena v Canada (Citizenship and Immigration)*, 2021 FC 1407 at para 23; *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 at para 25. It was unreasonable for the Officer to attribute "some negative weight" to the Applicant's non-compliance efforts without any meaningful engagement with the evidence.

[8] I acknowledge, as the Respondent pointed out, that the dates of the Applicant's original H&C application and its refusal, as well as the date of this underlying H&C application, are listed in Section 3 of the Officer's Decision entitled "Application and Immigration Information". However, this is not sufficient to overcome the Officer's failure to engage with the evidence in their reasons when assessing the Applicant's establishment in Canada.

[9] Had the Officer properly engaged with and assessed the Applicant's efforts to regularize his status in Canada between May 2019 and April 2021, the Officer may have come to a different conclusion in their global assessment of the Applicant's H&C application: *Toussaint v Canada (Citizenship and Immigration)*, 2022 FC 1146 at para 23. It is not for this Court sitting on judicial review to reassess and reweigh the evidence and determine whether it would have impacted the Officer's global assessment of the relevant H&C factors: *Vavilov* at para 126.

[10] I do not, however, agree with the Applicant's counsel's submission, made for the first time at the hearing, that the Officer also erred in concluding that the Applicant was "without status" since May 2019. Counsel referred the Court to a study permit, for the period April 2020 to March 2021, attached to the Applicant's submissions filed in support of his H&C application. On closer examination, however, the Court notes that the study permit is not in the Applicant's name, but in the name of another individual.

[11] Based on the Officer's failure to properly engage with and assess the evidence regarding the Applicant's efforts to regularize his status in Canada, the Officer's decision is set aside. The matter is remitted for redetermination so that a different officer can properly consider and assess the evidence.

[12] The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-737-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The Officer's decision dated January 3, 2023, is set aside and the matter is remitted for redetermination by another officer.
3. There is no question for certification.

"Anne M. Turley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-737-23
STYLE OF CAUSE:	REZA KAMARRUSTA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 6, 2024
JUDGMENT AND REASONS FOR JUDGMENT:	TURLEY J.
DATED:	JUNE 10, 2024

APPEARANCES:

Mehran Youssefi	FOR THE APPLICANT
Ferishtah Abdul-Saboor	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Youssefi Law Professional Corporation Thornhill, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT