Federal Court  Cour fédérale

Date: 20240722

Docket: IMM-7387-23

Citation: 2024 FC 1139

Ottawa, Ontario, July 22, 2024

PRESENT: Mr. Justice Norris

BETWEEN:

HONGCHAO YUAN AND LIJUAN HE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants, a retired couple, are citizens of China. They came to Canada in June 2021 to visit their daughter, son-in-law, and three grandchildren. A little over a year later, they applied for permanent residence in Canada on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). The application was based on the best interests of the applicants' grandchildren and on the applicants' establishment in Canada. A Senior Immigration Officer refused the application on May 27, 2023.

[2] The applicants have applied for judicial review of the officer's decision under subsection 72(1) of the *IRPA*. They submit that the decision is unreasonable.

[3] As I will explain, I am not persuaded that there is any basis to interfere with the officer's decision. This application for judicial review must, therefore, be dismissed.

[4] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44).

[5] 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 (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). The onus is on the applicants to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

[6] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). Nor is it the role of the reviewing court to reweigh or reassess the factors the officer considered in determining

whether H&C relief was warranted. Given the discretionary nature of H&C decisions (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15), generally the decision maker's determinations will be accorded a considerable degree of deference by a reviewing court (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4).

[7] The officer recognized that the "crux" of the H&C application was the applicants' familial ties to Canada. The officer acknowledged that the applicants "wish to remain in Canada on a permanent basis in their senior years" and recognized the strong emotional attachment the applicants share with their family in Canada. The officer gave this factor "some weight". The officer also took into account the best interests of the applicants' grandchildren and how this would be affected by the applicants' absence from Canada. The officer was not satisfied, however, that these factors warranted granting an exception from the usual requirement that permanent residence must be applied for from outside Canada.

[8] The applicants have not established that the officer's determinations are unreasonable. The officer acknowledged the strong connections between the applicants and their grandchildren and the important role the applicants play in the children's lives. The officer simply was not satisfied that, in the particular circumstances of this case (which included that, in the absence of the applicants, the grandchildren would continue to be fully cared for by their parents), this factor was sufficiently strong to warrant granting the relief sought. In challenging this determination, the applicants are effectively asking me to assess this factor for myself and come to a different conclusion than the officer. As stated above, this is not the role of a court conducting judicial review on a reasonableness standard.

[9] Likewise, the officer recognized that, while the applicants have strong connections to Canada, they also continued to have strong connections to China. The officer concluded that any hardship the applicants may face in having to return to China to apply for permanent residence while, in the meantime, continuing to come to Canada as visitors, did not warrant an exception from the usual requirements of the law. To the extent that the officer assessed the H&C application in terms of hardship, this was responsive to the submissions made in support of the application. There is nothing to suggest that the officer misunderstood or misapplied the test for H&C relief.

[10] Contrary to the applicants' submissions on review, the officer did not "disregard" any of the factors on which the applicants relied in seeking relief. The officer simply did not give those factors as much weight as the applicants would have preferred. This does not make the decision unreasonable.

[11] In sum, the officer provided transparent and intelligible reasons explaining why relief was not warranted in the applicants' case. That conclusion is justified in relation to the facts and law that constrained the decision maker. The applicants have not established any basis on which to interfere with the officer's decision.

[12] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-7387-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Anna Davtyan	FOR THE APPLICANTS
Giancarlo Volpe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dov Maierovitz Barrister and Solicitor Thornhill, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT