Federal Court Cour fédérale

Date: 20240725

Docket: IMM-1127-23

Citation: 2024 FC 1180

Toronto, Ontario, July 25, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

HABIB AYODELE YUSUF
OMOLARA NOIMOT YUSUF
ZAFEERAH OLOLADE YUSUF
NABIL OPEMIPO YUSUF
YASIR AKOREDE YUSUF

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family—a couple and three of their minor children. They are citizens of Nigeria, with the exception of the youngest of the three children who is a citizen of the United States of America. There is a fourth minor child of the family who is a Canadian

citizen and an adult son residing in Nigeria; they are not parties to this judicial review application.

[2] The Applicants challenge the negative outcome of their application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. See Annex "A" below for relevant statutory provisions.

[3] The sole issue in this judicial review is whether the decision was unreasonable.

[4] This application for judicial review will be allowed. The analysis of the best interests of the children [BIOC] was flawed, thus warranting the Court's intervention.

II. Analysis

[5] The Applicants raise several granular issues, including that the H&C officer: failed to consider their August 2022 update [Update] to their H&C application that originally was submitted in February 2022; erred in the hardship analysis by seemingly analyzing risk (in a manner more consonant with a risk assessment under sections 96 and 97 of the *IRPA*, contrary to subsection 25(1.3) of the *IRPA*); erred in the establishment analysis by not recognizing the moral debt owed to the Principal Applicant who worked as a support worker during the Covid-19 pandemic; and erred in the BIOC analysis.

[6] There is no dispute that the presumptive review standard of reasonableness applies in the matter presently before the Court: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25. The party challenging an administrative decision has the onus of satisfying the Court that it is unreasonable: *Vavilov*, above at para 100.

[7] The Applicants here have met their onus but only in respect of the BIOC analysis in my view. The other issues involve essentially a request to reweigh the evidence, which is not the role of the Court on judicial review: *Vavilov*, above at para 125.

[8] Regarding the Update issue, the Applicants submit that the H&C officer's reasons do not list the Update in section 3 (Application & Immigration Information / Renseignements sur la demande et sur l'immigration) and do not mention specifically some of the evidence submitted with the Update. According to the Applicants, these omissions are sufficient to rebut the presumption that the H&C officer considered their Update. I disagree.

[9] Section 3 of the H&C reasons template provides examples of the sort of "events" that typically are listed in H&C reasons, such as "issued visa at, entered Canada at, visa extended, claimed ref. protection, claim denied, PRRA received/rejected, prior H&C, removal order issued." Given these examples, I find the Applicants' arguments on this point speculative, absent evidence that updates to applications usually are listed.

[10] Although it was unacceptable bolstering on the part of the Respondent to argue that the evidence submitted with the Update was more of the same already in evidence and, therefore,

likely did not change the H&C officer's decision, I agree that the evidence was more of the same and, thus, in itself, is not indicative of whether the officer considered it or not.

[11] Further, the Update forms part of the certified tribunal record and falls within the range of pages listed for "sources consulted" by the officer. The Applicants' argument to the effect that because the Update did not have its own separate listing it is unusual and must mean it was not considered, is also speculative, in my view, and unpersuasive.

[12] Regarding the hardship analysis, I agree with the Respondent that the H&C officer responded to the Applicants' own submissions regarding their risk in returning to Nigeria. I am not convinced that the Applicants have demonstrated a reviewable error with the officer's hardship analysis.

[13] The Applicants also argue, based on this Court's decision in *Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1 [*Mohammed*], that the H&C decision is unreasonable because it does not recognize the frontline contribution of the Principal Applicant as a support worker during the Covid-19 pandemic. In other words, the decision should have done more than just acknowledge the employment he held at that time. I disagree for at least two reasons.

[14] First, the facts in *Mohammed* are entirely distinguishable from the matter presently before the Court. The applicant in *Mohammed* already was a permanent resident who worked in Canada as an aid or health care worker for a number of years before the pandemic and later during the

pandemic. She risked losing her status for non-compliance with the residency requirement in unique circumstances.

[15] Second, the Principal Applicant here provided little detail in his own affidavit about the nature of his support work and contributions to the pandemic, including duties and responsibilities, and length of time he was employed as a support worker. Some of that information can be found in the support letters from his employers. More significantly, the Update seemingly demonstrates that he has transitioned into different work altogether. Further, while the Applicants' H&C submissions include some arguments about the Principal Applicant's support work during the pandemic, the submissions focus predominantly on hardship and BIOC. I find, as a consequence, that this matter is more consonant with the Court's decision in *Taqi v Canada (Citizenship and Immigration)*, 2023 FC 1607 at paras 14-18. I thus am not persuaded that the Applicants have shown a reviewable error with the establishment analysis.

[16] I am persuaded, however, that the BIOC analysis is unreasonable for at least four reasons. As noted in *Kanthasamy*, the interests of children directly affected "are a singularly significant focus and perspective[; t]hose interests must be 'well identified and defined' and examined 'with a great deal of attention' in light of all the evidence": *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at paras 39-40.

[17] First, the Principal Applicant's affidavit provides details on each of the children. The H&C officer, however, did not consider them individually, contrary to the Court's guidance in

Vieira Sebastiao Melo v Canada (Citizenship and Immigration), 2022 FC 544 [*Melo*] at para 52, citing *Kolosovs v Canada (Citizenship and Immigration)*, 2008 FC 165 at para 11.

[18] Second, it is unreasonably speculative on the part of the officer to find that the children have not been educated long enough in Canada to face challenges in relocating to Nigeria, especially when the only education they have had has been in Canada.

[19] Third, that the adult Applicants received their education in Nigeria without any identified obstacles, in no way is indicative, in my view, of the obstacles the children may face with their education, upon returning to Nigeria many years after the adult Applicants were educated there. In other words, the H&C officer's focus strays from the children to the parents and seeks to draw conclusions about what the children would face in moving to Nigeria based on the absence of evidence about whether the parents encountered any obstacles with their education. This too is unreasonable speculation: *Koos v Canada (Citizenship and Immigration)*, 2022 FC 1762 at para 11; *Giraldo v Canada (Citizenship and Immigration)*, 2023 FC 492 at para 8.

[20] Finally, the finding that the adult Applicants' reunification with their adult son living in Nigeria would be in the best interests of their minor children is wholly unfounded and speculative, given the lack of any evidence about their current relationship, if any, with the adult son.

[21] As *Melo* emphasizes (at para 47), “it is quite possible that one of those factors alone [i.e. including BIOC] may be sufficient to warrant the H&C relief sought.” Here, I find the BIOC analysis alone sufficiently flawed to warrant the Court’s intervention in this judicial review.

III. Conclusion

[22] For the above reasons, the H&C decision will be set aside and remitted to a different officer for redetermination.

[23] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-1127-23

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review is granted.
2. The November 23, 2022 decision by a senior immigration officer of Immigration, Refugees and Citizenship Canada, refusing the Applicants' application for permanent residence from within Canada on humanitarian and compassionate grounds, will be set aside and remitted to a different officer for redetermination.
3. 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.
…	…
Non-application of certain factors	**Non-application de certains facteurs**
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	**(1.3)** Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

FEDERAL COURT

SOLICITORS OF RECORD

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