

Federal Court



Cour fédérale

**Date: 20220218**

**Docket: IMM-255-21**

**Citation: 2022 FC 219**

**Ottawa, Ontario, February 18, 2022**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**DOMINIK JANUV**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This judicial review concerns a decision of an officer of Immigration, Refugees and Citizenship Canada [Officer] denying the Applicant's requests for a temporary resident permit [TRP] and permanent residence on humanitarian and compassionate grounds [H&C] under the *Immigration and Refugee Protection Act*, SC 2001, c 27, s 25.

[2] The Applicant relied on his establishment based on three years residence, his work and his community involvement through church and volunteering. He also relied on the best interests of the child [BIOC] being his 15 year old brother in Slovakia and on that of Oliver, the son of his friend Maria in Canada. The hardship he claimed is that of discrimination as a half Roma individual and the economic state of Slovakia.

## II. Background

[3] The Applicant, who is half Roma and in his mid-20's, came to Canada in October 2017 to escape "loan sharks" said to be harassing him over a loan his estranged father took. The rest of his family has stayed in Slovakia to whom he sends money to pay the loan sharks.

[4] The Officer denied the TRP having concluded that the Applicant was not likely to leave Canada at the end of his temporary stay. The Officer denied the H&C application which is the principal issue in the judicial review.

[5] The Officer noted in respect of establishment that the Applicant acquired the so-called "establishment" by unlawfully remaining in Canada for 2 ½ years and working without authorization. Such roots as the Applicant established in the community and with friends were the normal social connections of someone living in Canada for this time period.

[6] In respect of hardship, the Officer noted that the Applicant, having all his family in Slovakia, would not have a difficult time reintegrating back into Slovakian society.

[7] With respect to hardship upon return to his home country, the Officer accepted that the Applicant was half Roma but had a difficult time accepting the Applicant's story that he had to stay in Canada to earn enough to pay off a debt incurred by his father, who had no involvement with the family since he was 10 years old.

[8] The Officer accepted that the Applicant was industrious and that he might have a difficult time securing equivalent employment but his skills should be of significant assistance.

[9] The Applicant challenges the Officer's conclusion that the Applicant had not provided evidence of personal discrimination against him and argued that the Officer failed to consider that Roma people generally experience discrimination and should have inferred that he would be treated like other members of the group.

[10] Lastly, the Applicant says that the Officer took too narrow an approach to BIOC by focusing the inquiry purely on whether the children would have their basic needs met.

### III. Analysis

[11] There is no issue that the applicable standard of review is reasonableness in accordance with the teachings of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[12] It is evident that the Officer saw this Applicant's efforts as designed to circumvent the normal immigration system – using H&C relief as an alternative immigration process to secure

entry to Canada and that it was based on a desire to maintain a better economic life. That overall conclusion is reasonable in the circumstances.

A. *Establishment*

[13] The Officer's analysis and consideration of factors was reasonable. His focus on the Applicant's unlawful residency, his ignoring the law and his failure to try other grounds for entry to Canada were proper considerations. One cannot *prima facie* leverage up one's illegal stay into legitimate grounds for remaining in Canada absent other factors.

[14] It was reasonable to conclude that in the face of weak evidence of establishment, the Officer could not see the Applicant's conduct deserving of the exercise of H&C discretion.

[15] With respect to hardship, the Applicant did not have significant evidence. It is unfair criticism of the Officer that he required the Applicant to experience personal discrimination and not to have inferred that the Applicant would be treated as other Roma people. The Applicant's case was based on him being identified as Roma by his looks and appearance. However, he was half Roma and was unable to establish that he would be linked as a Roma and therefore experience the discrimination that other Roma individuals demonstrably suffer. All the Applicant produced was a bare unsupported assertion of possible harm.

[16] The Officer's conclusion on this point is likewise reasonable.

B. *BIOC*

[17] Finally, in respect of BIOC, the Officer properly noted the absence of supporting evidence, even from the Applicant's brother in Slovakia. The Officer considered the interests of Maria's son and the fact that he was not being moved from Canada – a feature which distinguishes the authorities relied on by the Applicant. There was no evidence of significant interdependence justifying a favourable BIOC conclusion regarding Oliver.

IV. Conclusion

[18] Considered overall and analyzed in respect of the key components of an H&C analysis, the Officer's decision was reasonable. As such, this judicial review will be dismissed.

[19] There is no question for certification.

**JUDGMENT in IMM-255-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification.

"Michael L. Phelan"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-255-21

**STYLE OF CAUSE:** DOMINIK JANUV v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 7, 2022

**JUDGMENT AND REASONS:** PHELAN J.

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