

Federal Court



Cour fédérale

Date: 20220705

Docket: IMM-3885-21

Citation: 2022 FC 986

Toronto, Ontario, July 5, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

**GILBERTO NOVOA GONZALEZ
MONICA JARAMILLO VEGA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a May 25, 2021 decision [Decision] of a Senior Immigration Officer [Officer] refusing an application for permanent residence on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, the application is allowed.

I. Background

[3] The Applicants, Gilberto Novo Gonzalez (the Principal Applicant) and his common law partner, Monica Jaramillo Vega (the Secondary Applicant [SA]), are citizens of Colombia. In 2012, they made a claim for refugee protection, alleging that their son had been kidnapped by the Revolutionary Armed Forces of Colombia [FARC] and that their family continued to be targeted and threatened.

[4] The refugee claim was refused in 2019. A judicial review application was denied shortly thereafter. The Applicants submitted an H&C claim in August 2019 that was rejected because it was made less than one year after the refugee claim was denied. A removal order was subsequently issued in October 2019, but was deferred on the basis of the Government of Canada travel ban relating to Colombia.

[5] On December 14, 2020, the Applicants made the H&C claim at issue in this application. On May 25, 2021, the H&C claim was refused. The Officer concluded that the Applicants had moderately established themselves in Canada on the basis of their employment history, friendships, volunteering, and education. The Officer addressed the risks the Applicants alleged they would face from the FARC. However, the Officer determined that there was insufficient independent or corroborative evidence to suggest they would be more likely than not to experience hardship upon their return to Colombia.

[6] The Officer acknowledged that the SA suffers from Major Depressive Disorder [MDD] and Post Traumatic Stress Disorder [PTSD] and gave some weight to this factor and the

Applicants' evidence from the SA's psychiatrist and a psychotherapist. However, the Officer found that there was insufficient evidence that the SA would be unable to access psychiatric services in Colombia if required.

[7] The Officer concluded that although the Applicants would suffer some hardship on being required to leave Canada, it was not sufficient to warrant relief on H&C grounds and the application was refused.

II. Issues and Standard of Review

[8] The Applicant raises the following two issues:

- (A) Did the Officer err by not considering the impact a return to Colombia would have on the SA's mental health?
- (B) Did the Officer err in its consideration of the evidence in assessing the threat of the FARC in Colombia?

[9] The standard of review of an Officer's H&C decision is reasonableness: *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 777 at para 13. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16-17.

[10] In conducting a reasonableness review, the Court must 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 paras 85-86; *Canada Post Corp v*

Canadian Union of Postal Workers, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

[11] As set out further below, I find that the first issue is determinative. As such, my analysis will be restricted to the first issue only.

III. Analysis

A. *Did the Officer err by not considering the impact that return to Colombia would have on the SA's mental health?*

[12] The Applicants argue that the Officer had a duty to consider the impact that returning to Colombia would have on the SA's mental health, apart from considering whether there was appropriate treatment available in Colombia.

[13] The Respondent asserts that the main focus of the Applicants' H&C submissions was on the availability of treatment for the SA in Colombia. They assert that it was not unreasonable for the Officer to analyse the issue from that perspective in view of this focus.

[14] In *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paragraphs 47-48, the Supreme Court held that once a psychiatric diagnosis is accepted as being based on an applicant's experiences in the country of origin, an Officer must not only consider whether treatment is available in the country of origin, but must also identify and weigh the effects of being returned to that country on the applicant's mental health (see also *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1081 at para 29).

[15] Before the Officer, the Applicants submitted reports from a Registered Psychotherapist and a psychiatrist commenting on the SA's mental health, MDD and PTSD diagnoses, and on the effects on her mental health if she were to return to Colombia. The psychotherapist expressed strong doubt that the SA would access psychological support in Colombia because of her fear and mistrust and opined that if the SA were to return to Colombia there might be a "collapse of her mental health"

[16] The psychiatrist stated that the SA "needs to be able to live in a safe and supportive environment and engage in treatment and take medication in order to regain her mental health". The report referred to the SA taking certain medication for sleep and provided for an alternate treatment plan if her condition did not improve. The report stated that the SA "would also benefit from ongoing therapy for her mental health". It noted that the SA's uncertain situation and her fear for her own safety and that of her family if returned to Colombia would be "very destabilizing for her mental health and a barrier for her to be able to focus on her goals."

[17] In the Applicants' H&C submissions, the Applicants refer to these reports and the potential harm to the SA if she were to return to Colombia. Much of the submissions is directed to the adequacy of the care that would be available to the SA to treat her symptoms, including MDD and PTSD. However, the submissions also highlight the comments noted above from the psychiatrist's report that there is a high risk to the SA's mental wellbeing if she is returned to Colombia as her fear for her own and her family's safety would be destabilizing to her mental health. In my view, these factors are not sufficiently considered in the Officer's analysis.

[18] In the Decision, the Officer accepted that the SA has MDD and PTSD. The Officer referenced the Applicants' submissions, which stated that "the SA's "mental health will be impacted if she is deported back to Colombia where access to psychiatric assistance is limited in Colombia." The Officer referred to the reports of the psychotherapist and psychiatrist, but focused on the SA's access to mental healthcare in Colombia. The Officer concluded by stating, "I recognize that there are more issues of inadequate mental health care in Colombia than in Canada, and thus, I am sympathetic to the state of the SA's mental health and give this factor some weight."

[19] The Respondent asserts that the Decision must be read holistically and contextually (*Vavilov* at para 97) and that it is reasonable to connect the dots to find that the impact of the SA's return to Colombia on her mental health was considered as part of the Officer's analysis. It asserts that the Officer understood that the SA's mental health might be impacted and even weighed this in her favour, but ultimately found this factor insufficient to justify a positive exemption.

[20] In my view, it is not reasonable to assume that such considerations were made, particularly as the focus of the analysis remained on the availability of treatment and not on the impact of the return itself on the Applicant's mental health.

[21] I agree with the Applicants that the Officer appears to accept that the SA's mental illness was caused by her experiences in Colombia, even if the Officer does not accept all of the evidence relating to the events that are alleged to have occurred involving the FARC. This fact

was not disputed in the Decision or in oral argument. Once this was accepted, the Officer was obliged to consider whether the SA's mental illness would worsen if she returned to Colombia. While it may have been open for the Officer to conclude that this factor ultimately would not weigh in the Applicants' favour, some analysis of this factor was required in the Officer's decision. On this basis, I find that the Decision was unreasonable.

[22] The application is accordingly allowed and the matter will be referred back to another Officer for redetermination.

[23] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-3885-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed, the Decision dated May 25, 2021 is set aside and the matter is referred back to another Officer for redetermination.
2. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3885-21

STYLE OF CAUSE: GILBERTO NOVOA GONZALEZ, MONICA
JARAMILLO VEGA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 26, 2022

JUDGMENT AND REASONS: FURLANETTO J.

DATED: JULY 5, 2022

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