Federal Court  Cour fédérale

Date: 20240726

Docket: IMM-7259-23

Citation: 2024 FC 1193

Ottawa, Ontario, July 26, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

CARLOS MIGUEL IGREJA FERREIRA DE CAMPOS
MARIA MADALENA FARIA PEREIRA DE CAMPOS
JOAO CARLOS PEREIRA CAMPOS
LARA SOFIA PEREIRA CAMPOS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of a Senior Immigration Officer (the "Officer") of Immigration, Refugees and Citizenship Canada, dated May 25, 2023, denying their 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 ("*IRPA*"). The Officer was not satisfied that the Applicants' circumstances or the best interests of the children ("BIOC") justified an exemption under subsection 25(1) of the *IRPA*, nor did country conditions in Portugal.

[2] The Applicants submit that the Officer's decision was rendered in a manner that breached procedural fairness and is unreasonable.

[3] For the following reasons, I find that the decision is unreasonable, and thus do not address the issue of procedural fairness. This application for judicial review is granted.

II. **Analysis**

A. *Background*

[4] Carlos Miguel Igreja Ferreira de Campos (the "Principal Applicant"), his partner Maria Madalena Faria Pereira de Campos (the "Associate Applicant"), and their two children (the "Minor Applicants") are citizens of Portugal.

[5] On April 7, 2014, the Principal Applicant entered Canada. On October 20, 2014, he gained temporary resident status that was valid until April 6, 2015. That same day, October 20, 2014, the Associate Applicant and Minor Applicants entered Canada.

[6] On March 18, 2021, the Applicants submitted their first H&C application. On July 6, 2021, this application was refused.

[7] On January 12, 2022, the Applicants submitted their second H&C application.

[8] In a decision dated May 25, 2023, the Officer found that the Applicants' circumstances did not warrant H&C relief pursuant to subsection 25(1) of the *IRPA*.

[9] On establishment, the Officer acknowledged the Principal Applicant's residence and work in Canada, but did not find that the Associate Applicant had provided sufficient corroborative evidence to establish that she had been working. The Officer acknowledged the Applicants' funds, ownership of a vehicle, donations, and participation in church activities, but found that the Applicants had not provided corroborative evidence to establish the Associate Applicant's father's medical condition as a ground for establishment. The Officer further found that the Applicants' community ties did not justify an H&C exemption, as the Applicants could maintain contact with their friends and family from abroad. The Officer overall found that while the Applicants had shown "a level of integration" in Canada warranting that establishment have some positive weight, they had long been in contravention of Canadian immigration laws. The Officer thus awarded establishment minimal weight.

[10] On the BIOC, the Officer was satisfied that the bonds the children had with their family and friends in Canada would not be severed upon returning to Portugal. The Officer acknowledged the evidence of their academic and extracurricular participation, but found that:

> [the Minor Applicants] have attended school in Portugal previously and would reasonably have some familiarity with the education system. I further note that there is little objective documentary evidence, such as a language assessment test, on file to demonstrate that their fluency in Portuguese is such that would face severe challenges acclimating to the education system in Portugal.

[11] The Officer found that the evidence submitted regarding the Minor Applicants' lack of fluency in Portuguese was not substantiated, and that it was reasonable to conclude that the children communicated with their grandfather in Portuguese because the grandfather wrote a letter of support for the H&C application in Portuguese. The Officer found that the Minor Applicants had experience adapting to a different country's educational system and learning a new language, having shown "their resiliency and ability to adapt." The Officer further found that the Minor Applicants' evidence with respect to their postsecondary education was speculative and, overall, gave the BIOC some weight.

[12] On the mental health concerns, the Officer found that there was little objective evidence regarding the availability of medical support for the Principal Applicant in Portugal. The Officer acknowledged issues faced by the Associate and Minor Applicants, but found that overall that the Applicants' mental health concerns did not warrant H&C relief.

[13] On adverse country conditions, the Officer did not find that the objective evidence regarding conditions in Portugal warranted H&C relief. The Officer also found that there was insufficient evidence that the Applicants could not re-establish themselves there. The Officer once more noted that the Applicants had been living in Canada in contravention of immigration laws.

[14] For these reasons, the Officer was not satisfied that the Applicants' circumstances warranted an H&C exemption under subsection 25(1) of the *IRPA*.

B. *Issue and Standard of Review*

[15] The sole issue is whether the Officer's decision is reasonable.

[16] The standard of review on the merits of the decision is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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 (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[18] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent

exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

C. *The Officer's decision is unreasonable*

[19] The Applicants submit that the Officer applied the wrong test for the BIOC analysis, erred with respect to the Applicants' medical evidence, erroneously discounted the Applicants' establishment in Canada owing to their contravention of Canadian immigration laws, and erred by finding the Applicants' relationships in Canada could be maintained remotely. Furthermore, the Applicants submit that the Officer unreasonably used evidence of positive establishment in Canada against the Applicants, held the Applicants to the erroneous standard of demonstrating "exceptional" circumstances warranting H&C relief, and erred by finding the Applicants could rely on family support in Portugal.

[20] The Respondent submits that the Applicants' submissions about the BIOC analysis amount to taking issue with the Officer's weighing of the evidence, that the Officer did not err with respect to the medical evidence, and that the Applicants have not shown how the Officer erred in the establishment analysis, it being appropriate for the Officer to consider the Applicants' contravention of immigration laws. Furthermore, the Respondent submits that the Applicants had the onus to show that they had exceptional circumstances warranting H&C relief.

[21] I agree with the Applicants.

[22] This Court has warned against focussing on a child's resiliency and adaptability rather than their best interests (*Bautista v Canada (Citizenship and Immigration)*, 2014 FC 1008 at para 28; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at para 31, citing *Edo-Osagie v Canada (Citizenship and Immigration)*, 2017 FC 1084 at paras 27-29). The Officer here focussed on the former, finding that the Minor Applicants' ability to adapt to Canada's education system and learn a new language "demonstrates their resiliency and ability to adapt."

[23] This finding is especially troubling given that the Officer speculates about the Minor Applicants' language abilities in Portuguese. The Officer infers that the Minor Applicants communicate with their grandfather in Portuguese because he wrote a letter of support in Portuguese. This inference is tenuous at best, and a troubling implication that migrant families speak a foreign language at worst. This inference is especially troubling in light of evidence provided by the Applicants that the children had lost their fluency in Portuguese.

[24] I further agree with the Applicants that the Officer erred in the establishment analysis. The Applicants' contravention of Canadian immigration laws was not only a consideration of the Officer's; rather, it was "conclusive". This is an error (*Jaramillo Zaragoza v Canada (Citizenship and Immigration)*, 2020 FC 879 at para 38). As I have held before, "an H&C application invariably involves some non-compliance with the *IRPA*" *(Augusto v Canada (Citizenship and Immigration),* 2022 FC 226 at para 23).

[25] Furthermore, the Officer erred by, in my colleague Justice Diner's words, using "the Applicants' shield against them as a sword" in finding that the Applicants' positive establishment factors could see them return to Portugal and having this finding be a basis to deny

their H&C claim (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 ("*Singh*") at para 23).

[26] Finally, I appreciate that counsel for the Applicant brought the Court's attention to the Officer's specific finding in the establishment analysis that "relationships are not bound by geographical locations and that [the Applicants] have the option to maintain contact with their family, friends and others in Canada through mail, telephone and via the internet."

[27] This standard-form "justification" for denying H&C relief is a paltry excuse for an analysis of an applicant's connection to their friends, family, and community in Canada. The Court has long advised against this line of reasoning when provided without regard to an applicant's circumstances (*Goh v Canada (Citizenship and Immigration)*, 2024 FC 364 at para 26; *Yu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 956 at para 30, cited in *Dhaliwal v Canada (Citizenship and Immigration)*, 2022 FC 1270 at para 27 and *Epstein v Canada (Citizenship and Immigration)*, 2015 FC 1201 at para 16).

[28] Furthermore, an artificially high standard is established when an officer finds that there is a lack of evidence that an applicant cannot maintain contact with friends, family, and community through communication methods upon leaving Canada. On the one hand, it elevates the evidentiary threshold to proving a negative: "Show us you cannot keep in touch with your community in Canada." Obviously, in this age of technology, this standard is unlikely, if not impossible to meet. On the other hand, such a standard envisions a grim view of what community ties mean: "It is enough that you can keep in contact with friends and family in

Canada through technological means." Simply put, this standard is not in accordance with what an establishment analysis entails, which is establishment in Canada (*Singh* at para 25 [emphasis in original]). This is especially troubling when applicants provide evidence of what their community in Canada means to them, and what they mean to their community.

[29] The Officer thus committed several reviewable errors, the decision being unjustified in relation to its legal and factual constraints and these errors' seriousness rendering the decision unreasonable as a whole (*Vavilov* at paras 99-101).

[30] Finally, many arguments were made at the hearing for this matter regarding whether the Applicants had to prove that their circumstances were "exceptional" to justify an H&C exemption.

[31] They do not. It is an error to hold applicants to that standard in H&C claims (*Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 at paras 29-47; see especially para 41, citing numerous cases).

III. **Conclusion**

[32] This application for judicial review is granted. The Officer's decision commits several serious errors and is unjustified in relation to its legal and factual constraints (*Vavilov* at paras 99-101). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-7259-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. The decision is quashed and the matter remitted to a different officer for redetermination.

3. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7259-23
STYLE OF CAUSE:	CARLOS MIGUEL IGREJA FERREIRA DE CAMPOS, MARIA MADALENA FARIA PEREIRA DE CAMPOS, JOAO CARLOS PEREIRA CAMPOS AND LARA SOFIA PEREIRA CAMPOS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

Ana Martinez	FOR THE APPLICANTS
Nicole John	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bellissimo Law Group PC Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT