

Federal Court



Cour fédérale

**Date: 20240725**

**Docket: IMM-3824-23**

**Citation: 2024 FC 1179**

**Ottawa, Ontario, July 25, 2024**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**Carlos Arturo ARTEAGA MANNSBACH**

**Applicant**

**and**

**The Minister of Public Safety and Emergency  
Preparedness**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a refusal to defer the removal of the Applicant, Carlos Arturo Arteaga Mannsbach. An inland enforcement officer [Officer] found that a deferral of removal was not appropriate in the circumstances [Decision].

[2] The Applicant's removal to Colombia, where the Applicant holds citizenship, was scheduled for March 27, 2023.

[3] The Applicant made a deferral request focusing on the Applicant's wish to stay and support his aunt during her final days battling a terminal illness; the risk of economic destitution he could encounter as a Venezuelan gay man in Colombia; and his pending permanent residence application on humanitarian and compassionate [H&C] grounds. The Officer found that there was insufficient evidence to establish the imminence of the aunt's passing and that the Applicant's demonstrated ability to find employment in Canada, combined with his familiarity of Colombia, meant that he would find employment in Colombia.

[4] On March 24, 2023, Justice Ahmed granted a stay of the Applicant's removal until the determination of this judicial review: *Arteaga Mannsbach v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 414 [*Arteaga Mannsbach*].

[5] I find the Officer erred by finding there was insufficient information establishing the aunt's passing as imminent. I therefore grant the application.

## II. Preliminary Matter

[6] The Certified Tribunal Record [CTR] contains several documents that belong to individuals unrelated to this application. I thereby issue an order directing the Respondent to redact PDF pages 16 to 21 of the CTR and then refile the redacted CTR with the Registrar.

III. Analysis

[7] Under subsection 48(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], a removal officer has the duty to enforce a removal order “as soon as possible.”

[8] A removal officer has discretionary power to defer removal in certain circumstances: *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 [Baron] at para 49-51; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras 54-55; *Canada (Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286 [Shpati] at para 43, and *Forde v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1029 [Forde] at paras 36, 40-43.

[9] The Applicant challenges the Decision on several grounds. I find the determinative issue is the Officer’s assessment of the evidence concerning the terminal nature of the aunt’s conditions. The applicable standard of review is the reasonableness standard as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[10] In support of his deferral request, the Applicant submitted several documents concerning his aunt’s terminal illness, including a medical report dated November 2, 2022, a lab report dated November 30, 2020. The November 2022 medical report confirms that the aunt has been diagnosed with several conditions including breast cancer that has metastasized to her lung. The same report also confirms that the aunt was receiving chemotherapy at that point in time.

[11] In addition, the Applicant submitted a letter from his aunt, and a sworn affidavit from TJT, the Applicant's cousin and the aunt's daughter, dated March 17, 2023.

[12] By March 2023, as TJT stated in her sworn affidavit, the aunt's condition "has gradually worsened until it took a sharp downward turn from July 2021 onward, when it was discovered that tumors had spread through her body." TJT also stated that her mother "was no longer well enough to receive a level of chemotherapy that would reduce the cancer in her body," and so the family has "transitioned to palliative care: focusing on keeping her stable and giving her an enjoyable life as her end nears."

[13] In finding that there was insufficient information confirming the aunt's death to be imminent, the Officer referred to the two medical reports as well as the aunt's letter. The Officer made no mention of TJT's affidavit.

[14] The Respondent submits that the Officer did not overlook TJT's affidavit evidence. Pointing to the Applicant's statement that the aunt was "in her final year or two of life" and TJT's statement that her mother would not live "more than a year," the Respondent submits this evidence was not sufficiently inconsistent with the Officer's finding that there was inadequate evidence showing the aunt's death as imminent. The Respondent also submits that implicit in the Decision is that 1-2 years is not "imminent."

[15] I reject the Respondent's submission as an attempt to buttress the Officer's reasons.

Given there is no mention whatsoever in the Decision of TJT's affidavit, the Court cannot read into the Decision what the Officer may have determined based on TJT's affidavit.

[16] The Respondent further relies on *Forde* at paras 36 and 43 to argue that an officer's discretion does not extend "beyond a few months or so."

[17] I agree that an enforcement officer's discretion is generally limited to cases where there is clear evidence of a "risk of death, extreme sanction or inhumane treatment," or where there are temporary, short-term exigent circumstances, such as facilitating proper travel arrangements or allowing a child to complete their school year: *Shpati* at para 43; *Baron* at paras 49-51; *Wang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148 [*Wang*] at para 48.

[18] However, I am not convinced that *Forde* establishes a hard temporal limit for an enforcement officer's discretion to defer removal. While noting that the change of the wording in subsections 48(2) from "as soon as reasonably practicable" to "as soon as possible," the Chief Justice suggests in *Forde* that an outside limit would appear to be contemplated to deal with "short term" considerations and H&C applications that are "imminent." However, beyond those general observations, the Court in *Forde* did not impose an exact outside limit. "[A] few months or so," with all due respect, is too imprecise a standard to be implied to all deferral requests, each of which must be determined based on the facts before the enforcement officer.

[19] The Respondent also points to *Wang* at para 44 to note a range of factors which will require the exercise of discretion including pending births or deaths. The Respondent submits that “pending” means it is something that will occur soon.

[20] I am not persuaded that “pending” necessarily carries the same meaning of “imminent.”

[21] I further observe that, unlike births, the exact timing of one’s demise is generally not something that can be predicted with some precision, even in cases involving individuals with terminal illness. I share Justice Ahmed’s comment that “[p]roviding evidence to prove when exactly a family member will die is an undue and impossible standard.” *Arteaga Mannsbach* at para 25.

[22] In any event, I need not opine on the difference between a “pending” and “imminent” death. In the case before me, the Officer did not deny the Applicant’s deferral request because the aunt’s death was expected to occur beyond a prescribed time limit and was therefore not pending or imminent. Instead, the Officer justified their refusal by focusing on the insufficiency of evidence. In so doing, the Officer made two reviewable errors.

[23] First, the Officer erred by failing to refer to TJT’s statutory declaration. The sworn statements in TJT’s statutory declaration indicating that the aunt was in palliative care by March 2023, which appears to suggest the aunt was either at or near the end of her life. I note that the Officer’s disregard of TJT’s evidence that the aunt was in palliative care was one of the reasons why Justice Ahmed stayed the Applicant’s removal: *Arteaga Mannsbach* at para 25.

[24] Second, as the Court notes in *Baron* at para 51, “pending deaths” can permissibly influence the timing of removal, even on the narrowest reading of section 48 of *IRPA*. By failing to meaningfully consider the totality of the evidence of the aunt’s pending death, the Officer’s reasoning was not justified by the law.

[25] In sum, the Decision failed to demonstrate the requisite the justification, transparency and intelligibility (*Vavilov* at para 81) and therefore should be set aside.

[26] Strictly as an *obiter*, I would add that however limited their discretion might be to defer removals, there is nothing to stop an enforcement officer from exercising their discretion with an element of compassion and understanding. When dealing with an applicant facing the pending passing of a loved one, rather than focusing on requiring absolute proof of when that day may come, an officer could consider granting a short deferral, and if necessary, request timely updates.

#### IV. Conclusion

[27] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision-maker.

[28] There is no question for certification.

**JUDGMENT in IMM-3824-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The matter is referred back for redetermination by a different decision-maker.
3. The Respondent shall file a redacted version of the Certified Tribunal Record [CTR] by redacting PDF pages 16 to 21 of the CTR within 30 days from the date of this decision.
4. The Registrar shall replace the CTR with the redacted version within 7 days after the Respondent files the redacted CTR. The Registrar shall then publish the decision.
5. There is no question for certification.

"Avvy Yao-Yao Go"

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Judge



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

**DOCKET:** IMM-3824-23

**STYLE OF CAUSE:** CARLOS ARTURO ARTEAGA MANNSBACH v THE  
MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 11, 2024

**JUDGMENT AND REASONS:** GO J.

**DATED:** JULY 25, 2024

**APPEARANCES:**

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Giancarlo Volpe FOR THE RESPONDENT

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