

Federal Court



Cour fédérale

Date: 20250402

Docket: IMM-3315-24

Citation: 2025 FC 609

Toronto, Ontario, April 2, 2025

PRESENT: Mr. Justice Diner

BETWEEN:

JOSEPHINE RUBIO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant challenges as being unreasonable the Officer's decision denying her application for permanent residency on Humanitarian and Compassionate [H&C] grounds pursuant to section 25 of *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

I agree, and advised the parties at the conclusion of the hearing of this matter as to why, outlining the broad strokes, but promising these more detailed reasons to follow.

I. Background

[2] The Applicant is a citizen of the Philippines and currently resides in London, Ontario. She has three children and three grandchildren, all of whom reside in the Philippines. The Applicant was married in the Philippines and faced abuse at the hands of her husband; she separated from him in 1992, and they officially divorced in 2010 while the Applicant was in Canada. The Applicant left her children in the care of her sister in 2007 and moved to Hong Kong where she worked as a domestic helper. The Applicant sent money back to the Philippines to cover her children's living expenses and continues to send money to support her grandson.

[3] The Applicant came to Canada in 2008 under the Live-in Caregiver Program [LIC]. She worked as a caregiver and later as a personal support worker [PSW], including during the COVID-19 pandemic. The Applicant submitted a Permanent Resident [PR] application under the LIC Class in [2014], including two of her children and one of her grandchildren. After her dependents failed to submit medical examinations, Immigration, Refugees and Citizenship Canada [the Department] advised the Applicant in 2017 that it was closing her PR application. However, the Applicant followed up by submitting receipts that her daughter had sent her as proof that the dependants had undergone the required medical examinations in the Philippines.

[4] Then, on June 14, 2019, the PR application was refused for misrepresentation. Unbeknownst to the Applicant, her daughter falsified the receipts for the mandatory medical examination that the Applicant had submitted to the Department. She submitted her first H&C application in 2020.

[5] The Department refused the H&C application in 2022, which the Applicant challenged before this Court. She settled in March 2023, returning the H&C application for redetermination with updated documentation. In that second H&C application, the Applicant submitted that (i) her establishment, (ii) the best interests of her grandson, and (iii) her hardships upon returning to the Philippines – including possible deterioration mental health, domestic violence, and lack of employment prospects and housing – all militated in favour of granting the H&C application. The Department disagreed. The refusal of the 2023 H&C application is the subject of this judicial review [Decision].

[6] The Officer found the Applicant's establishment in Canada insufficient, giving neutral weight to the Applicant's employment as a PSW, noting her ability to attend and make church connections abroad, and determining she could maintain her relationships in Canada through other means. In short, she had the ability to reestablish herself in the Philippines.

[7] The Officer also found inadequate evidence to support hardship, i.e. the inability to continue to provide financial support to her family; limited prospects for employment due to age, gender, and time away (finding transferable skills); and a lack of housing options in the Philippines due to prohibitive housing costs.

[8] Similarly, the Officer found insufficient evidence to ground domestic violence threats, given a lack of proof that the ex-husband had tried to contact or locate the Applicant following their separation in 1992, and that her own psychological health assessment lacked such corroboration.

[9] On mental health, the Officer acknowledged that the Applicant had PTSD but noted that there was little evidence that the Applicant would not be able to receive treatment in the Philippines, and further noted that the Applicant was not undergoing any treatment in Canada. The Officer also noted that the Applicant would be able to continue her bible studies and get support from church congregants to help with her mental health in the Philippines.

[10] Finally, the Officer found the best interests of the child (BIOC) lay in her return to the Philippines where her disabled grandson would receive her love, care, and support. The Officer again noted that there was little evidence on the record that the grandson would be unable to continue his schooling should the Applicant return to the Philippines, or what his disabilities actually are. The Officer noted that there was little evidence to suggest that the Applicant would not be able to provide financial support to her grandson in the event that the H&C application be refused. Instead, the Officer found that the grandson may actually benefit from the Applicant being present in the Philippines.

[11] The Applicant argues that the Decision was unreasonable because the Officer failed to properly consider the (i) reasons for which the Applicant needed to resort to an H&C; (ii) her level of establishment in Canada; (iii) BIOC; and (iv) hardship.

II. Analysis

[12] This Decision is reviewed on the standard of reasonableness, and I agree with the Applicant that several elements of the Decision are unreasonable.

[13] First, the Officer failed to consider the underlying reason for the H&C application – i.e. the daughter falsified documents and now, after many years of establishment in Canada, the Applicant’s only avenue to permanent residency is through an H&C application. The Officer also failed to consider the reasons for which the Applicant came to Canada in the first place, namely to provide financial support to her family in the Philippines and to escape her abusive ex-husband. The Supreme Court acknowledged in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] that the officer must take a contextual approach to H&C review. For this observation, *Kanthasamy* (at paras 13, 21) harkened back to *Chirwa*:

13. The meaning of the phrase “humanitarian and compassionate considerations” was first discussed by the Immigration Appeal Board in the case of *Chirwa v. Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338. The first Chair of the Board, Janet Scott, held that humanitarian and compassionate considerations refer to “those facts, established by the evidence, which would excite in a reasonable man [*sic*] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes ‘warrant the granting of special relief’ from the effect of the provisions of the Immigration Act”: p. 350. This definition was inspired by the dictionary definition of the term “compassion”, which covers “sorrow or pity excited by the distress or misfortunes of another, sympathy”: *Chirwa*, at p. 350. The Board acknowledged that “this definition implies an element of subjectivity”, but said there also had to be objective evidence upon which special relief ought to be granted: *Chirwa*, at p. 350.

...

21. But as the legislative history suggests, the successive series of broadly worded “humanitarian and compassionate” provisions in various immigration statutes had a common purpose, namely, to offer equitable relief in circumstances that “would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another”: *Chirwa*, at p. 350.

[14] I agree with the Applicant that the Officer failed to consider the various consistent factors presented in the broader sense, as Justice Brown observed was also absent in *Marshall v Canada*

(*Citizenship and Immigration*), 2017 FC 72 at para 33. Rather, the Officer adopted a segmented approach and failed to consider the *Chirwa* standard (see also *Gregory v Canada (Citizenship and Immigration)*, 2022 FC 277 at para 36). While the Officer paid lip service to the concepts of establishment and BIOC, the analysis here came back to the finding that it would not be a hardship for the Applicant to settle back in the Philippines. Even that conclusion, as I will explain, was flawed, because the Officer made errors on the elements that were considered in arriving at that conclusion.

[15] First, regarding establishment, the Officer held that the Applicant's adaptability and resiliency in Canada to find work and adapt to Canadian society, would mitigate against any hardship upon her return. The Officer failed to properly consider how the Applicant's establishment weighed in favour of granting the exemption, focusing instead on how the Applicant might be able to overcome hardship upon her return abroad.

[16] Turning the Applicant's positives in establishment in Canada into a negative by downgrading any hardship on return has been criticized, given that in doing so, the Officer may fail to consider whether they would be positive factors in her establishment in Canada (*Singh v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1142 at para 37 [*Singh*]). And as this Court stated in another 2019 case of the same name - *Singh v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1633 at para 23: "To turn positive establishment factors on their head is unreasonable. The Officer cannot, as they do here, use the Applicants' shield against them as a sword". It was inappropriate for the Officer to view only the opposite side of the coin presented, in effect looking at the picture presented in all its light and colour through its photographic negative.

[17] In a similar vein, the Officer also erred in approaching the Applicant's involvement with different parts of her community – including her church and other individuals she assisted – as to whether they could continue in her absence. For instance, the Officer wrote “I accept the applicant has contributed to her church community through volunteering activities. While it is commendable that the applicant performs volunteer work, she has provided little evidence that others depend on her volunteer work and that they would be unable to obtain a similar service in the event the applicant departs from Canada”.

[18] The question that should be asked is not whether the Canadian community in question can continue without the Applicant. Rather, “what is required is an analysis and assessment of the degree of establishment of these applicants and how it weighs in favour of granting an exemption” (*Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 at para 21 [*Sebbe*]). In other words, the Officer's focus must be the Applicant, and what she has contributed, rather than simply whether life can continue without her.

[19] Similarly, the Officer downplayed the Applicant's relationships in Canada, including that with her companion, a Canadian. The Officer held that these could all be continued from abroad. The Officer concluded, after addressing the community that she had established over more than 15 years in Canada, that:

In the event the applicant leaves Canada, I recognize that she would be physically separated from Mr. F and her other friends in Canada. However, relationships are not bound by geography. I am not satisfied that separation from Mr. F and the applicant's friends in Canada would sever the bonds that have been established. Although the applicant may experience some difficulty being separated from Mr. F and her friends in Canada, there is little evidence provided to indicate that she could not maintain

relationship ties through other means such as telecommunications and social media.

[20] As Justice Manson recently held in *Goh v Canada (Citizenship and Immigration)*,

2024 FC 364 [*Goh*] at para 26:

Moreover, the Officer unreasonably concluded that the Applicant's relationship with her Canadian family can be maintained "by way of telephone, video call or potentially future visitations". The Officer mistook the Applicant's ability to maintain contact with the ability to maintain any sort of relationship of a similar quality with individuals on whom the Applicant depends emotionally. [...] The Officer's conclusions are simply not justifiable given the evidence, limited in quality as it may be. Ignoring gender and age, vulnerability, and the availability of emotional support outside of Canada fails to recognize a reasonable, holistic approach to the H&C considerations.

[21] Furthermore, unlike in *Goh*, Ms. Rubio provided a plethora of evidence regarding her relationships, whether they were with those she had established with her church congregation, those she volunteered to help, her Canadian companion, and others.

[22] The Officer also erred in the hardship analysis by failing to wholly consider the Applicant's submissions regarding employment possibilities in the Philippines and the cost of living in Manila. The Officer found that the Applicant failed to adduce enough evidence to ground her case that she would not be able to continue to support her family should she return to the Philippines. This was unreasonable in light of the record which provided ample new evidence to substantiate her claim.

[23] Indeed, the Officer seems to have only relied on the evidence and submissions the Applicant provided in her 2020 H&C application, failing to grapple with the additional evidence

and submissions she filed in her 2023 H&C application. For instance, the Officer completely fails to engage with the evidence and submissions that even if the Applicant were able to find employment, her income would be insufficient for her to continue to support herself and her family. The failure to mention this central element of the Applicant's submissions is deficient in the circumstances as it deprives this Court the possibility of "know[ing] whether the officer would have assigned positive, neutral, or negative weight to [this] relevant H&C consideration" (*Bhalla v Canada (Citizenship and Immigration)*, 2019 FC 1638 at para 22). That type of evidence has been found to be material and deserving of assessment (*Singh* at paras 35-36; *Augusto v Canada (Citizenship and Immigration)*, 2022 FC 226 at paras 39-40).

III. Conclusion

[24] For the reasons outlined above, I will grant the judicial review. No certified question is proposed, and none arises.

JUDGMENT in IMM-3315-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.
2. The matter is remitted for redetermination by a different officer, to be assessed in accordance with these reasons.
3. No question of general importance is certified.
4. There is no order as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: JOSEPHINE RUBIO v MCI

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