

Federal Court



Cour fédérale

Date: 20250428

Docket: IMM-7240-24

Citation: 2025 FC 752

Ottawa, Ontario, April 28, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

NASSHA FERNANDEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision by a senior immigration officer [Officer] refusing her application for permanent residence on humanitarian and compassionate grounds [H&C] under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] I am allowing the application because the Officer made several reviewable errors. First, the Officer failed to apply a compassionate lens to the decision-making process. Second, the Officer placed undue weight on the Applicant's unauthorized work in discounting her establishment in Canada. Finally, the Officer erred in assessing the objective evidence about discrimination against LGBTQ individuals in the Philippines.

II. Background

[3] A citizen of the Philippines, the Applicant arrived in Canada as a live-in caregiver in April 2019. She was preparing a permanent residency application under the Home Support Worker [HSW] program but was unable to book a language test before her work permit expired in April 2021. As a result, the Applicant lost status and became ineligible for the HSW program.

[4] The Applicant's attempt to restore her status as a care worker was refused in October 2021. In August 2022, she submitted a temporary resident permit and open work permit application concurrently with her H&C application. The former was refused on May 5, 2023. The Applicant continued to work throughout this period.

[5] In support of her H&C application, the Applicant relied on her establishment in Canada, the best interests of directly affected children (her nephews in Canada), and current country conditions in the Philippines.

III. Analysis

[6] There is no question that the standard of review is reasonableness. A reasonable decision 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”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [Mason]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59–61.

A. *The Officer failed to apply a compassionate lens*

[7] In *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 [Chirwa], the first Chair of the Immigration Appeal Board held that H&C factors include “those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another”: *Chirwa* at 350. The Supreme Court adopted *Chirwa*’s approach in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 21[Kanthasamy]. This is a cumulative and contextual exercise, meaning officers “must substantively consider and weigh *all* the relevant facts and factors before them” [emphasis in original]: *Kanthasamy* at paras 25, 28.

[8] The *Chirwa* approach thus requires evaluating the subjective circumstances of the applicant from the objective perspective of a reasonable Canadian. This Court has held that officers must place themselves in the former’s shoes to clearly understand and be sensitive to their particular

situation: *Francois v Canada (Citizenship and Immigration)*, 2025 FC 514 at para 9; *Wray-Hunt v Canada (Citizenship and Immigration)*, 2023 FC 1687 at para 6; *Helalifar v Canada (Citizenship and Immigration)*, 2022 FC 1040 at para 32; *Kaur v Canada (Citizenship and Immigration)*, 2022 FC 220 at para 43; *Bawazir v Canada (Citizenship and Immigration)*, 2021 FC 1343 at paras 34, 39; *Dowers v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 593 at para 3.

[9] Ultimately, H&C applications are an exercise in empathy. They require engaging with the reciprocal relationships between an applicant and their communities, both here and abroad. The error in this decision is that the Officer ignored the Applicant's evidence demonstrating the various important roles she plays within her community. This precluded the application of a compassionate lens in assessing the relevant H&C factors. I have highlighted three findings below that exemplify this error.

[10] First, the Applicant explained in her H&C application how on weekends, she provides caregiving support to one of her aunts, a stroke survivor. In doing so, the Applicant spells off another aunt so that she can attend to personal matters. The Applicant further stated that the aunt who suffered a stroke had sent remittances to the Applicant's family growing up. This kept the family out of poverty and allowed the Applicant to pursue the education that eventually brought her to Canada. The Applicant described how she consequently feels a duty to support her aunt, who has no children of her own.

[11] The Officer finds that this is "commendable", but that they were not satisfied that the aunt would be "left without support, assistance, and company should the applicant be required to return

to the Philippines”: Humanitarian & Compassionate Grounds Reasons for Decision dated March 26, 2024, at 3 [H&C Decision]. In my view, the Officer failed to engage with the quality of the Applicant’s relationship with her aunts, and neglected to consider the hardship that the aunts would experience in the Applicant’s absence.

[12] Second, the Officer failed to contextually consider the impact of the Applicant’s return to the Philippines on the elderly couple for whom she works as a caregiver. In a support letter accompanying the H&C application, the couple’s adult daughter explained the important role the Applicant plays:

[The Applicant] has become an important part of our family over the last few years. When [the Applicant] arrived in Canada my parents were in good cognitive health but needed physical support. My 83 year old father has had significant heart problems for many years and [the Applicant]’s ability to offer support with the more taxing household chores is essential. Over the past couple of years my mother has been experiencing notable cognitive decline (onset of dementia). Her needs are increasing as she is no longer capable of taking care of most household tasks without support. The comfort and familiarity that [the Applicant] brings to my parents at a time when my mother’s discomfort with people increases is invaluable. It would not only be very disruptive, but actually create significant hardship for my parents if [the Applicant] was unable to stay and work in Canada. We truly believe that [the Applicant] can bring comfort and kindness to my parents’ home as they transition from independence. This is a difficult time to accept when you are less capable of taking care of yourself. It is a difficult path to navigate as the adult child. Loosing [*sic*] [the Applicant] would not only be unfair to her, after her years of honest, hard work, but unfair to my aging parents.

Letter dated December 20, 2021, Certified Tribunal Record [CTR] at 104

[13] The Officer did not engage with this compelling evidence at all, simply stating that the Applicant has been a “dedicated employee and made good strides in the [*sic*] her profession”:

H&C Decision at 3. This, in my view, entirely disregards the role the Applicant plays in this couple's life and why her presence is required.

[14] Finally, while the Officer accepted that the Applicant has “close relationships with her in Canada family members”, they concluded that she can continue these relationships “through accessible means of communication such as phone, messaging or video conferencing”: H&C Decision at 3. This once again overlooks the relationship the Applicant has with her elderly aunt who suffered a stroke. Furthermore, this Court has cautioned against relying on this line of boilerplate reasoning without regard to the particular circumstances of the affected individuals: *Igreja Ferreira de Campos v Canada (Citizenship and Immigration)*, 2024 FC 1193 at para 27; *Kaur v Canada (Citizenship and Immigration)*, 2023 FC 412 at paras 24–27; *Lopez Alvarez v Canada (Citizenship and Immigration)*, 2022 FC 130 at para 38.

[15] Based on the foregoing examples, I find that the Officer did not take an empathetic approach to the Applicant's H&C claim. Rather, their approach ignored the very H&C factors advanced by the Applicant to justify relief.

B. *The Officer placed undue emphasis on the Applicant's unauthorized work*

[16] Subsection 25(1) presupposes that an applicant has failed to comply with the *IRPA*'s requirements. As Justice Little explains, “the provision expressly contemplates an exemption from the strict application of the statute”: *Ajtai v Canada (Citizenship and Immigration)*, 2022 FC 963 at para 46 [*Ajtai*]. On this basis, the Court has held that while an officer may consider an applicant's non-compliance with immigration laws, they must assess the nature of the non-compliance in the

particular circumstances of each case: *Ajtai* at para 46; *Mateos de la Luz v Canada (Citizenship and Immigration)*, 2022 FC 599 at para 28; *Dela Pena v Canada (Citizenship and Immigration)*, 2021 FC 1407 at para 17.

[17] Here, the Officer gave the Applicant's establishment positive weight but found that it was insufficient for H&C relief because she worked without authorization. The Officer failed, however, to assess the nature and the circumstances of the Applicant's non-compliance. They did not consider factors such as the Applicant's responsibility as her parents' only source of revenue, her own ability to survive, and the availability of any alternative care providers for her elderly employers.

[18] Notably, Justice Ahmed recently found that it is particularly erroneous for an officer to focus on non-compliance with respect to employment. He held that "H&C applicants cannot reasonably be expected to stop seeking the means to purchase basic needs such as food and shelter while attempting to regularize their status in Canada": *Daguil v Canada (Citizenship and Immigration)*, 2025 FC 3 at para 20 [*Daguil*].

[19] In my view, the Officer erred in discounting the Applicant's establishment based on her unauthorized work without assessing the particular circumstances of her non-compliance.

C. *The Officer erred in assessing the country condition evidence*

[20] The Officer made two related errors in assessing the country condition evidence regarding workplace discrimination against members of the LGBTQ community in the Philippines.

[21] In finding that there was “insufficient evidence” that the Applicant would be denied employment, the Officer relied on a *Time* article entitled “In the Philippines, You Can Be Both Openly LGBT and Proudly Catholic. But It’s Not Easy”. In particular, the Officer quoted that “some cities have enacted their own anti-discrimination ordinances”: H&C Decision at 4.

[22] The Officer, however, failed to include the rest of the paragraph in that same article speaking of serious consequences where there are no such anti-discrimination laws:

Absence of these laws can prove to be deadly. Little to no data is available on hate crimes in the Philippines, but data collated by Transgender Europe’s Trans Murder Monitoring project show that at least 77 murders of trans and gender-diverse people took place between 2008 and September 2021. (The report warns that many hate crimes remain undocumented and that the actual number may be much higher.) One of the most notorious cases involved a U.S. Marine who killed a transwoman in 2014. He was later pardoned by President Rodrigo Duterte.

Chad de Guzman, “In The Philippines, You Can Be Both Openly LGBT and Proudly Catholic. But It’s Not Easy”, *Time* (6 June 2022), CTR at 180.

[23] This failure to engage with contradictory evidence renders the Officer’s decision unreasonable: *Vavilov* at para 126; *Daguil* at para 18; *Ceguerra v Canada (Citizenship and Immigration)*, 2022 FC 910 at paras 52–54; *Ocampo v Canada (Citizenship and Immigration)*, 2015 FC 1290 at para 5 [*Ocampo*].

[24] In addition, I agree with the Applicant that the Officer erred in failing to assess the operational efficacy of anti-discrimination laws in the Philippines. Contrary to the Respondent’s argument, operational efficacy is not only relevant in refugee cases. This Court has determined that officers must consider the adequacy of state protection in H&C hardship analyses as well:

Singh v Canada (Citizenship and Immigration), 2022 FC 410 at paras 25–27; *Ramesh v Canada (Citizenship and Immigration)*, 2019 FC 778 at paras 20–21; *Ocampo* at para 9.

[25] Indeed, the Officer noted that “discrimination laws have been ‘languishing in Congress for 20 years’” and “‘some limited legal protections for LGBT people exists at the local level’”: H&C Decision at 4. Given this evidence, it was incumbent on the Officer to assess whether these laws are actually protecting members of the LGBTQ community.

[26] The Officer thus did not properly assess the country condition evidence in determining that the Applicant would not face discrimination in the Philippines as a member of the LGBTQ community.

IV. Conclusion

[27] As set out above, the Officer made several reviewable errors. Each on their own is sufficient to vitiate the decision.

[28] The application for judicial review is allowed. The Officer’s decision dated March 26, 2024 is set aside and the matter is remitted to another officer for redetermination.

[29] The parties did not propose any certified questions and I agree that none arise.

JUDGMENT in IMM-7240-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The Officer’s decision dated March 26, 2024 is set aside and the matter is remitted for redetermination by another officer.
3. There is no question for certification.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7240-24

STYLE OF CAUSE: NASSHA FERNANDEZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: MARCH 25, 2025

JUDGMENT AND REASONS: TURLEY J.

DATED: APRIL 28, 2025

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