Federal Court  Cour fédérale

Date: 20250430

Docket: IMM-7629-24

Citation: 2025 FC 781

Ottawa, Ontario, April 30, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

SAVITRA KHADGI BHATTARAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by an Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] dated April 23, 2024 [Decision]. The Officer refused the Applicant's application for permanent residence on humanitarian and compassionate grounds [H&C] pursuant to s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant, a citizen of Nepal, came to Canada in 2016 on a valid work permit to work as an in-home caregiver, and later studied to become a personal support worker. She applied for the temporary resident to permanent residency [TR to PR] pathway program under the essential workers in healthcare stream with two-year-old test scores that were half-a-point too low because the program was time-limited. She later retook the language test and sent her updated improved score in February 2022.

[3] On September 19, 2023, the Applicant's TR to PR application was refused because she did not meet the requirement for English proficiency. She requested discretionary relief on H&C grounds, which was also refused. The Applicant's husband and 19-year-old son were included on her H&C application. Her husband returned to Nepal in February 2021 after his work permit extension was refused. Her son had a study permit that expired on October 31, 2023.

[4] The Applicant brings this application for judicial review of the H&C Decision on the basis that it is unreasonable.

II. Decision Under Review

[5] The Officer held the Applicant had not met her burden of showing H&C relief was justified. The determinative factors were establishment in Canada and the best interests of the child.

[6] The Officer found that the Applicant demonstrated modest establishment and integration in Canada, but there was insufficient evidence to establish the Applicant's employment history, financial ties to Canada, social network and relationships in Canada, or hardship upon return to

Nepal. The Officer similarly found insufficient evidence that the Applicant's son required her support or would find hardship in leaving Canada with his mother.

[7] The Certified Tribunal Record [CTR], which was before the Officer, only contains the Applicant's application forms, supplementary information responses, and email communications. However, "Exhibit D" of the Applicant's Record contains additional evidence listed as "Further Submissions re H&C." This will be discussed further below.

III. Issues and Standard of Review

[8] The issue in this application is whether the Decision is reasonable.

[9] The parties agree and I concur that the merits of the Decision are to be reviewed on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 23-25, 85, 99, 101-4, 115-26).

IV. Legal Framework

[10] H&C is an exceptional and discretionary form of relief that is not meant to operate as an alternative immigration scheme (*Kanthasamy v Canada (Citizenship and Immigration)* [2015] 3 SCR 909 at paras 23, 93 [*Kanthasamy*]).

[11] Subsection 25.1(1) of *IRPA* governs H&C considerations. It states:

Humanitarian and compassionate considerations — Minister's own initiative	**Séjour pour motif d'ordre humanitaire à l'initiative du ministre**

25.1 (1) The Minister may, on the Minister's own initiative, examine the circumstances concerning a foreign national who is inadmissible — other than under section 34, 35, 35.1 or 37 — or who does not meet the requirements of this Act and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25.1 (1)** Le ministre peut, de sa propre initiative, étudier le cas de l'étranger qui est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 — ou qui ne se conforme pas à la présente loi; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché

[12] H&C factors are assessed globally and weighed cumulatively (*Kanthasamy* at para 28). The test is "whether, having regard to all of the circumstances, including the exceptional nature of H&C relief, the Applicant has demonstrated that decent, fair-minded Canadians would find it simply unacceptable to deny the relief sought" (*Kanthasamy* at para 101).

V. Submissions and Analysis

[13] The Applicant submits that the Decision is unreasonable for failing to grapple with the issues raised.

[14] The Respondent submits that the Decision is reasonable, and that the Applicant is attempting to litigate a different decision, specifically the decision rendered on September 19, 2023, by which her TR to PR application was refused because she did not meet the requirement for English proficiency.

A. *Preliminary Issues*

(1) New Arguments on Judicial Review

[15] The Respondent submits that the Applicant raises a new issue in her Further Memorandum of Argument about whether the Decision was rendered in breach of the duty of procedural fairness, specifically concerning a legitimate expectation that her TR to PR application materials would be transferred to the H&C Officer. The Respondent requests the arguments found at paragraphs 35 to 42 of the Applicant's Further Memorandum not be heard by this Court because they were not raised at leave and the Respondent "is now prejudiced by not having had a chance to provide evidence in response."

[16] At leave, the Applicant requested that her application for judicial review be based on whether the Officer's assessment of her credibility and the documentary evidence is unfair or done in unreasonable manner and did not raise issues about a document being absent from the CTR. Her Memorandum of Argument only discussed reasonableness as an issue. However, in her Further Memorandum of Argument, the Applicant makes the argument that IRCC breached the duty of fairness and submits that the September 19, 2023, letter refusing her TR to PR application stated that:

[17] "For the reason(s) set out above, I am not satisfied that you meet the requirements of the TR to PR Pathway. In your submission, you requested an exemption from that eligibility requirement(s) under subsection 25(1) of the Immigration and Refugee Protection Act. As such, we are transferring your application to the **Humanitarian Migration Office In Vancouver**, who

will make a final decision on your application for permanent residence. That office may contact you for an interview or to seek additional information or clarification." [Bold emphasis in original]

[18] According to the Applicant this letter gave rise to a legitimate expectation that the application, including the submissions made by the Applicant up to that point, would be transferred to the Humanitarian Migration Office in Vancouver, and would be before the Officer and that IRCC's failure to transfer the submissions was therefore a breach of the duty of fairness.

[19] I agree with the Respondent that the Court should exercise its discretion not to consider these new issues considering factors outlined by this Court in *Al Mansuri v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 22 at paragraph 12 (see also ; *Thambirajah v Canada (Citizenship and Immigration)*, 2011 FC 1196 at para 23 and *Mousavimianji v Canada (Citizenship and Immigration)*, 2024 FC 726, at paras 4-8).

[20] I find that the Applicant has been represented by the same counsel since she applied for leave. Therefore, I agree with the Respondent that the arguments regarding the breach of procedural fairness found at paragraphs 35 to 42 of the Applicant's Further Memorandum and argued orally during the hearing are new and should not be entertained by this Court in this application for judicial review.

(2) Evidence Not Before the Decision Maker and One Decision Per Application

[21] The Respondent further submits the Applicant is attempting to rely on evidence that was not before the decision-maker and draws the Court's attention to a motion brought by the

Applicant on October 15, 2024, alleging that the CTR was incomplete. Justice Go dismissed this Motion by Order dated December 13, 2024, finding that the documents the Applicant sought to add were for her TR to PR application. The Order states that as the Court confirmed in *Akintunde v Canada (Citizenship and Immigration)*, 2022 FC 977 at paragraph 28, a CTR is not incomplete for failing to contain a copy of a different application by an applicant.

[22] Similarly, the Respondent cites Rule 302 of the *Federal Courts Rules*, SOR/98-106, which states that "[u]nless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought."

[23] Respectfully, I agree with the Respondent on each of the points above.

[24] Firstly, I find that the Applicant cannot rely on "Exhibit D" of the Applicant's Record that contains additional evidence listed as "Further Submissions re H&C," since this evidence was not before the Officer. The CTR, which was before the Officer, only contains the Applicant's application forms, supplementary information responses, and email communications.

[25] Secondly, since the Applicant did not file an application for leave and for judicial review challenging the decision on her TR to PR Pathway application within the time period, she is out of time to do so in this application for judicial review of the H&C Decision.

B. *The Decision is Reasonable*

[26] The Applicant submits that the Officer fundamentally misapprehended the nature of the H&C application, which was for an exemption from or variation of the language requirement.

She argues that the Decision "incorrectly states that the Applicant was seeking an exemption from the in-Canada selection criteria," and "does not demonstrate any consideration of the Language Requirement."

[27] The Respondent submits that since the Applicant did not seek judicial review of the refusal of her TR to PR application, she therefore did not dispute that she did not meet the program's eligibility requirements. According to the Respondent, the Applicant's arguments do not address the Officer's findings on the H&C application.

[28] I find the Applicant has not demonstrated that the Decision is unreasonable.

[29] The Officer determined that the Applicant's situation did not warrant granting an exemption from the general rule that foreign nationals apply for permanent residence from outside of Canada because of humanitarian considerations. In my view, the Officer in this case explicitly took account of the issues and evidence brought forward by the Applicant, including that her TR to PR application was refused because she failed to meet the requirement for English proficiency, her establishment in Canada, and the best interests of her child who lives with her in Canada and is dependent upon her.

[30] As stressed by the Respondent, the Applicant does not argue that the Officer's findings on the establishment or best interests of her child are unreasonable, but instead that she requests an exemption to the language requirement on the TR to PR Pathway application. However, the Applicant acknowledges that English language proficiency was one of the eligibility criteria for the TR to PR program. I agree with the Respondent that the Applicant's arguments do not

address the Officer's findings in the Decision being challenged in this application for judicial review and that she has not argued or shown that the decision under review is unreasonable.

VI. Conclusion

[31] I find the Applicant has not met her burden to establish that the Decision is unreasonable.

[32] The application for judicial review is dismissed.

JUDGMENT in IMM-7629-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions to be certified.

"L. Saint-Fleur"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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