Federal Court  Cour fédérale

Date: 20250507

Docket: IMM-11824-23

Citation: 2025 FC 836

Ottawa, Ontario, May 7, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

VICTOR ALFONSO RAMOS MARTINEZ

and

NORMA FUENTES CASTILLO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Principal Applicant ("PA"), Victor Alfonso Ramos Martinez, is a citizen of El Salvador who came to Canada in 2008. The Associate Applicant ("AA") is the PA's wife and a citizen of Mexico; she came to Canada in 2010. They have remained in Canada since then without legal status. Together they have two sons who were born in Canada in 2015 and 2018.

[2] The Applicants applied for permanent residence from within Canada on humanitarian and compassionate ("H&C") grounds, citing their establishment in Canada, the best interests of their children and adverse conditions in their countries of origin. Their H&C application was refused. The Applicants seek judicial review of this decision, claiming that the Officer's analysis of their establishment and the hardship they would face in their countries of origin was flawed. They also argue that the analysis of the best interests of the children is unreasonable because the Officer applied the wrong test and discounted the risk of family separation.

[3] For the reasons set out below, I find the decision to be unreasonable. The Officer discounted the Applicants' employment history for reasons that are not clear, and the Officer engaged in unfounded speculation about the risk that the family would be separated if the PA had to return to El Salvador and the AA and children returned to Mexico. The combined effect of these two problems is sufficiently serious to render the entire decision unreasonable.

I. Background

[4] The Applicants' H&C claim was based on their degree of establishment in Canada, the hardships they would face on a return to their respective countries of origin, and the best interests of the children. On the establishment factor, the Applicants pointed to their history of employment in Canada, their involvement in their Church and community, and the bonds of friendship they had established. The Applicants claimed they would face extreme hardship on a return to El Salvador and Mexico, citing both their family experiences of threats of violence and the general country conditions. As for the best interests of their children, the Applicants argued that they would face separation as a family because the PA would have to return to El Salvador

while the AA and children would go to Mexico. The Applicants referred to a research document prepared by the Immigration and Refugee Board (IRB) that indicated that the AA might be able to sponsor the PA to join her in Mexico, but his ability to work there would be uncertain. They submitted that refusal of their H&C claim would lead to family separation.

II. Underlying Decision

[5] The Officer analyzed the three grounds advanced by the Applicants in support of their H&C application. The Officer found their degree of establishment in Canada was modest, not greater than would have been expected of other individuals who had lived here for 15 years. The Officer noted that during this period the Applicants had worked in Canada without authorization and had not tried to regularize their status. While the Officer gave some positive weight to the PA's history of employment in Canada, this was discounted in part because he had worked without authorization. The Officer also raised a question about the PA's work history because he had only submitted an employer's letter confirming his employment from 2010 to 2016. Although both the Applicants had filed income tax documents indicating their total income and income taxes from 2016 to 2022, the Officer found little evidence to indicate the details of their actual employment during this period. The Officer noted the absence of letters from employers or pay stubs for the latter period of their residence in Canada.

[6] On the issue of hardship, the Officer accepted that conditions in El Salvador and Mexico were less favourable than the situation in Canada. However, the Applicants had not demonstrated that they faced any particular threats or risks, and they were each familiar with their country of birth.

[7] Regarding the best interests of the Applicants' children, the Officer found that it would be better for the children to remain in the care of at least one of their parents. Given their relatively young age, the Officer found they were not deeply integrated into Canadian society and that they could adapt to life in Mexico if they accompanied their mother there. The Officer found little evidence to confirm that the Principal Applicant would not be able to join his wife in Mexico on a temporary status that could later be made permanent.

[8] Based on a consideration of these factors, the Officer refused the Applicants' H&C application. The Applicants seek judicial review of this decision.

III. Issues and Standard of Review

[9] The Applicants argue that the decision is unreasonable because the Officer erred in applying the tests for establishment and the best interests of the child. The Applicants also submit that the Officer's assessment of the hardship they would face on a return to their countries of origin was unreasonable.

[10] These questions are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[11] In summary, under the *Vavilov* framework, a reviewing court is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual

constraints (*Vavilov* at para 85). The onus is on the Applicants to demonstrate that "any shortcomings or flaws … are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker (*Vavilov* at para 125).

IV. Analysis

A. *The establishment factor*

[12] On establishment, the Applicants submit that the Officer's focus on their lack of status unreasonably overshadowed their work history. I disagree. The Officer reasonably noted that the Applicants had lived and worked in Canada for many years without seeking to regularize their status. I am not persuaded that the Officer ignored or downplayed the positive elements of the Applicants' establishment because of an undue emphasis on their lack of legal status. Instead, the Officer stated that while their "unauthorized work and stay in this country do not overshadow all the positive elements of their establishment, I will not completely discount the fact that the [Applicants] have disregarded Canadian immigration laws which they now seek a regulatory waiver from." That is a reasonable analysis based on the evidence, including the lack of any explanation about why the Applicants did not attempt to regularize their status over the many years they were in Canada.

[13] That said, I am persuaded that the Officer unreasonably discounted the PA's employment in Canada. The Officer acknowledged the PA's work history, mentioning the employer's letter attesting to the PA's employment from 2010 to 2016. However, the Officer found little evidence

to confirm PA's employment from 2016 to 2022, noting the absence of letters from his employer or pay stubs for the period. The PA points to the evidence he filed about his work history, including the list of his employers included in the H&C application together with the income tax records he submitted showing his employment income. The Applicants submit that the Officer unreasonably diminished the PA's employment history by ignoring relevant evidence in the record.

[14] I agree with the Applicants on this point. While it is true that the PA did not submit employment letters or pay stubs for the period from 2016 to 2022, he did list his employers in his H&C application, and he submitted official records from the Canada Revenue Agency attesting to his employment income during these years. While this is not, itself, proof of the source of that income, the fact that the PA declared income and paid taxes on it needed to be acknowledged by the Officer. Instead, the Officer merely mentions that the records did not provide details regarding the source of the PA's income. Given the central importance of employment in the analysis of a claimant's establishment in Canada, and in light of the information that the PA provided to demonstrate that he was gainfully employed throughout the relevant period, I am satisfied that the Officer's analysis of this point is unreasonable.

[15] While that flaw in the Officer's reasoning may not have been sufficient to make the entire decision unreasonable, I am persuaded that it tips the balance when combined with the unreasonable analysis of the best interests of the children factor.

B. *The best interests of the children*

[16] The Applicants submit that the Officer's analysis of the best interests of the child factor is the most grievous error in the decision. They argue that the Officer incorrectly applied a hardship-centric test rather than engaging in the comprehensive analysis the law requires. In addition, the Applicants submit that the decision falls short because the Officer only identified that it was in the children's best interest to accompany their mother to Mexico, rather than engaging with the totality of the evidence about their lives in Canada and the benefits they would obtain from remaining here. Finally, the Applicants argue that the Officer engaged in speculation regarding the possibility that the Principal Applicant would be able to join the family in Mexico despite the fact that he is a citizen of El Salvador. They also submit that the Officer relied on hypothetical statements about the likelihood that the Applicants and their children would benefit from support from the extended family in Mexico.

[17] The Officer acknowledged the degree to which the Canadian-born children had developed ties to Canada. Considering their respective ages (8 and 5 at the time of the application) and their close ties with their parents, the Officer found it would be in the children's best interests to remain with one or both of their parents. I am not persuaded that the Officer's analysis was tainted by a hardship or "basic needs" approach. Instead, I find that the Officer examined the best interests of the children with careful attention to their actual circumstances.

[18] However, I agree with the Applicants that the Officer's analysis of the risk of family separation was unreasonable. In their H&C application, the Applicants argued that their main fear was family separation because the Principal Applicant would return to El Salvador while the

AA would go back to Mexico. However, their submissions on this point were sparse. The main reference is found in the AA's affidavit submitted with their H&C request, where she stated: "[i]f I were to return to my country, I would have to take my children with me, but it is an experience we do not want for our family would be torn apart and we don't want our children to go through the same experience of separated parents that my husband and I went through." In his affidavit, the Principal Applicant expressed a fear that he and his wife would be deported to two different countries, but he did not elaborate on that.

[19] The Applicants referred to an IRB research document on the law concerning the AA's right to sponsor the PA to live in Mexico. That document states that a dependent of a Mexican citizen can enter the country as a non-immigrant (temporary resident) or as an immigrant who seeks to become a permanent resident at the end of a five-year period. The research report indicates that "(s)uch persons are not allowed, however, to engage in any remunerative activity in Mexico, but this may vary on a case by case basis." The Applicants claimed that a refusal of their H&C request would lead to family separation.

[20] While acknowledging the risk of family separation, the Officer noted that it was up to the adult Applicants to decide where their children live and that there was no risk that the children would not end up living with one of their parents. The Officer went on to find that the Applicants had provided little evidence to confirm that the PA could not accompany his spouse and children in Mexico. The Officer found no indication that the PA had applied for legal status in Mexico or that he had tried to obtain permission to work there. On the PA's ability to work, the Officer referred to the official website of the Embassy of Mexico in Australia, which indicates that the

spouse of a Mexican citizen can apply for a Temporary Resident Visa and then apply for a work permit. Based on this independent research, the Officer discounted the possibility that the family would be separated.

[21] This is an unreasonable analysis because it is based on speculation regarding the results of a two-step application process the PA would have to undertake in order to obtain residence and permission to work in Mexico. It was not unreasonable for the Officer to point out the absence of evidence of any efforts made by the PA to pursue these avenues. It was, however, unreasonable for the Officer to presume that the PA would be successful in seeking permission to live and work in Mexico without any evidence to support such a finding. Absent documentary evidence showing that such applications were regularly granted, the Officer's conclusion remains in the realm of speculation.

[22] The risk of family separation was a central theme in the Applicants' H&C application, for obvious reasons. The PA is a citizen of El Salvador, and there are indications in the record that he had contravened the law in the United States while he lived there. This was raised in the Applicants' H&C submissions. While this did not count against the Applicants in the assessment of the H&C claim, it is the kind of evidence the Officer needed to consider in assessing whether there were any impediments to the PA's ability to obtain status in Mexico. That analysis is absent.

[23] For these reasons, I am persuaded that the Officer's analysis of the best interests of the children is fundamentally flawed. This was a central element of the Applicants' H&C claim, and

therefore this error is sufficiently serious, when combined with the problems in the analysis of the Applicants' work history, to call into question the entire decision. The application for judicial review will therefore be granted.

[24] In light of my findings on these points, it is not necessary to consider the Applicants' submissions regarding the analysis of their hardship claim. I will simply add, for the sake of completeness, that I am not persuaded that the Officer's analysis of this element is unreasonable in light of the evidence and submissions put forward by the Applicants.

V. Conclusion

[25] For the reasons set out above, I find the Officer's refusal of the Applicants' H&C application to be unreasonable. The flaws in the analysis are sufficiently serious to call into question the entire decision, and therefore the application for judicial review will be granted.

[26] The decision refusing the Applicants' application for permanent residence on H&C grounds will be quashed and set aside. The matter will be remitted back for reconsideration by a different Officer. Considering the passage of time, the Applicants shall be permitted an opportunity to file new evidence and updated submissions if they wish to do so.

[27] There is no question of general importance for certification.

[28] One final procedural note. On consent of the parties, the style of cause is amended, with immediate effect, to add the Associate Applicant, Norma Fuentes Castillo, as an Applicant in this matter.

JUDGMENT in IMM-11824-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision refusing the Applicants' H&C application dated August 25, 2023 is hereby quashed and set aside.

3. The matter is remitted back for reconsideration by a different Officer.

4. The Applicants shall be permitted the opportunity to file fresh evidence and further submissions, if they wish to do so.

5. There is no question of general importance for certification.

6. The style of cause is amended, with immediate effect, to add Norma Fuentes Castillo as an Applicant.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11824-23
STYLE OF CAUSE:	VICTOR ALFONSO RAMOS MARTINEZ, NORMA FUENTES CASTILLO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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