Federal Court  Cour fédérale

Date: 20250509

Docket: IMM-10061-24

Citation: 2025 FC 865

Toronto, Ontario, May 9, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

RASHEED ALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] This is the judicial review of the decisions of an Immigration, Refugees and Citizenship Canada [IRCC] Officer refusing the application of Rasheed Ali for Authorization to Return to

Canada [ARC] and a Temporary Resident Permit [TRP].1For the reasons set out below, I am granting the application.

II. **BACKGROUND**

[2] The Applicant is a 58-year-old citizen of Guyana. His husband, Jose "Tony" Moniz, is a Canadian citizen and resides in Toronto.

[3] The Applicant first came to Canada in 1984 as a visitor. He met Tony in 1987. They lived together in Canada between 1990 and 1999, and again from 2001 until 2016. They have been married since October 27, 2015. The Applicant was removed from Canada in 2016 and, as explained below, he and his spouse have been seeking to be reunited ever since.

[4] During his time in Canada, the Applicant had significant contact with Canada's immigration enforcement and criminal justice systems. In 2001, he was convicted of driving under the influence of alcohol under section 253(b) of the *Criminal Code,* RSC 1985, c C-46 [*Criminal Code*] and obstructing a peace officer under section 129(a) of the *Criminal Code.* He spent 18 days in jail. In 2015, he pled guilty to four counts of fraud under five thousand dollars under section 380(1)(b) of the *Criminal Code* and was sentenced to a cumulative total of ten months in jail (time served) plus a day. The Applicant also has a lengthy history with immigration enforcement, including multiple detentions, an escape from detention, three

1 Although the Applicant challenges two decisions in this application – the ARC refusal and the TRP refusal – I have exercised my discretion to consider the matters together pursuant to Rule 302 of the *Federal Courts Rules,* SOR/98-106 and Rule 4(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22.

removals to Guyana and several unauthorized returns, including under a false passport in October 1994. The Applicant was most recently removed from Canada in February 2016.

[5] The Applicant and his spouse began the spousal sponsorship application process on March 7, 2018. They sought, in the alternative, a TRP, and later applied for an ARC after learning that the Applicant would require authorization to return to Canada. Following an interview with the Applicant, an IRCC officer determined in November 2018 that the Applicant was in a genuine same-sex relationship with Tony and that their marriage was genuine. However, the officer rejected the Applicant's permanent residence application due to criminal inadmissibility under s. 36(2)(a) of *the Immigration and Refugee Protection Act* [IRPA]. The ARC and TRP applications remained outstanding.

[6] IRCC rejected the Applicant's ARC application in June 2021 and denied that the Applicant had any further TRP application pending. The Applicant sought leave for judicial review of the decision (IMM-5719-21). That litigation was settled, and IRCC reopened the ARC and TRP applications.

[7] The Applicant attended a second interview in April 2022 in connection with the redetermination of the ARC and the outstanding TRP application, and provided further submissions and evidence to IRCC. His submissions requested consideration of humanitarian and compassionate factors and highlighted the dated nature of his past offences and noncompliance. The Applicant also asserted his continuing *bona fide* relationship with his spouse, the negative impact of spousal separation on Tony's physical and mental health, the lack

of a viable alternative to reunification in Canada given the severe mistreatment of LGBTQ+ persons in Guyana and the adverse conditions there for persons who, like Tony, experience disabilities. He noted his outstanding application for a pardon and relied on previous submissions about his rehabilitation efforts. The Applicant adduced extensive evidence in support of his application, including updated country conditions documentation about the discrimination and adversity faced by LGBTQ+ and disabled persons in Guyana and further objective evidence addressing the effect of loneliness and stress on depression and schizophrenia.

[8] On March 14, 2023, IRCC again rejected the Applicant's ARC and TRP applications. The Applicant filed another application for leave and judicial review of the refusals (IMM-5945-23). Once again the litigation was settled, with IRCC agreeing to reconsider the decision.

[9] On May 30, 2023, the Applicant received a Record Suspension from the Parole Board of Canada for his 2001 and 2015 convictions. Record Suspensions, previously called "pardons", reflect determinations by the Parole Board that the recipients have remained free of criminal convictions since completing their last sentence. While a record suspension obtained after the execution of a removal order does not remove the requirement to obtain an ARC to re-enter Canada, it nevertheless confirms that the recipient has been of good conduct such that the past conviction(s) should no longer reflect adversely on their character or lead to a further disqualification under federal law: *Criminal Records Act*, RSC 1985, c C-47, ss 2.3 (*RH v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 1274 at para 24).

[10] Notwithstanding the pardon, IRCC refused the applications for a third time on November 23 and 24, 2023. Following an objection by the Applicant, IRCC agreed to reopen that decision to receive and consider updated documentation from the Applicant. The Applicant provided additional submissions highlighting his clean record and compliance over the previous decade; the nonviolent nature of his past offences; his successful record suspension application; his outstanding criminal rehabilitation application; his spouse's dependency on him; and the suffering caused by the repeated refusals and reconsiderations of his applications.

[11] On March 26, 2024, a different officer at IRCC approved the Applicant's application for criminal rehabilitation. This decision amounts to a finding by the Minister that the Applicant "lead[s] a stable lifestyle and …[is] unlikely to be involved in any further criminal activity" (*De Campos Gregorio v Canada (Citizenship and Immigration)*, 2020 FC 748 at para 23). The rehabilitation decision was forwarded to the Officer reassessing his ARC and TRP applications. However, on April 16, 2024, IRCC refused, for the fourth time, the Applicant's request for ARC and a TRP.

III. **DECISIONS UNDER REVIEW**

[12] The ARC decision issued on April 16, 2024, simply records the denial of the Applicant's authorization to return to Canada. However, the parties agree that this document should be read in conjunction with the Officer's notes recorded in the Global Case Management System [GCMS] dated November 23, 2023, and April 11, 2024, which form part of the reasons for the decision. These notes confirm that the TRP request was also refused.

[13] The Officer set out the required analysis as follows:

> The test for the granting of both an ARC and TRP involves evaluating the client's history of compliance or non-compliance with IRCC and/or CBSA, the likelihood that the applicant will repeat the behaviour that caused them to be removed, the maintenance of program integrity as well as the client's reason that their presence is required in Canada.

[14] The initial November 23, 2023, reasons for refusing the ARC and TRP applications (rendered prior to the issuance of IRCC's rehabilitation finding) begin with a lengthy point-form chronology of the Applicant's criminal and immigration enforcement history. The Officer noted that, in light of IRCC's prior finding that the Applicant's relationship is genuine, his desire to reunite with his spouse would "normally constitute a compelling reason to facilitate a return to Canada," particularly given that the spouse in question is "not well." However, the Officer found this reason to be "undermined" by the Applicant's prior marriage of convenience and his failure to face "the consequences of his actions". The Officer weighed the desire to reunite against the preservation of Canadians' safety and the need to maintain the integrity of Canadian law, concluding that there are insufficient grounds to grant an ARC given the exceptional nature of this relief and the Applicant's history of non-compliance with immigration law and authorities. The Officer stated that, in reaching this decision, they had weighed the Applicant's actions, his husband's situation, their genuine relationship and the Applicant's remorse.

[15] In refusing the TRP, the Officer asserted that they had considered "compelling reasons and exceptional circumstances," and granted considerable weight to the Applicant's desire to reunite with his spouse, but likewise concluded that it did not overcome the need to protect Canadians and the Canadian immigration system. The Officer noted that a TRP might be "more

easily justified" if the Applicant completed his criminal rehabilitation, repaid removal costs and started another spousal sponsorship application.

[16] The Officer's April 11, 2024, GCMS notes set out their further reasons for refusal following the reopening of the November 23, 2023, decision. The Officer acknowledged receipt of new documents provided by the Applicant relating to his rehabilitation application, "descriptions of the human rights situation in Guyana", and "expressions by the sponsor to have the client join him in Canada." Although the Officer accepted that the positive rehabilitation decision combined with his record suspension means the Applicant is no longer criminally inadmissible, the Officer found that the new information "[does] not address the concerns that formed the basis of the previous ARC refusal." The Officer acknowledged "the desire on the part of both parties to be reunited" before again summarizing the Applicant's past noncompliance. The Officer also found that "the second part" of the spousal sponsorship test had not been completed with regard to the previous spousal sponsorship application, and that this "factors into the relative weight given to the above considerations." The Officer concluded that while they had balanced humanitarian and compassionate considerations, they were "not satisfied that sufficient grounds exist to warrant granting the subject the authority to return to Canada," observing that "[t]his form of relief is not one that is granted as a matter of course but is integral to the maintenance of the integrity of the Act." The Officer reiterated that they had taken account of "the subject's actions, the sponsor's situation, the genuineness of the relationship and the subject's statements of remorse and given them due weight."

[17] The Officer also refused the TRP request, noting again that "[i]f the spouse makes another sponsorship such that there is a process in place for permanent residence and the

relationship can be fully evaluated per the regulations, special relief might be more easily justified."

IV. ISSUES AND STANDARD OF REVIEW

[18] The Applicant, then unrepresented, raised a number of issues in his leave and reply memoranda, which were addressed in writing by the Respondent in a further memorandum of argument. At the hearing before me, counsel focused their submissions on whether the decisions were reasonable, and I agree that this issue is dispositive. I will therefore limit my analysis to this question.

[19] The parties agree, as do I, that the applicable standard of review of both the ARC and TRP decisions is reasonableness.

[20] Reasonableness review does not allow this Court to step into the role of the decision maker or to reweigh the evidence before them to reach a different conclusion. Rather, this Court must consider the outcome of a given decision and the decision maker's reasoning to ensure that the decision, as a whole, is transparent, intelligible and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]). The Supreme Court of Canada has endorsed a "culture of justification" for exercises of delegated public power by administrative decision makers in Canada (*Vavilov* at para 2; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8). A reasonable decision must be justified in light of the evidentiary record and the central arguments raised before the decision maker (*Vavilov* at paras 127-128). This justification is "not in the abstract" but rather from the perspective of the

individual subject to the decision under review, and the reasons provided should reflect the severity of the outcome on the rights and interests of that individual (*Vavilov* at paras 95, 133).

V. **LEGAL FRAMEWORK**

[21] Requests for authorization to return to Canada are governed by section 52(1) of the IRPA, which provides that "If a removal order has been enforced, the foreign national shall not return to Canada, unless authorized by an officer or in other prescribed circumstances."

[22] There are no legislated criteria for the issuance of ARCs and this Court has found that that Officers have relatively broad discretion to determine whether issuance is justified in the circumstances (*Guan v Canada (Citizenship and Immigration)*, 2022 FC 999 at para 21 [*Guan*]). The relevant operational manual, entitled *OP 1 Procedures* [OP1], provides non-binding guidance to officers exercising this discretion, and has assisted this Court in determining whether an officer has done so reasonably (*Uddin v Canada (Citizenship and Immigration)*, 2016 FC 314 at para 49). Regarding ARC eligibility, the manual explains:

> Individuals applying for an ARC must demonstrate that there are compelling reasons to consider an Authorization to Return to Canada when weighed against the circumstances that necessitated the issuance of a removal order. Applicants must also demonstrate that they pose a minimal risk to Canadians and to Canadian society. Merely meeting eligibility requirements for the issuance of a visa is not sufficient to grant an ARC. The decision to grant an ARC should be consistent with the objectives of the legislation as defined in paragraph A3(1)(h). (OP1 at 36)

[23] With respect to the assessment of "compelling reasons," the manual sets out the following criteria:

- Do compelling or exceptional circumstances exist?

- Are there alternative options available to the applicant that would not necessitate returning to Canada?
- Are there factors that make the applicant's presence in Canada compelling (e.g., family ties, job qualifications, economic contribution, temporary attendance at an event)?
- Are there children directly implicated in the application whose best interests should be considered?
- Can the applicant support him or herself financially?
- How much time has passed since the infraction that led to the removal order
- How long does the applicant intend to stay in Canada?
- Are there tangible or intangible benefits that may accrue to Canada or the person concerned?

> *Bona fide* marriages, attendance at the funeral of a family member or acceptance under a provincial nominee program are examples of factors that would normally constitute a "compelling reason" for returning to Canada. However, no one factor alone should automatically serve to override concerns related to the safety of Canadians and the security of Canadian society. (OP1 at 36-37)

[24] The authority to grant temporary resident permits flows from section 24(1) of the IRPA, which provides that a TRP can be issued to a foreign national who is inadmissible if "the officer is of the opinion that it is justified in the circumstances." This Court has held that the objective of section 24 is to "soften the sometimes harsh consequences of the strict application of the IRPA" in light of compelling reasons to enter or remain in Canada despite inadmissibility or a history of non-compliance. However, what is required of immigration officers in the TRP context is less than the "full scale" humanitarian and compassionate assessment required by section 25(1) of the

IRPA (*Shabdeen v Canada (Citizenship and Immigration)*, 2020 FC 492 at paras 15, 33, citing *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22).

[25] This power, too, is discretionary, and is unconstrained by statutory criteria. This Court's jurisprudence has again relied on the relevant operational guidance, published as "Temporary resident permits (TRPs): Eligibility and assessment" [TRP guidelines] to assist in the determination of whether this discretion has been exercised reasonably (see e.g. *Palmero v Canada (Citizenship and Immigration)*, 2016 FC 1128 at paras 8-9). This guidance urges officers to determine whether "the individual's purpose for entering Canada balances Canada's social, humanitarian and economic commitments to the health and security of Canadians" as well as "whether the need for the foreign national to enter or remain in Canada is compelling" and "whether the need for the foreign national's presence in Canada outweighs any risk to Canadians or Canadian society" (TRP guidelines).

VI. **POSITIONS OF THE PARTIES**

[26] The Applicant alleges generally that the Officer's reasons failed to meet the *Vavilov* standard of intelligibility and justification and do not reflect an appreciation of the stakes of the decisions (*Vavilov* at paras 127, 133). In particular, the Applicant argues that the Officer unreasonably failed to engage with the extensive evidence and detailed submissions in respect of two key factors, as follows:

A. *Assessment of Risk to Canada and Canadians*

[27] The Applicant submits that the Officer failed to engage with the central issue of risk to Canada and Canadians, and the evidence and submissions demonstrating that there is no longer any basis upon which to find that his return to Canada would pose any risk.

[28] The Applicant alleges that the Officer failed to consider the positive steps that he has taken to demonstrate accountability and rehabilitation since the time of his convictions. He alleges that the Officer overlooked his record of positive reform detailed in his ARC/TRP application, including compliance with sentencing and probationary measures, sobriety, counselling, volunteerism, steps taken to improve his employment and finances and to repair and re-engage in relationships. Most importantly, he asserts a failure by the Officer to grapple with the significant implications of the record suspension and rehabilitation decisions.

[29] At the hearing of the judicial review, the Respondent conceded that the Officer did not engage with the question of whether the Applicant poses a risk of reoffending or other noncompliance. This was because, as I understood counsel's submission, future risk was not a concern or live issue for the Officer. Instead, according to counsel, the Officer properly focused their analysis on the issues that *were* live and relevant: the Applicant's history of criminal behaviour and non-compliance in the past, weighed against the compelling factor of a *bona fide* marital relationship.

B. *Consideration of the reasons of return to Canada: humanitarian and compassionate factors*

[30] The Applicant alleges that the Officer further failed to engage with the reasons and evidence put forward to justify his return to Canada, including submissions on the discrimination and violence facing LGBTQ+ people and queer communities in Guyana, and the permanent separation of the Applicant from his spouse that would result from the refusal of an ARC. The Applicant analogizes the Officer's failure to engage with this evidence and with the evidence of rehabilitation to the situation in *Mandric v Canada (Citizenship and Immigration)*, 2017 FC 162 at para 22 [*Mandric*], where Justice Brown found that an ARC decision relying on "egregiously incorrect details" in a central component of its analysis is unreasonable.

[31] The Respondent, however, emphasizes the exceptional and discretionary nature of ARCs and TRPs, the absence of statutory criteria governing such decisions, and the case law establishing that full-scale humanitarian and compassionate assessments are not required (*Shabdeen* at para 15; *Gan v Canada (Citizenship and Immigration)*, 2017 FC 1186 at para 31). According to the Respondent, it was open to the Officer to determine whether there were "compelling reasons" to issue an ARC (*Guan* at paras 21-23; *Dheskali v Canada (Citizenship and Immigration)*, 2021 FC 1191 at para 23 [*Dheskali*]. He argues that the Officer's notes demonstrate that they considered the evidence and took it seriously, but found it outweighed by the Applicant's past noncompliance and criminality. According to the Respondent, the Applicant's case is merely a request to the Court to reweigh the evidence.

[32] The Respondent distinguishes *Mandric* on the basis that, in the case at bar, the Officer made no factual errors, egregious or otherwise. He says it was open to the Officer to rely on the

evidence of the Applicant's past misconduct as sufficient to outweigh his more recent expressions of remorse and rehabilitation.

VII. **ANALYSIS**

[33] There is no doubt that the scope of discretion available to Officers under sections 24(1) and 52(1) of the IRPA is broad (*Howlader v Canada (Citizenship and Immigration)*, 2025 FC 274 at para 34; *Dheskali* at para 14). Nor is it in doubt that the Officer was entitled to consider and give due weight to the Applicant's history of noncompliance with the IRPA (*Guan* at para 24). But these considerations do not excuse the Officer from the duty to render a reasonable decision based on all the relevant evidence and submissions presented by the Applicant. If *Vavilov* teaches us anything it is that administrative decision makers must ensure that their decisions meet the standards of justification, intelligibility and transparency, and that they reflect the relevant factual and legal constraints (*Vavilov* at para 99). The Applicant is entitled to know that his evidence and submissions were taken into account, and to understand why and how the Officer determined that his applications should nevertheless be refused (*Vavilov* at paras 127, 133).

[34] I am not convinced that the decisions under review meet those requirements.

[35] It is possible that, as suggested by counsel for the Respondent, the Officer accepted that the Applicant was rehabilitated, of good character, and no longer at risk of reoffending or otherwise breaching conditions of readmission but found these factors to be outweighed by his past misconduct. However, the Officer did not articulate any such finding. It is speculation by

Respondent's counsel, and as such cannot fill a gap in the Officer's reasoning. Reasonableness review does not permit this Court to entertain or fabricate supplemental reasons beyond those issued by the Officer (*Vavilov* at para 97; *Sedki v Canada (Citizenship and Immigration)*, 2021 FC 1071 at paras 25-26). Nor is this a minor concern: as noted by the Applicant, the relevant manual identifies the risk to Canada and Canadians as a central consideration, and even the Officer identified "the likelihood that the applicant will repeat the behaviour that caused them to be removed" as a factor weighing on their decision. Given the evidence and submissions before the Officer on this key issue, including in particular the rehabilitation decision, the record suspension, and the passage of more than a decade since the last offence or breach, the Officer's failure to address it, make a finding, and include that finding in the overall balancing exercise was unreasonable.

[36] The Officer's treatment of the humanitarian and compassionate considerations raised by the Applicant is likewise troubling. To be sure, in refusing to issue an ARC the Officer referred summarily to "the rehab application, descriptions of the human rights situation in Guyana and expressions by the sponsor to have the client join him in Canada" and purported to have taken note of "the client's and the spouse's pleadings for the ARC and TRP." But there is nothing in the reasons to show that the Officer actually engaged with those pleadings, nor is there any reasoning or justification for the finding that these considerations were insufficient to justify granting an ARC. The Officer did not address the extensive evidence regarding the violent persecution of LGBTQ+ people in Guyana, which showed that consensual same-sex relationships between men are criminalized. Nor did the Officer address the consequences of the

refusal of the ARC, namely the continued and potentially permanent separation of the Applicant and his spouse.

[37] The reasoning relating to the TRP refusal is no better. While the Officer suggested the possibility of a more favorable outcome in the future in the event of a subsequent sponsorship application, this does not excuse the Officer from the duty to provide a reasonable assessment of the applications before them. This is especially so in this case, where the Applicant has now been waiting for seven years for a reasonable decision on his ARC and TRP applications. There have been at least three previous refusals along the way, each reopened or redetermined following a challenge by the Applicant. He and his spouse are entitled to a prompt, fair and reasonable decision that properly weighs all the evidence and submissions and comes to a justified, intelligible and transparent conclusion that reflects the applicable legal and factual constraints.

VIII. **CONCLUSION**

[38] The application for judicial review is granted. The ARC and TRP decisions are quashed and remitted to a different officer for prompt redetermination in accordance with these reasons. The Applicant shall be afforded a reasonable opportunity to provide updated evidence and submissions as part of that redetermination process. While I am not in a position to prejudge the outcome of that redetermination, should yet another unreasonable decision be rendered a stronger judicial response may be warranted.

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

JUDGMENT in IMM-10061-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decisions under review are quashed and the matters remitted to a different officer for prompt redetermination in accordance with these reasons and following a reasonable opportunity to provide updated evidence and submissions.

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

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10061-24
STYLES OF CAUSE:	RASHEED ALI v. MCI
DATE OF HEARING:	APRIL 8, 2025
JUDGMENT AND REASONS:	BROUWER J.
DATED:	MAY 9, 2025

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