Federal Court  Cour fédérale

Date: 20250509

Docket: IMM-7459-23

Citation: 2025 FC 863

Ottawa, Ontario, May 9, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

CARLOS MARCEL MANTEIGA BARREIRO, DANIELLE MOGI MANTEIGA, MARIA EDUARDA MOGI MANTEIGA (BY HER LITIGATION GUARDIAN, CARLOS MARCEL MANTEIGA BARREIRO), ARTHUR MOGI MANTEIGA (BY HIS LITIGATION GUARDIAN, CARLOS MARCEL MANTEIGA BARREIRO)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the refusal of their application for permanent residence from within Canada on humanitarian and compassionate ("H&C") grounds.

I. Background

[2] The Applicants are a family who came to Canada from Brazil. The Principal Applicant, Carlos Marcel Manteiga Barreiro is a citizen of Brazil and Spain. He is married to the co-Applicant, Danielle Mogi Manteiga (who is a citizen of Brazil), and they have two children, aged 10 and 12 at the time of the H&C application. The children are citizens of Brazil and Spain.

[3] The Applicants entered Canada in April 2019 on visitor visas and have remained in Canada since then. The Principal and Co-Applicant have worked in Canada since their arrival, and have amassed savings and formed connections in their community. The children have successfully integrated into the Canadian education system and have made friends here. The Applicants' H&C claim was based on their establishment in Canada, the best interests of the children and the hardships they would face if they had to return to Brazil.

[4] The Officer denied their request for H&C relief, finding that their positive establishment as demonstrated by their employment and social connections in Canada did not overcome the fact that they worked knowing they were not authorized to do so – in breach of Canadian law – and it appeared they had unpaid income tax assessments. On the best interests of the children, the Officer found that the children would have access to education and social services in Brazil, and would remain in the care of their parents who had demonstrated that they wanted the best for their children. The Officer accepted that the Applicants would face adverse country conditions in Brazil (as compared to their lives in Canada) but found that this did not justify granting them H&C relief.

[5] Based on this analysis, the Officer refused the Applicants' application for permanent residence on H&C grounds. The Applicants seek judicial review of this decision.

II. Issues and Standard of Review

[6] The Applicants argue that the Officer's assessment of the best interests of the children failed to meet the standard established by the law; they also submit that the analysis of their establishment in Canada is unreasonable because it was unduly fixated on their lack of status in Canada and wrongly drew negative conclusions because they had unpaid taxes.

[7] 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.

[8] 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).

III. Analysis

[9] On the best interests of the children, the Applicants argue that the Officer erred by taking a "basic needs" approach to assessing the children's best interests. They point to the following sentence in the decision: "[t]he applicants have provided insufficient evidence to show they would not be able to mitigate any negative effects of their move to Brazil in providing normal basic care and support to their children…"

[10] The Applicants argue that this indicates that the Officer was not "alert, alive and sensitive" to the children's best interests, as required by the case-law: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 143, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 75. Instead, they say that the Officer adopted the "basic needs" approach that has been found to be unreasonable in cases such as *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 at paras 15–16 [*Sebbe*]. They also submit that the Officer ignored the evidence about the children's integration into Canadian society as demonstrated by their success in school and the close friendships they had established.

[11] I am not persuaded by this argument.

[12] It is important to focus on the specific findings that animate the decision in each particular case. Recall that in *Sebbe*, the officer had stated "there is insufficient evidence before me to indicate that basic amenities would not be met in Brazil…" (*Sebbe* at para 15). That is a far cry from the decision in this case, where the Officer simply found that the children would remain in the care of their supportive and loving parents.

[13] An important part of the Applicants' explanation for leaving Brazil to come to Canada was that they could not afford to continue to pay for private school for their children and they thought that public education system in Brazil provided an inferior level of education. The Officer examined the evidence and noted that the children would have access to public education and other social services in Brazil, as well as the continued support of their parents. This is not the type of "basic needs" approach found to be unreasonable in *Sebbe* and similar cases.

[14] In addition, the Officer acknowledged the children's integration into Canadian society and found that they would face a period of adjustment on their return to Brazil. In that sense, the Officer did not ignore the impact of removal on the children but found on balance that their best interests was in remaining with their parents. It is not for a reviewing Court to re-weigh that evidence.

[15] Turning to the second branch of the Applicants' claim, I am not persuaded that the Officer's analysis of their establishment in Canada is flawed or that it calls into question the reasoning that underpins the entire decision.

[16] The Applicants advance three arguments in support of their claim that the Officer's establishment analysis is unreasonable. First, they submit that the Officer was unduly fixated on their lack of status in Canada, and therefore failed to give due weight to their positive contributions. They rely on case-law that has confirmed that non-compliance with the *Immigration and Refugee Protection Act*, S.C. 2001 c 27 [*IRPA*] is the usual reason that claimants seek H&C relief under section 25, and it is unreasonable to place undue weight on it:

Dela Cruz Ignacio v Canada (Citizenship and Immigration), 2022 FC 953 at para 29 [*Ignatio*]; *Toussaint v Canada (Citizenship and Immigration)*, 2022 FC 1146 at paras 22–23.

[17] Second, the Applicants contend that the Officer did not assess several relevant factors in assessing their establishment, including their sound financial management, stable living arrangements, and their efforts to upgrade their skills.

[18] Finally, the Applicants point out that travel restrictions associated with the COVID-19 pandemic amounted to circumstances beyond their control that prevented them from leaving Canada.

[19] I am not persuaded that the Officer gave undue emphasis to the Applicants' lack of status in Canada to the exclusion of other positive factors. In considering this question, it is not for a reviewing Court to re-weigh the evidence. Instead, the question is whether the Officer's analysis was unduly skewed by a fixation on their lack of legal status in Canada.

[20] In this case, I find the Officer gave positive consideration to the Applicants' efforts to establish themselves in Canada and their ability to support themselves without recourse to social assistance. On this point, the Officer mentions that the Applicants worked without legal authorization, but nevertheless gave "some positive weight" to their employment history. The Officer also gave some positive weight to the letters of support the Applicants submitted.

[21] The Officer gave negative consideration to the Applicants' financial establishment in Canada based on the Notices of Assessment they had filed showing that they had unpaid taxes owing. This, combined with the fact that the Applicants had worked without authorization, resulted in a negative assessment of their financial establishment. Once again, this analysis does not demonstrate an undue fixation on the lack of legal status; it was simply one factor considered in assessing the Applicants' degree of financial establishment in Canada.

[22] The Applicants dispute that they had taxes owing, arguing that their most recent Notices of Assessment showed that taxes were owing, but not due to be paid until after they submitted their H&C application. They contend that the Officer should have clarified their income tax situation if they had doubts about whether they were in compliance with their obligations. Instead, the Officer engaged in unfounded speculation.

[23] I disagree. The Applicants submitted Notices of Assessment from the Canada Revenue Agency, the most recent of which showed taxes due to be paid. They did not submit any other information to confirm that they had, in fact, paid the amounts owing. The onus was on the Applicants to provide all relevant information, and it was up to them to confirm that their taxes had been paid. On this point, it should be noted that the Applicants submitted their income tax information in order to demonstrate that they were respecting Canadian law. They wanted to demonstrate that they had declared income tax, despite working without legal authorization. However, the forms submitted clearly show income tax amounts that were due, and the Applicants had the opportunity to complete this aspect of their claim even after they submitted

their original application. There was no obligation on the Officer to take steps to obtain this information.

[24] The Applicants rely on the decision in *Ignatio*, but I am not persuaded that it is directly applicable here. The first thing to note is that each case is determined according to its merits; Justice McVeigh specifically mentions that her determination in *Ignatio* is based on the "highly fact-specific circumstances before me…" (*Ignatio* at para 26). Moreover, in that case the applicant had made several applications to regularize her status in Canada (*Ignatio* at para 22), and it appears that her lack of status was "the sole factor in favour of not granting this H&C." (Ignatio at para 23). Those are not the facts of this case. The principles set out in *Ignatio* undoubtedly apply here, but in light of the factual differences between the cases, I am not persuaded that the result in that case must inexorably apply to the circumstances before me.

[25] Stepping back to examine the decision as a whole, in light of the Applicants' circumstances, the Officer noted a number of relevant considerations. In particular, the Officer observed that the Applicants arrived in Canada on visitor visas after discussing places to pursue a better life for themselves and their children and then deciding to come to Canada. They acknowledged that they had sold all of their furniture in Brazil before their departure, and they immediately obtained short-term housing and started to work. The Officer reasonably found that these were not indications that the Applicants intended simply to visit Canada. Instead, these facts indicate an intention to make a new life here on a permanent basis. This did not count in favour of the Applicants, and that is a reasonable consideration in light of the evidence in the record – evidence that the Applicants do not dispute.

[26] Examining the decision as a whole, I am not persuaded that the Officer's references to the fact that the Applicants remained and worked in Canada without legal authorization eclipsed their consideration of the positive factors in their claim. The Officer gave their work and community support some positive weight, but found it was outweighed by their lack of status. This does not reflect an undue fixation or emphasis, but rather a consideration of all relevant factors: *Lopez Bidart v Canada (Citizenship and Immigration)*, 2020 FC 307 at para 13.

[27] Based on the analysis set out above, the application for judicial review will be dismissed.

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

JUDGMENT in IMM-7459-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

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

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7459-23
STYLE OF CAUSE:	CARLOS MARCEL MANTEIGA BARREIRO, ANIELLE MOGI MANTEIGA, MARIA EDUARDA MOGI MANTEIGA (BY HER LITIGATION GUARDIAN, CARLOS MARCEL MANTEIGA BARREIRO), ARTHUR MOGI MANTEIGA (BY HIS LITIGATION GUARDIAN, CARLOS MARCEL MANTEIGA BARREIRO) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 24, 2024
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	MAY 9, 2025

APPEARANCES:

Laura Best	FOR THE APPLICANT
Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT