Federal Court Cour fédérale

Date: 20250611

Docket: IMM-10039-24

Citation: 2025 FC 1044

Toronto, Ontario, June 11, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

RICARDO ROCHA PEREIRA
JAQUELINE DA SILVA SARAIVA

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants seek judicial review of a decision in which their application for permanent residence from within Canada, on humanitarian and compassionate grounds, was rejected.

[2] For the reasons that follow, this application will be dismissed.

II. BACKGROUND

A. *Facts*

[3] The Applicants, citizens of Brazil, challenge an Immigration Officer's refusal of their application for permanent residence on humanitarian and compassionate [H&C] grounds. In these reasons, I will refer to Ricardo Rocha Pereira as the Principal Applicant [PA], while I will refer to his spouse, Jaqueline Da Silva Saraiva, as the Associate Applicant. The Applicants have two children who are not formally part of this application, as they were both born in Canada and are Canadian citizens. The children - Noah and Ryan - were 3 and 5 years old, respectively, at the time the application was submitted.

[4] Mr. Pereira is a professional drywaller and owns a construction business. He and Jaqueline first came to Canada in 2017 on temporary resident visas, and between 2017 and 2020 they departed and re-entered Canada on various occasions. In early 2020, Mr. Pereira was issued a study permit, together with a work permit, allowing him to work for a maximum of 25 hours per week. However, it was later discovered that Mr. Pereira was working full-time hours, and he was found inadmissible for misrepresentation. As a result, an exclusion order and a removal order were issued.

[5] The Applicants submitted an application for a pre-removal risk assessment, which has yet to be determined. They additionally submitted an application for H&C relief, the refusal of which is at issue in this matter. The grounds for the Applicants' H&C application related to their

establishment in Canada, the hardship they would experience upon return to Brazil, and the best interests of their children [BIOC].

B. *Decision under Review*

[6] An Officer refused the Applicants' H&C, finding that an exemption under s.25(1) of the *Immigration and Refugee Protection Act* [IRPA] was not warranted. In coming to that conclusion, the Officer made the following findings. On the Applicants' establishment in Canada, the Officer noted the letters of support demonstrating community engagement and social involvement. The Officer also recognized that the PA has been employed in Canada since 2018 and has paid his taxes, but noted that he was also working without authorization in this time, and had misrepresented this to Canadian authorities. As a result, the Officer assigned little weight to the Applicants' establishment in Canada.

[7] In regard to hardship, the Officer noted the allegations of harsh country conditions contained in Mr. Pereira's affidavit but found that the Applicants did not present corroborative documentary evidence. The Officer conducted their own research and found that the economic situation in Brazil is relatively stable, with unemployment being at its lowest since 2015, and that social assistance and free universal healthcare are available. The Officer also found that, although there is documentary evidence of security concerns related to public schools in Brazil, there is no evidence that Noah and Ryan would experience hardship simply by attending a public school. The Officer ultimately concluded that it was the Applicants' responsibility to adduce sufficient corroborative evidence to demonstrate hardship in Brazil, which the Applicants had failed to do.

[8] Finally, on the question of the best interests of Noah and Ryan, the Officer acknowledged the challenges and emotional distress the children could experience if they relocate to Brazil. At the same time, the Officer found that "children are typically quite adaptable and are generally capable of adjusting to new environments." The Officer also noted that the Applicants have multiple extended family members in Brazil that could provide emotional or other support to the children (although it noted previously that no letters of support had been provided by those same family members). The Officer further commented that Noah and Ryan are Canadian citizens, and therefore retain the right to return to Canada in the future.

[9] However, the Officer concluded by acknowledging that it would be in the best interests of the children to remain in Canada.

[10] In sum, the Officer found that "while I accept that it is somewhat in the children's best interest to remain in Canada, I find that the weight accorded to BIOC is not enough to grant relief on H&C grounds due to insufficient evidence demonstrating a negative impact on the children."

III. ISSUES and STANDARD OF REVIEW

[11] The Applicants submit that the Officer's decision is unreasonable for two overarching reasons. First, they argue that the Officer failed to be alert, alive, and sensitive to the best interests of Noah and Ryan. Second, they argue that the Officer's assessment of the evidence on hardship and establishment failed to adequately engage with the evidence on record.

[12] The parties do not dispute that the appropriate standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 23, 25 [*Vavilov*]; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 44-45.

IV. LEGAL FRAMEWORK

[13] Subsection 25(1) of the IRPA governs applications based on humanitarian and compassionate grounds. The relevant aspects of the provision are as follows:

> **25 (1)** […] the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is […] or who does not meet the requirements of this Act[…] examine the circumstances concerning the foreign national 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.

[14] In *Kanthasamy,* the Supreme Court of Canada described s.25 of the IRPA as "a flexible and responsive exception to the ordinary operation of the Act…a discretion to mitigate the rigidity of the law in an appropriate case." The Court further stated that the H&C exception was not intended to be an alternative immigration scheme, but was rather meant to "offer equitable relief in circumstances that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another": *Kanthasamy* at para 21, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338, at p. 350.

[15] In *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 (at para 24) Justice Walker distilled the essence of an H&C assessment into a simple question: "Were the applicant's circumstances, when considered with humanity and compassion, sufficient to warrant extraordinary relief?"

[16] A consideration of the interests of children affected by H&C decisions is central to the analysis under s.25. As the Supreme Court noted in *Kanthasamy*, where "the legislation specifically directs that the best interests of a child who is 'directly affected' be considered, those interests are a singularly significant focus and perspective": para 40, citing *A.C. v Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at paras 80-81. The Court went on to note in *Kanthasamy* (at para 41) that "since children will rarely, if ever, be deserving of any hardship, the concept of unusual or undeserved hardship is presumptively inapplicable to the assessment of the hardship invoked by a child to support his or her application for humanitarian and compassionate relief." However, the best interests of affected children will not always outweigh other factors in the H&C assessment: *Kanthasamy* at para 38, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817 at para 75 [*Baker*].

V. ANALYSIS

A. *The Best Interests of the Children – Adequately considered, adequately assessed*

[17] The Applicants argue that the Officer erred in adopting a "basic needs" approach to the BIOC assessment, without ever considering what was in the children's actual best interests. I disagree, largely because the Officer considered the children's best interests and accepted that it was likely in their interests to remain in Canada. This distinguishes this case from many others,

where officers have been faulted for side-stepping the BIOC analysis by focusing on a child's basic needs, rather than their bests interests: *Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 at para 22; *Ganaden v Canada (Citizenship and Immigration)*, 2023 FC 325 at para 16.

[18] Here, the Officer did not fall into this error. The Officer considered the evidence that had been submitted by the Applicants, weighed this evidence, and ultimately concluded that it was in the children's best interests to remain in Canada.

[19] While not articulated as such, I believe that the Applicants' main concern with the Officer's decision is not in the identification of the children's best interests (which favoured the children remaining in Canada), but in the weighing of this factor against the other factors considered by the Officer.

[20] I believe that the Officer's approach to the BIOC analysis was compatible with the requirements set out in *Kanthasamy*, namely that officers must: i) consider what is in the children's best interests; ii) assess the degree to which those interests would be compromised by one decision over the other; and iii) determine the weight that the children's interests should be assigned in the overall H&C application: see *Egwuonwu v Canada (Citizenship and Immigration)*, 2020 FC 231 at para 63, 64, 73.

[21] The Applicants' argument in this case is, on a fundamental level, related to the last of the above steps. Put differently, the Applicants take issue with the weight that the Officer attributed to the BIOC assessment, in the overall evaluation of their application. This weighing process,

however, is in the core domain of administrative decision makers, and warrants deference from this Court: *Sharafeddin v Canada (Citizenship and Immigration)*, 2022 FC 1269 at para 15.

[22] In the end, I find that the Officer's assessment of the children's best interests, and the weighing of those interests against other factors, was reasonable. It was rooted in the evidence related to the children and was appropriately considered in the larger context of the H&C application.

[23] The Applicants raise various other arguments on the BIOC issue, but I am not convinced that they reveal any unreasonableness in the Officer's reasons. For example, the Applicants argue that the decision is unjustifiable because, at one point, it indicates that it was in the best interests of the children to remain in Canada, but at another point states that it was 'somewhat' in their best interests to remain. These slightly inconsistent findings are unfortunate, but not fatal to the decision: *Vavilov* at para 102. Read as a whole, it is clear that the Officer acknowledged that it was in the best interests of Noah and Ryan to remain in Canada. Once again, however, a positive BIOC assessment does not necessarily result in an H&C exemption: see para 16, above.

[24] The Applicants also argue that the Officer unreasonably speculated that the children would have family support if they are returned to Brazil. Once again, I disagree. First, this was a minor observation in the context of the Officer's larger BIOC assessment. Second, as the Respondent notes, the Officer did not presume any financial support from the Applicants' Brazilian family members, but merely pointed to the presence of such family members as a possible source of emotional or other support. I see nothing to contradict this observation in the record, and I am not convinced that this was either a particularly material or irrelevant finding on

the part of the Officer. As above, *Vavilov* instructs that reasonableness review is not a "line-by-line treasure hunt for errors" (at para 102).

[25] As a result of the above, I have concluded that the Officer's assessment of the best interests of Ryan and Noah was reasonable.

B. *Hardship and Establishment – Adequately considered, adequately assessed*

[26] The other arguments raised by the Applicants relate to the Officer's assessment of the evidence. First, they argue that the Officer unreasonably dismissed the Associate Applicant's establishment in Canada because of the Principal Applicant's inadmissibility. I disagree. In fact, the Officer explicitly considered Ms. Saraiva's establishment, in terms of both employment and education. While the Officer did not explicitly state that her establishment was insufficient to warrant H&C relief, read holistically, the assessment of her situation was clearly rolled into the larger evaluation of the Applicants' collective establishment.

[27] Second, the Applicants note that the Officer considered the establishment of an adult stepchild who was not included as an applicant in the H&C application. While I certainly agree that it was unnecessary for the Officer to address the situation of the stepchild, I am not convinced that it undermines the reasonableness of the decision in respect of those who *were* included in the application.

[28] Finally, the Applicants argue that the Officer unreasonably pointed to evidence that had not been adduced, while ignoring evidence that was provided. Once again, I do not agree. The statements that the Applicants find problematic must be understood in light of the

onus associated with H&C applications, which lies with the applicant: *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45.

[29] In assessing the hardship that the Applicants may experience, the Officer noted the lack of evidence regarding their employment prospects in Brazil. Contrary to what the Applicants argue, this does not represent an unreasonable focus on evidence that was not before the Officer, but was merely a finding that the Applicants had failed to meet their burden on this particular aspect of the application. There was nothing unreasonable in this finding, particularly since the Applicants have pointed to no evidence that *was* in the record, which contradicted the Officer's conclusions.

[30] I come to the same conclusion regarding the Officer's observation that no support letters had been provided by family members in Brazil. I do not read the Officer's reasons to suggest that such evidence was a hard requirement, but rather that such evidence may have been helpful in supporting the Applicants' claims that they would experience hardship if they returned to Brazil. The absence of such evidence was a relevant consideration, in the context of the application that was presented to the Officer.

VI. CONCLUSION

[31] As a result of the above, I will dismiss this application. While I have no doubt that the Applicants have made positive contributions since they have come to Canada, and while I appreciate their sincere desire to remain, I have no basis on which to interfere with the Officer's decision. The parties have not proposed a question for certification, and I agree that none arises.

JUDGMENT in IMM-10039-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question of general importance is certified.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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