

Federal Court



Cour fédérale

Date: 20250703

Docket: IMM-5653-24

Citation: 2025 FC 1180

Ottawa, Ontario, July 3, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

BERNADETTE THERESA CONNELL

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Bernadette Theresa Connell [Applicant], seeks judicial review of a decision by an officer of the Minister of Immigration, Refugees and Citizenship Canada [Officer] dated March 6, 2024, refusing an application for humanitarian and compassionate [H&C] rendered pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Officer found that the Applicant failed to demonstrate sufficient establishment,

hardship, or impact on the best interests of the child that would warrant extraordinary relief. For the reasons that follow, this application for judicial review is granted.

[2] The Applicant is a dual citizen of Saint Lucia and Barbados. She suffered from childhood abuse and domestic violence as an adult. The Applicant's youngest son still lives in Barbados and the eldest son lives in Saint Lucia with his six-year-old son. In August 2012, the Applicant arrived in Canada as a visitor. Her status expired 6 months after her arrival, and she has been without status in Canada for the last eleven years. While residing in Canada, the Applicant completed training programs as a personal support worker and volunteered in a church and at different community organizations. After she arrived in Canada, she was diagnosed with Post-Traumatic Stress Disorder and has been following ongoing treatment for this diagnosis.

[3] On May 26, 2021, the Applicant's first H&C application was refused. Her application for judicial review challenging this first H&C decision was granted by the Court on September 29, 2023 (*Connell v Canada (Citizenship and Immigration)*, 2023 FC 1316 [*Connell 2023*]). The H&C application was sent back for redetermination by a different officer. The Applicant provided updated documents and submissions.

[4] On March 6, 2024, the Applicant's second H&C application was refused [Decision]. The Officer considered the Applicant's establishment in Canada, the best interests of her children and the hardship she could face if she returned to Saint Lucia or Barbados. The Officer found that the Applicant has not been financially established in Canada during the past years, that the best interest of the children is to be reunited with their mother physically in Saint Lucia or Barbados,

and that the Applicant would not face great difficulties in Saint Lucia or Barbados even though the living standard may not be ideal. However, the Officer did grant her a one-year temporary resident permit [TRP] which would allow her to work with legal authorization. The Decision as it relates to the H&C application is the subject of this judicial review. The TRP is not being reviewed in the context of this application.

[5] The issue on judicial review is whether the Decision was unreasonable, applying the reasonableness standard of review with respect to the merits of the Decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25).

[6] On judicial review, the Court must consider whether a decision bears the hallmarks of reasonableness – justification, transparency and intelligibility (Vavilov at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (Vavilov at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (Vavilov at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (Vavilov at para 100).

[7] The Applicant submits that the Officer on the second H&C repeated the same fatal errors identified in *Connell 2023*. More precisely, the Officer failed to engage with the evidence and to explain their conclusion with respect to the decompression of her mental health as a hardship, among other things. Having considered the submissions that were made on the second H&C application and the Officer's reasons, I agree with the Applicant's submissions.

[8] Indeed, as with the first H&C decision, the Applicant's assertion of hardship arising from deterioration of her mental health based on her return to Saint Lucia or Barbados was a central aspect of her claim. However, this hardship was not grappled with, nor discussed in the Decision. Mention of access to health care in Saint Lucia or Barbados does not address the Applicant's central argument.

[9] As Justice Turley confirmed in *Connell 2023*, the failure to consider and assess the risk of decompression upon removal from Canada renders the decision unreasonable (*Connell 2023*, at para 34, citing *Sanchez v Canada (Citizenship and Immigration)*, 2021 FC 1349 at para 51; *Montero v Canada (Citizenship and Immigration)*, 2021 FC 776 at paras 27-30; *Saidoun v Canada (Citizenship and Immigration)*, 2019 FC 1110 at para 19; *Jeong v Canada (Citizenship and Immigration)*, 2019 FC 582 at para 57). Furthermore, the failure to meaningfully account for the central issues and concerns raised by the parties also renders the decision unreasonable (*Connell 2023* at para 37, citing *Vavilov* at para 127).

[10] Secondly, I find that the Officer erred in the assessment of the medical reports that were submitted in support of the H&C application. These reports were prepared by the Applicant's family doctor and psychiatrist, who had been following her for many years. They specifically addressed the risk of decompression if the Applicant were to return to either to Barbados or Saint Lucia and explained the triggers or aggravating factors.

[11] However, despite this, the Officer did not assess the reports. Instead, the Officer stated that the Applicant's mental health "would benefit from reuniting with her family in Saint Lucia

or Barbados”. The Officer also stated that the Applicant’s mental health issues and her fear of returning would be mitigated by the passage of time and support of her family and friends. In my view, this was an error. As a person without medical expertise, it was not appropriate for an officer to place weight on their own observations regarding an applicant’s emotional and psychological problems (*Basbaydar v Canada (Citizenship and Immigration)*, 2019 FC 387 at para 11). In addition, there was no evidence before the Officer that supported this finding.

[12] Given the above, I cannot find that the Decision is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). As such, the application for judicial review must be granted and the H&C application returned for redetermination by another officer.

JUDGMENT in IMM-5653-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5653-24

STYLE OF CAUSE: BERNADETTE THERESA CONNELL v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VIDEOCONFERENCE

DATE OF HEARING: MAY 27, 2025

JUDGMENT AND REASONS: NGO J.

DATED: JULY 3, 2025

APPEARANCES:

Annie O'Dell	FOR THE APPLICANT
Hannah Shaikh	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Annie O'Dell Barrister and Solicitor Toronto (Ontario)	FOR THE APPLICANT
Attorney General of Canada Toronto (Ontario)	FOR THE RESPONDENT