

Federal Court



Cour fédérale

Date: 20250626

Docket: IMM-16607-23

Citation: 2025 FC 1130

Ottawa, Ontario, June 26, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

RATHNASINGAM RASAMANEY

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Rathnasingam Rasamane, applied to remain in Canada by filing an application for permanent residence based on humanitarian and compassionate grounds (“H & C Application”). He asked for humanitarian relief on the basis of his establishment, his poor health, and the hardship of returning to Sri Lanka, his country of citizenship. An officer at Immigration,

Refugees and Citizenship Canada (“the Officer”) refused his application. Mr. Rasamaney is challenging this decision on judicial review.

[2] Mr. Rasamaney raised a number of arguments on judicial review. In my view, the determinative issue is the Officer’s evaluation of the Applicant’s remorse and the circumstances surrounding his 2022 criminal conviction. The Officer considered the Applicant’s statements in a July 5, 2022 affidavit (“First Affidavit”), prior to his conviction. However, it is not clear from the decision that the Officer considered the Applicant’s second affidavit dated December 2022 (“Second Affidavit”). Given that the information in the Second Affidavit related to a key concern raised by the Officer, namely, Mr. Rasamaney’s remorse and the circumstances surrounding his criminal conviction, this is a sufficient basis on which to send the matter back to be redetermined.

[3] The application for judicial review is allowed.

II. Background Facts and Procedural History

[4] Mr. Rasamaney is a Tamil man in his late sixties from Northern Sri Lanka. He entered Canada approximately 14 years ago, in 2011, and made a claim for refugee protection. The Refugee Protection Division (“RPD”) dismissed his claim on December 2, 2013 on the basis of credibility. Mr. Rasamaney attempted to challenge this decision at this Court and was unsuccessful.

[5] Since the refusal of his refugee claim, Mr. Rasamaney has made a number of applications to remain in Canada. He filed two previous H & C Applications – the first in 2015 and a second in 2020. Both were refused. He also filed a Pre-Removal Risk Assessment (“PRRA”) that was refused and leave was denied by this Court to challenge the decision.

[6] The decision at issue relates to Mr. Rasamaney’s third H & C Application, which was filed in January 2023 and refused on July 31, 2023.

[7] Mr. Rasamaney also filed a motion to stay his removal pending the resolution of this application for judicial review. This Court dismissed the motion to stay his removal at the end of September 2024.

III. Issue and Standard of Review

[8] The determinative issue is the Officer’s treatment of the evidence relating to Mr. Rasamaney’s remorse and the circumstances surrounding his criminal conviction. The parties agree as do I that I ought to review the Officer’s determination on this issue on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 12-13, 84).

[9] The Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless “robust form of review,” where the decision maker’s reasons are the starting point of the analysis (*Vavilov* at paras 13, 296). Administrative decision makers must ensure that the

exercise of public power is “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

[10] The Supreme Court explained that a decision maker’s formal reasons are assessed “in light of the record and with due sensitivity to the administrative regime in which they were given” (*Vavilov* at para 103). A reasonable decision is “one that 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).

IV. Analysis

[11] Foreign nationals applying for permanent residence in Canada can seek discretionary humanitarian and compassionate relief from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27, section 25 [IRPA]. The Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 [*Chirwa*], confirmed that the purpose of this humanitarian and compassionate discretion is “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* at p. 350).

[12] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case,” there is no limited set of factors that warrant relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively

consider and weigh all the relevant facts and factors before them” (*Kanthasamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 [*Baker*] at paras 74-75).

[13] One of the factors considered by the Officer was the lack of explanation or remorse for the Applicant’s recent criminal conviction for sexual assault. The Officer found that the Applicant’s “lack of explanation or recognition” of his conviction demonstrated a “lack of remorse,” warranting “some negative consideration”. The Officer makes reference to statements in the Applicant’s July 5, 2022 affidavit, where he states that he is not sure what the charge is about and that his trial for this charge is scheduled to take place in two weeks. Notably, the First Affidavit was sworn prior to the Applicant’s conviction.

[14] The Officer makes no mention of the Second Affidavit filed by the Applicant in December 2022, after he is convicted and sentenced. In the Second Affidavit the Applicant states that he “take[s] responsibility for what happened” and that he “deeply regrets...[his] actions.” In the Second Affidavit, the Applicant further explains that he believes his actions related to his consumption of alcohol, he realizes that he has a “problem with alcohol”, “it has been difficult to stop drinking” and that he has “cut ties with friends” who are drinkers.

[15] While it may have been open to the Officer to still not have been convinced by the limited explanation provided in this short affidavit, the Officer’s analysis of the Applicant’s lack of remorse is incomplete because it fails to address relevant and key evidence on this issue.

[16] The Officer failed to “meaningfully grapple” with any of the evidence in the Second Affidavit that addressed the issue of the Applicant’s remorse directly, calling into question the Officer’s sensitivity and alertness to key issues in the application before them (*Vavilov* at para 128).

[17] As was explained by Justice Diner in *Bhalla v Canada (Citizenship and Immigration)*, 2019 FC 1638, when an officer overlooks elements upon which the application is based, the balancing will necessarily be deficient, as the reviewing court cannot know what weight would have been assigned to the factor if it had been properly considered (at para 22). The same can be said here.

[18] The Officer’s treatment of the Applicant’s lack of remorse is not responsive to the evidence before them (*Vavilov* at paras 127-128); nor did the Officer consider all the relevant facts raised in the application as is required (*Kanthasamy* at para 25; *Baker* at paras 74-75). Accordingly, the decision is unreasonable and must be redetermined.

[19] The application for judicial review is granted and sent back to a different decision maker for redetermination. Neither party raised a question for certification and none arises.

JUDGMENT in IMM-16607-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated July 28, 2023 is quashed and sent back to be redetermined by a different decision-maker;
3. The Applicant should be given an opportunity to file further evidence and submissions on redetermination; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16607-23

STYLE OF CAUSE: RATHNASINGAM RASAMANEY v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 16, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JUNE 26, 2025

APPEARANCES:

Julie Beauchamp	FOR THE APPLICANT
Sarah Merredew	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jared Will & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT