Federal Court  Cour fédérale

**Date: 20190618**

**Docket: IMM-5218-18**

**Citation: 2019 FC 828**

**Ottawa, Ontario, June 18, 2019**

**PRESENT: Madam Justice Roussel**

**BETWEEN:**

**JEM RASECK CANTALEJO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant, Jem Raseck Cantalejo, is a citizen of the Philippines born on December 14, 1993. His mother first came to Canada in 2009 as a foreign worker. She applied for permanent residence under Alberta's Provincial Nominee Program but was refused because her husband at the time was criminally inadmissible. Her four (4) children were included in the application, including the Applicant, the eldest.

[2] In July 2016, the Applicant's mother was granted permanent residency on humanitarian and compassionate [H&C] grounds. She then successfully sponsored her two (2) younger children who met the definition of a "dependent child".

[3] In December 2017, the Applicant applied for a permanent resident visa under the family class sponsored by his mother. As he was over the age of twenty-two (22) and no longer met the age limit for a "dependent child" under section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], the Applicant requested an exemption based on H&C grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[4] In a decision communicated to the Applicant and his mother on October 22, 2018, an immigration officer from the visa section at the Embassy of Canada in Manila [Visa Officer] refused the Applicant's sponsored permanent resident visa application. The Visa Officer first determined that the Applicant was not a member of the family class as he was twenty-four (24) years old when the application was received and there was no indication that he had a physical or mental condition that rendered him unable to be financially self-supporting. The Visa Officer then concluded that there were insufficient H&C grounds to warrant the requested exemption.

[5] The Applicant now seeks judicial review of the Visa Officer's decision. He submits that the decision is unreasonable because the Visa Officer failed to consider whether the Applicant fell within the ambit of his mother's *de facto* family. He also argues that the Visa Officer's

analysis of the other H&C factors does not reflect the requirements of empathy and compassion set out in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*].

## II. Analysis

[6] It is well established that the decision of a visa officer to grant or to withhold relief based on H&C considerations is discretionary and involves a question of mixed fact and law. On that basis, a visa officer's findings are reviewable on the standard of reasonableness and are subject to considerable deference by this Court (*Kanthasamy* at para 44; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18; *Mukilankoy v Canada (Citizenship and Immigration)*, 2017 FC 161 at para 21; *Pervaiz v Canada (Citizenship and Immigration)*, 2014 FC 680 at para 15 [*Pervaiz*]; *Frank v Canada (Citizenship and Immigration)*, 2010 FC 270 at para 15 [*Frank*]).

[7] Where the reasonableness standard applies, the role of the Court on judicial review is to determine whether the visa officer's decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New* Brunswick, 2008 SCC 9 at para 47). There may be several reasonable outcomes and "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[8] The Applicant submits that in conducting the H&C assessment, the Visa Officer failed to consider whether the Applicant met the definition of a *de facto* family member as set out in the

Respondent's Program Delivery Instructions [PDI]. According to the PDI, *de facto* family members are persons who do not meet the definition of a family class member but who may still be eligible for sponsorship on H&C grounds because of their situation of dependence with a family member that is either in Canada or applying to immigrate to Canada. The Applicant relies on the PDI which specifically mention that an overage child may be considered a *de facto* member. While the Visa Officer acknowledged the Applicant's financial dependence on his mother, the Visa Officer undertook no analysis with respect to whether this made him a *de facto* family member.

[9] The Applicant's argument is unfounded for several reasons.

[10] First, the Applicant did not raise the issue of *de facto* family members before the Visa Officer (*Pervaiz* at para 33; *Sandhu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1032 at para 20 [*Sandhu*]. Moreover, unlike in *John v Canada (Citizenship and Immigration)*, 2010 FC 85 [*John*], I do not find that the facts were clearly set out in the Applicant's application such that they were staring the Visa Officer in the face (*John* at para 14).

[11] Second, while operational manuals are valuable guidelines to visa officers in carrying out their duties, they are not law and are not binding (*Frank* at para 21).

[12] Third, this Court has recognized that visa officers do not have the obligation to explicitly consider the issue of *de facto* family members in every case (*Pervaiz* at para 33; *Da Silva v*

*Canada (Citizenship and Immigration*), 2011 FC 347 at para 24; *Frank* at para 30; *Sandhu* at para 20).

[13] Fourth, even if the Visa Officer did not conduct a separate analysis on whether the Applicant was a *de facto* family member, I am satisfied that the Visa Officer took into account all of the factors to be considered in the context of *de facto* family members. As stated in *Frank,* where a *de facto* family relationship is said to exist, an important consideration in determining the merits of the H&C application is, to what extent the applicant would have difficulty in meeting financial and emotional needs without the support and assistance of the family unit in Canada (*Frank* at para 26).

[14] In this case, the Visa Officer specifically referred to the fact that the Applicant has been receiving financial assistance from his mother and reasonably noted that he would likely continue to receive such assistance if he remained in the Philippines. The Visa Officer also found that the Applicant's enrollment in private schools since elementary and his pursuit of a bachelor's degree in hotel and restaurant management in a private college would likely provide him better opportunities to find employment both in the Philippines and abroad. In my view, this inference was both reasonable and supported by the objective documentary country condition evidence which demonstrated that the Applicant did not have the profile of a person likely to endure significant hardship in the Philippines.

[15] The Visa Officer also reasonably considered the family relationship of the Applicant to his mother and sponsor in Canada. The reasons disclose that the Visa Officer understood that the

Applicant's mother was sponsoring him to Canada and that she wanted to bring all of her children to Canada. The reasons also disclose that the Visa Officer considered their emotional dependency, noting that there would be no impediment for the Applicant's mother to visit him, as she had done in the past.

[16] As such, I find that the Visa Officer considered the relevant factors to be assessed in the context of *de facto* family members.

[17] I recognize that the Visa Officer's determination is not the outcome the Applicant and his mother wanted. The difficulty in this file is that the Applicant tendered very little evidence to demonstrate his level of dependency, both financially and emotionally, in relation to the rest of the family. Although the Visa Officer sent the Applicant a procedural fairness letter providing him the opportunity to provide additional information and documentation to overcome the fact that he was no longer a dependent under the IRPR, the Applicant simply reiterated the H&C submissions made in his initial application. The Applicant had the onus of putting his best foot forward and establish the existence of sufficient H&C factors justifying an exemption from normal legal requirements in the IRPA (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5; *Bacha v Canada (Citizenship and Immigration)*, 2008 FC 1382 at para 11, citing *Singh v Minister of Citizenship and Immigration*, 2007 FC 1356 at para 32). He failed to do so to the satisfaction of the Visa Officer.

[18] Finally, the Applicant has failed to convince me that in assessing the other H&C factors, the Visa Officer failed to meet the requirements of empathy and compassion as set out in

*Kanthasamy*. While the Applicant may disagree with the Visa Officer's assessment of the evidence, it is not the role of this Court to reweigh the evidence before the Visa Officer for the purpose of reaching a different outcome.

[19] Accordingly, the application for judicial review is dismissed. No questions were proposed for certification and I agree that none arise.

**JUDGMENT in IMM-5218-18**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **STYLE OF CAUSE:** | JEM RASECK CANTALEJO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
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