Federal Court  Cour fédérale

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[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 27, 2020

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

CÉLINE ANDRÉE ALZINE BRAUD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Céline Andrée Alzine Braud, is a French citizen. Having arrived in Canada as a student in 2008, she is now inadmissible for criminality under section 36 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The rationale for this decision is based on

the following. In 2016, she assaulted a seven-month-old baby in her care three times, and uttered threats of death and bodily harm against her. Following a guilty plea on the two counts filed against her, the judge imposed a six-month prison sentence for assault and two years' probation for the threats.

[2] In 2018, after her conviction, Ms. Braud made an application for permanent residence on humanitarian and compassionate considerations [H&C Application], under subsection 25(1) of the IRPA. This provision gives the Minister of Citizenship and Immigration [Minister] the discretion to exempt foreign nationals from the usual requirements of the IRPA if the Minister considers that humanitarian and compassionate considerations warrant it. In a decision dated March 15, 2019 [Decision], an immigration officer [Officer] refused Ms. Braud's H&C Application, finding that she had not established that her personal situation justified granting a discretionary exemption based on H&C considerations and waiving her inadmissibility to Canada.

[3] Ms. Braud is applying to the Court for judicial review of the Decision. She alleges that the Decision is unreasonable for three main reasons: (1) the Officer erred in analyzing her state of health and the question of the *in vitro* fertilization treatments which she requires; (2) the Officer made errors in the assessing her criminality, in particular by extrapolating certain aspects of her criminal record and by minimizing her rehabilitation; and (3) the Officer failed to assess some evidence that she submitted. Ms. Braud is asking the Court to set aside the Officer's Decision and order that another immigration officer reconsider her H&C Application.

[4] The only issue to be dealt with is whether the Officer's decision is reasonable.

[5] For the following reasons, I will dismiss Ms. Braud's application for judicial review. In light of the Officer's findings, the evidence presented to him and the applicable law, I see no reason to set aside the Decision, either as regards the assessment of the assisted fertilization treatments or of Ms. Braud's criminality, or as to the conclusions drawn by the Officer in the context of his assessment of the humanitarian and compassionate factors at stake. The Officer's reasons have the qualities that make his reasoning logical and consistent, having regard to the relevant legal and factual constraints. There are no grounds for intervention by the Court.

II. Background

A. *Facts*

[6] Ms. Braud was born in France and has been established in Canada since 2008. She holds a diploma in Special Education from Cégep de Thetford. During her college studies, she met Kevin Moreau, a Canadian citizen, with whom she began a romantic relationship. They started living together in July 2009.

[7] In 2011, Mr. Moreau joined the Canadian military. Over the following years, Ms. Braud moved with him according to his assignments, particularly in Quebec and Ontario. In 2014, they got married. In May 2015, sponsored by Mr. Moreau, Ms. Braud applied for permanent residence in the Spouse or Common-Law Partner in Canada class.

[8] In winter 2016, Ms. Braud began working as a babysitter for the parents of a seven-month-old baby. One month after being hired, the father found, through a surveillance camera, that Ms. Braud had been violent with his baby on three occasions, on March 21, 22 and 24, 2016. More specifically, Ms. Braud was seen violently taking the baby out of his bed, shaking him while speaking to him in an exasperated tone, abruptly putting him back in his bed, holding his head against his will while he struggled, and telling him that she would strangle him because he would not fall asleep. The parents complained to the police, and in January 2018 Ms. Braud pleaded guilty to the two charges laid against her under the *Criminal Code*, RSC 1985, c C-46, namely assault and uttering threats of death and bodily harm. She was sentenced to six months in prison for the first count, and two years' probation for the second.

[9] At the time of these events, Ms. Braud and Mr. Moreau had taken steps to become parents through an *in vitro* fertilization procedure. Due to the criminal act committed by Ms. Braud, the health clinic suspended their assisted reproduction procedures.

[10] In January 2018, following the drafting of an inadmissibility report under section 44 of the IRPA, a deportation order was issued against Ms. Braud.

[11] Ms. Braud is now inadmissible on grounds of criminality under paragraph 36(2)(a) of the IRPA. In April 2018, Ms. Braud's application for permanent residence was refused because she was now inadmissible and was not living with Mr. Moreau, since she was incarcerated.
Ms. Braud then converted her sponsorship application to an H&C Application under subsection 25(1) of the IRPA. Through her H&C Application, Ms. Braud sought to be relieved of

her inadmissibility mainly by invoking her degree of establishment in Canada, the difficulty for Mr. Moreau to have his professional training recognized if he had to accompany her to France, the risk that they will have to start all over with the assisted reproduction process initiated in Canada, and her rehabilitation.

B. *Decision*

[12] In the March 2019 Decision, the Officer refused Ms. Braud's application, concluding that due to her criminal record, the H&C considerations invoked by Ms. Braud were insufficient to grant her an exemption and to relieve her from her inadmissibility. The Officer took two factors into account in his analysis of the H&C considerations: Ms. Braud's establishment in Canada and the ties she has developed here, and the criminality. I note that the Officer dealt with the issue of the medical and health care related to assisted fertilization treatments and a possible pregnancy under the heading of establishment in Canada.

[13] With respect to the level of establishment, the Officer first recognized that the time spent in Canada and the degree of establishment in the country were substantial and that this was a very positive factor playing in favour of Ms. Braud. The Officer noted in particular that Ms. Braud had lived in Canada for more than 10 years, that she had studied and worked here, that she had married a Canadian citizen who is a member of the Armed Forces, that she had a good relationship with her in-laws and that she had a circle of friends in the country.

[14] The Officer then examined the hardships raised by Ms. Braud and to which she would be exposed if her H&C Application was refused. He began by addressing the uncertain recognition

of Ms. Braud's professional training and her career reorientation in France, to which he gave little weight due to the fact that, in any event, Ms. Braud could not work in special education, her field of training, because of her criminal conviction. The Officer then considered the difficulty for Ms. Braud in rebuilding a new life in France. This element was also given little weight since Ms. Braud's entire family lives in France and, over her years in Canada, Ms. Braud has continued to maintain significant ties with France and with her family.

[15] With respect to separation from her in-laws, the Officer also gave little weight to this factor as the frequent moves of Ms. Braud and her husband in Canada indicated that they did not live near their in-laws. The Officer then analyzed the end of Ms. Braud's husband's career in the Army if he were to follow Ms. Braud to France, a factor to which the Officer gave some weight while noting that Ms. Braud's criminal acts had created this situation.

[16] The Officer then briefly dealt with the impossibility of starting a family in Canada but gave very little weight to this factor, which is entirely attributable to Ms. Braud's actions.

[17] Finally, the Officer considered the process of assisted reproduction and the fertility treatments undertaken by the couple. The Officer did not give any weight to this element due to the absence of evidence on the real and precise consequences of a refusal of the H&C Application on the treatments in progress. The Officer observed that Ms. Braud had not indicated what stage had been reached in the *in vitro* process, and that there was nothing to demonstrate that a possible pregnancy could not be continued in France.

[18] The Officer concluded that Ms. Braud had raised certain H&C considerations in favour of a positive response, but that he should then balance them with the negative factor in Ms. Braud's application, namely her criminality.

[19] Regarding Ms. Braud's criminality, the Officer noted that Ms. Braud's acts, namely the repeated assaults on a seven-month-old infant in her care, as well as the threats of death and bodily harm, were particularly serious and reprehensible. The Officer then referred to the mitigating and aggravating factors considered on sentencing. In terms of mitigating factors, he noted in particular the absence of a criminal history, the stress experienced by Ms. Braud at the time of the events, her apologies and remorse expressed before the judge, and the fact that she had undergone therapy. On the other hand, in terms of aggravating elements, he underlined the number and the duration of the violent acts, the fact that Ms. Braud was unwittingly caught by a surveillance camera installed by the parents, and her training in special education. The Officer also concluded that he was satisfied that Ms. Braud's risk of reoffending was low. However, he noted that the possibility of rehabilitation was difficult to assess since the offences were very recent.

[20] In his assessment and weighing of the various factors at issue, the Officer stated that he took all H&C considerations into account while referring more specifically to the factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No. 4 (QL), namely (1) the seriousness of the offence; (2) the possibility of rehabilitation; (3) the time spent in Canada and the degree of establishment in the country; (4) family in Canada and the dislocation that Ms. Braud's deportation would cause to her family; (5) the support available for Ms. Braud

from her family and the community; and (6) the degree of hardship that would be caused to Ms. Braud by her return to France.

[21] The Officer considered that the seriousness of the offence—that is, the repeated acts of violence committed on a baby—weighed particularly heavily in this case. He further observed that the absence of direct testimony and expressions of remorse on the part of Ms. Braud in the specific context of her H&C Application militated somewhat against her. Finally, he concluded that the H&C considerations, although present in the file, were insufficient to overcome the inadmissibility and to grant the exceptional relief requested.

[22] The Officer also stated, in an addendum to the Decision, that the letter from Mr. Moreau dated February 10, 2019, received after having drafted the reasons for his Decision, did not add anything new that could change his conclusions. He notably determined that Mr. Moreau had not submitted evidence to support the hardships he alleged, namely that he would have to reimburse his tuition fees to the army if he had to leave before serving for a certain period and that his military training would be worth nothing outside the Armed Forces. The Officer also noted that Mr. Moreau could complete his studies before joining Ms. Braud in France, and that his bachelor's degree in Business Administration could be useful for him in that country. Regarding the fertility treatments, Mr. Moreau stated that the couple had successfully conceived four fertilized embryos. The Officer concluded, however, that the evidence on the record did not demonstrate that Ms. Braud could not receive the fertilized embryos before returning to France. The Officer also noted the lack of evidence showing that Ms. Braud could not obtain the required medical follow-up in France should she become pregnant.

C. *Standard of review*

[23] The framework for judicial review of an administrative decision was recently reviewed by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. This analytical framework is now based on the presumption that the standard of reasonableness applies in all cases. This presumption can be rebutted in only two types of situations. The first is where the legislature has statutorily prescribed a standard of review or where it has provided for an appeal from the administrative decision to a court; the second is where the question on review falls into one of the categories of questions that the rule of law requires to be reviewed on a standard of correctness (*Vavilov* at paras 10, 17; *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post Corporation*] at para 27).

[24] None of these situations that warrant departing from the presumption of reasonableness review apply here. The Officer's decision is reviewable on a standard of reasonableness. The parties do not challenge this. Indeed, case law has already established that the standard of review applicable during a judicial review of a discretionary decision respecting an application made under subsection 25(1) of the IRPA is reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 44-45).

[25] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in

relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Canada Post Corporation* at paras 2, 31). The reviewing court must consider "the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). The reviewing court must therefore ask itself "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 47, 74 and *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2 at para 13).

[26] It is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision "must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" (emphasis in original) (*Vavilov* at para 86). Thus, review on the reasonableness standard is concerned with both the outcome of the decision and the reasoning process followed (*Vavilov* at para 87). I note that this view is consistent with the direction in *Dunsmuir* that judicial review involves both the outcome and the process (*Dunsmuir* at paras 27, 47–49).

[27] Reasonableness review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must examine the reasons provided with "respectful attention" and seek to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene only "where it is truly necessary

to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). It is important to remember that reasonableness review finds its starting point in the principle of judicial restraint and must still show respect for the distinct role conferred on administrative decision makers (*Vavilov* at paras 13, 75). The presumption of reasonableness review is based on "respect for the legislature's institutional design choice, according to which the authority to make a decision is vested in an administrative decision maker rather than in a court" (*Vavilov* at para 46). In other words, according to the majority of the Supreme Court, *Vavilov* is not a eulogy for deference to administrative decision makers.

III. Analysis

[28] Ms. Braud submits that the Officer's Decision regarding her is unreasonable for three reasons. First, she alleges that the Officer's analysis of the medical care she requires for *in vitro* fertilization was unreasonable. Second, the Officer allegedly made errors in the evaluation of the negative aspects of her criminality, by extrapolating certain dimensions of her criminal record and by downplaying the importance of her rehabilitation. Finally, she claims that the Officer failed to assess certain evidence that she submitted. At the hearing before the Court, Ms. Braud's lawyer mainly emphasized the first two aspects.

[29] For the reasons that follow, I do not agree with the arguments put forward by Ms. Braud.

[30] I admit that it is regrettable that Ms. Braud's crime could prevent her from carrying out her plan to start a family in Canada with her husband, after more than a decade of being in the country. I cannot, however, conclude that the Officer's assessment of the H&C considerations at

stake does not take into account the relevant legal and factual constraints, and that his balancing exercise between Ms. Braud's establishment in Canada and her criminality is not the product of a logical, coherent and rational analysis. I recognize that I would not have come to the same conclusion as the Officer but, in the context of an application for judicial review, I cannot substitute my opinion for his.

A. *Legal framework*

[31] First, I will consider the legal framework of this case. In *Vavilov*, the Supreme Court stressed the importance of the legal considerations that could constrain an administrative decision maker, including the statutory scheme in which the decision is made, in the reasonableness assessment that the reviewing court must make (*Vavilov* at para 106). In Ms. Braud's case, two statutory provisions of the IRPA are involved: first, paragraph 36(2)(a), which provides that, for a foreign national, criminality entails inadmissibility; second, subsection 25(1), which allows a foreign national inadmissible for criminality to be granted an exemption and to obtain permanent residence in Canada on H&C considerations.

(1) Criminality

[32] One of the conditions that Parliament attached to the right of non-citizens to stay in Canada is that they must not have been convicted of certain criminal acts. This is provided in section 36 of the IRPA. It has been mentioned repeatedly that subsection 36(1) of the IRPA dealing with inadmissibility for "serious" criminality defines a form of "social contract" (*Gill v Canada (Citizenship and Immigration)*, 2019 FC 772 at paras 11–12; *Gannes v Canada*

(Citizenship and Immigration), 2018 FC 499 [*Gannes*] at paras 17–18): in exchange for the possibility of residing in Canada, permanent residents (and foreign nationals) must not commit serious criminal offences. The IRPA recognizes that the "successful integration of permanent residents involves mutual obligations for those new immigrants and for Canadian society", including the obligation of the former to avoid serious criminality (*Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at paras 1–2).

[33] A similar finding applies with respect to the criminal offences referred to in subsection 36(2), which are considered to be less serious. We then speak of criminality that could be described as "simple", as opposed to the cases of "serious" criminality in subsection 36(1). Again, this provision establishes a form of social contract: foreign nationals have the obligation to avoid "simple" crime so as not to be inadmissible. I note that two of the IRPA's immigration objectives relate to crime. Parliament has notably seen fit "to protect public health and safety and to maintain the security of Canadian society" and "to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks" (IRPA, paragraphs 3(1)(h) and (i)). The objectives, as expressed in the IRPA, indicate an intent to prioritize security. As the Federal Court of Appeal stated in a case of "simple" criminality, "Parliament has made it clear that criminality of non-citizens is a major concern" (*Canada (Minister of Public Safety and Emergency Preparedness) v Cha*, 2006 FCA 126 at para 24).

[34] Also, when foreign nationals commit criminal offences (within the meaning of the IRPA), such breaches of the social contract can result not only in penalties imposed on them by

the criminal courts, but also in the loss of recourse under the IRPA and deportation from Canada. This is the purpose of the IRPA's provisions on criminality.

[35] That said, the uniform application of this principle can lead to injustice or unfairness, and subsection 25(1) of the IRPA is intended to be a protective measure to avoid this (*Gannes* at para 18).

(2) Applications based on H&C considerations

[36] Subsection 25(1) thus authorizes the Minister to grant an exemption to a foreign national who applies for permanent resident status, but who is inadmissible or does not comply with the law, if the Minister "is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national". In *Kanthasamy*, the Supreme Court adopted an approach to respond more flexibly to the equitable goals of the provision (*Kanthasamy* at para 33). The discretion based on H&C considerations provided by subsection 25(1) is "seen as being a flexible and responsive exception" to mitigate the effects of the rigid application of the IRPA in appropriate cases (*Kanthasamy* at para 19).

[37] In *Kanthasamy*, the Supreme Court clarified the legal test that Minister's representatives must use to assess applications based on H&C considerations under paragraph 25(1) of the IRPA. Thus, the Supreme Court ruled that *Chirwa v Canada (Minister of Citizenship and Immigration)*, [1970] IAC No. 1 [*Chirwa*] had set out an important guiding principle, which must now govern the assessment of applications based on H&C considerations: "the successive series of broadly worded 'humanitarian and compassionate' provisions in various immigration

statutes had a common purpose, namely, 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’: *Chirwa*, at p. 350” (*Kanthasamy* at para 21).

[38] Thus, it is no longer sufficient to examine H&C considerations from the perspective of hardship alone, and immigration officials should no longer use the terms “unusual and undeserved or disproportionate hardship” so as to limit their ability to take into account and weigh *all* relevant H&C considerations in a specific case (*Kanthasamy* at para 25). A reviewing court must therefore be satisfied that the approach outlined in *Kanthasamy* is reflected in the reasons of the administrative decision maker and that, in his or her analysis, the decision maker properly considered not just hardships but all relevant H&C considerations in a broader sense.

[39] That said, just because immigration officials must try to “relieve the misfortunes” of an applicant does not mean that they should automatically grant an application for exemption for H&C considerations. The *Chirwa/Kanthasamy* language certainly does not call for a given result. But the approach necessitates a certain mindset and disposition on the part of immigration officers, and it dictates a certain path to be followed in their analysis of the evidence in order to echo the objective of the provisions related to H&C considerations. Immigration officers, however, retain their discretion to assess the evidence, by using the specialized expertise they have in the immigration field. In other words, the approach taken in *Chirwa/Kanthasamy* with respect to applications based on H&C considerations sets the course that must be taken in the analysis, but it does not prescribe the result at which decision makers may ultimately arrive.

(3) Weight

[40] An application based on H&C considerations under subsection 25(1) is a balancing exercise in which an immigration officer is called upon to consider different and sometimes divergent factors. When, as is the case with Ms. Braud, the applicant invokes H&C considerations in support of an application for exemption from inadmissibility for criminality, the immigration officer must review the public policy set out in subsection 36(2) of the IRPA with respect to the applicant's personal circumstances and decide whether the H&C considerations outweigh the criminality and warrant an exemption from the usual rule that grounds of criminality result in deportation from Canada. In other words, criminality must be weighed against all H&C factors. There is undoubtedly a tension between the two public policy objectives of the IRPA which are then at issue, and it is for immigration officers, in their reasons for decision, to consider and assess both H&C and criminal factors and determine whether it is justified to waive the inadmissibility for criminality.

B. ***General comments on the Decision***

[41] I am satisfied, on reading the reasons for the Decision, that this is exactly what the Officer did in the section describing his assessment.

[42] As set out, the Officer's conclusions easily allow the parties and the Court to understand how the factors relating to H&C considerations and criminality were taken into account and assessed, and how the Decision was finally rendered. I accept that automatically ruling out an exemption based on H&C considerations on the basis of the mere existence of a form of criminality could have the practical effect of deviating from the spirit of subsection 25(1) of the IRPA. But the Decision does not reflect this approach. On the contrary, before concluding that

the seriousness of Ms. Baud's criminal offences tipped the scales in favour of a refusal of her H&C Application, the Officer carefully analyzed all of the H&C considerations identified by Ms. Braud and her husband. As the Minister argued, the Officer duly assessed all of the humanitarian grounds invoked by Ms. Braud, namely the uncertain recognition of her professional training and that of her husband and the career reorientation in France, the end of her husband's career in the military, the possibility of rebuilding a new life in France, separation from the in-laws, the impossibility of living the dream of starting a family in Canada, and the difficulty of starting the assisted reproduction process again.

[43] Following the *Vavilov* judgment, the reasons given by administrative decision makers have taken on a greater importance and are now the starting point for the analysis. They are the primary mechanism by which administrative decision makers show that their decisions are reasonable, both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They serve to state "how and why a decision was made", demonstrate that "the decision was made in a fair and lawful manner" and shield against "the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79). In short, it is the reasons that establish the justification for the decision.

[44] However, in the case of Ms. Braud, I am of the view that the Officer's reasons provide transparent and intelligible justification for the Decision (*Vavilov* at paras 81, 136; *Canada Post Corporation* at paras 28–29; *Dunsmuir* at para 48). They demonstrate that the Officer followed rational, coherent and logical reasoning in his analysis and that the Decision conforms to the

relevant legal and factual constraints that bear on the decision maker and the issue at hand (*Canada Post Corporation* at para 30, citing *Vavilov* at paras 105–7).

[45] After considering and assessing all the circumstances of the case and all the relevant factors, the Officer certainly could have concluded that the H&C factors did not outweigh Ms. Braud's inadmissibility because of the seriousness of the assault and threats for which she pleaded guilty and was sentenced to imprisonment. Although it was not "serious" criminality within the meaning of subsection 36(1) of the IRPA, the criminal acts were recent and involved acts of violence directed against a person who is entirely powerless and who was in Ms. Braud's care. Ultimately, the errors alleged by Ms. Braud do not lead me "to lose confidence in the outcome reached by the decision maker" (*Vavilov* at para 123).

[46] The reasons for a decision need not be perfect or even exhaustive. They need only be comprehensible. The reasonableness standard of review is not concerned with the decision's degree of perfection but rather its reasonableness (*Vavilov* at para 91). The standard requires that the reviewing court start with the decision and recognize that the administrative decision maker has the primary responsibility for making factual determinations. The reviewing court examines the reasons, the record and the outcome and, if there is an explanation for the result obtained, it refrains from intervening.

[47] Furthermore, having analyzed the Officer's reasons, I am also satisfied that the Decision respects the approach developed in *Kanthasamy* and *Chirwa* and that the Officer did not examine the case from the limited perspective of the hardships. It is true that, in the Decision, the Officer

did not expressly use the words “circumstances which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another”, but immigration officials are not required to use this language explicitly to respect the approach in *Kanthasamy*. There is no magic formula or specific term for officers to use. It is sufficient for the reviewing court to find that the approach in *Kanthasamy* is apparent from the reasons for it to be able to conclude that the administrative decision maker, in its analysis, properly took into account *all* of the relevant H&C considerations taken in a broader sense.

[48] That is clearly the case here. The Decision does not contain passages suggesting or indicating that the Officer examined Ms. Braud’s application from the limited perspective of the hardships, and that the Officer had gone down this narrow path that immigration officials are now required to avoid. On the contrary, in assessing Ms. Braud’s situation, the Officer instead adopted the holistic approach set out by the Supreme Court in *Kanthasamy*. In my opinion, it appears from reading the Decision that the Officer showed compassion and sensitivity towards Ms. Braud’s misfortunes, and that he weighed all of the humanitarian factors related to her establishment in Canada. I note that the Officer showed empathy for Ms. Braud, saying in particular, on two occasions, that he was sensitive to the question of assisted fertilization treatments and the challenges that this posed for a possible pregnancy.

[49] The Officer’s reasons do not, in my opinion, reflect the attitude of a person who is insensitive and indifferent to the misfortunes of others, or of a person who is not motivated by the desire to relieve them of those misfortunes. To properly apply the lessons of *Kanthasamy*, the decision maker had to assess Ms. Braud’s personal situation as well as all of the relevant H&C

considerations. This is precisely what the Officer did. In my opinion, the question posed in *Chirwa* and *Kanthasamy* was taken into account, and the Officer answered it on the basis of the file, even though this answer is not the one Ms. Braud would have liked to have heard.

[50] It is also important to keep in mind that subsection 25(1) of the IRPA remains an exception to the normal functioning of the IRPA. In this regard, the Supreme Court noted in *Kanthasamy* that "[t]here will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1) . . . . Nor was s. 25(1) intended to be an alternative immigration scheme" (*Kanthasamy* at para 23). The exemption on H&C considerations is an exceptional measure and, what is more, a discretionary one (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125, at para 15). This exemption sits outside the normal immigration classes or refugee protection streams by which foreign nationals can come to Canada permanently. It acts as a sort of safety valve available for exceptional cases.

[51] I would add the following observation. The test that a reviewing court must apply in a judicial review such as this one is the standard of reasonableness. While immigration officials must now avoid assessing humanitarian and compassionate factors from the narrow angle of hardships, reviewing courts must always consider the conclusions of the administrative decision maker from a perspective of reasonableness and restraint, with respectful attention to the reasons of the decision maker. This judicial restraint requires the reviewing courts to exercise discipline. On judicial review, it is not for the reviewing court to substitute its point of view for that of the decision maker, even if it could have come to a different conclusion. The reviewing court must

focus its attention on the very decision made by the administrative decision maker, in particular on its justification, and not on the conclusion which it would have reached itself if it had been in the shoes of the decision maker.

[52] Decisions made under subsection 25(1) of the IRPA are highly discretionary, and a reviewing court should not find that an immigration officer's decision is unreasonable simply because it does not like the outcome and would have decided otherwise. Even in situations where the factual context of an application may arouse some sympathy, the reviewing court must resist the temptation to rule on the application for judicial review on the basis of the conclusion that it could have itself drawn had it occupied the place of the decision maker. In particular, considerable deference is owed to the weight given to the assessment of H&C factors made by an officer (*Wang v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 705 at para 29). As long as all of the evidence has been properly examined, the question of the weight remains entirely within the expertise of the immigration officer (*Lopez v Canada (Citizenship and Immigration)*, 2013 FC 1172 at para 31).

[53] In other words, reasonableness is, and remains, the standard that I am required to apply in the circumstances, even if its application may seem harsh in the eyes of Ms. Braud.

C. *Assisted fertilization treatments*

[54] I now turn to the more specific arguments put forward by Ms. Braud. Initially, Ms. Braud argued that it was unreasonable for the Officer to attach paramount importance to the timing of the embryos' implantation in the *in vitro* fertilization process undertaken by the couple.

Ms. Braud alleges that the Officer should rather have considered the purpose of the assisted reproduction procedures. She adds that it was unreasonable for the Officer to require proof of the time of implantation of a fertilized embryo, and that this did not comply with the legal constraints with regard to evidence. Ms. Braud also submits that it was unreasonable for the Officer to conclude that there was nothing to prevent Ms. Braud from receiving a fertilized embryo and continuing her pregnancy in her country of origin. She submits that this reason did not take into account foreseeable difficulties in carrying a pregnancy, such as the harmful effect of the stress inherent in leaving Canada where she has lived for the past decade.

[55] I do not share Ms. Braud's interpretation of the Decision in this regard.

[56] I am, rather, satisfied that the Officer's analysis of the assisted reproduction treatments received by Ms. Braud is reasonable. The affidavits of Ms. Braud and her husband confirm that Ms. Braud has not yet received the embryos and was not pregnant when the Officer issued his Decision in March 2019. To the extent that Ms. Braud relied on the assisted fertilization treatments as H&C considerations, it was reasonable for the Officer to inquire at what stage she was in those treatments, in order to determine what would be the impact of a refusal of her H&C Application. Contrary to Ms. Braud's reading of the reasons for the Decision, I am not persuaded that the Officer imposed an inappropriate burden of proof on Ms. Braud. The reasons illustrate, rather, that the Officer sought to understand how a return to France could affect Ms. Braud's assisted reproduction treatments and possible pregnancy.

[57] I would add that this was one factor among several others in the context of the hardships cited by Ms. Braud, and the weight to be given depended on the evidence submitted by Ms. Braud. The Officer considered that this evidence was deficient. I can understand that Ms. Braud may disagree with the Officer's assessment and challenge the lack of weight given to this factor, but it is not for the Court to change the importance given by the Officer to the various H&C considerations. In the context of a judicial review, the Court is not authorized to reassess the evidence or to substitute its own assessment for that of the Officer. Deference to an administrative decision maker includes deferring to their findings and assessment of the evidence (*Canada Post Corporation* at para 61). The reviewing court must in fact avoid "reweighing and reassessing the evidence considered by the decision maker" (*Canada (Canadian Human Rights Commission v Canada (Attorney General)*, 2018 SCC 31 at para 55, citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 64).

[58] In the present case, the arguments raised by Ms. Braud express more of a disagreement with the assessment of the evidence and with the weighing of the various factors carried out by the Officer in the exercise of his discretion and expertise. Being of the view that the Officer did indeed conclude that the degree of establishment in Canada favoured the granting of the H&C Application, Ms. Braud is asking the Court to reassess the evidence and to re-evaluate the assessment of H&C considerations carried out by the Officer. That is not the role of the Court in judicial review proceedings.

[59] Furthermore, judicial review is not a "line-by-line treasure hunt for errors" (C*ommunications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper*,

Ltd, 2013 SCC 34 at para 54, *Vavilov* at para 102). Rather, reviewing courts should pay respectful attention to the reasons of the decision maker. In the present case, the Officer decided to draw adverse inferences from the absence of evidence relating to what stage the assisted fertilization treatments were at. This conclusion is mainly based on Ms. Braud's specific factual situation; it is explained in the Decision and is supported by the evidence. It therefore has all the attributes of a reasonable conclusion.

[60] Reasonableness review aims to understand the basis on which a decision was made and to identify whether it contains a sufficiently critical or material shortcoming or reveals an unreasonable analysis (*Vavilov* at paras 96–97, 101). The party contesting the decision must satisfy the reviewing court that "the shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). In *Vavilov*, the Supreme Court identified two categories of fundamental flaws: the first is a failure of rationality internal to the reasoning process, and the second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it (*Vavilov* at para 101). In the present case, I am satisfied that the Officer's reasoning can be followed without encountering any fatal flaws in its rationality and logic, and that the reasons contain a line of analysis that could reasonably lead the administrative decision maker, from the evidence before him, to the conclusion at which he arrived (*Vavilov* at para 102; *Canada Post Corporation* at para 31). The Decision does not suffer from a serious shortcoming which would hamper the analysis and which could undermine the requirements of justification, intelligibility and transparency.

D. *Criminality*

[61] With respect to criminality, Ms. Braud submits that the Officer should have given more weight to her low risk of reoffending and her rehabilitation. She alleges that the Officer's analysis was contrary to the teachings of the Court stating that a minimal risk of reoffending demonstrates a great capacity for rehabilitation (*Thamber v Canada (Minister of Citizenship and Immigration)*, 203 FTR 169, 2001 FCT 177 (CanLII); *Brar v Canada (Citizenship and Immigration)*, 2011 FC 691 [*Brar*]). Ms. Braud also claims that the Officer exceeded his expertise and went beyond the conclusions of the criminal record by unfavourably interpreting the psychological distress she was experiencing at the time of the criminal acts, her own failure to have expressed remorse as part of her H&C Application, and the uncertainty surrounding her rehabilitation.

[62] Ms. Braud finally submits that it was unreasonable for the Officer to give little weight to her prospects for rehabilitation on the grounds that her probation period was still in progress. Relying on *Singh v Canada (Citizenship and Immigration)*, 2018 FC 744 [*Singh*], Ms. Braud notes that her prior clean criminal record should be among the factors to be considered when assessing H&C considerations to overcome criminal inadmissibility (*Singh* at para 21).

[63] Once again, and despite the arguments skillfully presented by her lawyer, I do not share Ms. Braud's reading of the reasons for the Decision.

[64] In my opinion, the Officer could reasonably conclude that Ms. Braud should have provided her own testimony in her H&C Application. On the one hand, an application for H&C considerations is an exceptional remedy. On the other hand, it was open to the Officer to consider the letter of February 10, 2019, signed by the couple as being insufficient to demonstrate Ms. Braud's remorse, since it was written mainly from the point of view of her husband, and not from that of Ms. Braud herself. I am also satisfied that in any event, the Officer duly analyzed and weighed all of the letters submitted by Ms. Braud. I reiterate that the absence of Ms. Braud's direct testimony was still only one factor among many in the Officer's assessment.

[65] On the issue of rehabilitation, first of all, contrary to Ms. Braud's claims, I note that the Officer expressly recognized that her risk of reoffending was low and that she had no criminal history. He also mentioned that her rehabilitation was a positive factor but that, given the short time that had elapsed since the criminal acts, this rehabilitation could not receive substantial weight. It is therefore not a situation where, as in *Brar*, the officer gave no weight to the pardon despite a long period of time that had elapsed since the criminal offence.

[66] Furthermore, I do not agree with Ms. Braud's claims that the Officer went beyond his field of expertise and took the place of other players involved in her criminal case, and that he effectively widened the scope of her criminality. The fact that the Officer gave more weight to certain elements among the aggravating and mitigating factors identified on sentencing is part of the exercise of his discretion. There was nothing to prevent the Officer from giving more weight

to the seriousness of the offences committed and to certain other elements, such as the repeated and highly reprehensible nature of the acts committed by Ms. Braud.

[67] Again, the Officer's reasons are based on a coherent, rational and justified analysis of the evidence on the record, and I am satisfied that the Decision has the requisite internal logic. Under the reasonableness standard, the reasons are to be read as a whole, in conjunction with the record, in order to determine whether the reasons provide the justification, transparency and intelligibility required of a reasonable decision (*Dunsmuir* at para 47; *Agraira v Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36 at paras 51–53). I conclude that this is certainly the case with regard to how Ms. Braud's criminality was handled.

E. Forgotten evidence

[68] Finally, Ms. Braud alleges that the Officer failed to take into consideration the photographs she submitted, which show her life with her family in Canada and demonstrate the distress that a possible return to France could cause. There is no merit to this argument. It is indeed well established that administrative decision makers are presumed to have considered all the evidence before them and that they are not required to make an explicit finding on each constituent element (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14-16).

IV. Conclusion

[69] For all the reasons stated above, the decision by which the Officer dismissed Ms. Braud's application based on H&C considerations constituted a reasonable outcome based on the law and the evidence and has the requisite attributes of transparency, justification and intelligibility. According to the reasonableness standard, it is sufficient for the Decision to be based on an inherently coherent and rational analysis, and to be justified having regard to the legal and factual constraints to which the decision maker is subject. That is the case here. I must therefore dismiss this application for judicial review. However, I do so with some reservation because I might not have drawn the same conclusion as the Officer. But in the context of an application like this, I cannot substitute my opinion for that of the Officer. If I did, I would not be respecting the role of the Court in matters of judicial review.

[70] Neither party has proposed a question of general importance for me to certify. I acknowledge that there are none.

JUDGMENT in IMM-2119-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.

2. No question of general importance is certified.

"Denis Gascon"
Judge

Certified true translation
This 18th day of February 2020.

Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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