

Federal Court



Cour fédérale

**Date: 20220211**

**Docket: IMM-2253-21**

**Citation: 2022 FC 186**

**Ottawa, Ontario, February 11, 2022**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**RABIA ABDULAZIZ SHUBAR SHUBAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Rabia Shubar applied for permanent residence on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Her application emphasized her establishment in Canada, the hardship she would face if she had to return to Iraq, and the best interests of her three Canadian grandchildren. In addressing the best interests of the children (BIOC), her application focused almost

exclusively on the particular needs of her youngest grandchild, who has been diagnosed with selective mutism and requires special attention and care.

[2] The senior immigration officer who refused Ms. Shubar's H&C application gave reasons for decision that refer to the best interests of the grandchildren. However, those reasons contain no analysis, or indeed mention, of the particular interests of the third grandchild or how she might be affected by the decision. In the circumstances, I consider this failure to address a central submission raised by Ms. Shubar to be a material and fundamental flaw that renders the decision unreasonable.

[3] The application for judicial review is therefore granted and Ms. Shubar's H&C application is remitted for redetermination.

## II. Issue and Standard of Review

[4] There is no dispute that an officer's decision on an H&C application is subject to review on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44.

[5] Ms. Shubar challenges the reasonableness of the officer's decision with respect to each of the factors raised in her H&C application, namely establishment, hardship, and the BIOC. In my view, the determinative issue is the reasonableness of the officer's BIOC analysis. I will therefore confine the following discussion to that issue.

III. Analysis

[6] A reasonable decision is one that is justified, intelligible, and transparent. The justification and transparency principles “require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties”: *Vavilov* at para 127.

[7] Ms. Shubar’s H&C application raised three central issues: (1) her establishment in Canada and ties to Canada; (2) the hardship she would face if returned to Iraq and the conditions in that country; and (3) the best interests of the children directly affected. The third of these factors is expressly identified in subsection 25(1) of the *IRPA* as a factor that must be addressed where relevant, a matter that makes it one of “singularly significant focus and perspective”: *Kanthasamy* at paras 34, 40. The BIOC is a highly contextual principle that must be applied “in a manner responsive to each child’s particular age, capacity, needs and maturity”: *Kanthasamy* at para 35.

[8] Given the importance of the principle, a decision under subsection 25(1) of the *IRPA* will be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered: *Kanthasamy* at para 39. Those interests must be “‘well identified and defined’ and examined ‘with a great deal of attention’ in light of all the evidence”: *Kanthasamy* at para 39.

[9] Ms. Shubar's submissions with respect to the BIOC referred to her role in caring for all three grandchildren, particularly given their parents' busy medical practices. However, the BIOC submissions focused almost entirely on her role in the care of her third grandchild, who has been diagnosed with selective mutism and does not speak with anyone outside the home. One of the few people the child speaks with is Ms. Shubar.

[10] As noted above, the officer's decision refusing Ms. Shubar's H&C application refers to the BIOC and Ms. Shubar's submission that it would be in the grandchildren's best interests for her to remain in Canada. The officer accepted that there is a level of dependency between the children and Ms. Shubar, but noted the children continued to be in the primary care of their parents, "who would continue to support their emotional, social, cultural, and physical needs." The officer therefore concluded that while the children may be impacted by Ms. Shubar's departure, any such impact could be mitigated by their parents, who could provide them with the required support and potentially arrange additional assistance in providing them care.

[11] Lacking in this analysis is any mention of the third grandchild's condition, the particular role of Ms. Shubar in her life and care, and the impact Ms. Shubar's departure would have on her.

[12] The Supreme Court of Canada in *Vavilov* recognized that an administrative decision maker cannot be expected to respond to every argument or submission made by a party, "however subordinate": *Vavilov* at para 128. However, it underscored the importance of administrative decision makers showing through their reasons that they have "meaningfully

grapple[d]” with the key issues or central arguments raised: *Vavilov* at paras 127–128. In the present case, Ms. Shubar’s particular involvement in the third grandchild’s life and care, and the specific impact on that child of her removal, was not merely a subordinate or passing submission. It is mentioned as part of the BIOC in the summary of “Relevant Factors” in counsel’s submissions in support of the H&C application; it is described again in the discussion of “Background”; it constitutes effectively the entirety of the section of the submissions on “Best Interests of the Children Directly Affected”; it is mentioned separately in Ms. Shubar’s personal statement, as well as in the support letters of her son, daughter-in-law, and eldest grandchild; and it is described in a medical report from a pediatrician.

[13] The officer’s decision refusing Ms. Shubar’s H&C application does not “meaningfully grapple” with any of these submissions or supporting evidence. In consequence, the decision effectively fails to address Ms. Shubar’s central submission on the BIOC, one of the three factors she put forward, and one that has an inherent importance in the H&C analysis. In the circumstances, I conclude that this “call[s] into question whether the decision maker was actually alert and sensitive to the matter,” and shows the BIOC not to have been sufficiently considered, well identified, and defined: *Vavilov* at para 128; *Kanthasamy* at para 39. This renders the decision unreasonable.

[14] As this is sufficient to require that the rejection of Ms. Shubar’s H&C application be set aside and that the application be redetermined, I need not address the remaining issues relating to Ms. Shubar’s establishment in Canada and the hardship she would face if removed to Iraq.

IV. Conclusion

[15] The application for judicial review is therefore granted. The decision of a senior immigration officer dated March 24, 2021, refusing Ms. Shubar's application for permanent residence on H&C grounds is set aside, and the application is remitted for redetermination by a different officer.

[16] Neither party proposed a question for certification. I agree that none arises in the matter.

**JUDGMENT IN IMM-2253-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed. The refusal of Rabia Abdulaziz Shubar Shubar's application for permanent residence on humanitarian and compassionate grounds, dated March 24, 2021, is set aside and the application is remitted for redetermination by a different officer.

“Nicholas McHaffie”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2253-21

**STYLE OF CAUSE:** RABIA ABDULAZIZ SHUBAR SHUBAR v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 6, 2021

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** FEBRUARY 11, 2022

**APPEARANCES:**

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