Federal Court  Cour fédérale

Date: 20220218

Docket: IMM-800-21

Citation: 2022 FC 225

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 18, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

ELIZABETH BARBARA DE OLIVEIRA GONCALVES & LETICIA OLIVEIRA ESPERANCA GONCALVES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background and underlying decision

[1] This is an application for judicial review of a decision of a senior immigration officer [the officer], dated January 20, 2021, refusing the applicants' application for permanent residence on humanitarian and compassionate grounds [H&C application].

[2] The applicants, Elizabeth Barbara de Oliveira Gancalves [Ms. de Oliveira] and her 12-year-old daughter, Leticia, are Brazilian citizens. Ms. de Oliveira was born in the Northeast of Brazil, has completed university studies, including a master's degree, and has experience as a lawyer, artist manager and teacher in Brazil. She experienced several stressful and violent events in Brazil: her father was killed in 1984 under unclear circumstances; she was the victim of an armed robbery in the summer of 2011; she divorced Leticia's father in June 2012 when Leticia was 2 years old; and Ms. de Oliveira's brother was shot and killed in 2014. In the meantime, Ms. de Oliveira has made several applications to immigrate to Canada, including a temporary resident visa application denied in 2011, a visitor visa application granted in 2013, and a student visa application granted in 2014. Ms. de Oliveira entered Canada with Leticia in July 2014 with temporary resident status and a work permit; they lived in Canada for 17 months, until December 2015, when Ms. de Oliveira returned to Brazil to care for her mother. Ms. de Oliveira returned to Canada with her daughter in May 2016 on a temporary student visa, renewed until April 13, 2019; Ms. de Oliveira also obtained a temporary work permit, also renewed until April 14, 2019. Leticia's father has given permission for her to live with her mother in Canada.

[3] Leticia has been in the same school environment since she returned to Canada in 2016 and Ms. de Oliveira held several jobs until her work permit expired in April 2019, including working as an elementary school monitor for the Centre de services scolaire de Montréal and as a school crossing guard for the City of Montréal. Ms. de Oliveira has also volunteered for several organizations. The applicants have both learned French and English since their arrival in Canada. In addition, Ms. de Oliveira married again on September 2, 2017, but the couple divorced in August 2019. She claimed that she was verbally abused by her ex-husband, who had submitted a

family reunification sponsorship application but withdrew it when the relationship ended. In recent years, Ms. de Oliveira has sought to regularize her situation in Canada. On June 18, 2018, her application for a work permit extension was denied and Citizenship and Immigration Canada received Ms. de Oliveira's H&C application in March 2019. On November 10, 2019, her new work permit application was denied. On November 19, 2019, Ms. de Oliveira crossed the United States border in an effort to obtain a valid document. Canadian customs granted her a six-month temporary residence and work permit, valid until May 19, 2020. Subsequently, she filed an application for a visitor record and applications for temporary resident and work permits; these applications were still pending a decision when the officer denied Ms. Oliveira's H&C application. On January 4, 2021, Ms. de Oliveira reportedly submitted an application for a temporary resident permit for victims of family violence; her application is also still awaiting a decision.

[4] On January 20, 2021, the officer refused the H&C application, finding that the factors the applicants cited were not sufficient to warrant an exemption on humanitarian and compassionate grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The officer considered the applicants' establishment in Canada, the hardship they would face if returned to Brazil, and the best interests of Leticia. In support of their application, Ms. de Oliveira and Leticia submitted, among other things, letters describing their establishment in Canada, as well as letters of recommendation from friends, employers, colleagues and their member of Parliament. Ms.de Oliveira also submitted proof of employment and income tax returns and letters confirming her involvement with various community organizations.

[5] The officer gave [TRANSLATION] “favourable weight” to Leticia’s school attendance as well as to Ms. de Oliveira’s employment, volunteer experience and good financial management. However, he noted that [TRANSLATION] “the issue in this assessment is not whether the applicants would make a valuable contribution to Canadian society, but rather whether their return to Brazil constitutes such a hardship that an exemption is warranted”. After reviewing the evidence, the officer determined that the degree of establishment of Ms. de Oliveira and her daughter was not exceptional compared to similarly situated individuals who have lived in Canada for a comparable period of time. In assessing the hardship the applicants would face if returned to Brazil, the officer considered Ms. de Oliveira’s psychological assessment report, which addresses the issue of the murder of her father and brother, but found that little evidence or information regarding their murder and its impact on Ms. de Oliveira’s life was submitted in support of the H&C application. The officer also found that no evidence was submitted regarding the armed robbery she suffered in 2011. Thus, regarding the [TRANSLATION] “armed robbery” in 2011, the officer stated that the evidence did not support a finding that the applicants were discriminated against in Brazil or that the Brazilian government [TRANSLATION] “could not or would not” protect Ms. de Oliveira or her daughter, and it did not support a finding that the difficult conditions in Brazil would have a direct and negative impact on Ms. de Oliveira. The officer also considered Ms. de Oliveira’s employment prospects as well as the family support that the applicants would have if they returned to Brazil. In analyzing Leticia’s best interests, the officer gave favourable weight to the child’s relationship with a family friend, a Mr. Keable, but there was insufficient evidence on the record to show that Leticia would be adversely affected socially and culturally or that her well-being would be compromised if she returned to Brazil. Finally, the officer concluded that the hardship that Ms. de Oliveira and her daughter would

suffer as a result of having to leave Canada is a consequence of the normal and foreseeable application of the IRPA.

[6] Not having been informed of the refusal of her H&C application, Ms. de Oliveira filed new submissions on February 4, 2021. As such, the officer considered additional submissions that included a letter from the City of Montréal's human resources department stating that her employee file was still active pending a decision on her work permit. In an addendum, the officer reached the same conclusion as the January 20, 2021 decision. The officer concluded that, following his assessment of all the relevant facts and factors before him, they [TRANSLATION] "do not support an exemption from the requirement to apply for permanent residence from abroad in this case". This application for judicial review is for the January 20, 2021 decision only.

II. Legislative scheme

Humanitarian and compassionate considerations - request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25(1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible - other than under section 34, 35 or 37 - or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada - other than a foreign national who is inadmissible under section 34, 35 or 37 - who	25(1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire – sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 –, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada – sauf s'il est interdit de

applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	territoire au titre des articles 34, 35 ou 37 – qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

III. Issues and standard of review

[7] This application for judicial review raises the issue of the reasonableness of the senior immigration officer's decision. The applicants argued that the officer erred in his analysis of their establishment by requiring an extraordinary degree of establishment in Canada, that the officer did not adequately consider the psychological assessment report of Ms. de Oliveira, that the officer confused Leticia's best interests analysis with a hardship analysis, and finally, that the officer only considered traditional hardship factors and not humanitarian and compassionate factors in the broader sense.

[8] The parties agreed that the standard of review applicable to the review of a decision on an H&C application is that of reasonableness (*Garcia Diaz v Canada (Citizenship and Immigration)*, 2021 FC 321 at para 49; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]). When reviewing under the standard of

reasonableness, the Court must examine the reasons given by the senior immigration officer to determine whether the decision is based on "an internally coherent and rational chain of analysis" and whether the decision as a whole is transparent, intelligible and justified (*Vavilov* at paras 85–86). An exemption on humanitarian and compassionate grounds under subsection 25(1) of the IRPA is an exceptional and discretionary measure that requires deference from the Court (*Sun v Canada (Citizenship and Immigration)*, 2012 FC 206 at para 16; *Qureshi v Canada (Citizenship and Immigration)*, 2012 FC 335 at para 30).

IV. Analysis

A. *The officer did not err in his analysis of the applicants' degree of establishment in Canada*

[9] The officer determined that the applicants did not have an exceptional degree of establishment compared to similarly situated individuals:

> [TRANSLATION]
>
> The applicants have resided in Canada for a relatively short period of time, according to the evidence they have presented, but I do not find their degree of establishment to be exceptional compared to similarly situated persons who have lived in Canada for a comparable period of time. Their evidence does not confirm that their integration into Canadian society is such that their departure would cause hardship beyond their control that is not contemplated by the IRPA.

[10] The majority in *Kanthasamy* adopted the approach of *Chirwa v Canada (Minister of Manpower and Immigration)* (1970), 4 IAC 338, [1970] IABD No 1 (QL), that an officer should not apply a higher threshold so as to restrict the officer's ability to consider and weigh all relevant H&C considerations. The applicants argued that the officer erred in his analysis of their

establishment by requiring an extraordinary degree of establishment in Canada. The applicants also argued that the officer failed to mention what might be considered exceptional establishment.

[11] First, I am not persuaded that the officer applied a higher threshold in his analysis of the applicants' establishment in Canada than the approach taken by the Supreme Court of Canada in *Kanthasamy*. I agree with Justice McHaffie in *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158, that to the extent that the term "exceptional" is used descriptively, as it is in this case, it does not create a higher threshold than that provided for in subsection 25(1):

> [21] Thus, to the extent that words such as "exceptional" or "extraordinary" are used simply descriptively, their use appears to be in keeping with the majority in *Kanthasamy*, although such use may not add much to the analysis. However, to the extent that they are intended to import a legal standard into the H&C analysis that is different than the *Chirwa*/*Kanthasamy* standard of "exciting in a reasonable person in a civilized community a desire to relieve the misfortunes of another, provided those misfortunes justify the granting of relief," this would appear to be contrary to the reasons of the majority. Given the potential for words such as "exceptional" and "extraordinary" to be taken beyond the merely descriptive to invoke a more stringent legal standard, it may be more helpful to simply focus on the *Kanthasamy* approach, rather than adding further descriptors.

[12] Only an analysis of the officer's reasons, considered as a whole, can determine whether the use of the word "exceptional" creates a higher threshold than that provided for in subsection 25(1) of the IRPA (*Jaramillo Zaragoza v. Canada (Citizenship and Immigration)*, 2020 FC 879 at para 22 [*Jaramillo Zaragoza*]), and in this case I find the use of the word to be merely descriptive.

[13] In addition, the applicants cited *Chandidas v Canada (Citizenship and Immigration)*, 2013 FC 258 at para 80 [*Chandidas*], in support of their claim that the officer had a duty to explain what exceptional establishment would look like (see also *Henson v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1218 at para 29 [*Henson*] and *Ndlovu v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 878 at paras 14–15). However, I am not convinced that these decisions support their argument. I have already addressed this issue in *Jaramillo Zaragoza* in which I quote Justice Diner in *Regalado v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 540:

> [7] The Applicant argues that it was unreasonable for the Officer not to explain what "level of establishment he requires to warrant the exercise of the discretion provided under section 25 of IRPA," because the Officer noted that her degree of establishment is what "one would expect to accomplish in her circumstances."
>
> [8] This argument is misguided; the Officer cannot be expected to arbitrarily set the degree of establishment required under section 25, as that analysis will necessarily vary depending on the facts of each case. Likewise, it is not the role of an officer to speculate as to what additional facts or circumstances would have triggered a section 25 exception. Rather, it is the Applicant's role to demonstrate exceptional circumstances, including establishment, rather than simply expected (*Baquero Rincon v Canada (Minister of Citizenship and Immigration*), 2014 FC 194 at para 1).

[14] Moreover, in *Chandidas*, the officer had provided no reasons for the inadequacy of the evidence on establishment; the *Henson* and *Ndlovu* decisions echo the reasoning of Justice Kane in *Chandidas*. However, unlike the *Henson* and *Chandidas* decisions, in this case, the officer actually defined the standard he applied in assessing the applicants' degree of establishment and explained his benchmark, namely that he [TRANSLATION] "does not find their degree of establishment exceptional in relation to similarly situated persons who have lived in Canada for a comparable period of time" (see also *Osorio Diaz v Canada (Citizenship and Immigration)*, 2015

FC 373 at para 17). Accordingly, I find nothing unreasonable in the officer's assessment of Ms. de Oliveira's establishment.

B. *The officer did not make an error in his analysis of the psychological assessment report*

[15] The applicants argued that the officer did not adequately consider the psychological assessment report of Ms. de Oliveira showing the after-effects of the murders of her father and brother, as well as the armed robbery of which she was a victim and the feeling of insecurity caused by the lack of recourse or identification of the assailants by the Brazilian authorities. According to the applicants, this report is particularly important because it explains the relationship between Ms. de Oliveira and her country of origin and the officer did not conduct a transparent and separate analysis of her mental health as a humanitarian factor.

[16] More specifically, they raised the comments of Dr. Cécile Marotte that Ms. de Oliveira presents a state of general anxiety related to the wait for a legal immigration status in Canada. She adds:

> [TRANSLATION]
>
> The client may certainly have developed an excessive and persistent fear concerning the disappearance of family attachment figures: her father, her brother, for whom no explanation seems to have been provided, other than the absurdity and unfortunate frequency of this type of delinquency where the identification of the assailants and their legal punishment should and could have been a form of recourse.

[17] However, I note Dr. Marotte's conclusion as follows:

> [TRANSLATION]

Clinical diagnosis according to the DSM V criteria (Diagnostic and Statistical Manual of Mental Disorders, American Psychiatric Association)

V71.09 (Z03.2): *no diagnosis of a clinical mental health disorder*.

Psycho-traumatic sequelae following several violent assaults in the process of resolution.

In conclusion:

- Ms. E.B. de OLIVEIRA does not express *any clinical mental health disorders* (pre-psychotic or psychotic), but she does have *long-lasting post-traumatic after-effects* following the murder of her father and brother, and following her own assault, which has contributed to a form of emotional deregulation and may allow us to better understand her search for a stable and safe living context.

- The anxiety experienced was mainly related to the wait for a legal Canadian immigration status to strengthen the client's personal integration and to allow her daughter to flourish in her schooling and future life choices.

- Ms. E.B. de OLIVEIRA GONCALVEZ is an *excellent candidate for a stable job*, having demonstrated a great capacity to take care of herself and her daughter since her arrival in Canada.

RECOMMENDATIONS

- **Ms. E.B. de OLIVEIRA GONCALVEZ** can be considered as an excellent candidate for employment as she has demonstrated her ability to be autonomous and to correctly assume all the responsibilities related to her 10-year-old daughter.

- **Ms. E.B. de OLIVEIRA GONCALVEZ** can continue to demonstrate all of her skills and be considered as a positive contribution in her chosen living context, for which she has not reported any difficulty or problem of adaptation for herself or her daughter.

[18] The officer considered the psychological assessment report:

[TRANSLATION]

> [Ms. de Oliveira] provided a psychological assessment dated May 24, 2019. It refers to the murder of [Ms. de Oliveira's] father as well as the death of her brother. In addition, according to the document, [Ms. de Oliveira] doubts the Brazilian government's ability to protect them. The report also discusses [Ms. de Oliveira's] anxiety about not having status in Canada. It is noted that the report does not mention that the principal applicant has ever sought assistance or that she continues to do so. Little information or evidence was presented to support the deaths of the applicant's father and brother and the impact on her life. Further, the evidence presented does not show that the Brazilian government could not or would not protect the applicants if they needed it. The evidence does not support a finding that the applicants were discriminated against in Brazil. [Ms. de Oliveira] stated that in 2011 she was the victim of an "armed robbery" in Brazil. I note that the applicant has not provided a police report or testimony regarding the event.

[19] Ms. de Oliveira claimed that her psychological report contains relevant material that was not given the attention it deserved by the officer. I agree that, as described in the psychological report, sometimes the state's failure to protect members of society from acts of criminal delinquency, in this case the stressful and violent events experienced by Ms. de Oliveira in Brazil, are likely to cause lasting psycho-traumatic damage and to have a significant impact. Ms. de Oliveira suffers from a state of general anxiety due to the wait for her immigration status in Canada as well as an excessive and persistent fear concerning the deaths of her father and brother. However, in my view, the officer did not err in his analysis of the psychological assessment report. While the officer considered the findings of Dr. Marotte's report, he noted that little information and evidence was presented to demonstrate the circumstances of the deaths of Ms. de Oliveira's father and brother and the armed robbery of which she was a victim. Furthermore, the evidence does not demonstrate that the applicants would not benefit from the protection of the Brazilian government. As the events that led to her general state of anxiety were not demonstrated, the officer could not give weight to this report; the officer is not required to

accept the opinion of Dr. Marotte (*Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 at paras 77–78 [*Rainholz*]).

[20] As the officer noted, the report does not mention that Ms. de Oliveira is under the care of a psychologist, or that she has ever sought help or continues to do so. Regarding her concern about the powerlessness of the state to protect her, the officer stated that the evidence presented does not show that the Brazilian government could not or would not protect the applicants if they needed it. Moreover, this is not a case similar to *Sutherland v Canada (Citizenship and Immigration)*, 2016 FC 1212 [*Sutherland*], where the psychological reports showed that the applicants' mental health would worsen if they were to be removed from Canada; here, no such finding exists. Nor is this a case like *Apura v Canada (Citizenship and Immigration)*, 2018 FC 762, and *Rainholz*, where the officer provided no explanation as to why the psychiatrist's report was given little weight; I find the analysis of the evidence on record in this proceeding to be reasonable and the explanation provided by the officer to be clear and coherent (*Sutherland* at para 24; *Jesuthasan v Canada (Citizenship and Immigration)*, 2018 FC 142 at paras 43–44).

[21] The onus is on the applicants to establish that the H&C exemption is justified by providing sufficient evidence to that effect (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45; *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5; *Febrillet Lorenzo v Canada (Citizenship and Immigration)*, 2019 FC 925 at para 15) In my view, the officer did not err in his analysis of the psychological assessment report since the events that led to Ms. de Oliveira's general state of

anxiety had not been demonstrated and it was reasonable for the officer not to give weight to that report.

C. *The officer did not err in his analysis of Leticia's best interests*

[22] The applicants argued that the officer confused an analysis of Leticia's best interests with an analysis of the hardships posed by their potential return to Brazil, and that the officer conducted a hardship analysis as a starting point for an analysis of young Leticia's best interests. The applicants also argued that the officer did not define Leticia's best interests and that the officer did not determine how the family's return to Brazil would affect Ms. de Oliveira's mental health and her ability to care for Leticia (*Rainholz* at para 91).

[23] In *Kanthasamy,* the Supreme Court of Canada established that the officer must be "alert, alive and sensitive" in his or her best interests analysis, which is "highly contextual" because of "the multitude of factors that may impinge on the child's best interest". The officer's reasons must demonstrate that the best interests of the child have been "well identified and defined" and considered "with a great deal of attention in light of all the evidence" (*Kanthasamy* at paras 35, 38 and 39; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75).

[24] In *Osun v Canada (Citizenship and Immigration),* 2020 FC 295, at paragraph 19, Justice Diner raises the risk of considering only hardship in assessing H&C applications:

> In other words, while officers may consider hardship as a factor in assessing the BIOC, a hardship analysis cannot supplant a complete and contextual BIOC analysis. Reviewing courts should have reason to believe that officers "considered <u>not just</u>

> hardship but humanitarian and compassionate factors in the broader sense" (emphasis added, *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 33 [*Marshall*]).

[25] In addition, the officer's reasons must contain an explicit description of what the best interests of the child really entail (*Rainholz* at para 90; *Francois v Canada (Citizenship and Immigration)*, 2019 FC 748 at paras 13, 16).

[26] Here, I find that the officer conducted a reasonable analysis of Leticia's best interests. First, I am not satisfied that the officer conducted a hardship analysis as a starting point for the best interests analysis. The officer assessed all the evidence related to Leticia's situation in Canada (proof of enrolment in school, school transcripts, academic awards she has earned, letters of support including the letter from Mr. Keable) and gave favourable weight to the relationship between Mr. Keable and Leticia. Next, the officer assessed Leticia's situation in the event of a return to Brazil and concluded that there was insufficient evidence on the record to show that Leticia would suffer negative social and cultural impacts or that her well-being would be compromised:

> [TRANSLATION]
>
> The evidence shows that [Leticia's] emotional, social, cultural and physical well-being must be considered in reviewing the information provided. I accept that returning to Brazil would have some impact on [Leticia], but the evidence does not show that she would not receive emotional support from her family in Brazil upon her return or that she would suffer negative social or cultural impacts. Further, the evidence does not support a finding that [Leticia's] well-being would be compromised in Brazil. I note that the minor applicant is still very proficient in Spanish, and the information does not show that upon her return in 2016, [Leticia] was adversely affected. Given the evidence presented by the applicants, it is established that the best interests of [Leticia] or other children living in Canada would not be compromised if they

> returned to Brazil to the extent that an exemption is warranted. The applicants have not provided any evidence, such as letters from doctors, psychologists or teachers in Canada, that it would be contrary to the best interests of [Leticia] or the other children for the applicants to return to Brazil.
>
> I have no doubt that [Ms. de Oliveira] only wants the best for her daughter; however, I am not convinced that their return to Brazil would adversely affect the best interests of [Leticia] or the other children in this case. In the end, and in the absence of evidence to the contrary, it is in [Leticia's] best interests to be with both parents, free from the hardships of life in a loving and supportive environment. The applicant's testimony does not support a conclusion that the applicants could not achieve this if they returned to their home country.
>
> [Emphasis added.]

[27] In my opinion, this is not an assessment of Leticia's hardship in Brazil, but an assessment of her situation from the point of view of her best interests.

[28] Second, I believe that the officer correctly defined Leticia's best interests by stating that [TRANSLATION] "[i]n the end, and in the absence of evidence to the contrary, it is in [Leticia's] best interests to be with both parents, free from the hardships of life in a loving and supportive environment." Finally, in my opinion, the officer conducted a reasonable best interests of the child analysis; the officer did not have to assess how the family's return to Brazil would affect Ms. de Oliveira's mental health and ability to care for Leticia since the officer did not accept the findings of Dr. Marotte's psychological assessment report. The situation of Ms. de Oliveira is not similar to the situation of the mother in *Rainholz* whose psychological assessment contained a diagnosis from a psychiatrist and that her mental health problems would require follow-up.

D. *The officer considered humanitarian factors in the broader sense*

[29] The applicants cited *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72, for the proposition that H&C officers must not only consider traditional hardship factors, but also the important guiding principles for H&C assessments as outlined in *Chirwa* (see *Kanthasamy* at para 13). They argued that, in the decision on their H&C application, there is no appreciation of this approach, which emphasizes compassion and relieving the misfortunes of others.

[30] I agree with the principles set out in *Chirwa* and *Kanthasamy*, but I do not agree with the applicants that the approach set out in those decisions is not reflected in the decision of their H&C application. The officer was clearly aware that his decision would cause pain to the applicants, but in the end, this was not enough to overcome the burden on them in these circumstances. After setting out the issues and findings, the officer concluded as follows:

> [TRANSLATION]
>
> On the basis of a cumulative assessment of the evidence presented by the applicants, I have considered the extent to which the applicants, given their particular circumstances, would suffer hardship if they were required to leave Canada in order to apply for permanent residence from outside Canada. As noted above, while the requirement to leave Canada will inevitably cause some hardship, this in itself will not be sufficient to warrant humanitarian and compassionate consideration under subsection 25(1). Before making this decision on humanitarian and compassionate grounds, I have thoroughly reviewed and assessed all the relevant facts and factors before me.
>
> The applicants do not wish to return to Brazil. This may be easy to understand, but not wanting to return is not a sufficient reason to allow them to stay in Canada. Canadian law requires that persons seeking to live in Canada permanently "must apply for and obtain a permanent resident visa abroad".
>
> The applicants' evidence does not support the existence of a mutual dependency between them and their personal relationships

> in Canada that would cause them to suffer hardship if those relationships were severed. . . .
>
> While there will inevitably be some hardship associated with the requirement to leave Canada, the fact that the applicants believe that Canada is a more desirable place to live than Brazil is not a determining factor in an H&C application. I give considerable weight to the idea that the exercise of discretion on humanitarian and compassionate grounds should go beyond the considerations inherent in removing a person who has been in a place for some time. The fact that a person would be leaving behind friends and perhaps family members, a job or a residence is not necessarily sufficient to justify the exercise of discretion.
>
> I find that the preponderance of factors in this application do not favour the applicants. I give greater weight in this application to the immigration laws as they exist in Canada and conclude that the personal circumstances of the applicants do not warrant an exception to the law. No country, including Canada, can guarantee that individuals will not suffer hardship in their lives; indeed, the purpose of the law and/or the public interest is not to mitigate the hardship inherent in removal from Canada. I am satisfied that the hardship that applicants may experience in leaving Canada is a consequence of the normal and predictable operation of the law.
>
> In order to obtain humanitarian and compassionate exemption, it is incumbent upon an applicant to demonstrate, based on the totality of the circumstances, that decent and honest Canadians, mindful of the exceptional nature of humanitarian and compassionate relief, would simply find a refusal of the application unacceptable. On balance, in assessing the submissions of the applicants as a whole, they do not establish that the exemption from the requirement to apply for permanent residence outside Canada is justified in this case.
>
> [Emphasis added.]

[31] In conclusion, subsection 25(1) does not create a parallel immigration regime, but rather creates a flexible and responsive exception to the usual application of the IRPA (*Kanthasamy* at paras 15, 19; *Yu v Canada (Citizenship and Immigration)*, 2020 FC 1028 at para 11). Here, a reading of the officer's decision as a whole leads to the conclusion that the officer applied the

appropriate analysis in assessing whether, given the applicants' establishment in Canada, removal to Brazil would cause such hardship that an exemption from the IRPA would be warranted. When I consider the officer's reasons as a whole, I am of the opinion that the officer did not apply a higher threshold than that provided for in subsection 25(1) of the IRPA in his analysis of the applicants' establishment in Canada; the officer's conclusion regarding their degree of establishment was adequately explained. The officer considered the evidence of their establishment in Canada and explained that, despite some positive evidence of their establishment, the evidence does not confirm that their integration into Canadian society is such that their departure would cause hardship beyond their control that is not contemplated by the IRPA. I see no reason to think it was unreasonable for the officer to conclude in the negative. The officer followed the *Kanthasamy* principles in assessing the applicants' H&C application, including the guiding principle that subsection 25(1) is intended to "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). I dismiss the application for judicial review.

JUDGMENT in IMM-800-21

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. The style of cause is amended to correctly spell the names of the applicants, Elizabeth Barbara de Oliveira Goncalves and Leticia Oliveira Esperanca Goncalves.

3. There are no questions to certify.

"Peter G. Pamel"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-800-21
STYLE OF CAUSE:	ELIZABETH BARBARA DE OLIVEIRA GONCALVES & LETICIA OLIVEIRA ESPERANCA GONCALVES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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