Federal Court  Cour fédérale

**Date: 20220425**

**Docket: IMM-3546-20**

**Citation: 2022 FC 600**

**Ottawa, Ontario, April 25, 2022**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**LARYSA BOSOVA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant, Larysa Bosova, seeks judicial review of a decision made on July 31, 2020 in which she was refused reconsideration of a negative humanitarian and compassionate (H&C) application for permanent residence (the Decision).

[2] The Applicant was born and lived in Russia since 1961. In March, 2011 she visited Canada on a six month visitor visa, which she successfully extended several times until its expiry on January 30, 2017.

[3] On December 27, 2018, the Applicant submitted an H&C application. The written submissions accompanying the application indicated that further documentation would follow.

[4] On June 11, 2020 a negative H&C decision was issued.

[5] On June 18, 2020 the Applicant filed a request for reconsideration accompanied by an affidavit from the H&C lawyer explaining the inadvertent omission of their office to file the further documentation and written submissions, which were enclosed (Additional Materials).

[6] On July 31, 2020, the Decision was made without any reference to the Additional Materials. The materials not mentioned included the written submissions, a great many letters of support, a detailed psychological report, household bills, medical documents and the Applicant's expired Driver's License, and Country Condition documents.

[7] On August 7, 2020, the Applicant's counsel requested written reasons for the Decision. Reasons were received for the June 11, 2020 decision which did not refer to the reconsideration request or the Additional Materials.

[8] An application for judicial review was filed August 17, 2020 in the belief that the Decision contained the entirety of the reasons for denying the reconsideration request.

[9] However, when the Certified Tribunal Record was received on March 3, 2021, it included a three-page document entitled "reconsideration of the negative H&C Decision of June 11, 2020."

[10] The Applicant had neither received, nor been aware of, the Reasons prior to reviewing the CTR.

## II. **Preliminary Issue**

[11] The notice of application indicates that judicial review is being sought of the July 31, 2020 decision. The Applicant's further memo states the application seeks judicial review of both the June 11 and July 31, 2020 decisions.

[12] Rule 302 of the *Federal Courts Rules* states that "[u]nless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought."

[13] An exception to this rule has been recognized where an applicant challenges two or more decisions that constitute "continuing acts or a course of conduct". The factors to be taken into account include whether the decisions are closely connected, whether there are similarities or differences in the fact situations, including, the type of relief sought, the legal issues raised, the

basis of the decision and decision making bodies, whether it is difficult to pinpoint a single decision; and, based on the similarities and differences, whether separate reviews would be a waste of time and effort: *David Suzuki Foundation v Canada (Health)* 2018 FC 380 at para 173, citations omitted.

[14] I find the two decisions together do constitute a continuing act or course of conduct. The reasons for the Decision are entitled "Reconsideration of the negative H&C decision of June 11, 2020". They reference the lack of submissions through inadvertence and refer to various facts in that decision, which it ultimately upholds. The two decisions are made by the same decision maker. They are based on the same facts and legal issues and they both sought, and were denied, the same relief. The conclusion in the Decision states it considered the information in the June 11, 2020 decision as well as the information received June 18, 2020. It would be a waste of time to have separate reviews of these two decisions.

## III. **Issues and Standard of Review**

[15] The only issue raised by the parties is whether the Decision was reasonable.

[16] Reasonableness is the presumptive standard of review, subject to certain exceptions, none of which apply here: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 16-17, 23, 25 and 69.

[17] Reasonableness review begins with the principle of judicial restraint and a respect for the distinct role of administrative decision-makers: *Vavilov* at para 13.

[18] A decision is considered reasonable where it is justified in relation to the facts and law constraining the decision-maker and is based on an internally coherent and rational chain of analysis. Where this is the case the reasonableness standard requires a reviewing court to defer to such a decision: *Vavilov* at para 85.

[19] Decisions should not be set aside unless there are "sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" and that "[t]he court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.": *Vavilov* at para 100.

[20] It is trite law that the decision maker may assess and evaluate the evidence before it and, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker: *Vavilov* at para 125.

[21] The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and the decision must be reasonable in light of them: *Vavilov* at para 126.

## IV. **Analysis**

[22] The application for leave and judicial review was filed on the basis that the July 31, 2020 letter received by the Applicant was the complete decision. It simply confirmed that the decision

made on June 11, 2020 to deny the application “remains unchanged”. The parties did not know at that time that there were 3 pages of reasons that ought to have accompanied the Decision.

A. *The Decision*

[23] The June 11, 2020 negative decision was based on the lack of evidence to support the Applicant’s submissions on establishment in Canada and hardships if returned to the Ukraine.

[24] The inadvertent failure to submit the Additional Materials was the cause of the lack of evidence.

[25] The June 18, 2020 submissions to the Officer contained extensive country condition documentary evidence showing that older women, such as the Applicant, lack access to health care and are discriminated against when searching for jobs.

[26] The Officer stated that the original decision was considered on its substantive merits, and after considering the request for reconsideration, the initial decision remained unchanged.

[27] The Officer decided to consider the Additional Materials “in fairness to the applicant”, because it “mostly pre-dates the decision where counsel’s actions may have caused a decision to be made without this information.”

[28] The Officer reviewed the Additional Materials and made findings on each factor raised.

[29] The Officer found that the additional supporting evidence did not lead to a different determination than the decision rendered on June 11, 2020. The Officer held that they were not satisfied that sufficient H&C grounds existed to warrant an exemption.

[30] The Decision stated there was insufficient evidence in the following respects:

- Demonstrating a degree of interdependency and reliance to the extent that separation would cause hardship warranting an exemption;
- Why the only course of action to manage her medical diagnosis was to remain in Canada;
- Demonstrating that she would not be able to seek and secure employment if she returned to Ukraine.

[31] This latter finding is determinative of this application. It runs contrary to the evidence and the legal constraint set out in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 (*Kanthasamy*) at paras 53- 55:

> [53] This effectively resulted in the Officer concluding that, in the absence of evidence that Jeyakannan Kanthasamy would be personally targeted by discriminatory action, there was no evidence of discrimination. (Balance of paragraph and all citations omitted)
>
> [54] Here, however, the Officer required Jeyakannan Kanthasamy to present direct evidence that he would face such a risk of discrimination if deported. This not only undermines the humanitarian purpose of s. 25(1), it reflects an anemic view of discrimination that this Court largely eschewed decades ago. (All citations omitted)
>
> [55] Even the Guidelines, expressly relying on this Court's decision in *Andrews*, encourage an approach to discrimination that does not require evidence that the applicant will be personally targeted. (Balance of paragraph omitted)

[32] The Officer noted the Applicant had previously worked in Ukraine prior to coming to Canada and had a university education. The Officer found that the Applicant did not provide sufficient evidence to demonstrate that she would be unable to return to working in her field or that she would not be able to secure employment in the Ukraine.

[33] The submissions to the Officer highlighted a number of reports and studies detailing significant problems with discrimination in employment based on gender and age, both of which apply to the Applicant and would significantly affect her ability to find any meaningful employment to be able to support herself.

[34] The Respondent submits that the Officer defined the Applicant's profile quite narrowly. The Decision notes that the Applicant was employed in Ukraine as a Laboratory Manager, and a Biochem Lab Tech. The Decision then immediately notes that the Applicant stated she had not been working in her field for many years and had not kept up her qualifications and would require retraining to update her qualifications.

[35] The Additional Materials included twelve country condition documents addressing discrimination against women in the labour market in Ukraine. The submissions to the Officer addressed the US DOS 2019 Country Report on Human Rights Practices in Ukraine which stated that "[w]hile the law provides that women enjoy the same rights as men, women experienced discrimination in employment. According to the government commissioner on gender policy, women on average received 30 percent lower salaries than men. The Ministry of Health maintained a list of 50 occupations that remain prohibited for women."

[36] The US DOS Report also stated that "[w]omen received lower salaries due to limited opportunities for advancement and the types of industries that employed them. According to the State Statistics Office, men earned on average 23 percent more than women. The gap was not caused by direct discrimination in the setting of wages, but by horizontal and vertical stratification of the labor market: Women were more likely to work in lower-paid sectors of the economy and in lower positions."

[37] The Officer acknowledged that the Applicant had provided "documentary evidence related to employment, discrimination in the workplace, discrimination against women and healthcare."

[38] From that, the Officer concluded:

> I have read and considered this evidence. I find the applicant has not linked this information to her *personal* circumstances. She has not provided sufficient satisfactory evidence to demonstrate that *she* will be denied employment or health services.
>
> (my emphasis)

[39] It is well known that discrimination can be inferred where an applicant shows they are a member of a group that is discriminated against. An applicant is not required to provide evidence that the applicant will be personally targeted, only that they would likely be affected by adverse conditions such as discrimination: *Kanthasamay* at paras 53-55, set out above.

[40] The Officer erred by failing to meaningfully evaluate whether the Applicant would likely be affected by the adverse conditions and by requiring the Applicant to demonstrate she would be personally targeted.

[41] Considering the evidence in the record and the submissions before the Officer, I find the Officer's analysis to be unreasonable for the above-noted reasons in *Kanthasamy*. It is also unreasonable because it fails to meaningfully grapple with the key evidence and is not intelligible, transparent or justified as required by *Vavilov* at paras 100, 127-128.

## V. **Conclusion**

[42] For all of the foregoing reasons, I find the Decision to be unreasonable.

[43] The application is granted, without costs.

[44] The Decision is set aside and this matter is to be returned to different decision-maker for redetermination.

[45] There is no question for certification.

**JUDGMENT in IMM-3546-20**

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

1. The application is granted, without costs.
2. The decision is set aside and the matter is to be returned to a different decision-maker for redetermination.
3. There is no question for certification.

"E. Susan Elliott"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-3546-20 |
| **STYLE OF CAUSE:** | LARYSA BOSOVA v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY WAY OF VIDEOCONFERENCE |
| **DATE OF HEARING:** | JUNE 29, 2021 |
| **JUDGMENT AND REASONS:** | ELLIOTT J. |
| **DATED:** | APRIL 25, 2022 |

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| Stephen Jarvis | FOR THE RESPONDENT |

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