Federal Court Cour fédérale

Date: 20220902

Docket: IMM-3010-21

Citation: 2022 FC 1253

Ottawa, Ontario, September 2, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

FABIAN ANDRES ALFEREZ MONSALVE
GINNA FERNANDA CABALLERO JOVEN
MARTIN ALFEREZ CABALLERO
(MINOR)
JULIETA ALFEREZ CABALLERO
(MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by a Senior Immigration Official, dated April 27, 2021, denying the Applicant's application for permanent residence from within

Canada on humanitarian and compassionate [H&C] grounds. The Officer for the Minister, having assessed BIOC, establishment, risk and country conditions, found insufficient H&C considerations to justify an exemption under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*].

II. Facts

[2] The first Applicant is the spouse of the second. They have three minor children, the youngest born in Canada and thus a Canadian citizen, who is not a party to this application. On August 8, 2018, the Applicants entered Canada seeking refugee protection. They had a hearing before the Refugee Protection Division on October 10, 2019, a negative decision was made, but the matter was judicially reviewed and returned to the Refugee Protection Division for a re-hearing. It appears that was not successful. They applied for permanent residence on an inland basis relying on section 25 of *IRPA*. They were unsuccessful leading to this application for judicial review.

III. Decision under review

[3] On April 27, 2021, a Senior Immigration Officer refused their application for permanent residence from within Canada on H&C grounds. The Applicants presented the following factors for consideration: establishment, family ties to Canada, best interests of the children and the hardship of returning to Columbia.

A. *Establishment in Canada*

[4] From September 2018 to July 2020, the primary applicant studied ESL at Wheable School. In August 2020, he started work as a part-time general labourer. He currently remains employed in this position. The primary applicant's spouse also studied ESL from July 2019 to July 2020, following the completion of a 10-month maternity leave. From August to October 2020, she also worked as a general labourer. No further employment was noted.

[5] The Applicants attend church at Redemption Bible Chapel Church and have friends in the community. They also presented auto insurance, a tenancy agreement as well as family photos to further demonstrate their establishment.

[6] Having acknowledged that the applicants have attained a "level of establishment" in Canada and developed valuable friendships, the Officer was not convinced that these ties "to be greater than their ties in Columbia." In the Officer's view, the Applicants' level of establishment is at a level that would be expected of persons in their circumstances. Additionally, the Officer noted that relationships are not bound by geographical location and the "applicants have the option to maintain contact with their friends in Canada through mail, telephone and the internet." As such, this factor was given little weight.

B. *Family ties to Canada*

[7] The Primary Applicant has a sister, brother-in-law, nieces and nephews nearby with whom they spend time. The Primary Applicant's sister and niece wrote letters detailing their

relationships with the Applicant and his family, noting how happy they were to be reunited and spend quality time together.

[8] The Officer acknowledges the emotional and psychological difficulty that might result from being separated from their extended family again, but does not believe this rises to a level of significant hardship. The Officer notes that there is no evidence to suggest "the families cannot continue to build on the time they shared in Canada by maintaining telephone, mail and Internet contact."

C. *Best interests of the children (BIOC)*

[9] The Applicants have three children, ages 6, 5 and 2. The elder two children attend school, participate in extracurricular activities and have friends. The Applicants have stated that the children do not know Columbia and would be exposed to hunger, poverty, insecurity, crime, fear and violence along with the ongoing persecution faced by their parents. The youngest is a Canadian citizen.

[10] The Officer on the evidence gave little weight to BIOC. The Officer relied on the fact that the two elder children lived in Columbia prior to their arrival in Canada and, given this, it would be "reasonable to assume that both children had been exposed daily to the Spanish language, customs and culture through their time in Columbia, as well as through their parents and extended family in Canada." While the Officer acknowledges that the youngest child, born in Canada, has a right to remain, they note that "it is in her best interest to remain with her family." Despite some difficulties the youngest daughter will face adapting to life in Columbia,

the officer says “children are resilient when it comes to change and all three children will have their mother, father, siblings, maternal/paternal grandparents and aunt(s) to support them with any linguistic, social, and emotional challenges that may arise.”

[11] The Officer found that the Applicants had not indicated how any of the children would experience hunger, poverty, insecurity, crime, fear, violence, lack of quality medical services, security, food, health care or attention while in Columbia. This factor was given little weight.

D. *Hardships upon return to Columbia*

[12] Specifically, the Officer notes the Applicants cite potential hardship should they return to Columbia due to a risk of persecution by Los Urabenos, known to be a prominent Columbian neo-paramilitary group and drug cartel. The RPD had found in its reasons the Applicants had a viable internal flight alternative elsewhere in Columbia, where they would not be at risk nor would it be unreasonable for them to relocate there. The Officer finds that the Applicants have not provided ample evidence to demonstrate the hardships they would face if they returned to the IFA or anywhere in Columbia. As such, this factor was given little weight.

[13] Broadly speaking, the Applicants cited crime, armed robberies, kidnapping, terrorism, women’s safety and drugs, among other things, as further hardships. In response, the Officer states that the purpose of invoking section 25(1) of *IRPA* is not compensate for the difference in a standard of living, but rather to allow for exceptional relief where humanitarian and compassionate grounds are justified. The Officer acknowledges that the Applicants may not wish to leave Canada, but that is not sufficient reason for them to remain. Additionally, the Officer

points to the fact the Applicant parents have lived in Columbia their entire lives, less their time in Canada, and have not set out in the evidence how they were subject to any of the listed hardships. As such, this factor was also given little weight.

[14] The Applicants also stated they would not know where to live if they returned to Columbia. In response, the Officer noted that they had not been provided with sufficient evidence to demonstrate the Applicants would not be able to obtain some level of support until they are able to support themselves.

IV. Issues

[15] The Applicants submit that the issues are:

1) Whether the decision gives sufficient consideration of the best interests of the children
2) Whether a reasonable analysis was established concerning the applicants' establishment in Canada
3) Whether a reasonable analysis was established concerning risk and adverse country conditions

[16] The Respondent submits that the issues are:

1) Was the Immigration Officer’s BIOC assessment reasonable?
2) Was the Immigration Officer’s assessment of their establishment reasonable?
3) Was the Immigration Officer’s assessment of risk and adverse country conditions in Colombia reasonable?

[17] With respect, the only issue is whether the Officer’s decision is reasonable.

V. Relevant statute law

[18] Section 25(1) of the *Immigration and Refugee Protection Act* [*IRPA*] states:

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 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.	**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 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.

[19] Section 25(1.3) of the *IRPA* states:

Non-application of certain factors	**Non-application de certains facteurs**
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	**(1.3)** Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

VI. Standard of Review

[20] The parties agree as do I that the standard of review is reasonableness. In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "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*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[21] I note as well that an H&C decision is "exceptional and highly discretionary; thus deserving of considerable deference by the Court": *Qureshi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 335, per Zinn J at para 30. The highly discretionary nature of H&C assessments results in a "wider scope of possible reasonable outcomes": *Holder v Canada (Minister of Citizenship and Immigration)*, 2012 FC 337 at para 18, Near J; *Inneh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 108 at para 13, Phelan J.

[22] In *Chaudhary v Canada (Minister of Immigration, Refugees and Citizenship*, 2018 FC 128, Justice Anne Marie McDonald stated and I agree that:

> [26] On an H&C application, the Officer is presumed to have reviewed all the evidence. In a similar case, the Court in *Guiseppe Ferraro v Canada (Citizenship and Immigration)*, 2011 FC 801 at para 17 states [*Ferraro*]:

> There is a presumption that the decision-maker has considered all the evidence before her. The presumption will only be rebutted where the evidence not discussed has high probative value and is relevant to an issue at the core of the claim…
>
> [27] Here, the Officer directly addressed contrary evidence and explained why the seriousness of the offence overcame the situation of the Applicant's husband. The Applicant seeks to reargue the merits of the H&C application before this Court. Parliament delegated power to the Minister of Citizenship and Immigration to make H&C determinations on the merits. The Court cannot intervene to put more weight on the medical evidence or reweigh the evidence (*Leung v Canada (Citizenship and Immigration)*, 2017 FC 636 at para 34 [*Leung*]) absent a "badge of unreasonableness" which takes the H&C decision out of the realm of reasonable, possible outcomes (*Re: Sound v Canadian Association of Broadcasters*, 2017 FCA 138 at para 59).
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> [31] An H&C decision will be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered (*Kanthasamy*, at para 39). The BIOC must be "well identified and defined" and examined "with a great deal of attention"(*Kanthasamy*, at para 39; *Legault*, at paras 12-31), and decision-makers must be "alert, alive, and sensitive" to the BIOC (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75). The BIOC does not mandate a certain result (*Legault*, at para 12) because, generally, the BIOC will favour non-removal (*Zlotosz v Canada (Immigration, Refugees and Citizenship*), 2017 FC 724 at para 22).

[23] I also agree with *Huang v Canada (Minister of Citizenship and Immigration)*, 2019 FC 265, where Chief Justice Crampton determined at para 21:

> [21] I recognize that in *Apura v Canada (Citizenship and Immigration)*, 2018 FC 762, at para 23, this Court suggested that it would be an error to deny an H&C application based on the absence of "exceptional" or "extraordinary" circumstances. To the extent that this statement is inconsistent or in tension with the principles quoted in paragraphs 19 and 20 above, and with other jurisprudence that can be fairly read as having adopted a similar approach, I consider that it does not accurately reflect the existing state of the law: see, e.g., *Li v Canada (Citizenship and Immigration)*, 2018 FC 187 at paras 25-26; *L. E. v Canada*

> *(Citizenship and Immigration)*, 2018 FC 930, at paras 37-38; *Yu v Canada (Citizenship and Immigration)*, 2018 FC 1281, at para 31; *Brambilla v Canada (Citizenship and Immigration)*, 2018 FC 1137, at paras 14-15; *Sibanda v Canada (Citizenship and Immigration*, 2018 FC 806, at paras 19-20; *Jani v Canada (Citizenship and Immigration)*, 2018 FC 1229, at para 25; *Ngyuen v Canada (Citizenship and Immigration)*, 2017 FC 27 at para 29.

VII. Analysis

A. *Best Interest of the Child (BOIC)*

[24] The Applicants submit the Officer erred in their assessment of whether the Applicant children can overcome hardships if they were to accompany their parents to Columbia. In the Applicants' view, the reasons given by the Officer, namely that "the children will face certain difficulties in re-adapting to life in Columbia" and that the Canadian child "will face some difficulties adapting", are all considerations of potential hardship should the children return with their parents. The Applicants submit that the children must be given primacy in a BIOC assessment, rather then whether they can reasonably overcome the hardships of a new life in Columbia. The Applicants cite *Bautista v. Canada (Citizenship and Immigration)*, 2014 FC 1008, for the proposition that a differing "application" of hardship must be applied to children. In that case, Justice Diner states:

> [28] To see everything through the lens of whether one reasonably can overcome the inevitable hardships that accompany a new life, as the Officer did in this case, resembles the H&C test that is applied to adults. Children are malleable – far more so than adults – and starting with the question of whether they can adapt will almost invariably predetermine the outcome of the script, namely that the child will indeed overcome the normal hardships of departure, and adjust to a new life, including learning a brand new language (Tagalog in this case). Undertaking the analysis through this lens renders the requirement to take into account the best

> interests of a child directly affected, as statutorily required in subsection 25(1) devoid of any meaning.

[25] The Applicants submit that the Officer's reasons unreasonably do not take into account the best interests of the child, but rather whether the children can adapt in Colombia.

[26] The Applicants also assert that the Officer's assessment unduly relies on the fact that the two older children had previously resided in Colombia, citing it repeatedly. These factors, in the Applicants' view, both logically speak to the issue of potential hardship on the children and renders the "best interests of the child" devoid of any meaning. The Applicants acknowledge that the Officer understood that the youngest child was born in Canada, they submit that the decision largely ignores the fact that the youngest child has never been in Colombia by twice referring to her return, an obvious oversight in my view. Simply put, the Applicants submit that the Officer's analysis of the best interests of the children was unreasonable because it was not justified, intelligible and transparent.

[27] The Respondent submits that there is no merit to the Applicants' proposition that the Officer erred in considering whether the minor applicants could adapt to life in Colombia, rather than whether they would have a better life in Canada.

[28] I agree. With respect, adaptability is reasonably part and parcel of a BIOC assessment. I see no reason why adaptability should not have been considered in this case, nor am I persuaded it was unreasonably considered in this case. In this regard, the Respondent cites the Federal

Court of Appeal's decisions in *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 and *Kisana v. Canada (Minister of Citizenship and Immigration),* 2009 FCA 189.

[29] I also refer to Justice Favel's decision in *Maradani v. Canada (Citizenship and Immigration)*, 2022 FC 839, on this point:

> [43] I find this case more analogous to *Edo-Osagie*. As recognized by the Applicants, the Court in that case emphasized that the applicants did not provide evidence on the "difficulties the children might face in adapting to a new culture" (at para 29). The Court went on to say that the record "contains little information about the family's background, language and cultural skills, knowledge of Nigeria or time spent in Italy" (at para 29). The Applicants submit that in comparison, they explained that the Minor Applicant could not speak Hindi. For the reasons already discussed above, I find that the Officer was "alert, alive and sensitive" to this submission (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 75, 174 DLR (4th) 193). The Officer was required to consider "the real-life impact of the decision on the best interests of the children" (*Ahmed* at para 27). The Officer did so and reasonably concluded that the Minor Applicant would be able to relearn Hindi.

[30] Briefly, it was for the Applicants to establish any difficulty the children will face in adapting if returned to Columbia. This is simply another factor in respect of which the onus is on the requesting family. The Applicant's criticism of the Officer assessing adaptability is, with respect, misplaced.

[31] In addition, it is trite to observe that living in Canada with their parent(s) is almost always more desirable for a child; therefore it is almost always insufficient to warrant an exception under subsection 25(1) of *IRPA*. For but one of many examples, see the Federal Court's decision

in *Edo-Osagie v Canada Minister of Citizenship and Immigration*, 2017 FC 1084 per Manson J. More must be shown:

> [26] While I may not agree with the Officer's appreciation of educational differences between Canada and Nigeria, and the impact on the children, the Officer reasonably found that the educational and socio-economic differences between Nigeria and Canada were not determinative. The mere fact that living in Canada is more desirable for the children is not sufficient, in and of itself, to grant an H&C application [Quoting *Serda* at para 31].

[32] The older children had spent three years of their lives in Canada. It is not unreasonable to suggest that Colombia is a comparable home in terms of familial connections, language and culture. To this point, the Officer reasonably highlights family and connections still residing in their home country. Even the youngest child, despite being born in Canada, could have reasonably understood and retained parts of her heritage and culture from this family. Her best interest was reasonably to remain with her parents and in this case to do so on their return to Columbia. On this point, I find the Officer's decision reasonable: it is justified, transparent and intelligible per *Vavilov*.

B. *Establishment*

[33] Contrary to the Officer's findings, the Applicant's submit it is unreasonable to require "without more explanation an extraordinary or exceptional level of establishment." For this proposition, the Applicants cite this Court's decisions in *Sivalingam v. Canada (Citizenship and Immigration)*, 2017 FC 1185, *Chandidas v Canada (Citizenship and Immigration)*, 2013 FC 258 and *Ndlovu v. Canada (Citizenship and Immigration)*, 2017 FC 878. Justice Grammond stated in *Sivalingam*:

> [13] I agree with Mr. Sivalingam that it was unreasonable for the Officer to conclude that Mr. Sivalingam's level of establishment in Canada is not "above and beyond or extraordinary to what is expected of a person coming to Canada." Other decisions of this Court have held that it is unreasonable to require, without more explanation, an "extraordinary" level of establishment (*Chandidas v Canada (Citizenship and Immigration)*, 2013 FC 258, [2014] 3 FCR 639 at para 80; *Ndlovu v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 878 at para 14). Indeed, "establishment" is reviewed to assess whether the applicant deserves H&C relief, not an award for a special contribution to society.
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> […]
>
> [18] […] in *Kanthasamy*, the Supreme Court of Canada rejected the view that certain H&C concepts create separate thresholds that H&C applicants must overcome, and held that an H&C decision-maker must take into account all the relevant circumstances in deciding whether or not relief is warranted (*Kanthasamy* at paras 28, 33). By imposing distinct thresholds or "burdens of proof" on Mr. Sivalingam, the Officer unreasonably failed to consider the H&C factors globally, contrary to *Kanthasamy*.

[34] The Applicants submit the Officer created a separate threshold that the Applicants had to overcome and did not reasonably explain why they had not reached it. The Officer acknowledges that the Applicants "achieved a level of establishment through their employment in Canada, church and valuable friendships in their community" along with existing family ties, but considers this a "level of establishment which would be expected." However, in the Applicants' view, this is a "blanket statement" unsupported by the Officers' reasons.

[35] With respect, there is no merit in this submission. The Officer found establishment was as expected in this case. They might have found it was less than expected or more than was expected in a given case. In my view the Officer simply determined a state of establishment lying on that continuum. This is not unreasonable; it is not required by constraining law for the

Officer to give more way of explanation having regard to their the record (all of which need not be recited) and the factors the Officer did considered.

[36] In addition, adequacy of reasons is not a stand alone ground for judicial review: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14. Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes."

[37] In my respectful view, the reasons on the issue of establishment go beyond simply stating that they obtained an "expected level of establishment." In this connection I refer to Justice Manson's (and Justice Roy's) decision(s) in *Santos v Canada (Minister of Citizenship and Immigration)* MCI, 2019 FC 1332 at paras 24-25:

> [24] Ms. Santos argues that the Officer misapplied the legal test for determining an H&C application by requiring her to demonstrate that her establishment was "exceptional". The same argument was made before Justice Yvan Roy in *De Sousa v Canada (Citizenship and Immigration)*, 2019 FC 818 [*De Sousa*], and was rejected for the following reasons (at para 27):
>
> > The applicants submit that the decision maker set a high bar for his consideration of the establishment by requiring that it be "exceptional" (Memorandum of fact and law, para 31). I do not believe that this parsing of the words is a reflection of what was actually found by the decision maker. He did not set a threshold at the level of exceptional. The decision merely assessed the establishment as being unexceptional. As a matter of fact, when the sentence is read in its entirety, it becomes clear that the decision maker was simply saying that "it is not uncommon for individuals who reside in Canada to be employed, to become integrated into their community, form friendships, pay their taxes, volunteer their time, and maintain good civil record". That is certainly true. Indeed, the decision

> maker gave some favorable weight to the establishment in Canada. There is no doubt that these applicants are making a contribution to their community and they have not been a drain on resources. But the point is that such establishment is not so out of the ordinary that it would carry very significant weight.
>
> [25] Similar considerations apply here. As in *De Sousa*, the Officer in this case ascribed positive weight to Ms. Santos' degree of establishment in Canada.

[38] The Officer goes on to state that "I do not find that the Applicants' ties to Canada to be greater than their ties of Colombia." When read as a whole, these reasons determine that the Applicants have equally established ties to Columbia and, thus, their return would not impose significant hardship in the circumstances.

[39] These finding are reasonable, justified and intelligible.

C. *Risk and adverse country conditions*

[40] The Applicant submits the Officer erred by taking a prohibited factor into account when assessing adverse country conditions, contrary to subsection 25(1.3) of the *IRPA*:

Non-application of certain factors	**Non-application de certains facteurs**
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection	**(1.3)** Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de

under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

[41] Specifically, the Applicants take issue with the Officer's reference to the fact the RPD decision found it reasonable for the family to relocate to a viable Internal Flight Alternative. In their view, the Officer was "required to make its own determination on the facts and not rely, even partially, upon what was decided by the Refugee Protection Division."

[42] There is no merit in this submission. Notably the Applicants provide no authority for this submission, based as it is solely on a novel interpretation of subsection 25(1.3). Additionally, I am not persuaded the subsection may be construed to prevent an H&C officer from considering an IFA finding made by an RPD (or RAD). I also note the Officer was simply assessing the Applicants' own arguments on hardship and risk: in this, the Applicants may not complain.

[43] The Applicants further submit the Officer incorrectly enunciated the hardship test as "to allow for an exceptional response to a particular set of circumstances which are unforeseen. [Emphasis added]" In their view, this contradicts the Supreme Court of Canada's finding in *Kanthasamy,* which found that a decision maker must only consider "unusual, undeserved or disproportional hardship." The Supreme Court in *Kanthasamy* states:

> [99] […] Section 25(1) does not limit when the relevant H&C considerations must occur; nor does it require that they be viewed only from the applicant's perspective. It asks only that decision makers look at H&C considerations relating to the applicant. Section 25(1) is framed in broad terms because it is impossible to foresee all situations in which it might be appropriate to grant

> relief to someone seeking to enter or remain in Canada. A more comprehensive approach is therefore required.

[44] Given this, the Applicants submit that the assessment of their application was unreasonable because the Officer restricted their analysis to circumstances "which are unforeseen." [Emphasis added]

[45] There is no merit in this submission. With respect, the Applicants misquote what the Officer stated. They failed to quote the entire sentence referred to, which is: "20. The purpose of invoking subsection 25(1) of the *IRPA* is not to compensate for the difference in a standard of living, but rather to allow for an exceptional response to a particular set of circumstances which are unforeseen by the *IRPA* and where humanitarian and compassionate grounds justify the granting of relief." [Emphasis added]. Added back to the Officer's finding, as they must be (and should have been in counsel's submissions), the phrase "unforeseen by the *IRPA*" completely answers the Applicant's submissions.

[46] The Respondent also points to *Kanthasamy* as the Supreme Court of Canada's confirmation of this very principle, namely that section 25 is enacted to give the Minister the power "to override the provisions of the Act and grant permanent residence, or an exemption from any applicable criteria or obligation under the *Act*, on humanitarian and compassionate grounds or for reasons of public policy". As the following from *Kanthasamy Canada (Minister of Citizenship and Immigration*), 2015 SCC 61, confirms, the humanitarian and compassionate discretion in s. 25(1) was, therefore, like its predecessors, seen as being a flexible and responsive exception to the ordinary operation of the *Act*, or, in the words of Janet Scott, a discretion "to

mitigate the rigidity of the law in an appropriate case". It is not necessary to re-engage on an issue so definitively confirmed so recently by our highest Court:

> [19] The Legislative Summary of Bill C-11, the Bill that led to the enactment of the *Immigration and Refugee Protection Act*, explained that s. 25 "continue[d] the important power of the Minister to override the provisions of the Act and grant permanent residence, or an exemption from any applicable criteria or obligation under the Act, on humanitarian and compassionate grounds or for reasons of public policy": Library of Parliament, "Bill C-11: *The Immigration and Refugee Protection Act*", Legislative Summary LS-397E, by Jay Sinha and Margaret Young, March 26, 2001, at p. 12 (footnote omitted); *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 (CanLII), [2013] 2 S.C.R. 559, at para. 41. The humanitarian and compassionate discretion in s. 25(1) was, therefore, like its predecessors, seen as being a flexible and responsive exception to the ordinary operation of the Act, or, in the words of Janet Scott, a discretion "to mitigate the rigidity of the law in an appropriate case".
>
> [Emphasis added]

[47] I note as well the Officer did not only rely on the Internal Flight Alternative found by the RPD. The Officer also outlined a lack of objective evidence as to the listed hardships in the Applicants' narrative and their inability to obtain some social supports upon their return. The Officer's decision was reasonable on this point.

VIII. Conclusion

[48] In my respectful view, the Decision under review is justified, transparent and intelligible and is supported by the record and constraining law, all as per *Vavilov*. Judicial review must therefore be dismissed.

IX. Certified Question

[49] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-3010-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified, and there is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3010-21
STYLE OF CAUSE:	FABIAN ANDRES ALFEREZ MONSALVE, GINNA FERNANDA CABALLERO JOVEN, MARTIN ALFEREZ CABALLERO (MINOR), JULIETA ALFEREZ CABALLERO (MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 31, 2022
JUDGMENT AND REASONS:	BROWN J.
DATED:	SEPTEMBER 2, 2022

APPEARANCES:

Terry S. Guerriero	FOR THE APPLICANTS
Monmi Goswami	FOR THE RESPONDENT

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Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT