

Federal Court



Cour fédérale

**Date: 20230206**

**Docket: IMM-4603-21**

**Citation: 2023 FC 169**

**Ottawa, Ontario, February 6, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**MARIA SORAYA RIVERA MARCOS**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant is a citizen of the Philippines who entered Canada in 2002. She has resided in Canada since then. She seeks judicial review of a negative Humanitarian and Compassionate (H&C) Decision dated June 21, 2021 [Decision].

[2] For the reasons that follow, this application is granted.

II. **Background Facts**

[3] The Applicant's family, including her parents, siblings, nieces and nephews, and her current partner, all reside in Canada.

[4] The Applicant's H&C application emphasized her close ties to her family and community in Canada. In fact, the Applicant's main reason for coming to Canada was to care for the children of her brother and sister. Her nephew, Aaron, has paralysis and epilepsy and relies heavily on the Applicant for support.

[5] The Applicant is also the main caretaker for her elderly parents. She is financially established, self-sufficient and extremely involved in her local community and church.

[6] In terms of hardship, the Applicant provided submissions and supporting documents in support of the psychological suffering, she will face if deported from Canada. She also claimed that she has no financial, emotional or social support of any kind in the Philippines and has no employment prospects as a 48-year-old woman who has not lived there for almost twenty years.

III. **Issues and Standard of Review**

[7] The determinative issue in this application is whether the Decision is reasonable.

[8] The Supreme Court of Canada has established that there is a presumption of reasonableness whenever a court reviews administrative decisions: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 16.

[9] To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

#### IV. Analysis

##### A. *Aaron's health issues*

[10] The evidence in the record shows that Aaron had a stroke at the age of two and it led to paralysis of the right side of his body. Aaron cannot move his right arm and he drags his leg when walking. In addition, Aaron has epilepsy.

[11] The Officer acknowledged that the Applicant had cared for and loved her nieces and nephews and had a hand in raising them when they were children. However, the Officer noted that all of the nieces and nephews are now adults and there was “little indication that they required care as adults, albeit they are still very emotionally attached, Aaron inclusive.”

[12] The Applicant does more than provide ongoing emotional support to Aaron. She ensures Aaron takes his medications and generally takes care of him. The evidence before the Officer

also demonstrated that Aaron is physically and emotionally dependent on the Applicant. She acts like a second mother to him.

[13] The Applicant is also the main caregiver for her 96-year-old father and 92-year-old mother.

[14] The Officer failed to address Aaron's health issues despite the fact that he could not live on his own. This was recognized by Immigration, Refugees and Citizenship Canada in 2016 when Aaron's mother won her immigration appeal because the panel recognized Aaron could not live on his own given his disability.

[15] While a decision-maker is not required to take into account every piece of evidence put forward in an H&C application, it is equally the case that the failure to mention or analyze important or critical evidence that goes the other way, opens the door to an inference that the decision-maker made an erroneous finding of fact without regard to the evidence before them or ignored contradictory evidence: *Laifatt v Canada (Citizenship and Immigration)*, 2020 FC 365, para 31. and cases cited therein.

[16] Having reviewed the underlying record and considering the Decision, I find the Officer's failure to fully take into account Aaron's profile and to not acknowledge the critical role the Applicant continues to play in his life are both reviewable errors.

[17] I further find that these errors are significant and are more than merely superficial or peripheral to the merits of the Decision. I find they are sufficiently serious such that the Decision cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov*, at para 100.

V. **Conclusion**

[18] For the reasons set out above, this application is granted.

[19] The Decision is set aside and this matter is to be returned to a different Officer for redetermination.

[20] There is no question for certification.

**JUDGMENT in IMM-4603-21**

**THIS COURT'S JUDGMENT is that**

1. The application is granted.
2. The Decision is set aside and this matter is to be returned to a different Officer for redetermination.
3. There is no question to certify.

"E. Susan Elliott"

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Judge

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

**DOCKET:** IMM-4603-21

**STYLE OF CAUSE:** MARIA SORAYA RIVERA MARCOS v MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 11, 2022

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** FEBRUARY 6, 2023

**APPEARANCES:**

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