

Federal Court



Cour fédérale

Date: 20230509

Docket: IMM-3088-22

Citation: 2023 FC 665

Montréal, Quebec, May 9, 2023

PRESENT: Madam Justice Walker

BETWEEN:

ROCIO GUADALUPE GARCIA ESQUIVEL

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Garcia, seeks the Court's review of a March 25, 2022 decision of a Senior Immigration Officer refusing her application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons set out below, I am persuaded that the officer's decision is not reasonable and will allow this application.

I. Background

[3] The Applicant is a citizen of Mexico who has lived in Canada since 2008. As a child in Mexico, she was physically and emotionally abused by her mother and sexually abused by her grandfather. Her mother ignored the Applicant's attempt to tell her about the sexual abuse and later prevented the Applicant from moving away from home until she was married.

[4] Eventually, the Applicant fled Mexico and came to Canada with the help of a friend. The Applicant first sought counselling in 2018 and submitted with her H&C application letters and reports from a psychiatrist and two counsellors. The Applicant states that her childhood has left her with traumatic memories of her abuse from which she has started to heal while in Canada, far removed from the society in which she was abused and in which abuse and violence against women are pervasive. The Applicant fears that if she returns to Mexico, her traumatic memories will return and her healing will end.

[5] The Applicant submitted her H&C application on June 21, 2021. She raised three factors for consideration: her mental health, adverse country conditions in Mexico in part based on her indigenous background, and establishment in Canada.

II. The H&C decision

[6] The officer refused the Applicant's H&C application after reviewing the factors, evidence and submissions presented in the application. The officer stated that they were not satisfied that the Applicant had provided sufficient evidence to warrant an exemption based on H&C grounds.

The Applicant's mental health considerations

[7] The officer assessed the three medical and counselling reports submitted by the Applicant: (a) a letter dated April 23, 2019 from the Applicant's counsellor who indicates that the Applicant had been attending counselling sessions since January 2019 (Pèrez Report); (b) a psychiatric assessment dated November 6, 2019 written by Dr. Doan, an Assistant Clinical Professor of Psychiatry, University of Toronto (Doan Report); and (c) a letter dated November 25, 2019 from Ms. Mata, an expressive arts counsellor at a women's shelter who had worked with the Applicant since May 2019 (Mata Report). The officer stated that they accepted the medical or professional opinion set out in each of the Reports but found they contained little information regarding a medical diagnosis or future or long-term therapies or medications for the Applicant. With respect to the psychiatric assessment, the officer stated that there was little information to indicate medical treatments or crisis interventions to address the Applicant's prior depressive state or suicidal ideations.

[8] Overall, the officer found insufficient evidence to indicate that the Applicant's return to Mexico could have a significant adverse effect on her mental health. In arriving at this conclusion, the officer also considered the letters of support submitted by the Applicant's friends but found they did not indicate emotional dependencies that would present challenges for the Applicant in the event of a geographical separation. The officer noted that, if the Applicant needs to continue any medical treatment, there was insufficient evidence filed with respect to access to such treatment in Mexico.

Country conditions in Mexico

[9] The officer acknowledged that Mexico has a notorious record for violence against women and girls, particularly those who are poor and have little access to education and health care. However, the officer stated that there was insufficient evidence to indicate that the Applicant fits the profile of a woman who could be subjected to violence.

[10] The officer then referred to counsel's submission that, as an indigenous woman, the Applicant is a member of the most marginalized segment of Mexican society. The officer reviewed the documentary evidence submitted by the Applicant and updated that evidence with reference to more current sources. The officer gave this factor some weight but noted that the documentary evidence indicates that indigenous people in urban Mexican settings typically have better access to basic services and market opportunities than those in rural areas. Also, an individual's historical circumstances can be an indicator of future hardships. In this regard, the officer stated there was little information before them about previous challenges encountered by the Applicant due to her indigenous origins. The evidence established that she completed her secondary, college and university education in Mexico and worked for a large shoe manufacturer. She is not a political activist on indigenous rights nor has she pursued a traditional indigenous lifestyle or lived in a traditional indigenous area. For these reasons, the officer gave minimal weight to the Applicant's feared hardships in Mexico due to her indigenous heritage.

Establishment in Canada

[11] The officer observed that the Applicant has been in Canada for over 13 years, a factor in her favour. She is financially self-sufficient, although there was little information before the

officer of employment letters, invoices or pay stubs to substantiate her income. The officer acknowledged the Applicant's volunteer work and monetary contributions to charitable organizations, her membership in a church and the positive support letters from her friends and landlord. The officer referred to the Applicant's immigration history and the absence of evidence of steps taken to regularize her immigration status notwithstanding she arrived in Canada in 2008. This was not a determinative factor for the officer but it did not reflect favorably on the Applicant. Overall, in light of the Applicant's lengthy residency in Canada, there was insufficient evidence to indicate she is well established.

[12] The officer then considered the economic effects of the COVID-19 pandemic and the Canadian government's announcement that it would make it easier for foreign nationals and asylum-seekers to become permanent residents. The officer accepted counsel's submission that the Applicant's H&C application aligns with this announcement but stated that it is just one of the factors to be considered.

III. Analysis

[13] The Applicant raises numerous issues in her application challenging both the fairness of the officer's process and the reasonableness of the decision.

Procedural fairness

[14] The Applicant submits that the officer breached her right to procedural fairness in consulting updated objective evidence regarding the treatment of indigenous women in Mexico without providing her an opportunity to respond.

[15] I will review the Applicant's submission by asking whether the procedure followed by the officer was fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 (*Canadian Pacific*)).

[16] Noting counsel's reliance on an article from 2010 regarding the plight of indigenous women in Mexico, the officer consulted "objective and more recent documentary sources" from the US Department of State (USDOS) and the World Directory of Minorities. The 2020 USDOS report confirmed the Applicant's contention that indigenous women are among the most vulnerable in Mexico, experiencing racism, discrimination and violence. The 2016 World Directory of Minorities report spoke to human rights legislation in place to protect indigenous communities and the existence of agencies in Mexico established to consult and support indigenous communities.

[17] I find that the officer did not breach the Applicant's right to procedural fairness. The officer consulted general, updated and publicly available documents from recognized bodies (*Ketjingga v Canada (Citizenship and Immigration)*, 2021 FC 1072 at para 18). The two reports referenced in the decision are easily accessible and provide information on a subject the Applicant raises in her application and supports with an article from 2010 that is on its face stale-dated. The officer's conduct was not unfair to the Applicant.

[18] The Applicant relies on *Barragan v Canada (Citizenship and Immigration)*, 2014 FC 558, a case in which one of the applicants submitted psychiatric evidence regarding her Post-Traumatic Stress Disorder (PTSD) and depression that resulted from previous trauma in

Mexico involving the *Los Zetas* gang. The officer undertook research specific to one of the main agents of persecution identified by the applicants and Justice Mactavish (as she then was) found that the officer had breached their duty of procedural fairness. The information was not general in nature, it was highly particular to the applicants' case and should have been disclosed (*Barragan* at para 9). The applicants could not have anticipated the introduction of such specific evidence and should have been afforded an opportunity to respond. In contrast, the officer's research in this case simply updated the Applicant's 2010 information with accessible and general information from well-known sources.

Reasonableness of the H&C decision

[19] The Applicant raises a number of issues regarding the reasonableness of the officer's analysis of each of the grounds set out in her H&C application. These issues centre on the merits of the decision and are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23; *Mirashi v Canada (Citizenship and Immigration)*, 2023 FC 323 at para 23).

[20] I have reviewed the Applicant's submissions in their entirety and find that the determinative issue in this application is the reasonableness of the officer's assessment of the Pèrez, Doan and Mata Reports.

[21] The Applicant submits that the officer's analysis of the three medical and counselling reports shows little understanding that each Report is premised on her progression in healing in Canada and the deterioration in her mental health that will or is likely to occur should she be

forced to return to Mexico. This analysis disregards the principles established in *Kanhasamy Canada (Citizenship and Immigration)*, 2015 SCC 61 (*Kanhasamy*). The Applicant argues that, once the evidence establishes negative mental health, it is an error to require further documentation to establish continuing hardship due to the mental health condition. In her opinion, the officer displayed no understanding of the effects of sexual abuse, particularly where that abuse was inflicted on a child. The Applicant also argues that the officer failed to take into account the unrelenting misogynistic climate in Mexico as context for her return to the country.

[22] I agree with the Applicant and find the officer's assessment of the Pèrez, Doan and Mata Reports minimizes or ignores the impact of a return to Mexico on the Applicant and is not justified. While the officer states that they accept the professional opinion expressed in the Reports, their substantive analysis ignores material aspects of the respective authors' analysis and conclusions.

[23] Pèrez Report: Ms. Pèrez states that the Applicant was receiving counselling to reduce post-traumatic stress and to manage her prolonged state of stress and past traumatic experiences. She concludes that the Applicant "has found a place in Canada where she feels she has the possibility to grow... with the freedom to make decisions without being criticized". The officer accepts the counsellor's professional opinion but states there is little information in the Report regarding a medical diagnosis or future therapies or medications.

[24] Doan Report: Dr. Doan sets out a comprehensive summary of the Applicant's assessment, detailing her personal history of abuse, medical history, education/work history,

current living arrangements/social relationships, and mental status exam. Dr. Doan states that the Applicant has many PTSD symptoms but that, through treatment, the symptoms have abated such that she likely does not meet the full criteria for the disorder. He refers to her sustained abuse as a child and adolescent and the improvement she has achieved by seeking treatment. Dr. Doan concludes that:

I hope [the Applicant] continues with the difficult process of psychotherapy: remembering and confronting past trauma is not [an] easy task. If she were forced to return to Mexico, her mental health would surely suffer, and I would not at all be surprised if she again became depressed and suicidal.

[25] The officer accepts the medical findings in the Doan Report but states that it contains little information as to “why the applicant could not continue to use her energy and desire for independence as coping mechanisms to assist her in overcoming her past abuse and continue to benefit from such coping mechanisms regardless of geographical location”.

[26] Mata Report: Ms. Mata is a counsellor at a women’s shelter who initially worked with the Applicant in an Expressive Arts Therapy group. Ms. Mata states that, since she has worked with the Applicant (over a seven-month period), she has seen the Applicant’s mental health stabilize as a result of counselling and psychological support. In Ms. Mata’s professional opinion, an abrupt termination of therapy and forced return to Mexico “will have a critically detrimental and negative impact on [the Applicant’s] psychological and emotional wellbeing”.

[27] The officer accepts Ms. Mata’s opinion and notes her references to the factors that perpetuated the Applicant’s state of mind, specifically her fear of deportation. The officer states that the immigration process is stressful but is not sufficient to ground H&C relief. More

generally, the officer observes that the Applicant's submissions speak to childhood abuse and that there is little information of any abuse as an adult, except to the extent of the mother's controlling behaviour. The officer again returns to the absence of an indication of the need for continuing therapy.

[28] The officer concludes their analysis of the evidence regarding the Applicant's mental health, stating:

Overall, I find insufficient evidence to indicate that the applicant's return to Mexico could have a significant adverse effect on her mental health.

[29] The officer's summaries of each Report is accurate. They do not speak to ongoing treatment, nor do they set out any required medications. However, the Doan Report and the Mata Report both provide the author's professional opinion that a forced return to Mexico, taking into account the prolonged violent and sexual abuse to which the Applicant was subjected as a child, would most likely have a serious detrimental effect on her mental health. The officer disregards this aspect of the Reports without explanation. This omission in and of itself is a significant error that requires the Court's intervention.

[30] With respect to the Doan Report, the officer ignores Dr. Doan's serious concern regarding the adverse effects on the Applicant of a return to Mexico. The officer relies on the Applicant's ability to use her "energy and desire for independence" as coping mechanisms to counter Dr. Doan's concern. I find that the officer did not in fact accept Dr. Doan's professional opinion.

[31] The officer's statement that the Mata Report focuses on childhood abuse with "little information" about abuse suffered as an adult is both surprising and irrelevant. The officer does not explain their statement and the reader is left to speculate on the relevance of this consideration. The medical and professional mental health evidence before the officer was premised on the long-term effects of child abuse on the Applicant. The statement compromises the logic of the officer's reasons and the clarity of the decision.

[32] The officer's reasons for discounting the Applicant's medical and counselling evidence must demonstrate that they were based on an internally coherent and rational chain of analysis and were justified in relation to the facts and law that constrain their decision. I find that this is not the case here and will allow the application.

[33] Given my conclusion regarding the officer's assessment of the Applicant's mental health evidence, I need not address the officer's consideration of her lack of status in Canada and its impact on her establishment, or the officer's hardship analysis. However, I do note first that the officer's reference to the Applicant's failure to regularize her immigration status is one of a number of elements of the establishment assessment and I find no indication of unreasonable focus by the officer on immigration status. Second, I find that the officer did not make a risk assessment in the guise of considering hardship, nor did they ignore the intersection of the culture and treatment of women in Mexico, the discrimination and violence facing indigenous women, and the Applicant's personal characteristics as an indigenous woman.

[34] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-3088-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision of the senior immigration officer dated March 25, 2022 refusing the Applicant's application for permanent residence based on H&C grounds is set aside and the matter is remitted to a different officer for redetermination.
3. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3088-22

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MINISTER OF CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Adela Crossley FOR THE APPLICANT

Nicholas Dodokin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Crossley Law FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario