Federal Court  Cour fédérale

Date: 20240924

Docket: IMM-10145-23

Citation: 2024 FC 1494

Toronto, Ontario, September 24, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

EBER HERNANDEZ GARCIA
MERI ALEJANDRA GALVEZ RUIZ
EVER ALESSANDRO HERNANDEZ GALVEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by a Senior Immigration Officer of Immigration, Refugees and Citizenship Canada refusing the Applicants' application for Permanent Residence within Canada on Humanitarian and Compassionate ("H&C") grounds.

II. Background

[2] The Applicants, citizens of Mexico, consist of the Principal Applicant ("PA"), his spouse: the Associate Applicant ("AA"), and their son, the Minor Applicant ("MA"). They first arrived in Canada in August of 2018 and filed for refugee protection in December of 2018. The Refugee Protection Division ("RPD") denied their claim in January of 2021, finding that the Applicants were not credible. The Applicants appealed their negative RPD decision, and the Refugee Appeal Division ("RAD") denied their appeal in September of 2021.

[3] On April 4, 2022, the Applicants submitted an application for permanent residence on H&C grounds. On February 2, 2023, the Applicants provided further documents in support of their application, which included confirmation of AA's pregnancy. In their application, the Applicants raised their establishment in Canada, the best interests of the children ("BIOC"), and adverse country conditions in Mexico. A Senior Immigration Officer (the "Officer") denied their application in July of 2023, finding that the circumstances of the Applicants and evidence submitted did not establish that an exception under s. 25(1) of *Immigration and Refugee Protection Act* (the "*IRPA*") was warranted (the "Decision").

[4] The Applicants also applied for a Pre-Removal Risk Assessment ("PRRA") in November 2022. This application was refused in July 2023 by the same Senior Officer that reviewed and refused their H&C application.

[5] The Applicants challenge the refusal of their H&C application, which forms the basis of this application for judicial review.

III. The Decision

[6] The Officer stated that the sources consulted in regards to the Applicants' H&C application were the Applicants' application forms, written submissions and documents, the RPD decision dated January 6, 2021, the RAD decision dated September 2, 2021, and the PRRA decision dated July 7, 2023.

[7] After conducting a global assessment of all the factors raised and having reviewed the documents submitted by the Applicants, the Officer rejected the H&C Application.

IV. Issues

[8] Although the Applicants raise several discrete issues with respect to the Decision, the primary issue is whether the Officer’s Decision was reasonable.

V. Analysis

[9] The standard of review with respect to the Officer’s substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). In reviewing, the Court asks 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).

[10] Pursuant to section 25 of the *IRPA*, the Minister is authorized to facilitate an individual’s admission to Canada or exempt an individual from any applicable criteria or obligation under the

IRPA where the Minister is satisfied that such exemption or facilitation should occur owing to the existence of humanitarian or compassionate considerations. A decision made on H&C grounds is an exceptional and discretionary measure (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15).

[11] The Applicants argue that the Officer erred in their analysis of each of the three grounds for their application: their establishment in Canada, the adverse country conditions, and the BIOC analysis. At the hearing, Counsel for the Applicants submitted that the Officer acted unreasonably by translating the exceptional nature of the remedy into a higher (or "exceptional") standard required for the three grounds considered.

[12] While I am not convinced the Officer imposed an exceptional standard for all three grounds raised, I agree with the Applicants that the Officer did impose an exceptional standard required for level of establishment.

Establishment in Canada

[13] The Applicants argue that the Officer erred in requiring the Applicants to demonstrate an "exceptional level of establishment". The Applicants refer to a number of cases where this this Court has continuously held that an Officer's finding that an applicant's establishment is "expected" or "typical" is unreasonable.

[14] The impugned officer's statement reads:

> I find, however, that this establishment is what individuals who have resided in Canada for several years would likely acquire. H&C relief is generally considered to be an exceptional measure. Having reviewed the applicants' H&C materials I do not find that they demonstrate establishment in Canada that would warrant an exemption on H&C ground.

[15] The Respondent submits that the Officer did not require an "exceptional level of establishment", but rather, the Officer was responding to the "exceptional" nature of the Applicants' stated establishment in their H&C request. In their request, the Applicants stated that their "establishment into Canadian society and degree of integration go beyond of what would be normally be expected from persons who live in continuous anguish and uncertainty of their performance in Canada." The Officer simply responded to this statement and cannot be faulted for being responsive to the Applicants' submissions (*Carter v Canada (MCI)* 2022 FC 1019 at para 21). I disagree and find that the Officer did require an exceptional standard of establishment.

[16] During the Applicants' approximate 5 years of residing in Canada, they showed considerable establishment in Canada. Notable factors include: both the Applicants have obtained work in Canada from 2018 and 2020, respectively, they have made efforts to further their English language skills in Canada through courses, they are part of a Church community, they have made charitable donations, they have a community of friends and acquaintances, their child attends school here, and their other child is a Canadian citizen. The Applicants achieved all of these factors in a time period the Officer described "a fairly short period of time".

[17] I accept that the Officer is not required to provide an explanation as to what would constitute a level of establishment that would justify an exemption (*Regalado v Canada (MCI)*,

2017 FC 540, at para 8). However, in this case, it is unclear how much more establishment one could reasonably expect to achieve in such a "fairly short period of time". I agree with the Applicants that the Officer imposed a standard equivalent to that of an "exceptional threshold" required to demonstrate sufficient establishment. This was an error.

[18] Consequently, the Decision is unreasonable. Having so found, I find it unnecessary to address the Officer's assessment on the BIOC and adverse country conditions, subject to my comments below.

[19] I note that other than the findings of the RPD/RAD and some of the establishment factors, the Decision is silent as to what weight, if any, was ultimately assigned to many of the factors raised, particularly in the BIOC analysis. This lack of transparency makes it difficult for a reviewing court to assess whether a proper global assessment was conducted and consequently, whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99; *Jafari v Canada (Citizenship and Immigration)*, 2022 FC 975 at para 10).

[20] Accordingly, I will grant the application and send the matter back for redetermination by a different officer.

VI. Conclusion

[21] For the reasons set out above, this application is allowed. The matter is remitted for redetermination by a different officer.

[22] No question was proposed for certification.

JUDGMENT in IMM-10145-23

THIS COURT'S JUDGMENT is that:

1. This application is allowed.

2. The matter is remitted for redetermination by a different officer.

3. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10145-23
STYLE OF CAUSE:	EBER HERNANDEZ GARCIA, MERI ALEJANDRA GALVEZ RUIZ, EVER ALESSANDRO HERNANDEZ GALVEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 16, 2024
JUDGMENT AND REASONS:	MANSON J.
DATED:	SEPTEMBER 24, 2024

APPEARANCES:

BELINDA BOZINOVSKI	FOR THE APPLICANTS
IDORENYIN UDOH-OROK	FOR THE RESPONDENT

SOLICITORS OF RECORD:

BOZINOVSKI, BARRISTERS & SOLICITORS TORONTO, ONTARIO	FOR THE APPLICANTS
ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT