Federal Court  Cour fédérale

Date: 20250107

Docket: IMM-9033-23

Citation: 2025 FC 32

Ottawa, Ontario, January 7, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

GRACIE MENDOZA DE JESUS
SCHENNETTE LEE RODRIGUEZ INGAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Gracie Mendoza De Jesus [Principal Applicant] and Schennette Lee Rodriguez Ingan [Sponsor Applicant], bring this application for judicial review of a May 19, 2023, decision wherein an immigration officer [Officer] refused the Principal Applicant's application for permanent residence [PR] under the family class. The Officer determined that the Principal Applicant was excluded under paragraph 117(9)(d) of the *Immigration and Refugee*

Protection Regulations, SOR/2002-227 [the *Regulations*] and declined to grant humanitarian and compassionate [H&C] relief under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*Act*].

[2] Two issues arise for determination: (1) whether the Officer breached procedural fairness in refusing to respond to the Applicants' final extension request before rendering the decision and (2) whether the Officer's H&C assessment was reasonable within the context of the Applicants' same-sex relationship.

II. Facts

[3] The Applicants are both citizens of the Philippines. The Sponsor Applicant is now also a naturalized Canadian citizen residing in Canada. The Principal Applicant resides in the Philippines.

[4] The Applicants met at work in the Philippines on January 18, 2004, and began a same-sex romantic relationship on August 4, 2004. In April 2005, the Applicants started living together. They did not disclose their relationship to their families and society, which were not accepting of same-sex relationships.

[5] The Applicants relocated to the United Arab Emirates in July 2007, for work opportunities, despite that country's legal prohibition on same-sex relationships. Through connections made at work, the Sponsor Applicant was employed at a restaurant in Canada. Though the restaurant attempted to secure positions for both Applicants, only one role was

available. In September 2009, the Sponsor Applicant obtained a work permit for Canada and began work here, while the Principal Applicant returned to the Philippines.

[6] In October 2011, the Principal Applicant applied for a work permit in Canada and joined the Sponsor Applicant. They worked at the same restaurant and lived together from October 2011 to July 2015. During this period, the Sponsor Applicant was sponsored by her employer for PR, subsequently obtained the status, and later acquired Canadian citizenship.

[7] The Principal Applicant attempted to secure PR through two Provincial Nominee Programs one after another without success. The Principal Applicant returned to the Philippines in July 2015. Multiple applications for visitor visas to allow her return to Canada were refused.

[8] On July 13, 2021, the Applicants submitted an application under the conjugal partner class. The application included documentation of their relationship, including shared insurance and banking information, proof of financial support, communication records, photographs, personal statements, and letters of support.

[9] Following submission of their application, the Principal Applicant was invited to an interview on October 20, 2022. The Applicants provided additional documentation on October 12, 2022, prior to the interview.

[10] The Sponsor Applicant travelled to the Philippines to attend the interview with the Principal Applicant. During this interview, the Officer noted that the Sponsor Applicant failed to disclose the Principal Applicant as a common law spouse when she applied for PR status and

therefore the Principal Applicant was not then examined. As a result, the Principal Applicant was barred from being sponsored by the Sponsor Applicant by operation of paragraph 117(9)(d) of the *Regulations*. However, the Officer indicated that the Applicants could make H&C submissions in an attempt to overcome this bar.

[11] On October 26, 2022, the Officer issued a Procedural Fairness Letter [PFL] providing 30 days to respond to the exclusion concern. The Applicants retained legal counsel on November 22, 2022, and initiated a series of extension requests tied to obtaining relevant immigration records. The first request came on November 24, 2022, seeking 60 days to January 24, 2023 to obtain and review ATIP records. When these records remained pending, a second extension was sought on January 25, 2023, extending the timeline to March 27, 2023. On March 23, 2023, citing continued substantial delays from immigration authorities, counsel requested a third extension of 50 days to May 11, 2023, during which time counsel also specifically requested the interview notes to help advance the response. The Officer partially granted this request to April 18, 2023. One day before this deadline, on April 17, 2023, the Applicant made a final request seeking extension until April 21, 2023, specifically asking that no decision be made without their response. This final request received no response, and a federal public service strike began two days later on April 19, 2023.

III. Decision Below

[12] The refusal decision rendered on May 8, 2023 contains determinations on both inadmissibility and H&C relief.

[13] As to admissibility, the Officer found that during the Applicants' documented period of cohabitation in Canada between 2011 and 2015, the Sponsor Applicant had applied for and obtained PR without declaring the Principal Applicant as a non-accompanying family member. This non-disclosure resulted in the Principal Applicant not being examined as required by paragraph 117(9)(d) of the *Regulations*, thereby triggering the exclusionary provision.

[14] As to H&C considerations, the Officer noted that the Principal Applicant and Sponsor Applicant were cohabitating in a same-sex relationship in Canada, where such relationships were legally recognized. The Officer observed that the Sponsor Applicant acknowledged seeing the common-law question on her application form but explained that she focused on work experience rather than the relationship aspect. The Officer concluded that "ignorance of both the requirement to declare and consequences of the failure to declare is not sufficient to grant an exemption," since "it is the applicant's responsibility carefully [*sic*] read the application forms and to truthfully respond to all questions." Ultimately, the Officer found the Principal Applicant and Sponsor Applicant "have not identified sufficiently compelling circumstances to allow for the requested exemption."

IV. Issue

[15] This Court is asked to review both procedural fairness and the reasonableness of the decision. The procedural fairness issue concerns whether the Officer breached procedural fairness principles by rendering a decision without responding to the Applicants' final extension request dated April 17, 2023, particularly in light of the Applicants' documented efforts to obtain relevant immigration records. The reasonableness issue requires assessment of the Officer's H&C analysis under section 25(1) of the *Act*, specifically whether the Officer reasonably

considered the evidence on the Applicants' 19-year relationship within the unique contexts of maintaining a same-sex partnership across multiple jurisdictions with varying degrees of legal recognition and social acceptance.

V. Legal Framework

[16] The exclusionary mechanism at issue derives from paragraph 117(9)(d) of the *Regulations*. It precludes consideration of a foreign national as a family class member where the sponsor previously obtained PR status and the foreign national was a non-accompanying family member who was not examined at the time of the sponsor's PR application:

Excluded relationships	**Restrictions**
117 (9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if	**117 (9)** Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :
…	[…]
(d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.	**d)** sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.

[emphasis added]

[17] Subsection 25(1) of the Act confers discretionary power upon immigration officers to grant exemptions from criteria or obligations under the *Act*:

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, 35.1 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, 35.1 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, 35.1 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, 35.1 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.

[emphasis added]

[18] This provision should be interpreted and applied as outlined by the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. It endorsed the approach outlined in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, which described H&C considerations as "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another": *Kanthasamy* at para 13.

[19] The applicant bears the onus to demonstrate that H&C considerations exist to warrant applying the exemption: *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45. Lack of evidence or failure to adduce relevant information in support of an H&C application is at the peril of the applicant: *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paras 5 and 8.

[20] The relief under section 25 of the *Act* depends on the facts and context of each case. Notably, *Kanthasamy* teaches that decision-makers must avoid imposing a threshold of unusual, undeserved, or disproportionate hardship; must consider and weigh all of the relevant facts and factors; and must "give weight to *all* relevant humanitarian and compassionate considerations in a particular case" [emphasis in original]: *Kanthasamy* at paras 25 and 33. Moreover, immigration officers must not require applicants seeking H&C relief to demonstrate exceptional circumstances justifying relief. Rather, it is the nature of the relief itself that is exceptional, not the factual matrix giving rise to it: *Zhang v. Canada (Citizenship and Immigration)*, 2021 FC 1482 at para 1.

[21] The assessment of H&C grounds requires an "empathetic approach": *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 at para 34; *Peshlikoski v. Canada (Citizenship and Immigration)*, 2022 FC 154 at para 27. To meet this standard, the decision-maker must "step into the shoes" of the applicant, considering their unique situation in a meaningful way: *Dowers v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 593 at para 6. Importantly, the Officer must avoid basing the determination predominantly on the same grounds as the underlying ineligibility. Doing so undermines the purpose of H&C relief, which is designed to soften the harsh effects from rigid applications of the Act: *Kanthasamy* at para 19.

VI. Analysis

A. *There was no breach of procedural fairness*

[22] The Applicants argue that the Officer acted unfairly by failing to respond to their extension request dated April 17, 2023, before issuing the final decision. They emphasize that this extension and those prior were necessitated by delays in accessing key immigration records through the access to information process—delays caused by the immigration authority's refusal to disclose those records.

[23] I am not convinced.

[24] The facts demonstrate an extensive period of engagement and accommodations by the Officer, spanning approximately 175 days beyond the initial 30-day response period established in the October 26, 2022 PFL. Specifically, the Officer granted an initial extension to January 24, 2023, provided a further extension to March 27, 2023, and partially accommodated a third request by again extending to April 18, 2023.

[25] The Applicants rely on three cases to advance the principle that "ignoring reasonable and timely extension requests may constitute a procedural fairness breach": *Hussain v Canada (Citizenship and Immigration)*, 2012 FC 1199 [*Hussain*] at paras 6-11; *Venkata v Canada (Citizenship and Immigration)*, 2017 FC 423 [*Venkata*] at paras 75-78; *Adams v Canada (Citizenship and Immigration)*, 2021 FC 1104 at para 12. While I agree that these cases support this principle, the factual scenario here is wholly distinguishable from those in the cited authorities.

[26] For example, in *Hussain*, the Court found a breach where the applicant made a single 30-day extension request after a two-and-a-half-year processing delay by the immigration authority. In *Venkata*, the breach centered on the officer's failure to address an extension request or communicate its status when clarity about additional documents was needed. Here, by contrast, the Officer had already offered accommodation through multiple extensions, with, in my view, the partial grant of the third request signaling limits to the extension process.

[27] Two factors further distinguish this case from the cited authorities and diminish the procedural fairness claim. First, the final extension request was submitted one day before the existing deadline. Given the timing and the extensive prior extensions already granted, the request cannot be reasonably characterized as "timely." The federal service disruption that occurred after the April 18 deadline does not alter this conclusion.

[28] Second, while the Applicants cited delays in obtaining immigration records through Access to Information processes, they failed to explain how these records were relevant to their H&C request until the very last request for extension, in which they indicated a need to access

interview notes. However, this Court has held that immigration authorities are not obligated to disclose such notes, as the necessity for doing so depends on "the role that this evidence played in the officer's decision-making process": *Darwisheh v Canada (Citizenship and Immigration)*, 2024 FC 98 at para 24. Here, the interview notes do not play as central a role in the Officer's decision-making process.

[29] Procedural fairness requires a meaningful opportunity to present one's case, not an indefinite one. While the consequences for the Applicants are significant, this does not obviate the need for timely engagement with administrative processes. I am of the view that the record demonstrates that the Applicants received a full and fair chance to respond as contemplated by *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69. That they could not access a more optimized opportunity does not render the process procedurally unfair.

B. *The decision is unreasonable*

[30] I find the Officer's H&C assessment fails to meet the standard of reasonableness through three fundamental deficiencies: insufficient engagement with key evidence, failure to grapple with the contexts surrounding the Applicants' unique same-sex relationship dynamics, and improper focus on the Sponsor Applicant's non-disclosure of her relationship with Principal Applicant.

[31] The first deficiency manifests in the Officer's cursory treatment of the available documentary evidence. While the Respondent correctly notes that no dedicated H&C submissions were made following the PFL, this does not relieve the Officer of the obligation to grapple with the evidence already on record. The materials before the Officer included extensive

documentation of the Applicants' relationship spanning decades across multiple jurisdictions. These included records of past and ongoing financial interdependence, sustained communication records throughout their relationship, personal statements and photographic evidence detailing relationship challenges, and eight third-party support letters from friends and relatives in both Canada and the Philippines. Despite the breadth and depth of this evidence, the Officer's analysis is limited to two fleeting observations. First, acknowledgment of cohabitation in Canada, and second, recognition of previous cohabitation "for several years in both Taiwan and Dubai." Reducing complex and multifaceted evidence to mere chronological observations reflects a troubling failure to meaningfully engage with the substance of the documentation.

[32] This superficial treatment is closely tied to the second deficiency: the failure to properly analyze the context surrounding the Applicants' same-sex relationship. The interview record presents a detailed narrative of consistent concealment driven by legal prohibitions and sociocultural imperatives. Within the Philippines' context, the Applicants provided evidence of the necessity for concealment, including statements such as "we could not reveal our relationship," along with documentation of religious and familial opposition to same-sex relationships. Similarly, their experiences in the United Arab Emirates add another layer of complexity, with explicit references to strict legal prohibitions and a pervasive fear of separation. The Officer's analysis, however, is completely silent on how these documented experiences of forced concealment might have shaped the Applicants' hesitancy to formal declarations of relationships. Instead, the Officer focused exclusively on Canada's legal recognition of same-sex relationships, using it as a basis to magnify the failure to disclose. This analysis disregarded the legal, cultural, and psychological dynamics faced by homosexual individuals moving from

jurisdictions requiring absolute concealment to one offering full recognition. This strays too far from the empathetic approach required in law.

[33] The third and most important deficiency lies in the Officer's treatment of the Sponsor Applicant's failure to declare the Principal Applicant as a common-law partner during her PR application as a major, if not dispositive, factor in the H&C considerations. The Officer's analysis stated: "Ignorance of both the requirement to declare and consequences of the failure to declare is not sufficient to grant an exemption." I find this approach troubling in light of the Sponsor Applicant's explicit explanation of the non-disclosure during the interview: "How am I supposed to declare her when we weren't even open? How can I even write it on... the form when we are not feeling validated in our relationship?" By heavily weighting the non-disclosure without contextualizing it within the Applicants' experiences of forced relationship concealment, the Officer failed to consider the unique circumstances surrounding the 117(9)(d) exclusion. This reasoning is flawed, as it relies on the same circumstances to justify both the initial ineligibility under 117(9)(d) and the subsequent denial of the H&C relief designed to address such situations. This rigid application of the law fundamentally undermines subsection 25(1) of the *Act*, which exists precisely to mitigate the harsh consequences of inflexible statutory requirements.

[34] Each of these deficiencies is concerning on its own, and when I consider them collectively, I find a decision that is both weak in analysis and lacking in empathy. The decision nullifies the remedial purpose of subsection 25(1) by allowing mechanical application of exclusionary provisions to override meaningful H&C consideration. This significant flaw warrants judicial intervention.

VII. Conclusion

[35] For the foregoing reasons, I conclude that, while the Officer did not breach procedural fairness in dealing with the Applicants' extension requests, the H&C assessment falls well short of the reasonableness standard established in *Vavilov* and the analytical rigour required by *Kanthasamy* for H&C decisions. The Officer's cursory treatment of extensive documentary evidence, failure to meaningfully engage with the complex dynamics of a same-sex relationship spanning multiple jurisdictions, and problematic focus on non-disclosure collectively render the decision unreasonable.

[36] I therefore allow the application for judicial review. In light of the disclosure in this process of the documents the Applicants requested, they are to be provided within 15 days after the issuance of these Reasons to supplement their H&C application.

JUDGMENT in IMM-9033-23

THIS COURT'S JUDGMENT is that this application is allowed and the Applicants shall have 15 days from the date of these Reasons to supplement their H&C submissions, following which the matter is to be considered by a different officer in keeping with these Reasons.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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