Federal Court Cour fédérale

Date: 20250115

Docket: IMM-10351-23

Citation: 2025 FC 84

Toronto, Ontario, January 15, 2025

PRESENT: The Honourable Justice Battista

BETWEEN:

SAIMA BIBI,
IMAAN TANSEER,
ARIBAH TANSEER,
AND MINAHIL TANSEER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] At the time of the decision on their humanitarian and compassionate (H&C) application for permanent residence, the Applicants had lived in Canada for over six years. Their family unit included a Canadian minor child and a Canadian permanent resident who is the father of the three minor applicants and spouse of Saima Bibi (the Principal Applicant). The family claimed that the

prospect of family separation, the Principal Applicant's mental health conditions, the best interests of the minor children, and the spouse's business in Canada justified permanent residence.

[2] For the reasons that follow, the decision to refuse their application is unreasonable for ignoring or overlooking evidence regarding the Principal Applicant's mental health conditions and the misapplication of H&C criteria, including the decision's analysis regarding the best interests of the minor children.

II. Background

[3] The Applicants are citizens of the United Kingdom (UK) who entered Canada in December 2016 to visit the Principal Applicant's brother. The Principal Applicant and her spouse re-married in August 2017 and gave birth to a fourth child, a Canadian citizen, in February 2021.

[4] In September 2017, an in-Canada sponsorship application was filed but eventually refused because the Applicants' spouse/father was determined to be ineligible as a sponsor.

[5] An application for permanent residence on H&C grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] was filed by the Applicants in November 2020. That application was updated after it was refused and reopened.

[6] The basis of the H&C application was the best interests of the minor children, the Principal Applicant's psychological conditions, and the hardship resulting from refusal of the application. The Applicants stated that they would be faced with separation from the spouse/father and potentially the Canadian child, or the abandonment of the successful business of the Principal Applicant's husband, which is the sole financial support for the family. His transportation business has at least 28 employees with a gross annual revenue of $4.2 million.

III. Issue

[7] The sole issue is whether the decision is reasonable pursuant to the Supreme Court's guidance in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], followed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*]. The reasonableness standard of review applies a "reasons first" approach to an assessment of the justification, transparency, and intelligibility of a decision (*Mason* at paras 58–61).

IV. Analysis

[8] The decision rendered by the Officer is lengthy, detailed, and largely responsive to the submissions made by the Applicants. However, the decision is not justified given the legal and factual contexts which provided constraints on the decision. As stated in *Mason* at paragraph 66:

> The burden of justification varies with the circumstances, including the wording of the relevant statutory provisions, the applicable precedents, the evidence, the submissions of the parties, and the impact of the decision on the affected persons. The greater the interpretive constraints in a given case, the greater the burden of justification on the decision maker in deviating from those constraints.
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> [Emphasis added.]

[9] A legal constraint on the Officer's decision was the relevant statutory provision, subsection 25(1) of the IRPA. The purpose of this provision is to provide a pathway to permanent residence for applicants when permanent residence is justified on the basis of humanitarian and compassionate considerations, including the best interests of directly affected children. Decisions made pursuant to subsection 25(1) must reflect the provision's humanitarian and compassionate purpose (*Vavilov* at para 108; *Baker v Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817 at para 66) and examine the best interests of directly affected children "with a great

deal of attention" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at para 39).

[10] The factual constraints on the decision were found in the evidence presented by the Applicants. This evidence included:

- The existence of four directly affected children, aged 16, 14, 10, and two years old;
- The status of the youngest child as a Canadian citizen;
- The fact that the three minor children and the Principal Applicant have lived in Canada for over six years, and currently live with their Canadian permanent resident father and Canadian brother;
- Evidence reflecting the Principal Applicant's mental health issues, including depression and anxiety classified in the "severe" range by a registered psychologist;
- Evidence establishing the impossibility of the children's father's relocation to the UK with the family given his responsibilities connected with his "thriving business in Canada," which supports the family.

[11] The Officer's treatment of these factual constraints was unreasonable given the humanitarian and compassionate approach required by subsection 25(1) of the IRPA.

A. *The best interests of the children*

[12] As stated above, the factual context of the application included four minor children, including a Canadian citizen, who lived as a family unit with their parents in Canada for over five years. The Officer acknowledged that the children completed "a large part of their formative or all of their education in Canada."

[13] This Court has established that an assessment of the best interests of a child requires the identification and selection of the best option available for the well-being and development of a child, not merely the avoidance of difficulties or hardship (*Osun v Canada (Citizenship and Immigration)*, 2020 FC 295 at paras 21–26; *Natesan v Canada (Citizenship and Immigration)*, 2022 FC 540 at para 22; *Fazal v Canada (Citizenship and Immigration)*, 2023 FC 1654 at paras 26–29).

[14] The Officer did not specify or describe what was in the best interests of the children, other than making the general statement that "it is in the best interests of the applicant's children to be sheltered from life's hardship in an environment of love and support."

[15] Despite the failure to describe the specific circumstances that are in the best interests of the children, the Officer found that the departure of the children from Canada to be parented by their mother alone would not be contrary to their best interests.

[16] The Officer speculated on the children's weak relationship with their father and relied upon the children's past experience of being raised in a single parent household to support the conclusion that the children's best interests would not be compromised if this were to occur in the future. Noting that the two eldest children are now teenagers, the Officer assumed that they would assume more family responsibilities, alleviating the burden on the Principal Applicant.

[17] The decision identified what was not contrary to the children's best interests without first specifically describing what was in the children's best interests. This renders the decision unintelligible (*Vavilov* at para 99).

[18] The Supreme Court has held that a child's best interests must be "well identified and defined" (*Kanthasamy* at para 39). Identifying a child's best interests in generic terms such as "be(ing) sheltered from life's hardship in an environment of love and support" is not justified given the "highly contextual" nature of the inquiry into the best interests of the children, an inquiry that must examine the individual child's particular circumstances (*Kanthasamy* at para 35).

[19] Overall, the Officer's analysis of the best interests of the children focused on minimizing the potential harm that could result after their departure from Canada rather than the selection of the best option for them.

[20] The Principal Applicant and the children's father presented detailed descriptions of the advantages of life in Canada to the children. These advantages included the educational system in which they were immersed, the family's emotional and financial stability, and close relationships with extended family members and friends. The parents expressed concern that the disruption of leaving Canada to begin again would be detrimental to them and that their continued life in Canada was in the children's best interests.

[21] The Officer's findings that "there is little evidence to demonstrate that the eldest children were negatively affected by living with their mother in the absence of their father" and that there was no evidence that they "lacked access to education, medical care or the necessities of life" are indications of the "mitigation of hardship" lens through which the Officer focused the best interests analysis. This approach is not a reasonable application of the best interest of the child test under subsection 25(1) of the IRPA (*Dedvukaj v Canada (Citizenship and Immigration)*, 2024 FC 1300 at para 188 [citations omitted]; *Akinleye v Canada (Citizenship and Immigration)*, 2024 FC 1799 at para 13 [citation omitted]).

B. *The Principal Applicant's mental health issues*

[22] The Principal Applicant provided two psychological reports to support her submission that her mental health will significantly deteriorate if she were required to leave Canada with her children.

[23] The first report, dated October 13, 2020, expressed the view that she would deteriorate psychologically if required to leave Canada. The Officer gave this report little probative value due to the lack of a specific diagnosis and lack of evidence that treatment would be interrupted if she were required to leave. The Officer also expressed confidence that any treatment needs could be met in the UK, referring to sources describing the fact that treatment for mental health issues was generally available in the UK.

[24] The second report, dated June 30, 2023, revealed the results of two psychological tests conducted after an "extensive clinical interview." This report found the Principal Applicant to be within the severe range for both anxiety and depression. It raised the risk of her re-traumatization upon returning to the UK based on her previous difficulties associated with the loneliness and struggles of being a single parent.

[25] The Officer did not mention the 2023 report at all. The Officer's failure to refer to the most recent psychological report indicates that it was ignored or overlooked, rendering the Officer's decision unreasonable for its unresponsiveness to the evidence before it (*Vavilov* at para 126). It is impossible to know how the more recent, more detailed evidence of the Principal Applicant's psychological conditions would have impacted the Officer's decision.

C. *The impact of separation on the family and Canadian business*

[26] One of the primary bases for the H&C application was the submission that Canadian permanent residence for the Applicants was the only way to maintain family unity. The Applicants stated that the refusal of their application would result in the separation of the family given the lack of other immigration avenues and the significant Canadian business and investment responsibilities of the Principal Applicant's husband. Without permanent residence for the Applicants, in their submission, they would be required to leave their Canadian permanent resident husband/father and perhaps the minor Canadian citizen son/brother. Separation could only otherwise be avoided if the Principal Applicant's husband abandoned the business and investments, which are the sole financial support for the family, so that he could leave Canada with the Applicants and start over in the UK. Both the separation of the family and the abandonment of the business and investments would cause hardship, according to the Applicants.

[27] The Officer dealt with the prospect of family separation by positing that they could maintain contact though "other means of communication" and visits. In doing so, the Officer ignored the emotional and physical strain of separation, which was the basis for the request for H&C relief. As stated in *Yu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 956 at paragraphs 30–31:

> …The visa officer ignored the evidence of emotional dependency, both for Ms. Yu and her twin sister in Canada. There is a significant factual difference between living together and sharing day-to-day life and an occasional visit. The visa officer also failed to take into account that Ms. Yu has been trying to reunite with her twin sister since she immigrated to Canada.
>
> The purpose of the Immigration legislation is to assist immigration, not hinder it by setting obstacles (*Hajariwala v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 79, [1988] F.C.J. No. 1021 (QL)). Furthermore, paragraph 3(1)(*d*) of IRPA,

> recognizing the fragility of the human condition in the separation of family members, clearly states that one of the objectives of the Act is to see that families are reunited in Canada.
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> [Emphasis in original.]

[28] Justice Shirzad Ahmed recently found in *Igreja Ferreira de Campos v Canada (Citizenship and Immigration)*, 2024 FC 1193 at paragraph 28 that the substitution of electronic communication and periodic visits for daily contact unreasonably raises the evidentiary standard:

> Furthermore, an artificially high standard is established when an officer finds that there is a lack of evidence that an applicant cannot maintain contact with friends, family, and community through communication methods upon leaving Canada. On the one hand, it elevates the evidentiary threshold to proving a negative: "Show us you cannot keep in touch with your community in Canada." Obviously, in this age of technology, this standard is unlikely, if not impossible to meet. On the other hand, such a standard envisions a grim view of what community ties mean: "It is enough that you can keep in contact with friends and family in Canada through technological means." Simply put, this standard is not in accordance with what an establishment analysis entails, which is establishment in Canada (*Singh* at para 25 [emphasis in original]). This is especially troubling when applicants provide evidence of what their community in Canada means to them, and what they mean to their community.

[29] The Officer also misconstrued evidence regarding the capacity of the family business to function if the Principal Applicant's husband was to relocate to the UK in order to avoid family separation. The Officer stated that there was no evidence that the business could not function while the Principal Applicant's husband resided outside of Canada. However, evidence from one of the company's operations managers undermined this finding by describing the critical role he plays in the business:

> We've grown from one truck to a fleet of twenty-six trucks and growing very rapidly and Khaliq has a major role in it with his knowledge of the trucking business and years of experience in the industry.… Khaliq managed to grow the company from one truck to

> a fleet of twenty-six trucks in three years…. I've the expertise in the mechanical/repair side of the business and Khaliq has the expertise in new business developments, hiring team, and managing over-all business. Khaliq has lots of good contacts in the industry and together we are making a best team… God forbid, if the family is separated, then I believe that Khaliq will not be able to function in business as an asset.

[30] This evidence was supported by the Principal Applicant's husband's evidence that he could not run his business unless he were in Canada. It was unreasonable for the Officer to overlook this evidence and substitute an impermissible inference about the capacity of the business to function in the absence of the Principal Applicant's husband. This aspect of the decision is not "justified in light of the facts" (*Vavilov* at para 126).

V. Conclusion

[31] The refusal of the Applicants' H&C application is unreasonable due to its misapplication of the analysis required to assess the best interests of the children and its mistreatment of the Applicants' evidence. The decision is not justified given its legal and factual constraints.

JUDGMENT in IMM-10351-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted, the decision on the applications for permanent residence is set aside and the matter is referred back to a different decision maker for re-determination.

2. There is no question for certification.

"Michael Battista"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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