Federal Court  Cour fédérale

Date: 20250130

Docket: IMM-6419-23

Citation: 2025 FC 192

Ottawa, Ontario, January 30, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

DIANA GILES MENDOZA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a Senior Immigration Officer [Officer], dated May 9, 2023 [Decision]. The Decision refused the Applicant's application for permanent residence on humanitarian and compassionate grounds [H&C] pursuant to s 25(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [IRPA]. The Applicant brings this application for judicial review of the H&C Decision on the basis that it is unreasonable.

[2] For the reasons that follow, I find that the Applicant has not discharged her burden of showing that the H&C Decision is unreasonable. The Officer has examined all the factors the Applicant put forth in her application regarding her establishment in Canada and the adverse country conditions in the United Kingdom [UK] she alleged will have a direct negative impact on her, and found granting the requested exemption under subsection 25(1) of the Act was not warranted.

II. Background Facts

[3] The Applicant is a 68-year-old citizen of the UK. She arrived in Canada in March 2014. She has a sister and brother who also live in Canada; her mother and the rest of her siblings live in the UK.

[4] The Applicant was born in Kenya and migrated with her family to Uganda where her father secured employment in a mining plant. In 1972, President Idi Amin issued a decree banishing all Asians from the country. The family was expelled from Uganda and sought the assistance of the British government to relocate to the UK.

[5] The Applicant states that the while the UK many years ago represented a place of solace from being forcibly expelled from Uganda, it is also the country where she suffered many personal tragedies that left her with terrible memories. Should she be forced to return to the UK, the most significant hardship will be on her emotional health. The UK was the place where she lived in a refugee camp, dealt with the death of her father, lost all her possessions to a fire and faced internal familial strife that led to the breakdown of her close-knit family. She does not have

family members that she can rely on for support or a home to return to in the UK. Adjusting to life back in the UK would be difficult for her since she has fully adapted to life in Canada.

[6] The Applicant says she believed she came to Canada legally but was defrauded. She says she retained a lawyer in the UK to assist her with her in immigrating to Canada, who provided her with a citizenship card ultimately determined to be fraudulent in 2016.

[7] The Applicant was previously refused H&C relief in January 2019 and February 2021. She remained in Canada following these decisions.

[8] The case at bar concerns the Applicant's third H&C application made in 2022. The Applicant sought H&C relief on the grounds of establishment and emotional hardship upon return in the UK.

III. Decision Under Review

[9] In their reasons, the Officer held the Applicant had not met her burden of demonstrating H&C relief was justified. The determinative factors were establishment in Canada and hardship upon return in the UK.

[10] Specifically, about her establishment in Canada, the Officer found that the Applicant established "a pattern of sound financial management" and community involvement, but found "these are not uncharacteristic activities undertaken by individuals intending to reside in Canada. Rather, the Applicant has demonstrated a typical level of establishment and integration for a person in similar circumstances."

[11] The Officer notes that, based on the Applicant's allegations of hardship in her country of citizenship, she retained the services of a lawyer in the UK to assist her in immigrating to Canada and that upon completion of the process, the lawyer provided her with a Canadian citizenship card that was subsequently determined to be fraudulent.

[12] The Officer found that the Applicant has not remained in Canada due to circumstances beyond her control since she has continued to remain in Canada by her own volition without having the legal right to do so. This is the Applicant's third H&C application. The first was refused in January 2019; the second in February 2021. The Applicant has sustained her establishment efforts over the course of many years, being fully cognizant that she did not hold legal immigration status and that she was to depart Canada forthwith.

[13] The Officer also considered factors in the Applicant's country of origin, finding that she has experienced tragedy and misfortune while living in the UK, which invites empathy. However, the Officer did not find that the nature of these past events rises to a level that warrants the exceptional relief provided by an application of this nature. The Officer further noted that despite the difficult circumstances she faced in the UK, the Applicant has proven herself a resilient, resourceful, and astute individual.

[14] Ultimately, the Officer found that the Applicant made a personal, conscious choice to depart the UK for Canada and remain for an extended period without legal status:

> I find that her attachments to the UK may have faded as a direct result of this decision. Notwithstanding, she continues to be a national of the UK who lived and worked in the country for many years. By extension, she is familiar with its society and way of life. The Applicant receives pension benefits in the UK and has

> demonstrated the accrual of savings and property assets that could be used to assist with resettlement efforts in the UK.

[15] The Officer was also "not satisfied that the likelihood of the Applicant being insulated from the rising cost of living due to inflation would be greater in Canada than the UK."

IV. Issues and Standard of Review

[16] The issue in this application is whether the H&C Decision was reasonable.

[17] The parties agree and I concur that the merits of the RAD's decision are to be reviewed on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*]).

V. Legal Framework

[18] H&C is an exceptional and discretionary form of relief that is not meant to operate as an alternative immigration scheme (*Kanthasamy v Canada (Citizenship and Immigration)* [2015] 3 SCR 909 at paras 23, 93 [*Kanthasamy*]).

[19] Subsection 25.1(1) of *IRPA* governs H&C considerations. It states:

Humanitarian and compassionate considerations — Minister's own initiative	**Séjour pour motif d'ordre humanitaire à l'initiative du ministre**
25.1 (1) The Minister may, on the Minister's own initiative, examine the circumstances concerning a foreign national who is inadmissible — other than under section 34, 35, 35.1 or 37 —	**25.1 (1)** Le ministre peut, de sa propre initiative, étudier le cas de l'étranger qui est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 — ou qui ne se conforme pas à la présente

or who does not meet the requirements of this Act 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.	loi; 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

[20] H&C factors are assessed globally and weighed cumulatively (*Kanthasamy* at para 28). The test is "whether, having regard to all of the circumstances, including the exceptional nature of H&C relief, the Applicant has demonstrated that decent, fair-minded Canadians would find it simply unacceptable to deny the relief sought" (*Kanthasamy* at para 101).

VI. Submissions and Analysis

[21] The Applicant argues that the Officer unreasonably assessed her past circumstances and establishment in Canada and failed to consider her evidence about being defrauded.

[22] The Respondent submits the Decision is transparent, justified, and intelligible and thus reasonable per *Vavilov.*

A. *Assessment of Applicant's Past Circumstances*

[23] The Applicant submits the Officer did not explain why the Applicant's circumstances do not "rise[] to a level warranting H&C relief," making the finding arbitrary and unreasonable. The Applicant cites *Ekpenyong v Canada (Immigration, Refugees and Citizenship),* 2019 FC 1245 at paragraphs 21-24, 33-34 and *Komolafe v Canada (Citizenship and Immigration),* 2013 FC 431 at

paragraph 11 for this proposition. I note this concerns a temporary work permit and permanent residence application, respectively, and both decisions under review did not explain their reasoning process whatsoever.

[24] The Applicant further submits the Officer's reasoning on her resilience is "perverse" because "it suggests that an individual who has already endured severe hardship in their lives and survived is undeserving of relief because they will likely be able to withstand further hardship." The Applicant submits this is not aligned with a humanitarian and compassionate approach.

[25] The Applicant submits this Court has repeatedly found it unreasonable to turn positive establishment factors like adaptability and resilience into negative ones, i.e., as evidence they would be able to re-assimilate to their home country, mitigating the hardship of return (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at paras 23-28; *Amarasingam v Canada (Citizenship and Immigration)*, 2023 FC 655 at paras 36-39).

[26] The Respondent submits it is trite law that "'adequacy' of reasons… is not 'a stand-alone basis for quashing a decision'" (*Vavilov* at para 304, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14; see also *Adel v Canada (Citizenship and Immigration)*, 2018 FC 1205 at paras 20-22, citing *Osorio Diaz v Canada (Citizenship and Immigration)*, 2015 FC 373 at para 15).

[27] The Respondent further submits the Officer considered and weighed the Applicant's hardships against the exceptional nature of H&C relief. The Respondent argues the Applicant is

engaging in a “line-by-line treasure hunt for error” and asking the Court to reweigh the evidence — neither of which are the Court’s role in a reasonableness review (*Vavilov* at paras 102, 125).

[28] I agree with the Respondent. I find that the Officer summarized the hardships experienced by the Applicant while living in the UK and reasonably found that these events do not rise to a level that warranted relief. The Officer took in consideration the Applicant’s experience with the UK, her familiarity with the society, the pension benefits she receives from the UK, her savings and assets that can assist her and help her resettle there. I find that the Officer conducted a fulsome analysis of the Applicant’s personal circumstances, including past circumstances, and reasonably concluded that they do not meet the exceptional standard for H&C relief.

[29] I find no merit in the Applicant’s allegation that the Officer erred by stating she has proven herself to be a resilient, resourceful, and astute individual. Her ability to adapt upon returning to her country of nationality where she lived for decades is a relevant consideration. An officer only errs where speculating on such traits in the absence of evidence, or in conflating the establishment and hardship analysis. (*Mashal v Canada (Citizenship and Immigration)*, 2020 FC 900 at paras 34-36). This is not what occurred in this case.

B. *Consideration of Evidence*

[30] The Applicant submits the Officer failed to consider how being a victim of fraud led her to be without status in Canada and caused her hardship and shame, pointing to the Officer’s comment that she “made a personal, conscious choice to depart the UK for Canada and remain

for an extended period of time without legal status." The Applicant submits this evidence was central to her application.

[31] The Applicant cites *Cepeda-Gutierez v Canada (Minister of Citizenship and Immigration)*, (1998), 157 FTR 35, which states that "when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact" (at para 17). The Applicant submits consideration of the hardship on the Applicant from being defrauded might have led the Officer to a different conclusion.

[32] The Applicant also cites *Trinidad v Canada (Citizenship and Immigration)*, 2023 FC 65 [*Trinidad*], which found a negative H&C decision unreasonable because the officer "fail[ed] to engage with the evidence concerning the negligence of the consultant" and "fail[ed] to assess the circumstances surrounding the Applicant's non-compliance of immigration law before relying on it to discount the Applicant's positive establishment and accomplishments in Canada as a caregiver" (at para 40).

[33] I agree with the Respondent that the Officer was alive to the Applicant's circumstances and reasonably weighed this against her choice to remain in Canada without status. The Officer explicitly considered these factors in the Decision while noting this is the Applicant's third H&C application, making *Trinidad* distinguishable.

[34] The evidence regarding the hardship that the Applicant endured from the immigration fraud was before the Officer in the context of her status in Canada. The evidence does not

suggest this fraud would cause her hardship upon her return to the UK. The Officer cannot be faulted for duly discussing the Applicant's allegations of fraud in a manner relevant and responsive to her own submissions (*Carter v Canada (Citizenship and Immigration)*, 2022 FC 1019 at para 21).

[35] The Officer did not fail to consider that the Applicant was the victim of fraud that she was being provided with a fraudulent citizenship card by her lawyer in the UK. They specifically took note of it but considered that she has not remained in Canada due to circumstances beyond her control. Since finding out that the card was fraudulent, the Applicant has since continued to remain in Canada by her own volition without the legal right to do so.

[36] I find that the Applicant is asking this Court to reweigh the evidence, which is not its role on judicial review (*Vavilov* at para 125).

C. *Assessment of Establishment*

[37] The Applicant submits the Officer's failure to engage with her being a victim of fraud made the assessment of her establishment unreasonable. The Applicant focuses on the Officer's comment that the Applicant's level of establishment was "typical" and a result of her presence in Canada without status.

[38] The Applicant again cites *Trinidad* for the proposition that the Officer should have assessed the circumstances surrounding the Applicant's non-compliance of immigration law (at para 40; see also *Samuel v Canada (Citizenship and Immigration)*, 2019 FC 227 at para 17).

[39] The Respondent repeats its above submissions. The Respondent further cites *Sanchez v Canada (Citizenship and Immigration)*, 2021 FC 1349 at paragraphs 20-26 [*Sanchez*] and *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313 at paragraphs 23-24 [*Shackleford*], which both held it is reasonable for an officer to give negative weight to an H&C applicant's establishment being a result of their decision to remain in Canada without status.

[40] Respectfully, I agree with the Respondent. The Officer found that notwithstanding the original fraudulent citizenship card that resulted in the Applicant entering Canada, and despite being fully cognizant that she did not hold legal immigration status in Canada, the Applicant voluntarily remained in the country, which means that her continued presence and efforts to establish herself in Canada are not due to circumstances beyond her control. I find that these considerations are relevant to an analysis of her establishment in Canada. It was reasonable for the Officer to consider them. Failure to regularize immigration status can be a factor that mitigates one's establishment in Canada (*Sanchez* at paras 20-26; *Shackleford* at paras 23-24).

[41] Ultimately, noting the Applicant has demonstrated a typical level of establishment in Canada, is "typical" not an error made by the Officer. In this case, the mere use of the word "typical" is not proof that the Officer applied an unreasonably high threshold. (*Davis v Canada (Citizenship and Immigration)*, 2022 FC 238 at paras 43, 47.)

VII. Conclusion

[42] I am satisfied that the Officer did consider all the information submitted. The Decision was reasonable.

[43] The parties did not raise a question for certification and I agree that none arises in this case.

JUDGMENT in IMM-6419-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"L. Saint-Fleur"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-6419-23
STYLE OF CAUSE:	DIANA GILES MENDOZA v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO (ONTARIO)
DATE OF HEARING:	JANUARY 13, 2025
JUDGMENT AND REASONS:	SAINT-FLEUR J.
DATED:	JANUARY 30, 2025

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