Federal Court Cour fédérale

Date: 20250304

Docket: IMM-3749-24

Citation: 2025 FC 402

Toronto, Ontario, March 4, 2025

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

MA VELGA SANCHEZ PANCHO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of the Philippines, is a single mother of four Canadian-born children ranging in age from two to nine. She challenges a decision of a Senior Immigration Officer [Officer] dated February 22, 2024, refusing the Applicant's application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Her H&C application was based on her establishment in Canada, undue hardship as a single mother in the Philippines and the best interests of her children [BIOC].

[2] While the Applicant asserts that the decision was unreasonable on a number of bases, I find that the Officer's flawed BIOC analysis is determinative.

[3] The applicable standard of review of an H&C decision is reasonableness [see *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44]. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[4] In *Kanthasamy*, the Supreme Court of Canada confirmed that in subsection 25(1) applications, "the decision-maker should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them" [see *Kanthasamy, supra* at para 38]. While the Court notes that this does not mean that this factor must always outweigh other considerations or that an H&C claim will be successful, a decision under subsection 25(1) will be unreasonable if the "well identified and defined" interests of children affected are not sufficiently examined "with a great deal of attention" [see *Kanthasamy, supra* at para 39]. Once that is done,

it is up to the officer to determine what weight those interests should be given in the circumstances [see *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 12].

[5] I agree with the Respondent that the Applicant provided limited evidence and submissions as to the best interests of her children. However, officers are under a duty to consider children's best interests when conducting H&C determinations when, as here, there is some evidence before them that would engage the interests of a child. An officer is required to clearly articulate what is in the best interests of the child and then weigh this against the other positive and negative elements in the H&C application [see *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 at paras 13, 16].

[6] In this case, I find that the Officer failed to identify what was in the best interest of each of the children. Although the analysis briefly addresses the Applicant's oldest children and how their departure might cause them discomfort, the Officer fails to address considerations relevant to the two youngest children. *Kanthasamy* requires that the BIOC analysis by applied in a manner responsive to each child's particular age, capacity, needs and maturity, which was not done in this case [see *Kanthasamy*, *supra* at para 35].

[7] Moreover, the Officer improperly focused their BIOC analysis through a basic needs and hardship lens, focusing on how the children's potential hardships from leaving Canada could be alleviated by "the emotional support, care and love of their mother" and maternal family. The Officer thus appears to be saying that the children's best interests will lie with staying in Canada only when the alternative country fails to meet their basic needs, which is an incorrect approach

that this Court has repeatedly rejected [see *Sebbe, supra*; *Manriquez v Canada (Citizenship and Immigration)*, 2022 FC 298; *Koos v Canada (Citizenship and Immigration)*, 2022 FC 1762; *Raposo Arruda v Canada (Citizenship and Immigration),* 2024 FC 1691].

[8] The BIOC assessment must include an analysis of the benefits of the children remaining in Canada (the only place they have ever known) as well as the hardship they would suffer if their parent were removed [see *Raposo Arruda, supra* at para 10]. Similar to the Officer in *Raposo Arruda*, the Officer here did not consider the degree to which the children's best interests would be compromised by one decision over the other. Rather, the Officer improperly took removal as the starting point and then spent their analysis justifying why removal would not compromise the BIOC.

[9] The Officer's decision contains a further error as it relates to the evidence concerning the children's relationship with their father and the relevant hardship to the children should they be separated from him. The Officer notes that counsel's submissions indicate that the children have semi-supervised visits with their father every weekend for a few hours. However, the Officer goes on to find that the asserted hardship should be given "little weight" because "as per the applicant, their father sees the children infrequently due to his drug addiction, he is of no fixed address and is unemployed". The Officer appears to have ascribed limited weight to this consideration based on an apparent contradiction between counsel's submission and the evidence of the Applicant herself. However, nowhere in the record before the Officer was there any statement made by the Applicant that the children see their father infrequently. This mischaracterization of the evidence renders the Officer's assessment of this component of the BIOC analysis flawed.

[10] I find that the various errors made by the Officer in their BIOC analysis renders the decision unreasonable. Accordingly, the application for judicial review is allowed.

[11] The parties have proposed no question for certification and I agree that none arises.

JUDGMENT in IMM-3749-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision of the Officer dated February 22, 2024, is set aside and the matter is remitted to another officer for redetermination.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3749-24
STYLE OF CAUSE:	MA VELGA SANCHEZ PANCHO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 4, 2025
JUDGMENT AND REASONS:	AYLEN J.
DATED:	MARCH 4, 2025

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