Federal Court  Cour fédérale

Date: 20250502

Docket: IMM-1486-24

Citation: 2025 FC 798

Ottawa, Ontario, May 2, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

RENOLD FRANCISQUE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Renold Francisque [Applicant], seeks judicial review of a decision by a Senior Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] dated January 5, 2024, confirming the refusal of an application for permanent residence on humanitarian and compassionate grounds [H&C]. The Officer found that the Applicant is inadmissible to an H&C because he committed an act outside of Canada that constitutes a crime

against humanity pursuant to subsection 35(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant submitted additional documents and asked for a reconsideration of the refusal in light of those new documents. The Officer considered the subsequent submissions and did not find that any changes in the original decision was warranted.

[2] For the reasons that follow, this application for judicial review is dismissed. The Officer's refusal to reconsider the decision rejecting the H&C application was not unreasonable.

II. Pertinent Facts and Decision under Review

[3] The Applicant is a citizen of Haiti. In February 2008, the Applicant arrived in Canada where he made a refuge claim. This claim was later refused by the Refugee Protection Division [RPD]. On May 23, 2018, the Applicant submitted his application for permanent residence on H&C grounds.

[4] On November 3, 2023, the Officer refused the application, finding the Applicant inadmissible under subparagraph 35(1)(a) of the IRPA [H&C Decision]. In the H&C Decision, the Officer found, among other things, that at the RPD hearing in July 2010, the Applicant self-declared himself as being a member of the "Volontaires de Sécurité Nationale" also known as "TonTon Macoutes" [TM] from 1984 to 1985. The Officer found that there are reasonable grounds to believe that the TM committed crimes against humanity from 1959 to 1986. Based on the Applicant's declarations, the Officer determined that there are reasonable grounds to believe that the Applicant participated in those crimes against humanity. The Applicant's role within the

TM met the legal test of complicity outlined in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40.

[5] On November 30, 2023, the Applicant requested a reconsideration of the H&C Decision and submitted additional documents.

[6] On January 5, 2024, the Officer responded to the Applicant's reconsideration request [Reconsideration Decision]. The Officer considered the additional evidence submitted by the Applicant, which included a Police Security Clearance certificate from Haiti and his counsel's explanation on "why there was a delay in submitting this documentation". The Officer explained that he reviewed the Applicant's new submissions and accepted the reason for the delay in submitting the documents. However, the Officer found that these new submissions did not change the H&C Decision. The fact remained that the Applicant previously self-declared himself to be a member of the TM at the RPD hearing. The Officer placed heavy weight into this initial declaration. There was no reason to believe that the Applicant would self-declare his membership and yet not be a member of the TM. The Officer concluded that the H&C Decision of November 3, 2023, stands and the application was refused. The Reconsideration Decision is the subject of the application for judicial review.

III. Issues and Standard of Review

[7] The issue in the present case is whether the Reconsideration Decision is reasonable.

[8] The parties submit that the standard of review with respect to the merits of the Reconsideration Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25). I agree that reasonableness is the applicable standard of review.

[9] To avoid intervention on judicial review, a decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision-maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

[10] In respect to allegations of procedural fairness, the Court's task is to determine "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]). If a proper allegation of a breach of procedural fairness has been framed, the Court will review the alleged breach on the standard of correctness (*Canadian Pacific* at para 34 citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

IV. Analysis

[11] The Applicant argues that Officer's decision was not reasonable as he failed to consider and analyze the entire evidence before him. The Applicant alleges that the Officer provided no

reasons regarding the evidence he analyzed nor how he analyzed it. More specifically, the Officer made erroneous findings of fact without regard to the material evidence before him and failed to provide sufficient reasons to support the decision, all of which fails to fulfill the requirements of transparency, intelligibility and justification as required under the framework established by *Vavilov*.

[12] Additionally, the Applicant argues that the Officer breached procedural fairness when he relied on the RPD's decision. The Applicant submitted that the evidence before the RPD is different than the evidence filed in the H&C application. Hence, by relying on the RPD's decision, the Officer used evidence that was not before him.

[13] On the other hand, the Respondent alleges that the Applicant is trying to collaterally attack the H&C Decision which he cannot do in the present judicial review. In his Application for Leave and Judicial Review, the Applicant only challenged the January 5, 2024, Reconsideration Decision, and has never challenged the H&C Decision. It is improper for the Applicant to challenge the H&C Decision at this juncture. According to the Respondent, the Reconsideration Decision is reasonable in light of the new submissions and evidence that was before the Officer.

[14] The following paragraphs outline the applicable framework surrounding reconsideration decisions as described in this Court's jurisprudence.

[15] First, immigration officers have jurisdiction to reconsider their decisions on the basis of new evidence or further submissions (*Canada (Citizenship and Immigration) v Kurukkal*, 2010 FCA 230 at paras 3-5). However, there is no general obligation on officers to reconsider their decisions. The onus is on the applicant to show that this is warranted in the interests of justice or because of the unusual circumstances of the case (*AB v Canada (Citizenship and Immigration),* 2021 FC 1206 at para 22 [*AB*]).

[16] The process involves two stages. At the first stage, the officer must decide whether to "open the door to a reconsideration" (*Katumbus v Canada (Citizenship and Immigration),* 2022 FC 428 at para 11 [*Katumbus*]). If the officer decides to reopen the case, then at the second stage, the officer must engage in a reconsideration of the decision on its merits (*Jaworski v Canada (Citizenship and Immigration),* 2024 FC 393 at para 12 [*Jaworski*]).

[17] It is important to determine whether the Officer refused the Applicant's request for reconsideration at the first or second stage because the scope of an officer's assessment of a reconsideration request and the substance of the reasons they must provide to an applicant differ at each stage (*Katumbus* at paras 11-12, other citations omitted).

[18] Having considered how the parties articulated their submissions, it is clear that they disagree on whether the Officer undertook a first or a second stage decision. The Applicant's arguments focused on his position that the evidence submitted in his reconsideration request demonstrated that the Applicant was not a member of the TM. This position was argued in the H&C application after the Officer provided procedural fairness letters to the Applicant. The

Applicant's submissions would, in my view, address an assessment in the second stage. The Respondent argues that the Officer proceeded in a first stage assessment and objects to the Applicant's submissions on the merits of the H&C Decision.

[19] I find that the Officer engaged with the first stage in the context of the Reconsideration Decision. In other words, the Reconsideration Decision engaged with the Applicant's new documents and submissions to assess whether they warrant reopening the H&C Decision.

[20] In a reconsideration decision, it is inevitable that an officer will need to examine the reasons put forward to reopen a decision, and this will entail some consideration of the submissions of an applicant about why it is in the interests of justice or necessary in the circumstances to reconsider the original decision (*AB* at para 31).

[21] Simply mentioning or describing the new evidence does not, in and of itself, indicate that the Officer made a decision at the second stage. Indeed, if an officer failed to engage to a certain degree with the new evidence and submissions at the first stage, this would raise a valid concern about the reasonableness of an officer's refusal to reopen a decision (*Jaworski* at para 14 citing *Katumbus* at para 18).

[22] An assessment of the intelligibility and justification of an officer's refusal to reopen should consider the nature of the materials submitted and the specific context of the case. Given my finding that the Officer engaged in the first stage, the requirements to justify a refusal to reopen a decision is not at the high end of the scale, and much depends on the actual

circumstances of the case and the nature of the request (*Jaworski* at para 19, citing *AB* at paras 43-44).

[23] As the Respondent appropriately identified, the issue of the Applicant's membership in the TM and potential inadmissibility on this ground was fully canvassed in the context of the H&C application, with procedural fairness letters setting out the issues and providing the Applicant with an opportunity to respond. The evidence of the Applicant "recanting his previous statement" that he was a member of the TM before the RPD was considered in the H&C Decision. The additional evidence in the reconsideration request sought to provide more information to substantiate this position. The Applicant had submitted that the Police Security Clearance certificate (supported by other references and articles) shows he could not have been a member of the TM.

[24] The Officer assessed the Police Security Clearance certificate and concluded that "after a review of the additional submissions" and after assessing the additional documents, his "decision rendered on the 3rd of November 2023 stands. The application is refused."

[25] In *Tanyanyiwa v Canada (Citizenship and Immigration)*, 2023 FC 559 [*Tanyanyiwa*], Justice Further found that this type of analysis indicated that the officer did not move beyond the first stage, and that the officer's conclusion (even if the decision was brief) was a logical conclusion to refusing to reconsider the H&C Decision (*Tanyanyiwa* at para 21). I find this to be the case for the Applicant as well.

[26] Similarly, in considering the Applicant's submissions provided in his reconsideration request against the backdrop of the initial H&C submissions, I find that the Reconsideration Decision is consistent with other denials of a request to reconsider. The Officer engaged directly with the Applicant's submissions on his reconsideration request and explained why this new evidence was not sufficient to warrant the reconsideration of the H&C Decision.

[27] I concur with the Respondent's submission that the Applicant's challenge goes to the merits of H&C Decision, including arguments that the Officer did not follow the guidelines for reconsiderations. The Reconsideration Decision focused on whether to reopen the H&C Decision or not. The Applicant's arguments could have been applicable had I found that the Officer engaged in a second stage assessment, which I did not.

[28] While the Applicant contends that the Reconsideration Decision ought to have been more fulsome, I also cannot agree with this argument. Rather, Justice Fuhrer reiterated that even in the absence of extensive or any reasons, the priority on reasonableness review is to look to the record as a whole to understand the decision and uncover the underlying rationale (*Tanyanyiwa* at para 18, other citations omitted). These matters serve as a reminder that the written reasons given by an administrative body must not be assessed against a standard of perfection (*Tanyanyiwa* at para 22 citing *Vavilov* at para 91).

[29] Finally, the Applicant's arguments on the breach of procedural fairness, are more akin to arguments relating to the reasonableness of the Reconsideration Decision. The Applicant's

arguments on procedural fairness do not pertain to an analysis of “whether the procedure was fair having regard to all of the circumstances”.

V. Conclusion

[30] The Reconsideration Decision is transparent, intelligible and justifiable in light of the legal and factual constraints that bear on it. As such, I cannot find that the Reconsideration Decision is unreasonable. The application for judicial review is dismissed.

[31] The parties do not propose any question for certification, and I agree that in these circumstances, none arise.

JUDGMENT in IMM-1486-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1486-24
STYLE OF CAUSE:	RENOLD FRANCISQUE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	EDMONTON (ALBERTA)
DATE OF HEARING:	MARCH 12, 2025
JUDGMENT AND REASONS:	NGO J.
DATED:	MAY 2, 2025

APPEARANCES:

Sukhwinder Singh Sandhu	FOR THE APPLICANT
Meenu Ahluwalia	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Purewal Law Barristers and Solicitors Edmonton (Alberta)	FOR THE APPLICANT
Attorney General of Canada Edmonton (Alberta)	FOR THE RESPONDENT