

Federal Court



Cour fédérale

Date: 20250611

Docket: IMM-13011-24

Citation: 2025 FC 1046

Toronto, Ontario, June 11, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

TRONG THUC MAC

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated July 10, 2024, by a senior immigration officer [the Officer] of Immigration, Refugees and Citizenship Canada [IRCC], refusing the Applicant's application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] As explained in further detail below, this application for judicial review is allowed, because the impugned decision is unreasonable in that the Officer erred by applying a standard requiring the Applicant to demonstrate exceptional circumstances in order to warrant H&C relief.

II. **Background**

[3] The Applicant is a citizen of Vietnam who arrived in Canada in January 2017 under a study permit that expired in January 2018. In March 2019, the Applicant's spouse at the time applied to sponsor the Applicant for permanent residence. This application was withdrawn on February 4, 2022, following the end of the couple's relationship. At that time, the Applicant held a work permit that expired on December 14, 2023.

[4] The Applicant does not currently meet the legislative requirements for permanent residence under either the family reunification or economic streams. As such, on October 17, 2022, the Applicant applied for permanent residence from within Canada based on H&C considerations, under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[5] The Applicant based his H&C application on the following factors: his *de facto* family ties in Canada, his establishment in Canada, his health, the best interests of the concerned Canadian children [BIOC], and hardship and adverse country conditions in Vietnam including religious discrimination, retaliation for political beliefs, and lack of support. Simultaneously, on

the same grounds, the Applicant requested a temporary resident permit [TRP] as an alternative to his permanent residence application.

[6] Generally, the Applicant submits he has established significant social, community, and economic ties in Canada. Specifically, the Applicant notes the important role he fulfills in the lives of various young children, including his godson, and that his sister resides in Canada. The Applicant argues he will face hardship in Vietnam, because he is a practicing Catholic, is an opponent of the current communist government, and eventually will be without family in Vietnam due to their immigration plans.

III. **Decision under Review**

[7] By letter dated July 10, 2024, the Officer communicated the decision that is the subject of this application for judicial review. In that letter, the Officer refused Applicant's application for permanent residence, because the Officer determined that the H&C factors cited by the Applicant were insufficient to grant the Applicant an exemption from certain requirements under the IRPA and the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[8] The Officer's reasons are further contained in an associated document entitled "Humanitarian & Compassionate Grounds – Reasons for Decision" [the Decision]. In the Decision, the Officer considered the following H&C factors: the Applicant's establishment in Canada, including social, community, and employment connections, his family ties in Vietnam, BIOC, the Applicant's health, and adverse country conditions in Vietnam, including religious discrimination and retaliation due to political beliefs.

[9] The Officer afforded some positive weight to the Applicant's employment in Canada, his overall financial stability, the demonstrated support through letters and a petition that the Applicant remain in Canada, and his integration into his community in Canada. However, the Officer found these factors demonstrated only a typical level of establishment in Canada. The Officer found the Applicant purchased his nail salon knowing that his immigration status was uncertain. The Officer also found that the evidence failed to demonstrate that the Applicant's friends would experience a high level of anxiety following his departure, the extent or detail of the Applicant's community involvement, the extent of financial support sent by the Applicant back to families and students in Vietnam, or that the Applicant's remaining family would be leaving Vietnam imminently. Moreover, the Officer noted that the Applicant's sister's immigration status in Canada was uncertain.

[10] Regarding BIOC, specifically in relation to the Applicant's godson and other friends' children with whom the Applicant has a close relationship, the Officer found that there was little corroborative evidence to support that these children are dependent on the Applicant. Particularly, the Officer noted the continued support of the children's parents in Canada and that the Applicant could continue to offer support to these children virtually. As a result, the Officer placed only some positive weight upon the BIOC considerations.

[11] Additionally, while the Officer accepted that the Applicant may be experiencing some level of anxiety due to his uncertain status in Canada, the Officer found limited evidence to establish that the Applicant currently suffers from a serious psychiatric illness, that his return to

Vietnam would result in degradation of his symptoms, or that appropriate treatment is not available in Vietnam.

[12] Finally, the Officer found insufficient evidence to support the Applicant's assertions that he would face hardship in Vietnam based on his religion or political beliefs, an inability to find employment, or Vietnam's healthcare system.

[13] The Decision concludes with the following paragraphs:

TRP request

The applicant is requesting a TRP simultaneously with his H&C application. Having carefully reviewed the applicant's materials I find that the applicant has not satisfied me that there are sufficient reasons to justify the issuance of a TRP. By seeking a TRP the applicant bears the onus of satisfying an officer that he has an exceptional circumstance with compelling reasons that overcome his inadmissibility as an overstay, and I find that the applicant has not done so in this case. This TRP application is refused.

Conclusion

The applicant has resided in Canada for approximately seven and a half years. I have considered the applicant's ties in Canada, including the best interests of his friends' children, his establishment, and his concerns with returning to Vietnam, including his religion. I understand the PA does not wish to return to Vietnam. I empathize with the applicant and understand that he invested his money into his nail salon, however he ought to have known that given his uncertain immigration status, removal from Canada could be a possibility.

I accept that the applicant may feel that living in Vietnam is not ideal for him and that he wishes to live in Canada. However, H&C applications are not meant to replace or bypass the regular immigration system. H&C applications are for individuals with exceptional circumstances that would hinder or prevent them from seeking out regular immigration streams. The applicant came to

Canada as a student on a student permit knowing that he would have to leave once his status lapsed. Applications examined on humanitarian and compassionate grounds are not considered another class of attaining permanent residency but rather considered a mechanism that an applicant who may not qualify for permanent residency under the regular classes and facing exceptional circumstances may employ.

I have assessed the application globally, and weighed all the factors submitted cumulatively, including best interest of the children consideration. I am not satisfied, given the evidence on file and given the particular circumstances of the PA to warrant an exemption. It is widely understood that invoking subsection 25 and 25(1) of the Act is an exceptional measure and not simply an alternate means of applying for permanent resident status in Canada.

The application is **refused**.

[Emphasis in original.]

IV. **Legislative Framework**

[14] Subsection 25(1) of the IRPA provides as follows:

Humanitarian and compassionate considerations —request of foreign national

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

Séjour pour motif d'ordre humanitaire à la demande de l'étranger

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

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.

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.

V. Issue

[15] The sole issue for the Court's determination in this application for judicial review is whether the Decision is reasonable. As contemplated by that articulation of the issue, the merits of the Decision are to be assessed on the reasonableness standard of review, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (paras 16–17).

VI. Analysis

[16] The Applicant's principal argument in challenging the reasonableness of the Decision is that the Officer erred by requiring the Applicant to demonstrate exceptional circumstances in support of his H&C application. The Applicant submits that the jurisprudence has repeatedly found the imposition of an exceptionality requirement of this nature to be a reviewable error, rendering an H&C decision unreasonable (e.g., *Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 [*Henry-Okoisama*] at paras 41–47).

[17] The Applicant bases this argument on the paragraphs of the Decision quoted earlier in these Reasons, in which the Officer employs the language “exceptional circumstance” and “exceptional circumstances”. The Respondent submits that the Applicant's argument is

misplaced, in that the mere use of the word “exceptional” in an H&C analysis is not a reviewable error as long as the use is instructive or descriptive and not determinative. The Respondent refers the Court to *Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 at paragraph 15, and *Perez Fernandez v Canada (Citizenship and Immigration)*, 2019 FC 628 at paragraph 21, which explain that what matters is not the specific words chosen but rather whether an H&C officer’s reasons provide a justification that accords with the direction provided by the majority decision of the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61.

[18] I accept the jurisprudential principles on which both parties rely. The Court’s task is to apply these principles to the case at hand to assess whether the Decision demonstrates the sort of error identified in *Henry-Okosama* and similar authorities. The Respondent argues that it does not, in that the language of “exceptional circumstances” appears only in the final paragraphs of the Decision, including the paragraph that considers the TRP request, not in the portions of the Decision in which the Officer analyses the various H&C factors that the Applicant advanced.

[19] However, as the Applicant emphasizes in reply to this argument, it is only in the final paragraphs of the Decision that the Officer provides the assessment as to whether the Applicant’s H&C factors warrant the requested relief. In earlier portions of the Decision, the Officer considers the evidence and arguments advanced by the Applicant in relation to each of the factors and decides how much weight should be afforded to each (and principally assigns some level of positive weight). It is then in the final paragraphs that the Officer determines that these H&C factors, as previously analysed and weighed, do not warrant an exemption. In arriving at

that conclusion, the Officer states that H&C applications are for individuals with exceptional circumstances and represent a mechanism that can be employed by an applicant who may not qualify for permanent residence under regular classes but who faces exceptional circumstances.

[20] I agree with the Applicant that this analysis clearly falls afoul of the now well-established principle that an individual's circumstances do not need to be exceptional to warrant H&C relief (*Henry-Okoisama* at para 41). A decision is unreasonable if it requires that an applicant demonstrate exceptionality as a condition for H&C relief (*Galindo Caballero v Canada (Citizenship and Immigration)*, 2024 FC 642 at para 14).

[21] I find that the Decision is unreasonable and will allow this application for judicial review. It is therefore unnecessary for the Court to consider the Applicant's other arguments challenging the reasonableness of the Decision.

[22] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-13011-24

THIS COURT'S JUDGMENT is that this application for judicial review is allowed,
the Decision is set aside, and the matter is returned to another IRCC officer for redetermination.
No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13011-24

STYLE OF CAUSE: TRONG THUC MAC v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 10, 2025

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: JUNE 11, 2025

APPEARANCES:

Jared Will	FOR THE APPLICANT
Pavel Filatov	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jared Will & Associates Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT