Federal Court  Cour fédérale

Date: 20250710

Docket: IMM-15287-23

Citation: 2025 FC 1230

Toronto, Ontario, July 10, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

GEORGE SVANIDZE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Svanidze seeks judicial review of a decision by an Immigration, Refugees and Citizenship Canada officer, denying his application for permanent residence on humanitarian and compassionate grounds [H&C]. The Officer was not satisfied that Mr. Svanidze's establishment in Canada or adverse country conditions justified an exemption under subsection 25(1) of the Immigration *and Refugee Protection Act*, Sc 2001, c 27 [*IRPA*].

[2] For the following reasons, I grant the application as I find that the decision is not only internally incoherent and at times unjustified, but also fails to demonstrate the compassionate approach that the case law demands of decision-makers for H&C applications.

I. BACKGROUND

[3] Mr. Svanidze is a 54-year old citizen of Georgia. He and his father left Georgia in 1992, when Mr. Svanidze was 21 years old, due to persecution for their involvement in the national liberation movement there. Mr. Svanidze has never returned. He and his father settled in Armenia, where they lived without status for the next seven years, with brief stays in Italy and Germany. In 1999 they moved to the USA and remained there without legal status for the next 18 years. On July 10, 2018, Mr. Svanidze and his father entered Canada to seek refugee protection, on advice from his sister who is a Canadian citizen.

[4] Mr. Svanidze's refugee claim, along with that of his father, was dismissed by the Refugee Protection Division of the Immigration and Refugee Board on April 20, 2021, based on the lack of corroborative evidence and the failure to make a claim for refugee protection in Italy, Germany and the United States. Their appeal to the Refugee Appeal Division was never perfected, as Mr. Svanidze's counsel suddenly passed away.

[5] Mr. Svanidze applied for permanent residence on H&C grounds on February 9, 2023. He adduced supporting evidence to demonstrate his establishment in Canada and ties to family here; the hardship arising from return to a country from which he had been absent since his youth, three decades earlier; and adverse country conditions that would cause him hardship, including

the risks of a Russian invasion of Georgia, discrimination against members of his religious group (Baptist Christians), and inadequate healthcare and social assistance (matters that were particularly salient because of the poor health and advanced age of Mr. Svanidze's father, who had applied for H&C consideration at the same time and was expected to accompany Mr. Svanidze back to Georgia if their applications were refused). A few days after filing his H&C application, Mr. Svanidze also submitted an application for a pre-removal risk assessment [PRRA].

[6] On September 6, 2023, while these applications were still in process, Mr. Svanidze's father passed away, and was buried in Canada. The PRRA and H&C applications were refused a month later, on October 6 and 11, 2023, respectively; however, the news of Mr. Svanidze's father's death had not yet been communicated to IRCC at the time of these decisions.

[7] In refusing the H&C application, the Officer determined that Mr. Svanidze's establishment in Canada and the hardship he would face upon return to Georgia were insufficient to warrant granting the application.

[8] Mr. Svanidze was scheduled for removal soon after being served with the negative decisions, but on January 30, 2024, Justice Elizabeth Heneghan stayed his removal pending the final disposition of this application for judicial review.

II. ISSUES

[9] The parties raise two issues for determination by this Court:

a) The admissibility of the parts of Mr. Svanidze's affidavit which relate to his father's death, as it was not before the Officer;

b) Whether the decision refusing his H&C application was reasonable.

[10] The standard of review applicable to the H&C decision is reasonableness. 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 bearing upon it (*Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 at para 85 [*Vavilov*]). The hallmarks of reasonableness are justification, intelligibility and transparency (*Vavilov* at paras 15, 100). As the Supreme Court explained in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at para 10, the principle at the heart of this standard is "responsive justification." While administrative decision-makers need not respond to every argument or line of possible analysis, the failure to meaningfully grapple with key issues or central arguments may call into question whether the decision-maker was actually alert and sensitive to the matter before it (*Vavilov* at para 128).

[11] Where, as here, "the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (*Vavilov* at para 133).

III. ANALYSIS

A. *Admissibility of the new evidence*

[12] The Respondent challenges the admissibility of Mr. Svanidze's evidence about the death of his father while his H&C application was under consideration. He argues that because the evidence was not provided to the decision-maker and therefore does not constitute part of the tribunal record, it is inadmissible on this judicial review. He maintains that none of the recognized exceptions to this general rule are met, citing the Federal Court of Appeal's summary

of the exceptions in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20 [*Access Copyright*].

[13] I agree.

[14] Mr. Svanidze's reliance on *Palmer v The Queen*, 1979 CanLII 8 (SCC), [1980] 1 SCR 759 to argue that the new evidence should be admitted is misplaced. *Palmer* sets out the test for the admission of new evidence on appeal. This matter is not an appeal, however; it is a judicial review. While I do not rule out the possibility that in appropriate circumstances the test in *Palmer* may have a role to play in a judicial review, Mr. Svanidze has not established that this is such a case nor provided any basis upon which I might distinguish the line of jurisprudence cited in *Access Copyright*. I therefore find that the portions of the affidavit and related exhibits detailing the death of Mr. Svanidze father are inadmissible.

[15] My determination that the new evidence is inadmissible in this judicial review should not be misconstrued as a finding that the evidence is irrelevant; to the contrary, as argued by Mr. Svanidze it clearly establishes a strong additional basis upon which the application could have been granted had it been placed before the Officer either before the decision was rendered or in support of a request to reopen the application after refusal. For this judicial review, however, I am limited to the record that was before the Officer at the time the impugned decision was rendered.

B. *Legislative context*

[16] The statutory provision under which the H&C application was made, section 25 of the *IRPA*, is intended to offer equitable relief where there are "facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes 'warrant the granting of special relief'" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, paras 13, 21, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338). Officers must apply compassion when reviewing the applications before them and must approach an applicant's circumstances with genuine empathy. This is especially so when evaluating hardship. As Justice Campbell explained in *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212:

> [33] .... Thus, the Guideline test requires a subjective as well as an objective evaluation of hardship: unusual hardship might only require an objective analysis, whereas undeserved and disproportionate impact hardship requires both an objective as well as a subjective analysis. A subjective analysis requires that the facts be viewed from an applicant's perspective. In particular, a disproportionate impact analysis must reflect an understanding of the reality of life a person would face, in body and mind, if forced to leave Canada. In my opinion, to be credible in determining these essential features, a decision-maker must apparently, and actually, apply compassion.
>
> [34] Applying compassion requires an empathetic approach. This approach is achieved by a decision-maker stepping into the shoes of an applicant and asking the question: how would I feel if I were her or him? In coming to the answer, the decision-maker's heart, as well as analytical mind, must be engaged.

[17] What it boils down to, as Justice Anne Turley recently put it, is that "[u]ltimately, H&C applications are an exercise in empathy" (*Fernandez v Canada (Citizenship and Immigration)*, 2025 FC 752, at para 9).

C. *Reasonableness of the decision*

[18] Mr. Svanidze challenges the Officer's analysis of his establishment in Canada and the hardship he will face if required to return to Georgia. I will limit my review to the reasonableness of the hardship finding, which is determinative.

[19] Mr. Svanidze submitted that requiring him to return to Georgia would cause him hardship due to:

- The lack of connection to the country after over 30 years away;
- Poor employment, health care and social assistance conditions;
- Religious discrimination;
- Risks arising from a potential invasion by Russia.

[20] I find the Officer's reasoning on the first three factors to be unreasonable and a sufficient basis upon which to quash the decision.

[21] In an affidavit submitted in support of his H&C application, Mr. Svanidze explained that he had fled Georgia in 1992, when he was just 21 years old. He was 52 when he filed his H&C application and had been living in North America for 24 years, the last five in Canada. He explained that he had only one remaining family member in Georgia, an aunt with whom he had no contact, and had no other connections there. His sister lives in Canada and his mother is buried here. Having been away from Georgia for over 30 years, he explained, his contacts with the place, the people and the community were severed, and it would be impossible to restart a life there.

[22] Although the Officer considered Mr. Svanidze's five years in Canada when assessing his establishment here (finding it to be a "fairly short period of time"), there is nothing in the decision to indicate the Officer grappled with the general hardship arising from Mr. Svanidze's return to a country he fled with his father three decades ago when he was barely out of his teens, and where he now has no connections.

[23] To be sure, as noted by the Respondent, the Officer considered Mr. Svanidze's employment prospects in Georgia, but even this was done in a manner that was internally inconsistent and unreasonable. When assessing Mr. Svanidze's establishment in Canada, the Officer found that he had been unable to obtain a work permit in Canada and had been unemployed since arrival, concluding that Mr. Svanidze would be "unlikely to be able to financially support himself in Canada" and identifying this as a negative factor. However, when assessing hardship in Georgia the Officer came to the opposite conclusion: despite lacking the family support and community contacts that he has in Canada, and notwithstanding the high unemployment rate in Georgia, the Officer found it "likely that the applicant would be able to obtain employment that would enable him to support himself if he was to return to Georgia."

[24] The Officer's consideration of religious discrimination is likewise unreasonable. The Officer accepted that Mr. Svanidze is Baptist and acknowledged the evidence showing attacks against Baptist churches in the past and recent reports of discrimination against Baptists. However, the Officer then observed that Mr. Svanidze had not indicated that he had experienced religious persecution "during the many years that he previously resided in Georgia" (the vast majority of which were as a minor), and concluded:

> [T]he applicant, as a Baptist, might face some discrimination if he was to return to Georgia. However, I note that this is only one of the factors for consideration on this H&C application and I note that a determination on an H&C application is based on a global review of all of the factors for consideration that applicants bring forward.

[25] There is no indication that the Officer took religious discrimination into account in coming to the finding about Mr. Svanidze's employment prospects in Georgia, nor has the Officer explained how the finding of religious discrimination played into the overall weighing of factors.

[26] I find that the Officer applied a largely rote, siloed assessment of individual factors raised by Mr. Svanidze, dismissing them one by one as "insufficient" on their own to warrant H&C consideration. Not only was the Officer's analysis of some of those individual factors unreasonable as explained in the preceding paragraphs, I am also unable to discern any real attempt by the Officer to apply compassion when assessing the facts, or to evaluate the overall circumstances of Mr. Svanidze with empathy. As such the decision is clearly unreasonable and must be set aside.

[27] Because I find the unreasonableness of the Officer's hardship analysis to be a reviewable error, I will make no additional findings about the Officer's assessment of Mr. Svanidze's establishment in Canada, a factor that will need to be re-evaluated in any event upon redetermination.

[28] The parties have not proposed a question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-15287-23

THIS COURT'S JUDGMENT is that:

1. The decision of the officer dated October 11, 2023, is set aside.

2. The application shall be remitted to a different officer for redetermination in accordance with these reasons. The Applicant shall be provided with a reasonable opportunity to provide updated submissions and evidence.

3. No question is certified.

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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