

Federal Court



Cour fédérale

Date: 20250722

Docket: IMM-7684-24

Citation: 2025 FC 1312

Ottawa, Ontario, July 22, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

JOSE ALBERTO SOSA SANCHEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jose Sosa Sanchez, has spent most of the last 29 years living in Canada. For approximately 22 consecutive years, he had been coming to Canada to work as a seasonal agricultural worker for about eight months of the year. After 2018, he remained in Canada and was sponsored as a spouse of a Canadian citizen; the relationship broke down and the sponsorship application was withdrawn. Mr. Sosa then applied for permanent residence based on

humanitarian and compassionate grounds (“H & C Application”). An officer at Immigration, Refugees and Citizenship Canada (“the Officer”) refused his application. Mr. Sosa is challenging this refusal on judicial review.

[2] Mr. Sosa raised a number of issues on judicial review. I find the Officer’s assessment of Mr. Sosa’s establishment in Canada to be unreasonable and, on this basis, I am sending the matter back to be redetermined.

II. Procedural History and Background Facts

[3] Mr. Sosa is a citizen of Mexico. He has three adult children who live in Mexico.

[4] Mr. Sosa first arrived in Canada in 1996 as a seasonal farm worker on a work permit. He worked at Seaway Farms in Ontario and Quebec for 22 consecutive years for approximately eight months of the year. He generally spent the other four months of the year in Mexico with his family. For much of that time, Mr. Sosa was married to a Mexican citizen and they had three children together. Mr. Sosa later separated from his wife in Mexico.

[5] Mr. Sosa was in Canada as a visitor from approximately September 2018 until February 2022. He was in a relationship with a Canadian citizen for approximately twelve years. They married in 2019. They filed a spousal sponsorship application in 2019 that was later withdrawn. They are currently separated.

[6] Mr. Sosa submitted his first H & C Application in May 2021 and it was refused in September 2021. He did not challenge this refusal.

[7] Mr. Sosa filed another H & C Application with a different representative in July 2022. It is the decision on this application that I am reviewing.

III. Issue and Standard of Review

[8] Mr. Sosa is not challenging the procedure followed by the Officer; he is challenging the substance of the decision. The parties agree, as do I, that I ought to review the merits of the Officer's decision on a reasonableness standard.

[9] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] described a reasonable decision as “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” (*Vavilov* at para 85). Administrative decision makers must ensure that their exercise of public power is “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

IV. Analysis

[10] Foreign nationals applying for permanent residence in Canada can ask the Minister to exercise ministerial discretion to relieve them from requirements under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because of humanitarian and compassionate

factors (IRPA, s 25(1)). The Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is “to offer equitable relief in circumstances that ‘would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another’” (*Kanthasamy* at para 21).

[11] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case,” there is no limited set of factors that warrants relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them” (*Kanthasamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 [*Baker*] at paras 74-75).

[12] Throughout his written submissions to the Officer, Mr. Sosa’s counsel raised Mr. Sosa’s contributions as a farmworker in Canada, and particularly the difficulty of this work, as a key aspect of his request for relief. For example, he states:

Particular notes on the Applicant’s painstaking work in Canada: As it is well known, the farming industry relies on temporary workers coming from different countries, Mexicans, among others. They come every year and stay between 8-10 months each time. In doing so, they make enormous sacrifices by staying away from their loved ones, mainly their spouses and their children. In the Applicant’s case, he was deprived of staying together with his wife and his children from sharing family time with them, like taking them to school, dining together, celebrating their birthdays, doing

outdoor activities, and, in general, by staying away from them for prolonged periods.

I submit that, whoever is responsible for the decision of this case, has to bear in mind the sacrifice that people like the Applicant have to make to work in a field that many Canadians are reluctant to work with, mainly for the hard work it entails and the low wages they get. In addition, for the internal suffering and distress they have to undergo as a result of the separation of their loved ones, just for the sake of supporting them. A profound analysis of this case is respectfully requested to find a balance between the Applicant's faithfulness to Canada and the contribution he made to the development of the country, and the sacrifice he endured by staying away from his family for so long.

[13] Mr. Sosa also provided his notice of assessments for the over twenty years of his work, demonstrating his contribution through paying taxes to Canada.

[14] Mr. Sosa's continuous contribution to Canada through farmwork over 22 years, and particularly the challenging nature of that type of work, was a basis on which the Applicant was requesting relief. While the Officer accepts that Mr. Sosa worked as a seasonal farmworker in Canada from 1996 to 2018, there is no assessment of this contribution.

[15] The only consideration of the Applicant's work in Canada was the Officer's remark that seasonal work is temporary work, and done on the expectation that one leaves at the end of each contract: "as a seasonal worker, there is an expectation upon the applicant that he would be returning to his country of origin at the end of every contract and would only be residing in Canada on a temporary basis."

[16] The Officer's approach suggests that there is no difference between someone who has done one year of temporary work as a seasonal farmworker and someone who worked at the same company spending most of each year doing farmwork in Canada for over two decades. In my view, the Officer was not responsive to the application before them. There was also no assessment of the nature of the work Mr. Sosa was doing.

[17] Mr. Sosa's contribution, both in length and nature, as a farmworker was a relevant factor raised in the H & C Application. As there was no assessment of this issue, the matter needs to be reconsidered. As was noted by Justice Diner in *Bhalla v Canada (Citizenship and Immigration)*, 2019 FC 1638, when an officer overlooks elements upon which the application is based, the balancing will necessarily be deficient, as the reviewing court cannot know what weight would have been assigned to the factor if it had been properly considered (at para 22).

[18] The Officer's treatment of Mr. Sosa's establishment was not responsive to the Applicants' submissions or evidence (*Vavilov* at paras 127-128); nor did the Officer consider all the relevant factors raised by the H & C Application as is required (*Kanthasamy* at para 25; *Baker* at paras 74-75). Accordingly, the decision is unreasonable and must be redetermined.

[19] I also note in obiter that at the outset of the Officer's establishment analysis, the Officer states that "time alone is not a sufficient factor to grant an H & C application." It is unclear to me whether the Officer is referencing the particular circumstances of the Applicant's time in Canada as not being a sufficient basis to grant the H & C Application or whether they are making a

general statement that length of time in Canada can never be a sufficient basis to grant a humanitarian and compassionate application.

[20] If it is the latter, I find it unreasonable for the Officer to limit their discretion to exclude the possibility that a particular factor could be determinative. This approach is inconsistent with the Supreme Court of Canada's guidance in *Kanthasamy* that officers have to consider "all the relevant facts and factors" and that the purpose of this broad discretion is "to offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (*Kanthasamy* at paras 21 and 25). As recently explained by Justice Battista at paragraph 42 of *Kapoor v Canada (Citizenship and Immigration)*, 2024 FC 2095:

It would be inconsistent with the broad discretion provided by Parliament in subsection 25(1) for the Court to carve out one factor and preclude officers from finding it to be determinative. It is not the Court's role to frustrate decision makers by confining their determinations based on relevant evidence or confining their capacity for compassion.

[21] The application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-7684-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated April 8, 2024 is quashed and sent back to be redetermined by a different decision maker;
3. The Applicant should be given an opportunity to provide further submissions and evidence on redetermination; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7684-24

STYLE OF CAUSE: JOSE ALBERTO SOSA SANCHEZ v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 24, 2025

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JULY 22, 2025

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