Federal Court  Cour fédérale

Date: 20250724

Docket: IMM-8544-24

Citation: 2025 FC 1325

Ottawa, Ontario, July 24, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

FENGDI LI

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 April 26, 2024 [Decision], of a Senior Immigration Officer [Officer] that denied the Applicant's application for permanent residence on humanitarian and compassionate grounds [H&C Application]. The Applicant included her daughter in her H&C Application.

[2] The Applicant argued that the Decision is unreasonable because the Officer failed to conduct a proper individual assessment of her and her daughter's establishment in Canada, the potential hardship of returning to China.

[3] The Respondent argues that the Decision was reasonable because the Applicant failed to provide sufficient evidence to establish that an H&C exemption was warranted.

[4] For the reasons that follow, this application is dismissed.

II. Background

[5] The Applicant is a 53-year-old citizen of the Peoples Republic of China, as noted above, included in the application is her 21-year-old daughter, also a citizen of China, who is currently studying in Canada and has a student visa valid to August 2025.

[6] The Applicant first came to Canada in August 2017, on a multiple entry visitor visa to accompany her daughter during her studies.

[7] The Applicant returned to China on three occasions: June to August 2018, June to September 2019, and September 2020 to October 2021. The Applicant has remained in Canada since October 2021 as a visitor.

[8] The Applicant's daughter currently studies mathematics at the University of Waterloo.

[9] The Applicant is married but she is estranged from her husband. The Applicant's husband resides in China. The Applicant indicated that her husband continues to provide her and their daughter financial support.

[10] On August 9, 2022, the Applicant filed her H&C Application, based on her and her daughter's establishment in Canada and the hardship of returning to China.

III. Issues and Standard of Review

[11] The parties submitted and I agree that the applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86).

[12] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, 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" (*Vavilov* at para 85).

[13] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[14] The Court has held that "the applicable standard of review in analyzing a discretionary decision based on H&C applications under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], is reasonableness" and that "[f]indings on the sufficiency of H&C grounds involve the exercise of discretion by immigration officers and the application of a specialized legislation to particular facts" (*Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 21, citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at para 44. *Vavilov* has not altered the applicable standard in this context).

[15] The sole issue for determination in this application is: is the Decision reasonable?

IV. Analysis

Is the Decision reasonable?

[16] The Applicant submits that the Decision was not reasonable, because the Officer erred in failing to consider the level of establishment in Canada, the hardship in returning to China, including the challenges to reintegrate back to life in China and the impacts of returning on her daughter's mental health. In addition, the Applicant argued that the Officer erred in their consideration of other avenues the Applicant and her daughter would have to get status in Canada.

[17] The Respondent argued that H&C relief is highly discretionary and reserved for exceptional cases. They argued that the Officer reasonably determined that the Applicant had failed to provide sufficient evidence to support the claimed exceptional H&C relief.

[18] Officers reviewing an application for H&C relief consider relevant circumstances including *inter alia*: establishment in Canada; ties to Canada; the best interests of a child; health considerations; and any other relevant factor not related to section 96 and 97 of the IRPA (*Kanthasamy* at para 27). This is not an alternative stream to ordinary immigration processes.

[19] The H&C process is designed to provide applicants with exceptional and discretionary relief from circumstances that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at para 13).

[20] An applicant bears the burden of demonstrating that their H&C factors warrant the exercise of discretion (*Dale v Canada (Citizenship and Immigration)*, 2021 FC 1045 at para 30).

[21] The Applicant has asserted that the Officer's reasons are a "recitation" and are a "selective review" of evidence that "disregards the compassionate factors" of their application.

[22] The Respondent disagrees with this characterization, and notes that the Applicant has not drawn the Court's attention to evidence that was overlooked by the Officer or other errors. I agree.

A. Establishment in Canada

[23] The Applicant asserted that the Officer failed to properly consider evidence of her and her daughter's establishment in Canada or to assess all the factors of establishment globally.

[24] The Respondent argued that the Officer considered all the evidence and fairly assessed it.

[25] In the Decision, the Officer noted that the Applicant has completed an EAP course and is an active volunteer at the Hanshine International Education Centre. The Officer also notes that the Applicant's daughter has been studying in Canada since 2017, completing high school in 2020, and she is currently studying at the University of Waterloo and has a coop with the Toronto Transit Commission. The Officer acknowledges that the Applicant submitted multiple letters of support from friends and teachers who spoke favourably of the Applicant and her daughter, which the Officer gave "some positive consideration to the Applicant's establishment in Canada." The Officer goes on to state: "However, it is not uncommon for individuals who reside in Canada to volunteer, attend school, or be employed. I consider this to be a typical level of establishment."

[26] The Applicant argued that the use of the word "typical" illustrates that the Officer introduced a new threshold for establishment and did not conduct a meaningful, individualized analysis. In support of this argument the Applicant sites *Stuurman v Canada (Citizenship and Immigration)*, 2018 FC 194 at para 24; *Cheng v Canada (Citizenship and Immigration)*, 2024 FC 560 [*Cheng*] at paras 19–21; and *Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 [*Henry-Okoisama*] at para 28, where in this Court was critical of analysis that an applicant's level of establishment is "typical".

[27] The Respondent argued that a review of the Decision does not support the Applicant's argument. The Officer did not introduce a new threshold for establishment nor did they fail to

conduct an individualized analysis. Rather the Officer's use of the word "typical" in the Decision was descriptive and consistent with the guidance set out in *Kanthasamy*.

[28] In *Truong v Canada (Citizenship and Immigration)*, 2022 FC 697 [*Truong*], the Court found that "the Officer did not apply a higher threshold in the assessment of Ms. Truong's establishment by simply using the word "typical". The Court found that the use of the word "typical" was "descriptive and accord[ed] with the approach set out in *Kanthasamy*" (at para 13 and *Hangero v Canada (Citizenship and Immigration)*, 2022 FC 1727 at paras 35–36).

[29] Similarly, in *Giles Mendoza v Canada (Citizenship and Immigration)*, 2025 FC 192, Justice Saint-Fleur found that "the mere use of the word "typical" is not proof that the Officer applied and unreasonably high threshold" (at para 41, citing *Davis v Canada (Citizenship and Immigration)*, 2022 FC 238 at paras 43, 47).

[30] *Cheng* is distinguishable from the present application, there, the Court found it was an error for an officer to accord neutral and negative weight to H&C factors because an individual's circumstances are similar to others. In the present application, the Officer accorded positive weight to the Applicant's H&C establishment factors. I agree with the Respondent, that the Officer's use of the word "typical" in context, is descriptive and did not create a higher or different standard for the Applicant to meet.

[31] In *Henry-Okoisama*, Justice Ahmed, underscored that the applicant was an essential frontline worker during the pandemic. The Court noted the heavy burden that frontline immigrant workers took on during the pandemic. The Court found that the officers use of the

word “typical” was not reasonable and failed to grapple with the important factual context of the application. With respect, the factual context of the present Application is different.

[32] In my view, the use of particular words is not the determinative factor, rather, it is if the decision, read as whole, demonstrates that “the officer applied the correct test and conducted a proper analysis” (*Lopez Segura v Canada (Citizenship and Immigration),* 2009 FC 894 at para 29).

[33] I am not persuaded by the Applicant’s argument that the Officer’s use of the word “typical” signals that the Officer failed to conduct an individualized assessment of the Applicant’s application or that the Officer was imposing a higher threshold for establishment. I agree with the Respondent that in the context of the Decision, “typical” is descriptive and a review of the Officer’s reasons indicates that the Decision aligns with the approach set out by the Supreme Court of Canada in *Kanthasamy*. I find nothing unreasonable with the Officer’s approach and the articulation of the Applicant’s level of establishment in this case (*Truong* at para 13).

[34] The Officer’s reasons are transparent, intelligible and justified. The Applicant has not pointed to anything that would warrant this Court’s intervention.

B. Hardship

[35] The Applicant argued that returning to China would subject her and her daughter to extreme hardship. She argued that they were no longer familiar with China's systems, social norms, beliefs and environment, such that reintegration would cause them hardship.

[36] In addition, the Applicant argued that returning to China would be detrimental to her daughter's mental health.

(i) Reintegration

[37] The Applicant noted that her daughter had spent much of her formative years in Canada, attending high school and now university. In addition, the Applicant provided evidence that during a trip to China in 2020, which was extended due to COVID-19 lockdowns, the Applicant and her daughter became aware that they were no longer familiar with China's social norms, beliefs, environment and systems.

[38] The Respondent argued that the Applicant and her daughter were born in China and lived there for 45 and 15 years, respectively, before coming to Canada.

[39] The Applicant argued that China's strict COVID-19 policies would make it difficult for her and her daughter to return. The Applicant noted that the confinement and isolation policies and mandatory quarantine periods for international travellers entering China would make her and her daughter feel "powerless" and would impact their ability to reintegrate.

[40] The Officer found “An open-source search confirms that China ended the mandatory quarantine period for international travellers and eased its zero tolerance COVID-policy in January 2023. In addition, there is insufficient evidence before me to indicate that there are currently restrictions on social services due to China’s COVID polices, or that the applicant [and her daughter] would be unable to access services that they needed in China.”

[41] The Officers reasons are transparent, intelligible and justified. At the height of the COVID-19 pandemic many countries implemented policies to help contain the spread of the virus in the face of an unprecedented public health care crisis. Those policies and restrictions have now eased, and it was reasonable for the Officer to rely on the open-source information that confirmed this.

[42] The Decision goes on to note “there is insufficient evidence before me that the social norms and environment in China have changed to such an extent in 7 years that the applicants would be unable to reintegrate if they were to return.” The Officer notes that the Applicant and her daughter were both born and spent a considerable amount of time in China, but also noted how they integrated into Canada, and this was an experience that they could draw from to reintegrate in China.

[43] The Applicant and her daughter’s ability to adapt upon return is a relevant consideration (*Mashal v Canada (Citizenship and Immigration)*, 2020 FC 900 at para 36 and *Sharifpouran v Canada (Citizenship and Immigration)*, 2022 FC 663 at para 28). In assessing the Applicant and her daughter’s adaptability, the Officer considered the Applicant and her daughter’s personal experiences, namely how long they had resided in China before coming to Canada, their

demonstrated abilities to adapt to a Canadian way of life, including learning English, and social norms and values.

[44] The Applicant has not pointed to specific social norms, beliefs, environments or systems that have changed in China that would present hardships or prevent her and her daughter's successful reintegration. The Applicant has not pointed to specific evidence that the Officer failed to consider in respect of this assertion.

[45] I agree with the Respondent, the Applicant has not shown an error that would warrant this Courts intervention. The Officer reasonably concluded that there was simply insufficient evidence in respect of this issue.

(ii) Mental health

[46] The Applicant indicated that during a visit to China in 2020, her daughter began to experience mental health issues, notably anxiety, fear of isolation and depression. In addition, her daughter struggled to maintain her university studies through on-line learning due to the 12-hour time difference.

[47] The Applicant argued that the Officer trivialized her daughter's mental health struggles. The Applicant pointed to evidence that her daughter was in counselling and taking medication.

[48] The Respondent argued that the Officer clearly considered and assessed the daughter's mental health challenges and reasonably found that there was insufficient evidence to support the H&C Application.

[49] A review of the Decision indicates that the Officer considered the evidence submitted that detailed the Applicant's daughter's mental health challenges, this included the evidence from New Beginnings Barrie Psychotherapy and Counselling Services and evidence that she was taking prescription medication. However, the Officer found that "[T]here is insufficient evidence before me to suggest that the applicant would be unable to apply the coping skills, she is learning in counselling to support her mental health if she were required to return to China or if she were separated from her mother." In addition, the Officer found that there was "insufficient evidence [was] put forward to indicate that the applicant would be unable to receive mental health treatment in China if she were required to return."

[50] The Officer acknowledges that the Applicant's presence in Canada is beneficial for her daughter's mental health. That said, the Officer also notes that the Applicant currently holds a multiple entry visitor visa valid to 2027 and there appears to be no restrictions on her entry into Canada.

[51] With respect, in my view the Applicant's argument boils down to a request for this Court to reweigh the evidence that was before the Officer. This is not the proper role of a reviewing court on judicial review, to substitute its preferred outcome. Reasonableness review mandates that where a decision bears all the necessary hallmarks of a reasonable decision: justification,

transparency and intelligibility in relation to the relevant factual and legal constraints, courts are to exercise restraint (*Vavilov* at paras 97, 99, 100, 102 and 143).

[52] I understand that the Applicant and her daughter are close, but the Applicant has not pointed to evidence that was overlooked by the Officer, nor has the Applicant identified a reviewable error.

[53] A review of the Decision illustrates that the Officer considered all the evidence, weighed and assessed the evidence, but ultimately found that it was not sufficient to grant the exceptional H&C relief requested. The Applicant has not pointed a specific error that would justify this Courts intervention in this matter.

C. Other avenues to obtain status in Canada

[54] Finally, in their conclusion, the Officer noted that the Applicant had not provided sufficient evidence to establish that her and her daughter could not apply for permanent residence status using the normal processes from overseas or that doing so would result in hardship.

[55] The Applicant relies on *Bernabe v Canada (Citizenship and Immigration)*, 2022 FC 295 [*Bernabe*], to argue that the Officer's approach was unreasonable and focused on an irrelevant consideration.

[56] The Respondent argued that the *Bernabe* case is distinguishable from the present application, I agree. In *Bernabe*, the officer had accepted that the applicants did not qualify for

other programs. In this case, while there is some evidence that the Applicant has given up her employment, a review of the record indicates that this was not the focus of her H&C Application.

[57] In my view, the Officer's statement in the conclusion is reflective of the evidence and arguments before them. There was little evidence submitted that demonstrated that the Applicant would not be able to visit Canada, with the multiple entry visa that she has that is valid until 2027, or that she would be ineligible to apply for permanent residence from China.

[58] As this Court has noted, the failure of an applicant to provide sufficient evidence and information in support of an H&C application is to the peril of the applicant. An applicant has the onus to establish the grounds upon which an officer may grant the extraordinary H&C relief. It is "not on the immigration officer to demonstrate why it should be refused" (*Gonzales De Barragan v Canada (Citizenship and Immigration)*, 2022 FC 902 at para 22, citing *Goraya v Canada (Citizenship and Immigration)*, 2018 FC 341 at para 16).

[59] I do not find the Officer's reference to possible alternative avenues of immigration has resulted in a reviewable error that warrants this Courts intervention. A holistic review of the Decision supports the conclusion that it was based on a consideration of several factors, including the Applicant and her daughter's degree of establishment, the potential hardships to reintegrate into China, and her daughter's mental health challenges.

V. Conclusion

[60] Relief under section 25 of the IRPA is intended to be extraordinary and exceptional, it is not an “alternative immigration stream or an appeal mechanism” (*Kanthasamy* at para 90).

[61] For the foregoing reasons, I have concluded that the Officer’s reasons were transparent, intelligible and justified and met the standard of reasonableness set out in *Vavilov*. The application for judicial review is dismissed. The parties did not propose a question for certification, and I agree that no question arises in this case.

JUDGMENT in IMM-8544-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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