Federal Court  Cour fédérale

Date: 20250725

Docket: IMM-4167-24

Citation: 2025 FC 1330

Ottawa, Ontario, July 25, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

TEREFE MEKONNEN ABOYE
YESHIWAS HABTE ESHETE
SOSNA TEREFE MEKONNEN
YOSTANA TEREFE MEKONNEN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family of four seeking judicial review of a decision of a Senior Immigration Officer of Immigration, Refugees and Citizenship Canada [Officer], dated January 10, 2024 [Decision], refusing their application for permanent residence within Canada on

humanitarian and compassionate [H&C] grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicants submit the Officer made adverse credibility findings, and the Applicant challenges the Officer's assessment of establishment, hardship and best interests of the children [BIOC].

[3] The application for judicial review is allowed. The Decision is unreasonable in its assessment of hardship and BIOC. It is unnecessary to address the other submissions.

II. Background

[4] The Applicants, Terefe Mekonnen Aboye [Principal Applicant or PA], Yeshiwas Habte Eshete [Associate Applicant or AA] and their daughters, Sosna and Yostana, are citizens of Ethiopia and Italy. In 2005, the PA successfully sought refugee protection in Italy. The following year, the AA, and their then infant daughter, Sosna, reunited with him in Italy. In 2012, their second daughter, Yostana, was born in Italy.

[5] The Applicants arrived in Canada in August 2019, and claimed refugee protection because of the racism they experienced in Italy. The PA failed to declare his Italian citizenship at the port of entry.

[6] In August 2021, the Refugee Protection Division [RPD] rejected their claim for refugee protection, on the ground that the Applicants had not rebutted the presumption of state

protection. The RPD expressed credibility concerns with the PA given his attempt to conceal his Italian citizenship at the port of entry and his vagueness and contradictions upon answering questions at his hearing. The Applicants appealed.

[7] In December 2021, the Refugee Appeal Division [RAD] dismissed their appeal. The RAD acknowledged the racial discrimination experienced by the Applicants in Italy, but determined that it did not rise to the level of persecution. The RAD shared the RPD's concerns regarding the PA's credibility.

[8] In October 2022, the Applicants submitted their H&C application, which now under judicial review. The Applicants also submitted an application for a pre-removal risk assessment [PRRA], which was rejected in January 2024. The PRRA decision is not the subject of these reasons.

III. The Decision

[9] The Officer found that the Applicants had established their identities on a balance of probabilities.

[10] The Officer then found that the PA and AA had a considerable degree of establishment, particularly since 2022, noting their employment history and community and church involvement. Both daughters are enrolled in schools and have friendships. Sosna is also employed and is involved with two community organizations. The PA's brother also resides in Canada. The Officer granted a moderate weight to this factor.

[11] The Officer also found that the Applicants would not face significant hardship if they were to return to Italy. Consequently, the Officer ascribed little weight to this factor. The Officer found that the Applicants have been able to establish themselves in both Italy and Canada, and that they had not demonstrated that they would be unable to do so if returned to Italy.

[12] The Officer noted that the Applicants submitted the same underlying risk of racial discrimination in their H&C application and in their refugee claim. The Officer found that the PA had been able to earn a livelihood as a welder in Italy, and specifically noted that after a workplace injury in 2013, he kept working for the same company and was then able to seek employment with different companies. In the Officer's opinion, years of work experience as a welder in both Italy and Canada could mitigate challenges with respect to finding employment in Italy. Like the RAD, the Officer accepted that Sosna had experienced racism at school, but found that she was not denied access to education in Italy. The Officer observed that the RAD had determined that the racism experienced by the Applicants did not have consequences "of a substantially prejudicial nature." As the Applicants had access to medical care, the ability to relocate to different cities and access to "a five-room apartment in San Secondo that had electricity and running water." The Officer relied on the RPD's determination that Italy was "active in assisting immigrants and in providing greater services to immigrant communities", and that it had a National Office to Combat Racial Discrimination which the Applicants had never filed a complaint with.

[13] The Officer also considered a report from the daughters' psychotherapist which disclosed that they are exhibiting symptoms consistent with their family physician's anxiety diagnosis. A

second report from the Canadian Centre for Victims of Torture states that the PA and AA participate in activities with the Centre, and that Sosna's mental health has been impacted by her experiences in Italy. Finally, a psychiatric assessment from Toronto Western Hospital also states that the PA had sought psychiatric care because of depressive symptoms, frequent headaches and nosebleeds. The Officer found that the record did not indicate that the Applicants had sought treatment while in Italy, and that the onus was on them to demonstrate that adequate treatment was not available to them in Italy.

[14] The Officer considered that the newly submitted country evidence, which included articles on Italy's mafia, working conditions of migrants and racist incidents and crimes, did not overcome the Immigration and Refugee Boards' [IRB]findings.

[15] The Officer turned to the BIOC in relation to the minor child, Yostana, and found that it would be in her best interests to remain in Canada. The Officer only evaluated the best interest of Yostana, as the eldest daughter, Sosna, had already turned 18 at the time of the H&C application. The Officer found that few details were provided about Yostana's experience of discrimination at school. The psychotherapist report explained that Yostana had "very few memories" of her time in Italy given her young age upon departure. The Officer rejected the argument that Yostana would face an especially difficult situation and found that she had a degree of knowledge of the Italian language, albeit limited, and previous experience with the Italian school system. The Officer also reflected that children are adaptable. They still found that it would be in Yostana's best interest to remain in Canada to pursue her schooling, given evidence that she had successfully adapted to Canada's educational system and learnt both French and English.

[16] The Officer summarized their analysis of the establishment, hardship and BIOC and the weight ascribed to each, and found that they were not sufficiently strong to grant an exemption from the requirements of the IRPA. The Officer also denied the Applicants' request for a temporary resident permit because it was grounded in the same unsuccessful motives as their H&C application, and because they still held valid Italian passports at the time.

IV. Issues and Standard of Review

[17] The sole issue for consideration is whether the Decision is reasonable.

[18] The standard of review is reasonableness for the review of the decision itself *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*]; *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at paras 46-47.

V. Analysis

[19] The Applicants submit that the Officer was not guided by the equitable purpose of subsection 25(1) of the *IRPA*, contrary to *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 [*Kanthasamy*].

[20] The Respondent submits that the Applicants are inviting the Court to re-weigh the evidence, whereas the Officer had the primary responsibility of making factual determinations

upon delivering what is a distinctively discretionary decision (*Hamzai v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1108 at para 24 [*Hamzai*]).

[21] H&C exempts individuals from the regular requirements of the *IRPA* in their application for permanent residence. It is a discretionary and extraordinary form of relief—an H&C officer is not bound by a rigid formula but is rather tasked with conducting a global assessment of several relevant factors which are ultimately weighed against the broader interest of applying the *IRPA*. H&C considerations refer to "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at para 13).

[22] A reviewing court must therefore assess whether an H&C officer turned their mind to the relevant factors and gave them due consideration.

(1) Hardship

(a) *Applicants' Position*

[23] The Applicants argue that the Officer confused persecution in a refugee proceeding with hardship in an H&C proceeding, and therefore misapplied the test for H&C. This confusion is further evidenced by the Officer's treatment of key facts in their analysis of the Applicants' ability to earn a livelihood in Italy.

[24] First, being able to earn a living is not demonstrative of a lack of hardship. Secondly, the PA testified to his experiences of racism in the workplace, which were accepted by the RAD. This led the PA to constantly be on the lookout for new employment opportunities between 2007 and 2019; to a workplace injury in which he lost two fingers; and to the family's many relocations. The Applicants take issue with the Officer's finding that because they "rented a five-room apartment in San Secondo that had electricity and running water", they would not face hardship, as this is only a socioeconomic baseline.

[25] The Officer further erred in finding that the Applicants had failed to submit a complaint to the National Office to Combat Racial Discrimination. It is not responsive to the objective evidence submitted with their application, which demonstrates that the "state mechanism to enforce protection against discrimination is weak, and, at times, non-existent." It also fails to situate these findings against the background of the election of a "far-right and nativist government". Finally, its runs contrary to caselaw, which holds that what matters if not the mere existence of state protection remedies, but "the capacity and the will to implement that framework effectively" (*Erdogu v Canada (Citizenship and Immigration)*, 2008 FC 407 at para 28, citing *Elcock (Milkson) v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8680 (FC) at para 15).

[26] The Officer relied too heavily on the facts set out in the RPD and RAD decisions without conducting their own assessment on the submissions before them. The Officer did not sufficiently engage with the psychological impact on the PA and the children, particularly Sosna, who expressed suicidal thoughts.

[27] In summary, the Officer conducted a cursory review of the hardship by minimizing the individual risk of each of the Applicants and by relying on general country condition evidence rather than the personalized evidence.

(b) *Respondent's Position*

[28] It is trite law that H&C officers may rely on the IRB's findings of fact so long as they are considered in the H&C context (*Shah v Canada (Citizenship and Immigration)*, 2018 FC 537 at para 54). The Officer did not import the test for persecution into their analysis, but rather referred to the IRB's prior findings of fact because the factual basis put forth by the Applicants for both applications were identical. The Officer identified the correct test when they referred to subsection 25(1.3) of the *IRPA*:

> Officers do not determine whether a well-founded fear of persecution, risk to life, danger of torture and risk of cruel and unusual treatment or punishment has been established, but they may take the underlying facts into account in determining whether the applicant will face hardship if returned to their country of origin.

[29] The Officer then noted that the Applicants had employment opportunities and access to education, secure housing and medical services in Italy, upon concluding that their circumstances did not justify an exemption from the requirements of the *IRPA*. The Officer did not place a higher threshold on the Applicants.

(c) *Conclusion*

[30] The Officer's analysis is unintelligible and unreasonable rendering it sufficient to quash the Decision.

[31] It is undisputed that anti-Black racism can constitute hardship (*Alex v Canada (Citizenship and Immigration)*, 2022 FC 1454 at para 12 [*Alex*]). Despite accepting the existence of racial discrimination in Italy, the Officer essentially found that the Applicants' life experience demonstrated that they could live with access to housing, education and employment.

[32] I agree with the Applicants that the Officer's analysis fell short of the empathetic approach that must characterize an H&C assessment. In a Western country such as Italy, having access to an apartment with "electricity and running water" is not indicative of a lack of hardship, but rather a bare living minimum. There is a margin between facing hardship and being destitute.

[33] While recognizing racial discrimination in Italy, the Officer implied that it was mitigated by the availability of government assistance for immigrants and the National Office to Combat Racial Discrimination. It was an error for the Officer to fail to engage with the effectiveness of these measures to prevent and redress racial discrimination, especially when the Applicants' submissions pointed to evidence that there measures were ineffective (*Alex* at para 19).

[34] The same reluctance to address the substance of the Applicants' submissions can be identified in the Officer's characterization of the objective evidence on the 2022 election of a far-

right government as simply evidence of “recent election results in 2022”. It is clear that the Applicants suggested that the sociopolitical context around racialized immigrants was difficult in Italy, which is correlated with the election of a far-right government in 2022 that ran on an anti-immigration campaign (*Kediye v Canada (Citizenship and Immigration)*, 2021 FC 888 at paras 30-31).

[35] The most significant error of the hardship assessment was in the Officer’s treatment of the Applicants’ psychological conditions. The Officer accepted the medical reports but found that the Applicants had failed to demonstrate that they could not access adapted care in Italy. In doing so, the Officer made the specific error that the Supreme Court warned against in *Kanthasamy,* namely that once a decision-maker accepts a mental health condition, “requiring further evidence of the availability of treatment, either in Canada or [in the country of origin]…undermine[s] the diagnosis and ha[s] the problematic effect of making it a conditional rather than a significant factor” (*Kanthasamy* at para 47).

[36] Therefore, the Officer accepted medical evidence that the Applicants have mental health conditions –including suicidal ideation—that would be worsened if they were removed to Italy. This is an obvious component of any hardship analysis in an H&C application, and it was overlooked by the Officer which focused their analysis on the lack of evidence demonstrating the unavailability of adequate mental health care in Italy rather than on the adverse mental health impacts that deportation to Italy would create (*Tutic v Canada (Citizenship and Immigration)*, 2022 FC 800 at paras 23-26). This a reviewable error.

(2) BIOC

(a) *Applicants' Position*

[37] The Officer unduly restricted their analysis to Yostana, despite Sosna just having reached the age of 18 years old and being entirely dependant on her parents. The Officer did not explain why they exempted the eldest daughter, whereas she has testified to many experiences of racism in Italy which led to general anxiety and suicidal ideation and has established herself in Canada.

[38] However the Officer has not shown to be "alert, alive and sensitive" to the BIOC (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 [*Baker*]; *Hawthorne v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2002 FCA 475 at para 10, [2003] 2 FC 555). The Officer failed to assess the evidence in light of what is in the BIOC, and instead limited themself to the hardship lens (*Patousia v Canada (Citizenship and Immigration)*, 2017 FC 876 at paras 53-56). The evidence indicates that Yostana would undoubtedly experience hardship if she were to return to Italy: the Officer accepted past incidents of racial discrimination and the likelihood of future incidents; she has limited Italian proficiency; and she was of a young age –7 years old—upon her arrival to Canada.

[39] The Officer then contradicted themself in their assessment of the BIOC. The Officer accepted that "given the fact that [the youngest daughter] has spent since 2019 residing in Canada, attending school and church, […] it would be in her best interest to remain in Canada to continue her schooling." Yet, three paragraphs later, the Officer states "while I recognize that it is somewhat in her best interest to remain in Canada in order to continue with her schooling, I

find the weight accorded to BIOC is not enough to justify the granting of an exemption from the requirements of the IRPA."

[40] In finding that the children were adaptable, the Officer did not assess the specific vulnerabilities of the children in light of the psychological evidence.

(b) *Respondent's Position*

[41] *Kanthasamy* alerts against evaluating the BIOC under a standard of unusual, undeserved or disproportionate hardship, which the Officer did not do (*Kanthasamy* at paras 35, 59). Moreover, the BIOC do not outweigh all other factors (*Kanthasamy* at para 38; *Jaramillo v Canada (Citizenship and Immigration)*, 2014 FC 744 at para 71).

[42] The Officer reasonably considered that the anxiety and challenges of readjusting to Italy did not outweigh the overall assessment that the youngest daughter could adapt to life in Italy given children's adaptability and her prior experience in Italy.

(c) *Conclusion - BIOC*

[43] There is contradictory caselaw about the requirement to assess the best interests of a young adult. However, the dominant jurisprudential trend is to the effect that reaching the age of majority deprives an applicant from the right to have their BIOC assessed on a H&C application. In any event, the Officer did not commit an error in selecting one jurisprudential trend (*Vavilov* at para 112).

[44] That being said, the BIOC assessment still includes reviewable errors. I agree with the Applicants that the Officer has seemingly interwoven their BIOC analysis with a hardship analysis, which is an error. The Officer only spoke to Yostana's capacity to surmount difficulties were she to return to Italy given that her previous immersion in the Italian language and schooling system and given children's adaptability. This is a reviewable error (*Osun v Canada (Citizenship and Immigration)*, 2020 FC 295 at paras 21-24).

[45] Equally, the anti-Black racism that underlines the H&C application is almost completely absent from the assessment of the BIOC, while it clearly is a relevant consideration (*Alex* at para 12). The Officer simply notes that there are few details regarding the youngest daughter's experiences in Italian schools, and that she has few memories of her time there. The Officer acknowledged racial discrimination in Italy, which would logically permeate the Italian educational system. The absence of any line of reasoning applying this finding to the BIOC assessment is unintelligible.

VI. Conclusion

[46] As a result of the cumulative effect of the flaws noted above, the Decision is unreasonable.

JUDGMENT in IMM-4167-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted to a different decision-maker in accordance with these reasons.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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