Federal Court Cour fédérale

Date: 20250815

Docket: IMM-8185-23

Citation: 2025 FC 1380

Toronto, Ontario, August 15, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

SNEZANA GAVRILOVIC

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Snezana Gavrilovic, seeks judicial review of a decision [Decision] of a senior immigration officer [Officer] who refused her application [Application] for permanent residence based on humanitarian and compassionate grounds [H&C].

[2] For the reasons that follow, I am allowing this application as the Applicant has met her onus of showing that the Decision is unreasonable as the Officer failed to meaningfully and compassionately engage with the very reason for which H&C relief was sought and with the totality of the Applicant's evidence.

II. Facts

A. *The Applicant's immigration history*

[3] The Applicant is a 52-year-old Serbian who first came to Canada on a temporary resident visa in November 2018. Her children, parents and brother continue to reside in Serbia where she too has spent the majority of her life and where she met her common law spouse who is a Canadian citizen [Spouse].

[4] The Applicant has been in a common law relationship with her Spouse since May 2011 but has been unable to avail herself of a Spousal Application by reason that he remains married to his former wife due to what the Officer referred to as "familial and traditional" reasons. She has provided evidence of how she cared for her Spouse while he was ill in Serbia and seeks exemptions from visa requirements for applying for permanent residence on the basis of her interdependent relationship with a Canadian citizen and adverse country conditions.

B. *The Decision*

[5] The Officer who reviewed the Application gave positive weight to the Applicant's establishment which included her common law relationship, friendships, volunteer service at her

church and community integration but found that this type of establishment was not uncommon for individuals who have resided in Canada for some time.

[6] The Officer gave positive weight to the Applicant's common law relationship, but noted that this factor alone was not sufficient to automatically grant her Application noting that the Applicant had spent the majority of her life in Serbia and had provided little evidence that she and her Spouse could not continue their relationship if she were to return to Serbia as they had done in the past taking into consideration the Applicant's positive history of obtaining temporary visitor visas which would allow her to continue to visit her Spouse in Canada. While the Applicant submitted evidence that she had cared for her ill Spouse when they were in Serbia, the Officer noted that the Applicant had not established that her Spouse was either still ill or dependant on her for his daily care.

[7] While the Officer acknowledged that the conditions in Serbia are not ideal based on country condition documents submitted by the Applicant, the Officer found that there was little evidence that the Applicant has faced conditions amounting to hardship in Serbia in the past or would in the future based on the country's political situation.

III. Issues and Standard of Review

The Applicant submits that the Decision is unreasonable as it is based on a flawed approach in a number of respects. I find it sufficient to dispose of the application based on my consideration of the issues raised by the Applicant with respect to the Officer's treatment of the evidence related to the Applicant's common law relationship.

[8] The applicable standard of review of the merits of an administrative decision is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision bears the hallmarks of justification, transparency and intelligibility with the burden resting on the challenging party to show that the decision is unreasonable (*Vavilov* at paras 99-100).

IV. Analysis

[9] The Applicant submits that the Officer failed to meaningfully and compassionately engage with the evidence regarding the Applicant's common law relationship. I agree and find that there are two aspects of the Officer's analysis of the relationship which do not meet the requisite standard under *Vavilov* and *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 19 [*Kanthasamy*].

[10] First, the Officer failed to meaningfully engage with the reason why the Applicant could not apply for a spousal application which ignores the very purpose of H&C relief which the Supreme Court described as "a flexible and responsive exception to the ordinary operation of the *Act*…a discretion to mitigate the rigidity of the law in an appropriate case" (*Kanthasamy* at para 19). The only reference to the reason that the Applicant cannot apply for a spousal sponsorship application is found in the Application Summary portion of the Decision which states that:

> Applicant has included a completed spousal sponsorship application with the H&C application, however, the applicant states that her common law spouse is not able to sponsor them as they do not meet the criteria – common law spouse is still married to another individual and is not able to obtain a divorce due to familial and traditional reasons.

[11] No where in the Decision does the Officer explain what "familial and traditional reasons" refers to, nor does the Officer engage with the Spouse's evidence which provides an explanation for why he remains married to his first wife. The Spouse describes in his sworn affidavit that when he fell gravely ill in Serbia, his six-month stay turned into one of years which severely strained his relationships back in Canada with his first wife and children. While his wife moved on with another man during this time, the Spouse has not taken the steps to divorce his wife as his children view this as "dishonourable." This failure to meaningfully engage with the Spouse's evidence which relates directly to the very purpose of H&C relief, renders the Decision unreasonable (*Vavilov* at para 126). Had the Officer engaged more meaningfully with the Spouse's evidence, it might have excited a desire to relieve the Applicant's misfortunes stemming from the rigidity of Rule 125(1)(c)(i) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 which prevents the Spouse from sponsoring the Applicant (*Kanthasamy* at para 21).

[12] Secondly, while the Officer dismisses the suggestion of the couple's interdependent relationship, the Officer focused only on the evidence related to the Spouse's grave illness in Serbia and the fact that there was no evidence that the Spouse remains ill and requires the Applicant's continued support. The Officer also found that the Applicant had not provided evidence that being apart negatively impacts their relationship. This does not do justice to the evidence of the Spouse who spoke to the emotional bond and dependence that his illness had as a defining moment in their relationship. The Officer's suggestion, that as with her friendships, the Applicant can maintain her common law relationship over the internet and through visitor visas seems to not only lack the empathy such decisions call for (*Damte v Canada (Citizenship and*

Immigration), 2011 FC 1212 at para 34) but falls into the error identified by Justice Manson in *Goh v Canada (Citizenship and Immigration)*, 2024 FC 364 [*Goh*] in mistaking the ability to maintain a relationship with the ability to maintain the quality of that relationship (*Goh* at para 26). The Applicant's evidence reflects an interdependence that permeates every aspect of the couple's life together, which evidence the Officer failed to engage with.

[13] I therefore find that on the evidence, the Decision lacks justification and is unreasonable.

V. Conclusion

[14] As the Applicant has demonstrated that the Decision is unreasonable, this application is granted.

JUDGMENT in IMM-8185-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The Decision dated June 21, 2023 is quashed the matter shall be remitted back to a different decision maker for redetermination; and
3. There is no question for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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