Federal Court  Cour fédérale

Date: 20250820

Docket: IMM-10320-24

Citation: 2025 FC 1394

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 20, 2025

PRESENT: The Associate Chief Justice St-Louis

BETWEEN:

DORCAS NDITO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] On June 10, 2017, the applicant, Dorcas Ndito, a citizen of the Democratic Republic of the Congo [DRC], arrived in Canada with her mother and four sisters and claimed refugee protection. In 2019, the Refugee Protection Division [RPD] rejected Ms. Ndito's claim for refugee protection and, in 2020, the Refugee Appeal Division dismissed her appeal.

[2] In August 2023, Ms. Ndito applied for permanent residence under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], asking the Minister of Citizenship and Immigration [Minister] for an exemption from any applicable criteria or obligations on the basis of humanitarian and compassionate considerations [H&C Application].

[3] On May 27, 2024, a senior immigration officer [Officer] denied Ms. Ndito's H&C Application [Decision]. That Decision is the subject of this application for judicial review.

[4] Before this Court, Ms. Ndito argues that the Officer (1) erred in assessing her application for permanent residence through the lens of hardship; (2) erred in assessing her credibility; and (3) erred in assessing the temporary suspension of removals to the DRC.

[5] The Minister responds that the Decision is reasonable and points out that the determinative issue is the insufficiency of the evidence submitted to the Officer. Indeed, throughout his reasons, the Officer emphasized the paucity of information in the evidence and submissions, which made it impossible for him to give positive weight to a number of elements.

[6] For the reasons that follow, the application for judicial review will be dismissed.

II. Background

[7] In short, Ms. Ndito filed her H&C Application on August 11, 2023. On January 5, 2024, through counsel, she submitted extensive written representations and additional documents to the Minister. She submitted more documents on January 11, February 1 and April 23, 2024.

[8] In written submissions dated January 5, 2024, counsel for Ms. Ndito indicated that Ms. Ndito's H&C Application rested on (1) her establishment in Canada, claiming that it was sound, taking into account Ms. Ndito's means, age, time spent in Canada, and the activities that she had taken part in and the network that she had built in Canada; (2) the best interests of the children affected, namely those of Ms. Ndito's son, born in Canada, and those of Ms. Ndito's four sisters; and (3) the significant hardship that Ms. Ndito would face were she to return to her country of origin, given the conditions in the DRC and Ms. Ndito's personal situation. Counsel emphasized, among other things, that Ms. Ndito had been the victim of a brutal attack in the DRC in 2014, when several Kinshasa police officers forced their way into the family home and raped Ms. Ndito and her mother. Counsel also pointed out that this 2014 event had hastened Ms. Ndito's departure from her country of origin. Ms. Ndito, one of her sisters and her mother make reference to this event in the signed unsworn statements that Ms. Ndito submitted with her H&C Application (pages 120 to 126 of the certified tribunal record).

[9] On May 27, 2024, the Officer refused Ms. Ndito's application. In respect of the establishment factor, the Officer considered that Ms. Ndito had done rather little to establish herself in Canada since her arrival and assigned relatively little weight to this aspect in his assessment. With regard to hardship, the Officer concluded that the current conditions in the DRC had a good deal of weight in his assessment and noted that the temporary suspension of removals to the DRC somewhat mitigated the hardship associated with the refusal of the H&C Application. Lastly, regarding the best interests of the children, the Officer considered that Ms. Ndito had not discharged her burden of showing to the Officer's satisfaction that the denial of relief posed a risk to the emotional, social, cultural and physical well-being of the children and

of her son in particular. The Officer stated that he was receptive, attentive and sensitive to the best interests of the children, which he considered to be an important element, but not determinative per se, and to which he granted medium weight.

[10] All in all, given Ms. Ndito's profile, her personal and family circumstances, the poorly established impact on her of the country conditions and the best interests of the children affected, the Officer found that he was not satisfied that the humanitarian and compassionate considerations presented justified an exemption under subsection 25(1) of the Act.

III. Parties' arguments and standard of review

[11] As mentioned above, Ms. Ndito presents three arguments: (1) the Officer erred in assessing her application for permanent residence through the lens of hardship; (2) he erred in assessing her credibility; and (3) he erred in assessing the temporary suspension of removals to the DRC.

[12] Although Ms. Ndito argues that the standard of correctness should apply to her second argument, I agree with the Minister that only the standard of reasonableness applies in these circumstances. The Supreme Court of Canada has confirmed the presumption that reasonableness is the standard of review applicable to the judicial review of an administrative decision, and that presumption is not rebutted in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25, 33, 53 [*Vavilov*]).

[13] Ms. Ndito bears the burden of showing that the Decision is unreasonable. As the Supreme Court of Canada instructs in paragraph 100 of *Vavilov*, Ms. Ndito must satisfy the Court that "there are sufficiently serious shortcomings in the [D]ecision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision." A reasonable decision is based on an internally coherent reasoning and is justified in light of the legal and factual constraints that bear on the decision. In terms of constraints, the statutory exemption scheme, the evidence before the Officer and the nature of the submissions made by Ms. Ndito are of particular relevance in this case.

IV. Analysis

A. *Statutory framework*

[14] Subsection 25(1) of the Act gives the Minister discretion to grant a foreign national permanent resident status or an exemption from any applicable criteria or obligations if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected. The humanitarian and compassionate discretion in subsection 25(1) is a flexible and responsive exception to the ordinary operation of the Act and its regulations to mitigate the rigidity of the law in an appropriate case (*Kanthasamy v Canada (Citizenship and Immigration*), 2015 SCC 61 at para 19 [*Kanthasamy*]); *Garcia Diaz v Canada (Citizenship and Immigration)*, 2021 FC 321 at para 42).

[15] As the Supreme Court of Canada stated in *Kanthasamy*, the purpose 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" (at para 21).

[16] Furthermore, as Madam Justice Love Saint-Fleur noted in paragraph 37 of *Canada (Public Safety and Emergency Preparedness) v Brutus*, 2025 FC 895, it is essential to reaffirm that humanitarian and compassionate exemptions are exceptional and constitute a discretionary remedy. I agree with Madam Justice Saint-Fleur's reaffirmation that these exemptions should be reserved for exceptional cases only so as not to constitute an "alternative immigration stream or an appeal mechanism" (citing *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 15; *Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904 at para 24; *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15; *Kanthasamy* at para 90; *Canada (Public Safety and Emergency Preparedness) v Nizami*, 2016 FC 1177 at para 16).

B. *First argument: The Officer did not err in assessing the entire application through the lens of hardship*

[17] Ms. Ndito submits that the Officer assessed the entire application, that is, all the factors, through the lens of hardship and that this is inconsistent with *Kanthasamy*.

[18] The Minister responds that the Officer may take into account the hardship that Ms. Ndito would be exposed to if she returned to her country of origin to apply for permanent residence from there (citing *Kanthasamy* at paras 30–31). At the hearing, he pointed out that this Court's

case law is clear that hardship analysis is an important factor in humanitarian and compassionate applications and that it is not an error that warrants this Court's intervention (citing *Carter v Canada (Citizenship and Immigration)*, 2022 FC 1019 at paras 11–23 [*Carter*]).

[19] The Court notes from the outset that half of Ms. Ndito's voluminous representations submitted in support of her H&C Application were devoted to allegations of hardship. These representations, comprising some 25 pages, allege hardship in connection with a great number of topics, such as potential family separation, the inadequacy of online communications, the loss of her support network, the country conditions, her personal situation, employment and poverty, education, healthcare, the treatment of women and girls, the situation of people who return, the temporary suspension of removals, and the hardship associated with staying in Canada without status.

[20] These representations as to hardship sometimes overlap with the representations on establishment and the best interests of the children. It is worthwhile emphasizing, as I have previously done in similar circumstances, that "[t]he Officer cannot be faulted for being responsive to [Ms. Ndito]'s submissions, which again, relied heavily on hardship" (*Carter* at para 21).

[21] In addition, the Court notes that in assessing establishment, the Officer referred to hardship only two times: the first after concluding that none of the relationships in Canada were characterized by such a degree of interdependency that the hardship associated with separation could not be mitigated by modern communication methods; the second in discussing Ms. Ndito's

volunteering at a church, where the Officer concluded that [TRANSLATION] “the applicant’s absence would cause hardship for the work of the Church, which limits the weight that [he] can grant to this factor”. No reference was made to Ms. Ndito’s hardship.

[22] Furthermore, the Officer did not mention hardship in his analysis of the best interests of the children but rather noted the insufficiency of the submissions regarding Ms. Ndito’s son and minor sisters.

[23] The Court notes the sparse references to hardship in the analysis of these two factors and concludes that it has not been shown that the Officer erred in assessing the application through this lens. First, for the reasons already stated in paragraphs 13 to 16 of *Carter*, the Court is not satisfied that the Officer could evaluate factors such as establishment and the best interests of the children without considering hardship, as Ms. Ndito argues. In any event, nothing indicates that the Officer in this case unreasonably relied on elements of hardship in his analysis of those two factors; in fact, his references to hardship are minimal and address concerns raised by Ms. Ndito herself.

[24] Ms. Ndito adds that the Officer erred because he showed an utter lack of empathy and compassion for her. She maintains that following *Kanthasamy*, the overall test for a humanitarian and compassionate application is for officers to determine whether applicants are deserving of relief from their situation while showing compassion for them, which would require putting themselves in their shoes. Ms. Ndito furthermore alleges that in *Kanthasamy*, the Court warned immigration officers that the approach to be taken was one of compassion. In support of her

position, Ms. Ndito also cites *Dela Pena v Canada (Citizenship and Immigration)*, 2021 FC 1407 at paragraphs 16 to 22, and *Bhalla v Canada (Citizenship and Immigration)*, 2019 FC 1638 at paragraphs 17 to 24.

[25] This argument by Ms. Ndito is likely rooted in the *obiter* offered by Mr. Justice Campbell in *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 at paragraphs 33 and 34. Mr. Justice Richard Boivin discounted Justice Campbell's proposition in his decision in *Richardson v Canada (Citizenship and Immigration)*, 2012 FC 1082 at paragraph 41 [*Richardson*].

[26] As I mentioned at the hearing, in reading subsection 25(1) of the Act and the Supreme Court of Canada's decision in *Kanthasamy*, I found no warning to decision makers or any obligation for them to show compassion in their analysis of an H&C application. Rather, as previously mentioned, the decision maker is tasked with considering whether the facts established by the evidence "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at para 21). Writing for the majority, Madam Justice Abella further confirmed, in paragraphs 13 and 14 of *Kanthasamy*, that although the term "humanitarian and compassionate considerations" was inspired by compassion, this is not sufficient to overcome the exclusionary nature of the Act and its regulations. As mentioned at the hearing, it is difficult to understand how such an obligation, if one exists, should be expressed by the decision maker, how it can be measured and found sufficient or insufficient, and how it should—or could—be reviewed by the Court.

[27] This argument would undoubtedly warrant more comprehensive submissions and a more extensive debate, but none will be needed in this case. Even assuming that the obligation exists, Ms. Ndito has not satisfied the Court that the Officer did not fulfill it.

C. *Second argument: The Officer did not assess Ms. Ndito's credibility*

[28] Ms. Ndito argues that the Officer breached the principles of natural justice in finding that she was not credible regarding the rape she suffered in the DRC at the age of 14. She adds that the Officer's finding is unreasonable because it is based solely on the lack of supporting evidence. According to Ms. Ndito, it is a fundamental principle that an applicant's credibility cannot be questioned solely on the basis of a lack of corroborative evidence (citing *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 31–36 [*Ismaili*]). Ms. Ndito adds that corroborative evidence is required only if an officer has reason to doubt someone's credibility. Ms. Ndito submits that the Officer had no reason to doubt her credibility since it was never assessed by the RPD.

[29] To start, as mentioned at the hearing, the Court notes that this argument relies on a finding of fact that the Officer did not make in his Decision. Contrary to Ms. Ndito's claim in paragraph 25 of her memorandum of fact and law, the Officer did not conclude that Ms. Ndito, her mother and her sister were lying. Rather, the Officer concluded that what little material Ms. Ndito had submitted in respect of the events that allegedly took place in the DRC was insufficient to establish, on a balance of probabilities, that she had actually experienced what she said she had. It is important to note that the Officer added that the evidence did not show that Ms. Ndito would encounter any particular hardship because of those allegations were she to

return, whether because of potential violence or the trauma she claimed to have suffered. In this case, the Officer did not assess Ms. Ndito's credibility.

[30] The letters that Ms. Ndito submitted indeed provide little information on this topic and very few details on the circumstances of the 2014 events and the reasons behind them. Reading them confirms that the Officer's conclusion in this regard was reasonable.

[31] In this case, the Officer pointed out that Ms. Ndito stayed in the DRC for three years after the events and thus could have presented a medical certificate, a death certificate or reports from a hospital or therapist, but she did not. Furthermore, according to counsel for Ms. Ndito, the events of 2014 hastened the family's departure from the country, yet they left only three years later, in 2017, and the record contains no information on that three-year period. The fact that it was up to Ms. Ndito to prove her allegations is not in dispute. However, in light of the evidentiary record before the Officer, it was not unreasonable for him to conclude that there was no information showing that Ms. Ndito would suffer any particular hardship due to those allegations in the event of her return, whether because of potential violence or the trauma she claimed to have suffered. The Court is satisfied that the Officer's conclusion is reasonable in light of the evidentiary record.

[32] The Court recognizes that it is sometimes difficult to distinguish between a finding of insufficiency of evidence and a veiled credibility finding. In this regard, I agree with the words of Mr. Justice Denis Gascon in *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at paragraph 43, which have since oft been repeated: "When frailties have been highlighted in the evidence, it is appropriate for the trier of fact to consider whether the evidentiary threshold has

been satisfied by an applicant. By doing so, the trier of fact does not question the applicant's credibility. Rather, the trier of fact determines whether the evidence provided, assuming it is credible, is sufficient to establish, on a balance of probabilities, the facts alleged" (*Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305 at paras 17–18). In other words, "not being convinced by the evidence does not necessarily mean that the trier of fact disbelieves the applicant". That is the situation here and the Officer's conclusion was not unreasonable given the evidence submitted by Ms. Ndito.

D. *Third argument: The Officer did not err in his assessment of the temporary suspension of removals to the DRC*

[33] As part of this argument, Ms. Ndito claims that an officer cannot use a temporary suspension of removals as a mitigating factor in respect of country conditions or the hardship associated with the refusal of a decision, and that in this case, the Officer relied on the suspension of removals to the DRC to conclude that the moratorium mitigated the hardship associated with the refusal of her application. Ms. Ndito maintains that, in drawing this conclusion, the Officer indicated that Ms. Ndito would not be subject to adverse country conditions, which is an error since a humanitarian and compassionate application should be assessed in the present, not in the future.

[34] Ms. Ndito's argument regarding the suspension of removals to the DRC cannot succeed. The Officer indicated that the suspension of removals somewhat mitigated the hardship associated with the refusal of Ms. Ndito's application after emphasizing that the refusal would not lead to Ms. Ndito's removal, and that she could stay in Canada until the temporary suspension of removals was lifted and continue to obtain work or study permits as needed. On

the contrary, the Officer noted that current conditions in the DRC weighed favourably in his assessment and the existence of a temporary suspension of removals did not cause him to reduce the weight given to this factor.

V. Conclusion

[35] Ms. Ndito has not discharged her burden of showing that the Decision is unreasonable. The Decision relies on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the Officer (*Vavilov* at para 85; *Mason* at para 8). As already mentioned, the statutory exemption scheme, the evidence before the Officer and the nature of the submissions made by Ms. Ndito in support of her H&C Application are particularly relevant elements in this case.

[36] When the reasonableness standard applies in the context of judicial review, it is not this Court's role to reweigh and reassess the evidence to reach a different conclusion (*Vavilov* at para 125), but that is essentially what Ms. Ndito is asking the Court to do.

[37] The application for judicial review will be dismissed and no question will be certified.

JUDGMENT in IMM-10320-24

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No costs are awarded.

3. No question is certified.

"Martine St-Louis"
Associate Chief Justice

Certified true translation
Margarita Gorbounova, Senior Jurilinguist

FEDERAL COURT

SOLICITORS OF RECORD

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