Federal Court Cour fédérale

Date: 20250825

Docket: IMM-8570-24

Citation: 2025 FC 1416

Toronto, Ontario, August 25, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

EDUARDO ALEXIS DURAN BANTAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Eduardo Alexis Duran Bantan (Mr. Duran) seeks judicial review of the decision of an Immigration Officer refusing his application for permanent residence on humanitarian and compassionate grounds ("H&C"). For the reasons set out below, I find that the Officer's decision was unreasonable and must be set aside.

I. BACKGROUND

[2] Mr. Duran came to Canada in December 2014, when he was 25 years old. A citizen of Panama, he originally entered as a visitor but subsequently received authorization to study here. He lives with his common-law spouse of five years, who is a protected person in Canada, and their Canadian citizen daughter, who is now three years old. Mr. Duran completed English as a Second Language training and is self-employed through his own registered renovation business. An active and contributing member of his local and religious communities, Mr. Duran volunteers, acts as a church deacon, donates to charity, supports his family and pays his taxes.

[3] In 2023, around the same time that his spouse's refugee claim was accepted, Mr. Duran applied for permanent residence on humanitarian and compassionate grounds pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*]. He based his application on several well-established grounds under this provision (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 27 [*Kanthasamy*]) including his establishment in Canada, separation from his spouse and child, the best interests of the child, and the hardships he would face in Panama if required to go back and apply to immigrate from there. This was Mr. Duran's second H&C application; a previous application had been refused in 2018. Mr. Duran had also previously applied for refugee protection on what he apparently admitted during his refugee hearing were "false pretenses." That claim, along with a subsequent appeal and application for leave for judicial review, were dismissed, as was an application for a Pre-Removal Risk Assessment.

[4] By decision dated February 9, 2024, an Immigration Officer rejected Mr. Duran's H&C application. The Officer accepted the evidence regarding Mr. Duran's work and business activity, his volunteer engagement, and his local and religious community involvement, but found that his establishment was not "extraordinary":

> Some form of establishment is always expected when applicants reside in Canada. The applicant has not demonstrated that his establishment is extraordinary in this regard. While he has established close friendships in Canada, he has not shown a significant level of involvement in the community; the donations to charities are small, undated and not recurring, though I note his involvement in his church. I also note that he has started his own business, works in that business, is financially secure and able to support himself. However, overall, I do not find that the applicant is established in Canada to an extraordinary degree; accordingly, I assign little positive weight to this factor.

[5] The Officer accepted that refusal of the application would result in Mr. Duran's separation from his partner and his then two-year-old daughter but determined that they could "maintain their relationship remotely" and that their separation "need not be indefinite." Nevertheless, the Officer agreed that Mr. Duran's removal and the separation from his partner and child would cause hardship for his daughter, and acknowledging that "children are rarely, if ever, deserving of any hardship" the Officer concluded that it would be in Mr. Duran's daughter's best interests for Mr. Duran to remain in Canada.

[6] The Officer also acknowledged that the "ongoing level of unrest" in Panama would cause Mr. Duran "some hardship."

[7] Under the heading "Analysis and Decision," the Officer purported to weigh these factors. The Officer assigned "little positive weight" to establishment because Mr. Duran had not

demonstrated “that his establishment is extraordinary”; and gave “some positive weight” to the hardship arising from conditions in Panama. Although the Officer assigned “substantial weight” to the best interests of Mr. Duran’s daughter, the Officer nevertheless found that her best interests were “insufficient to warrant a positive decision in this case.” The officer concluded that “granting the requested exemption is not justified by humanitarian and compassionate considerations,” and refused the application.

II. ISSUES

[8] Mr. Duran raises two grounds for this Court’s review of the H&C decision:

A. Whether the Officer erred by imposing an unreasonably elevated threshold when assessing Mr. Duran’s establishment in Canada; and

B. Whether the Officer erred in the assessment of the best interests of Mr. Duran’s child.

[9] The parties agree, as do I, that the standard of review applicable to the issues raised by Mr. Duran is reasonableness.

[10] 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 bearing upon it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). The decision must be justified, intelligible and transparent (*Vavilov* at paras 15, 100) to meet the requirement of “responsive justification” (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at

paras 10, 76 [*Mason*]). As the Supreme Court of Canada explained in *Vavilov*, "Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (*Vavilov* at para 133).

III. ANALYSIS

A. *Admissibility of the new evidence*

[11] The Respondent raises a preliminary challenge to the admissibility of three paragraphs of Mr. Duran's affidavit as well as an exhibit containing a copy of his request for reconsideration of his H&C application. He argues that this evidence was not before the Officer at the time the decision under review was rendered and therefore should not be considered by this Court on judicial review. Mr. Duran agrees, his counsel explaining that these had only been included in the application record to apprise the Court of the full context of the case. As such, there being no argument that any of the exceptions set out in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 applies, the contested evidence will not be considered.

B. *Establishment analysis*

[12] Mr. Duran argues that the Officer erred by requiring "extraordinary establishment" to justify granting his H&C application. He relies on a line of jurisprudence from this Court explicitly rejecting as unreasonable the imposition of a requirement of exceptionality or extraordinariness when evaluating establishment (*Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 at paras 22-25; *Wahyudini v Canada (Citizenship and*

Immigration), 2024 FC 350 at paras 24-26; *Baptiste v Canada (Citizenship and Immigration)*, 2024 FC 181 at para 10; *Farhat v Canada (Citizenship and Immigration)*, 2023 FC 1427 at paras 27, 29-30, 33 [*Farhat*]; *Solis Olvera v Canada (Citizenship and Immigration)*, 2023 FC 1760 at para 24). Mr. Duran maintains that in imposing this elevated threshold the officer also erred by failing to explain what level of establishment would be required for this factor to constitute a significant positive consideration (*Nagamany v Canada (Citizenship and Immigration)*, 2019 FC 187 at para 34; *Stuurman v Canada (Minister of Citizenship and Immigration)*, 2018 FC 194 at paras 23-24; *Farhat* at para 31; *Sivalingam v Canada (Citizenship and Immigration)*, 2017 FC 1185 at para 13; *Apura v Canada (Citizenship and Immigration)*, 2018 FC 762 at para 23; Ndlovu v *Canada (Immigration, Refugees and Citizenship)*, 2017 FC 878 at para 15).

[13] The Respondent denies that that the Officer imposed an elevated threshold for establishment. According to the Respondent, "the Officer was merely describing the Applicant's establishment, when balancing the various aspects of the Applicant's establishment and other H&C factors," and there was "nothing unreasonable about this weighing exercise." He cites several decisions in which this Court found that officers' references to "exceptional" or "extraordinary" establishment did not signal the imposition of an elevated legal threshold (*Davis v Canada (Citizenship and Immigration)*, 2022 FC 238 at paras 36-38; *Arney v Canada (Citizenship and Immigration)*, 2023 FC 1478 at paras 11-15; *Del Chiaro Pereira v Canada (Citizenship and Immigration)*, 2022 FC 799 at paras 50-55; *Toor v Canada (Citizenship and Immigration)*, 2022 FC 773 at para 20; *Gao v Canada (Citizenship and Immigration)*, 2018 FC 1001 at para 19; *Gill v Canada (Citizenship and Immigration)*, 2018 FC 649 at para 30).

[14] I agree with Mr. Duran. The Officer did not merely use the word “extraordinary” to describe Mr. Duran’s establishment, as asserted by the Respondent. The Officer explicitly compared Mr. Duran’s level of establishment to what according to the Officer “is always expected when applicants reside in Canada,” and upon finding that it failed to exceed that unspecified standard, discounted it as a factor for consideration. This was unreasonable because it effectively “introduced an implicit exceptional establishment threshold that is not required” (*Farhat* at para 33). The finding is not justified in relation to the relevant factual and legal constraints that bear on it and is unreasonable (*Vavilov* at para 99).

C. *Best Interests of the Child*

[15] Mr. Duran also argues that the Officer’s analysis of his young daughter’s best interests was unreasonable.

[16] As Mr. Duran notes, the Officer accepted that refusal of the application would result in the separation of Mr. Duran from his daughter and determined that this separation was not in Mr. Duran’s daughter’s best interests and would “negatively impact” her. The Officer found further that “children are rarely, if ever, deserving of any hardship” and determined that this consideration attracted “substantial weight.” Yet in the next sentence the Officer concluded that Mr. Duran’s daughter’s best interests were “insufficient to warrant a positive decision in this case,” either alone or in combination with the other factors raised by Mr. Duran.

[17] I agree with Mr. Duran that this finding is – at best – puzzling.

[18] The best interests of the child are a core consideration in H&C applications. As Justice L'Heureux-Dubé explained in *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817 at paragraphs 74-75:

> [A]ttentiveness and sensitivity to the importance of the rights of children, to their best interests, and to the hardship that may be caused to them by a negative decision is essential for an H & C decision to be made in a reasonable manner. While deference should be given to immigration officers on … judicial review applications, decisions cannot stand when the manner in which the decision was made and the approach taken are in conflict with humanitarian and compassionate values.
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> …
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> [F]or the exercise of the discretion to fall within the standard of reasonableness, the decision-maker should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them. That is not to say that children's best interests must always outweigh other considerations, or that there will not be other reasons for denying an H & C claim even when children's interests are given this consideration. However, where the interests of children are minimized, in a manner inconsistent with Canada's humanitarian and compassionate tradition and the Minister's guidelines, the decision will be unreasonable.

[19] In *Kanthasamy* the majority of the Supreme Court of Canada found at paragraph 40: "Where, as here, the legislation specifically directs that the best interests of a child who is 'directly affected' be considered, those interests are a singularly significant focus and perspective."

[20] At first blush the Officer's reasons suggest compliance with these principles: the officer stated that they were "alert, alive and sensitive" to the best interests of the child; engaged with the evidence regarding the impact of Mr. Duran's separation from his daughter; reasonably found

that she would indeed be negatively impacted by the separation; noted that children are seldom of ever deserving of hardship; and even purported to give this factor "substantial weight."

[21] The problem, however, is that the Officer's conclusion does not flow from these findings. The Officer failed to explain why the harm that would be caused to Mr. Duran's young daughter was outweighed by other factors, or even what those other factors were. While I agree with the Respondent that it was, at least in principle, open to the Officer to refuse the application even after assigning substantial weight to the best interests of the child (for example, if there had been other substantial negative factors that outweighed the best interests of the child) it was incumbent on the Officer to explain how and why that conclusion was reached (*Cordero Romero v Canada (Citizenship and Immigration)*, 2022 FC 1372 at paras 22-23, 26). This is what it means to provide "responsive justification" (*Mason* at para 76). The Officer's failure to provide a coherent and rational chain of analysis connecting the factual findings to the legal conclusion renders the decision unreasonable.

[22] As I find the decision under review to be unreasonable, it must be set aside. The parties have not proposed a serious question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-8570-24

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

2. The Decision of the Officer dated February 9, 2024, is set aside and the matter is remitted to a different officer for redetermination in accordance with these reasons.

3. No question is certified.

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8570-24
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