Federal Court  Cour fédérale

Date: 20250916

Docket: IMM-14521-24

Citation: 2025 FC 1528

Ottawa, Ontario, September 16, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

THI THANH HUONG NGUYEN
TAN DUNG HOANG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Ms. Nguyen and Mr. Hoang, are a married couple and citizens of Vietnam. They applied for permanent residence in Canada based on humanitarian and compassionate grounds ("H & C Application"). The Applicants have two adult Canadian children who live in Canada. Ms. Nguyen has been diagnosed with cancer. The Applicants'

request for relief was primarily based on the following combined factors: their inability to access the parental sponsorship process, prolonged periods of family separation due to Ms. Nguyen's cancer and the children's work in Canada, and the adverse conditions for receiving necessary medical treatment in Vietnam. An officer at Immigration, Refugees and Citizenship Canada ("the Officer") refused the H & C Application. The Applicants challenge this refusal on judicial review.

[2] The Applicants make several arguments. I have not found it necessary to address all of them. I am granting the application for judicial review based on the following three issues. First, as conceded by the Respondent, the Officer failed to address the Applicants' alternate request for a Temporary Resident Permit ("TRP"). Second, the Officer breached procedural fairness or was unreasonable in how they addressed the issue of medical inadmissibility. Third, the decision is unreasonable in failing to be responsive to the Applicants' submissions and evidence – in particular, the impact of family separation and the conditions Ms. Nguyen would face in accessing cancer treatment in Vietnam.

II. Procedural History and Background Facts

[3] The Applicants are an elderly couple. Their only children live in Canada. For the last 15 years, they have regularly visited their two adult children from Vietnam. With their advanced age and the reoccurrence of Ms. Nguyen's cancer, visiting Canada has become more challenging for the Applicants. This is the core basis on which the Applicants were seeking relief - at the very time when the parents and children are the most in need of each other's support, they are

separated from one another. The Applicants' family ties in Canada and the hardship they face in Vietnam were the primary basis on which the Applicants sought H & C relief.

[4] The Applicants' children completed their secondary and post-secondary education in Canada and became citizens. The Applicants' son is a doctor who specializes in cancer care. The Applicants explained in their H & C Application that for the last three years, they have been unable to apply for the parent sponsorship program because there has been no call for applications from the government. Ms. Nguyen described the conditions of the hospitals that she has experienced in Vietnam in a detailed affidavit. The Applicants also provided country condition evidence about health care services in Vietnam.

[5] The Officer refused the H & C Application in July 2024. The Officer focused their decision on the Applicants' establishment, a basis on which the Applicants were not seeking relief. The Officer found the Applicants had little establishment in Canada, other than through the establishment of their children, who were well-established. The Officer acknowledged the challenge in applying for the parental sponsorship program and the stress of separation. The Officer found that Canada's health care system has challenges as well, like those of Vietnam. The Officer also commented on Ms. Nguyen's medical inadmissibility and the failure to request an exemption. Overall, the Officer found there was not a sufficient basis on which to grant relief.

III. Issues and Standard of Review

[6] The Applicants raise two issues relating to the process the Officer followed, i.e. the consideration of the TRP request and the medical inadmissibility issue. The parties agree, as do I,

that I ought to consider on these issues whether the procedure was fair in all the circumstances (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 77; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The remaining issues relating to the Officer's consideration of the evidence and submissions engage the substance of the decision and will be reviewed on the reasonableness standard (*Vavilov* at paras 12-13, 84).

IV. Analysis

A. *Request for Alternative Relief – Temporary Resident Permit*

[7] The parties agree that the Officer failed to consider the Applicants' alternative request for relief – the request for a TRP under section 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicants made this request in their submissions filed with the H & C Application, but the Officer did not acknowledge or address it.

[8] I agree with the parties that the Officer failed to consider the TRP request. This Court has explained in several cases that the failure to address a TRP request made as an alternative request for relief, in the context of an H & C Application, is a breach of procedural fairness (see *Connell v Canada (Citizenship and Immigration)*, 2023 FC 1316 at paras 45-50; *Mpoyi v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 251 at paras 32-33, 36; *Catindig v Canada (Citizenship and Immigration)*, 2018 FC 92 at para 36; and *Shah v Canada (Citizenship and Immigration)*, 2011 FC 1269 at paras 77-79).

[9] While the Respondent concedes that failing to address the TRP is an error, they ask for a redetermination of only the TRP request and not the H & C Application. As I address in these reasons, I am not allowing the judicial review solely on the failure to address the TRP request. In these circumstances, the matter to be redetermined is not limited to the TRP request but requires the redetermination of the H & C Application as a whole.

B. *Medical Inadmissibility Finding*

[10] The Officer made the following comments in their decision on the Applicants' medical inadmissibility:

> I am aware of Mrs. Nguyen's cancer diagnoses and treatments in Vietnam. The Applicants have not made clear a request for exemption from medical inadmissibility under section 38(1)(c) of the IRPA. I therefore do not consider a medical exemption in this application. That being said, the applicant makes clear that continued medical care for breast cancer will be required in Canada. As a permanent resident, the primary applicant would be able to access public health coverage that could reasonably exceed the threshold for excessive demand per 38(1)(c).

[11] The parties disagree on whether the Officer found the Applicants to be medically inadmissible. The Respondent argues that the Officer did not make a final finding on medical inadmissibility, otherwise they would have indicated this in their decision letter or in the section where officers are to list the applicants' inadmissibilities. Further, the Respondent argues that even if they had made such a finding, no further procedural steps would have been required because the Officer implicitly found the humanitarian and compassionate factors could not have overcome the inadmissibility.

[12] The manner in which the Officer engaged on the issue of the Applicants' medical inadmissibility is difficult to follow and has led to a situation where the parties and this Court are not clear about the Officer's intention to make a medical inadmissibility finding. This is untenable.

[13] I agree with the Applicants that the Officer is engaging with the issue of medical inadmissibility in the decision. First, the Officer erroneously states that the Applicants have not sought an exemption from a medical inadmissibility. Second, the Officer states that the Applicants are inadmissible while using language that mirrors the medical inadmissibility provision. There is no explanation for why the Officer would make this statement if they were not intending to make a finding about medical inadmissibility. At the same time, I agree with the parties that it is unusual that there are no other indications that the Officer made an inadmissibility finding– like in the list of inadmissibilities or a statement as such in the decision letter.

[14] In my view, either: i) the Officer made an inadmissibility finding without following the process that would allow for a full response from the Applicants, including reviewing a medical examination and the estimate of costs; or ii) the Officer's reasons are unintelligible because it states that the Applicants are inadmissible at one part and then do not list the inadmissibility at another, and further erroneously state that the Applicants had not requested an exemption contrary to the submissions before them. Whether it is the intelligibility of the reasoning or the process the Officer followed, I have serious concerns leading me to lose confidence in the outcome the Officer reached, requiring a redetermination.

[15] For the sake of completeness, I also do not agree with the Respondent's position that even if the Officer made an inadmissibility finding, they need not have done anything further by way of process because it is clear from the decision that the humanitarian and compassionate factors could not have overcome the inadmissibility.

[16] First, this position requires the Court to significantly add to the Officer's reasons which do not address whether the humanitarian and compassionate factors outweigh the medical inadmissibility. In fact, the Officer explicitly states that the Applicants have not sought an exemption from this inadmissibility.

[17] Moreover, this Court has considered a similar argument by the Respondent in *Daniyan v Canada (Citizenship and Immigration)*, 2021 FC 884 and found that a decision maker must engage with the nature of the inadmissibility to assess whether there are sufficient humanitarian and compassionate factors to overcome an inadmissibility:

> [18] According to the Respondent, the IRCC Policy contemplates that the decision maker should first determine whether H&C considerations warrant a waiver of inadmissibility, and should address the nature of the inadmissibility only if the H&C considerations are sufficiently compelling. I disagree.
>
> [19] The IRCC Policy states explicitly that inadmissibilities should be considered "in the overall context of the considerations put forward by the applicant". It is difficult to envisage how a decision maker can determine whether H&C considerations are sufficient to warrant a waiver of inadmissibility without examining the nature of the inadmissibility in question.

[18] In this case, if the Officer was making a medical inadmissibility finding, there is no engagement in the nature of the "excessive demand" posed by Ms. Nguyen's medical condition.

There is no assessment of the nature of her condition, or the costs associated with the condition. I cannot find that the Officer implicitly balanced factors in the decision that were not mentioned or engaged with in any way. Further, the lack of engagement on these key aspects of a medical inadmissibility determination also calls into question the transparency and justification of the inadmissibility finding itself.

C. *Country Conditions in Vietnam*

[19] I agree with the Applicants that the Officer's treatment of the adverse conditions in Vietnam is unreasonable. The Officer failed to address Ms. Nguyen's evidence about the treatment she had already received in hospitals in Vietnam. Ms. Nguyen described overcrowded, dirty hospital rooms where patients had to sleep on the floor, share beds and care for one another due to the lack of nurses. The Officer equates the situation in Vietnam to the "similar shortcomings in medical care" in Canada, "with long wait times and difficulty accessing the most recent developments in various treatments." The Officer's comparison ignores the Applicants' evidence on cancer care in Vietnam which was certainly not limited to wait times and access to recent treatments. The Officer's reasons on adverse country conditions were unresponsive to the Applicants' evidence and therefore unreasonable (*Vavilov* at paras 126-127).

D. *Family Separation*

[20] Much of the Officer's decision is focused on the Applicants' establishment, or lack thereof, in Canada. The Applicants were not requesting relief based on their establishment in Canada. The Applicants' submissions are clear that their request was principally based on the

connection with their children in Canada and the challenge of family separation at a particularly difficult time for the family.

[21] I agree with the Applicants that while the Officer mentions the "emotional stress" of family separation, there was a lack of engagement with the core basis on which the Applicants were seeking relief. The Applicants provided a great deal of evidence and submissions on the nature of the challenges they are facing as a family and the need for relief in their particular circumstances. The Officer's reasons are unresponsive to this evidence. There is a mismatch between the Applicants' submissions and evidence and the Officer's reasons. In other words, the Officer's reasons do not demonstrate that "they have actually *listened*" to the Applicants and responded to their particular request for relief (*Vavilov* at para 127). This lack of responsive justification renders the decision unreasonable.

[22] The application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-14521-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated July 31, 2024 is quashed and the matter is sent back to be redetermined by a different decision maker;
3. The Applicants should be given an opportunity to provide further submissions and evidence on redetermination; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Leo Rayner	FOR THE APPLICANTS
Leila Jawando	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Legally Canadian Barristers and Solicitors Mississauga, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT