Federal Court  Cour fédérale

Date: 20250929

Docket: IMM-7021-24

Citation: 2025 FC 1606

Ottawa, Ontario, September 29, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

H.K., J.N., AND R.N.

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family: mother, father and their 13-year-old daughter. The Applicants applied to remain in Canada and become permanent residents based on humanitarian and compassionate grounds ("H & C Application"). The adult Applicants have another child who was born in Canada and is approximately 11 years old. This child was not included in the H & C

Application as he is a Canadian citizen, but his interests were nonetheless required to be assessed as a child affected by the decision on his parents' and sister's application.

[2] An officer at Immigration, Refugees and Citizenship Canada ("the Officer") refused the Applicants' H & C Application. The Applicants are challenging this refusal on judicial review. I have found it unnecessary to address all the Applicants' arguments. I agree with the Applicants that the Officer's analysis of the best interests of the two children affected by their decision is unreasonable and requires redetermination. It is on this basis that I am granting the judicial review.

II. Procedural History and Background Facts

[3] The adult Applicants were born in North Korea and defected to South Korea as adults. Therefore, they hold citizenship in South Korea, as does the minor Applicant, who was born there.

[4] The female adult Applicant came to Canada with the minor Applicant in 2012 and made a claim for refugee protection. In the claim, she provided a false name for herself and her daughter and stated that they were coming from North Korea and made the claims only against North Korea. The Applicants allege that their lawyer advised them to put forward such a claim. This lawyer has now been disbarred and convicted of fraud. The Refugee Protection Division ("RPD") granted their refugee claims. The male adult Applicant joined the family the following year and also filed a false claim for refugee protection which he later withdrew.

[5] The Minister appealed the positive RPD decision. In August 2013, the Refugee Appeal Division set aside the RPD's decision and found that the female adult Applicant and minor Applicant were not Convention refugees or persons in need of protection.

[6] The Applicants filed the H & C Application in November 2022. The Applicants sought H & C relief based on the following factors: establishment in Canada, the best interests of the two children, mental health concerns for the female adult Applicant and the hardship in returning to South Korea as people who had defected from North Korea.

[7] The Officer refused the H & C Application in February 2024.

III. Issue and Standard of Review

[8] As I have noted above, the Officer's analysis of the children's best interests is the determinative issue.

[9] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[10] In *Vavilov*, the Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the starting point of the analysis begins with the decision maker's reasons (at para 13). A decision maker's formal reasons are

assessed “in light of the record and with due sensitivity to the administrative regime in which they were given” (*Vavilov* at para 103).

[11] The Court described a reasonable decision as “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). Administrative decision makers, in exercising public power, must ensure that their decisions are “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

IV. Analysis

[12] Foreign nationals applying for permanent residence in Canada can ask the Minister to use their discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] in light of humanitarian and compassionate factors, including the best interests of any child directly affected (s 25(1)). The Supreme Court of Canada in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration) (1970)*, 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion 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).

[13] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case”, there is no limited set of factors that may warrant relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the

circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them” (*Kanthasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 [Baker] at paras 74-75).

[14] The best interests of the two minor children – one an Applicant and one a Canadian citizen – was a central factor raised as a basis for relief.

[15] The Supreme Court of Canada in *Kanthasamy* considered the subsection 25(1) best interests of the child requirement, finding: “Where, as here, the legislation specifically directs that the best interests of the child who is ‘directly affected’ be considered, those interests are a singularly significant focus and perspective” (*Kanthasamy* at para 40).

[16] The Applicants explained in their H & C Application that the two children would have difficulty adjusting to the school system in South Korea because of: i) language barriers; ii) the special learning needs of the youngest child; and iii) the discrimination and bullying of children of North Korea defectors.

[17] The Officer acknowledged these submissions but found that there was insufficient evidence that the children’s interests would be compromised. Ultimately, the Officer’s reasoning does not grapple with the core task – determining what would be in the children’s best interests.

[18] The Officer's decision is not responsive to the evidence and submissions before them. Throughout the best interests of the child section of the decision, the Officer minimized the challenges described by the Applicants by misstating their evidence or unduly focusing on one aspect of it while ignoring the central basis for the relief.

[19] For example, on the issue of the children's integration into the Korean school system, the Officer states:

> It is submitted that the children do not have the best Korean skills. I accept that the children can face some challenges, however, I also note that counsel indicates both children can speak in Korean and … [the eldest child] can read and write a little. I further note that the children can acquire more proficiency in reading and writing Korean once living in South Korea and immersed in a Korean language environment. I look at the children's current reports and observe that on the available evidence, they have the academic ability to meet such challenges. I find insufficient evidence to indicate that the children's educational development and progress would be adversely affected in the long term on account of linguistic challenges.

[20] The focus of the Applicants' submissions was the difficulty for the children to integrate into a demanding and competitive school system at their ages. While it is certainly true that they "can acquire more proficiency in reading and writing Korean once living in South Korea", this does not address the real concern – given their ages, whether the children can catch up in a demanding school program in the Korean language when neither child has studied in Korean.

[21] Further, the Officer states that they have reviewed "the children's current reports" and concluded they have the "academic ability to meet such challenges." The Officer does not further explain this conclusion. It is not clear how the Officer reached this conclusion based on the

evidence. For example, the youngest child has learning challenges; his report card from the end of grade two indicated that he read and spoke at a kindergarten level and his math was at a grade one level. As a result, he has an educational plan with a number of accommodations. The Officer also does not consider, on an individual basis, the difficulty of integration for the eldest child, who, at the time of the Officer's decision, would be entering grade seven the following year.

[22] The Applicants also focused their submissions and evidence on the problem of severe bullying in schools and the discrimination faced by the children of North Korean defectors. In addition to country reports, the adult Applicants provided evidence from their eldest son, an adult in South Korea, who attended school in South Korea as a North Korean defector. He described his experiences of being bullied and discriminated against in the school system.

[23] The Officer states, in commenting on the adult Applicants' eldest son's experiences:

> I accept that such instances are unpleasant and hurtful. Whilst not discounting such behaviour, I note that it reasonably occurred in the broader socialization process involving children.

[24] And later, notes that despite this discriminatory treatment, the eldest son still went on to achieve some successes:

> I am cognizant that despite the discriminatory treatment cited by the applicant's son he notes that he became captain in a Taekwondo team, scored well in national competitions, was scouted by a private school and he graduated from university.

[25] I find both of these statements to be examples of discounting and minimizing the harms of discrimination characterizing it as something to be expected and tolerated as part of the

"broader socialization process involving children" and framing it in a way to suggest it as not *that* harmful because an individual has, in spite of those harms, still managed to achieve some success.

[26] While stating they are not discounting this evidence and expressing sympathy for these unfortunate occurrences, the Officer's reasons, in fact, do just that – discount and minimize the evidence, without really evaluating the negative impact of discrimination on the interests of the two children affected by the decision. This is unreasonable.

[27] The Supreme Court of Canada in *Kanthasamy* re-affirmed its finding in *Baker*, that "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" (*Kanthasamy* at para 38, citing *Baker* at para 75). The Court also re-affirmed that a reasonable best interests of the child analysis requires that a child's interests be "'well-identified and defined' and examined 'with a great deal of attention' in light of all the evidence" (*Kanthasamy* at para 39, citing *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 (CanLII), [2002] 4 FC 358 (CA) at paras 12, 31; *Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165 at paras 9-12).

[28] The Officer's analysis of the children's best interests minimizes their interests and fails to examine their interests 'with a great deal of attention in light of all of the evidence', falling short of the requirements set out by the Supreme Court of Canada in *Kanthasamy* and *Baker*. The

application for judicial review is accordingly granted. Neither party raised a question for certification, and I agree none arises.

JUDGMENT in IMM-7021-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated February 2, 2024 is set aside and sent back to be redetermined by a different decision maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7021-24
STYLE OF CAUSE:	H.K., J.N., AND R.N. v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 2, 2025
JUDGMENT AND REASONS:	SADREHASHEMI J.
DATED:	SEPTEMBER 29, 2025

APPEARANCES:

Annie O'Dell	FOR THE APPLICANTS
Kareena Wilding	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Annie O'Dell Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT