Federal Court Cour fédérale

Date: 20251008

Docket: IMM-10442-24

Citation: 2025 FC 1665

Toronto, Ontario, October 8, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

HARI MOHAMED EMAM ADAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The is an application for judicial review of a decision refusing the permanent residence application of Mr. Hari Mohamed Emam Adam. Mr. Adam applied for permanent residence as a member of the humanitarian-protected persons abroad class, together with his wife and seven youngest children. This application was sponsored by Mr. Adam's eldest son, Salim Hari Mohamed Emam [the Sponsor] through what is referred to as the One-Year Window program

[OYW]. Their application was made on humanitarian and compassionate [H&C] grounds per subsection 25(1) of the *Immigration and Refugee Protection Act* [IRPA].

[2] The application was refused on the grounds that none of the Applicants met the definition of "family member" under the *Immigration and Refugee Protection Regulations* [IRPR] and because the Sponsor did not declare any of the Applicants when he applied for permanent residency in Canada. Furthermore, the officer did not find sufficient H&C grounds to grant their application.

[3] For the reasons that follow, I believe that this application should be granted.

II. BACKGROUND

A. *Facts*

[4] The Sponsor was born in Zamzam refugee camp in Sudan in 2006. In 2011, he moved to North Darfur to live with his aunt so that he could attend school. On April 15, 2023, war broke out in Sudan, and the next day a bomb fell on his aunt's home while he was inside. He survived the bombing and fled to Kenya with three of his cousins. One of his cousins was shot and killed *en route* by an unseen attacker.

[5] In Kenya, Canadian embassy officials interviewed the Sponsor and his cousins together. Sanaa, the Sponsor's eldest cousin, answered all the questions during the interview and completed and signed all of the Sponsor's paperwork, including his application for permanent residence. The Sponsor did not know he could include his family members on his application.

[6] To their credit, Canadian officials processed the Sponsor's permanent resident application rapidly, and he settled in Ottawa with his two cousins on May 9, 2023.

[7] In July 2023, the Sponsor managed to contact his parents and siblings. They had fled Sudan and were living with four extended family members in a single room dwelling in Nairobi.

[8] The Sponsor applied to sponsor his parents and siblings through the OYW program. The Applicants submitted that they should be exempted from the requirement of being "declared family members" on H&C grounds because the Sponsor was not at fault for failing to declare them on his permanent residence application.

[9] The Applicants also submitted that, although they do not meet the IRPR criteria for "family," the following H&C grounds weigh heavily in favor of an exemption from this criteria: the best interests of the children [BIOC], referring to both the Sponsor's siblings and the Sponsor himself, who was 17 years old at the time of the application; the hardship of family separation for the Sponsor and Applicants; the hardships the Applicants face in Kenya: and the hardships the Applicants will face if returned to Sudan.

[10] In addition to an affidavit sworn by the Sponsor, the OYW application included extensive secondary supporting evidence about the importance of family stability; the importance of education for children and comparisons of the education systems in Canada and Kenya; the hardships faced by children, and girls in particular, in Kenya; the psychosocial impact of family separation; the prevalence of violence and crime in Kenya; the difficult economic conditions in

Kenya; the poor treatment of refugees and displaced persons in Kenya; the inaccessibility of healthcare in Kenya; and evidence about country conditions in Sudan.

B. *Decision Under Review*

[11] On May 23, 2023, the application was refused on the grounds that the Applicants did not meet the program criteria and there were not sufficient H&C grounds to accept their application.

III. ISSUES AND STANDARD OF REVIEW

[12] The decisive issue for this judicial review is whether the officer's assessment of the H&C grounds for this application was reasonable. The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[13] The Applicant also argues that the decision under review was tainted by procedural unfairness because the officer relied on evidence that was extrinsic to the record. Because I have concluded that this matter must be redetermined, this procedural complaint will be remedied as the Applicant is now aware of the evidence on which the officer relied. For now, it will suffice to provide a reminder that reliance on such evidence, the existence of which is unknown to an Applicant, is often fraught with procedural pitfalls.

IV. ANALYSIS

[14] The Sponsor in this matter, Salim, faced two impediments in being reunited with his immediate family under the OYW program. The first was that these family members were his parents and siblings. Under section 1(3) of the IRPR, the applicable definition of family members does not include either parents or siblings:

Definition of *family member*	**Définition de *membre de la famille***
(3) For the purposes of the Act, other than section 12 and paragraph 38(2)(d), and for the purposes of these Regulations, other than paragraph 7.1(3)(a) and sections 159.1 and 159.5, ***family member*** in respect of a person	**(3)** Pour l'application de la Loi — exception faite de l'article 12 et de l'alinéa 38(2)d) — et du présent règlement — exception faite de l'alinéa 7.1(3)a) et des articles 159.1 et 159.5 —, membre de la famille, à l'égard d'une personne, s'entend de :
(a) the spouse or common-law partner of the person;	**a)** son époux ou conjoint de fait;
(b) a dependent child of the person or of the person's spouse or common-law partner; and	**b)** tout enfant qui est à sa charge ou à la charge de son époux ou conjoint de fait;
(c) a dependent child of a dependent child referred to in paragraph (b).	**c)** l'enfant à charge d'un enfant à charge visé à l'alinéa b).

[15] The second impediment is that when Salim applied for permanent residence for himself, he did not disclose his parents or siblings to immigration authorities. This ran contrary to the requirements of paragraph 141(1)(a) of the IRPR, which provides as follows:

Non-accompanying family member	**Membre de la famille qui n'accompagne pas le demandeur**
141 (1) A permanent resident visa shall be issued to a family member who does not accompany the applicant if, following an	**141 (1)** Un visa de résident permanent est délivré à tout membre de la famille du demandeur qui ne l'accompagne pas si, à

examination, it is established that	l'issue d'un contrôle, les éléments suivants sont établis :
(a) the family member was included in the applicant's permanent resident visa application at the time that application was made, or was added to that application before the applicant's departure for Canada;	**a)** le membre de la famille était visé par la demande de visa de résident permanent du demandeur au moment où celle-ci a été faite ou son nom y a été ajouté avant le départ du demandeur pour le Canada;
…	…

[16] It was specifically because of these two impediments that the Applicant submitted his application together with a request that it be considered under subsection 25(1) of the IRPA, which provides relief from the requirements of the IRPA on H&C grounds:

> **25 (1)** Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible…or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada…who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption ***from any applicable criteria or obligations of this Act*** 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.
>
> [emphasis added]

[17] Properly understood, then, the Applicant's application was layered into two separate components: first he requested an exemption, based on H&C grounds, from the definition of 'family member' as set out above, so that it could include the Sponsor's immediate family — his parents and siblings. Second, he requested relief on H&C grounds from the requirement, also set out above, that only declared family members are eligible under the OYW.

[18] Contrary to what the Respondent has implied, subsection 25(1) was a proper mechanism for seeking relief in this case. As noted, this provision may result in an exemption from any applicable criteria or obligation under the IRPA, with the only exceptions being certain specific provisions [not at issue here] that may not be exempted, as set out in subsequent parts of section 25.

[19] With this in mind, I turn to a consideration of the arguments that, in my view, warrant granting this application.

A. *The Omission of the Applicant in the Sponsor's Application for Permanent Residence*

[20] The Applicant first argues that the officer erred by failing to consider that his omission from the Sponsor's permanent resident application was inadvertent. The evidence before the officer was that Salim's cousin had taken the lead in the resettlement process; she had answered questions at the interview and was under great emotional stress throughout this time. Her evidence was that they were never asked to list their family members, and so she did not provide this information in relation to the Sponsor's family members. The officer did not entirely disregard these facts, providing as follows in notes entered into the Global Case Management System (GCMS):

> H&C is being requested to overcome…failure to declare the family members on the initial application, as it was not intentional that the PA-CDA did not declare his parents and siblings. The rep states that the PA-CDA was asked about his family members in Kenya, but does not recall if his family was included on his application as his cousin filled out all of the documents.

[21] The Respondent makes two main points in response. First, the Respondent argues that the above passage demonstrates that the officer did, in fact, consider the submissions about the Sponsor's failure to declare his family members. Second, the Respondent asserts that the question of blameworthiness, in the context of this failure to declare, is essentially irrelevant because it does not change the calculus of paragraph 141(1)(a), "which is strictly based on whether family was mentioned in an asylum seeker's original application or not."

[22] Respectfully, this latter argument misses the mark. The main question before the officer was *not* whether the accidental omission of the Sponsor's family from his PR application was relevant to the officer's paragraph 141(1) (a) determination. The Applicant clearly acknowledged that he had not been included in his son's PR application and that, as such, he did not meet the formal requirements of paragraph 141(1)(a). Rather, the key question was whether the circumstances that led to the Applicant's omission from his son's PR application, together with all the other applicable H&C factors, warranted relief from the usual rule that OYW applicants must have been included in their sponsor's PR application.

[23] Seen in this light, it is clear that while the officer was *aware* of the Applicant's explanation, there was no actual engagement with it in the determination as to whether to exempt the Applicant from the ordinary requirements of paragraph 141(1(a). The Sponsor's 'innocence' in failing to include his family members may not have been sufficient on its own to warrant an exemption under section 25 of the IRPA, but it was surely a relevant factor in the analysis. Rather than assess this factor, the officer merely described the Applicant's request and then moved on to the next part of the decision. Noticeably absent, however, is any explanation as to

how the Sponsor's innocent error may have factored into the H&C analysis. This aspect of the officer's reasons therefore lacks adequate justification.

B. *The Best Interests of the Sponsor*

[24] The Applicant argues that the officer did not adequately consider the best interests of the children affected by the decision, namely the Sponsor in Canada, and his younger siblings in Kenya. I agree that, at least in respect of the Sponsor, the officer's BIOC analysis was deficient. The officer commenced the BIOC analysis as follows:

> I have assessed BIOC for this application. I note that the PA-CDA was 17 years old at the time of application submission, and has turned 18 this year. I note that his siblings are minor children that are in the care of their parents in Kenya. The representative indicates the importance of stability in the family unit and best interest of the female children when considering BIOC, and having the PA-CDA's minor siblings in the care of their parents ensures that they have a safe and stable environment to develop in.

[25] The Applicant argues that the officer's assessment of the Sponsor's best interests was unreasonably truncated, solely because he had turned 18 by the time the application was considered. In support of this interpretation of the officer's reasons, the Applicant points out that immediately after noting the Sponsor's age, the Officer moved on to a consideration of the interests of the children in Kenya. The Applicant refers to jurisprudence confirming that it is an error to disregard the best interests of an individual who was under 18 at the time an application is submitted, but who has turned 18 at the time the application is considered: see for example, *Noh v Canada (Citizenship and Immigration)*, 2012 FC 529; *Deng v Canada (Citizenship and Immigration)*, 2019 FC 338; *Gayle v Canada (Citizenship and Immigration)*, 2024 FC 29; *Charles v Canada (Citizenship and Immigration)*, 2014 FC 772.

[26] The Respondent counters that the officer *did* consider the Sponsor's best interests and merely mentioned his age as a relevant contextual factor in the BIOC analysis. The Respondent further notes that the jurisprudence cited by the Applicant only stands for the proposition that decision-makers cannot refuse to consider the best interests of those who have turned 18 during the life cycle of an application. There is nothing wrong, however, with noting the age of an individual, or with factoring age into the BIOC analysis.

[27] There is some merit to the positions of both parties. On the one hand, the structure of the reasons certainly seems to indicate that the officer conducted, at best, a less robust BIOC analysis for the Sponsor on the sole basis of his age. That having been said, the officer returned to the Sponsor's circumstances later in the reasons, noting that "The rep has not indicated how PA-CDA living with his cousins in Canada has been in any way unstable." Subsequent references to the Sponsor's situation, however, appear confined to an assessment of the hardships he may experience, rather than any kind of assessment as to what may be in his best interests.

[28] In the end, I have concluded that the officer either: 1) conducted an unreasonably cursory assessment of the Sponsor's best interests; 2) conducted no assessment of those interests at all; or 3) collapsed an assessment of the Sponsor's best interests into a larger and separate discussion of hardship. The fact that it is unclear what kind of analysis was undertaken by the officer is concerning on its own, and calls into question the transparency and intelligibility of the officer's reasons. But irrespective of those concerns, on any of the above interpretations, I have concluded that the officer did not have adequate regard to the Sponsor's best interests.

[29] Recall that the evidence before the officer was that the Sponsor went to live with his aunt at the age of five years old, but maintained close contact with his family until the aunt's home was bombed and he was forced to flee with his cousins, one of whom was shot and killed while leaving the country. Recall as well that in the midst of this conflict, the Sponsor lost contact with his family but always maintained his desire to be reunited with them. In this context, the mere observation that the Sponsor's life in Canada has not been unstable was not sufficient.

[30] In order to be "alert, alive and sensitive" to a child's best interests, it is essential that those interests be well identified and defined: *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 12. Moreover, in defining those interests, decision makers should "have regard to the child's circumstances, from the child's perspective": *Etienne v Canada (Citizenship and Immigration)*, 2014 FC 937 at para 9.

[31] At no point in the decision under review does the officer articulate what would be in the Sponsor's best interests. The officer acknowledged and agreed with the Applicants' submissions that "children tend to do best in stable households" and that the best interests of the Sponsor's younger siblings would be "a safe and stable environment to develop in" and "high-quality education." There is no such attention paid to the best interests of the Sponsor.

C. *Alternative Pathways to Permanent Residence*

[32] While the above provides a sufficient basis on which to grant this application, I will also briefly register my concern with the officer's finding that the Applicant may have alternative pathways for permanent residence, which mitigated against H&C relief.

[33] There is no indication in the record that the alternative pathways mentioned by the officer (family class sponsorship or private sponsorship) would be even remotely viable. In fact, the Applicant's eligibility for either of these options may well be compromised by the Sponsor's failure to list his family members in his own permanent residence application. The 'catch-22' should be apparent: the officer refused the Applicant's request for H&C relief, in part, because of the availability of other options, yet those options may *also* require a request for H&C relief. Furthermore, as this Court found in *Rocha v Canada (Citizenship and Immigration)*, 2022 FC 84 at para 35, the officer also failed to consider whether there were other barriers, such as sponsor income requirements, that could present a barrier to applying through these programs: see also *Farooq v Canada (Citizenship and Immigration)*, 2023 FC 1391 at para 16.

V. CONCLUSION

[34] For all of the above reasons, I have concluded that the decision under review was unreasonable, and I must therefore grant this application for judicial review. The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-10442-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted to a new decision-maker for redetermination.

3. There is no question to certify.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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