

Federal Court



Cour fédérale

Date: 20251014

Docket: IMM-20354-24

Citation: 2025 FC 1692

Ottawa, Ontario, October 14, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

**PEDRO ALEXANDER ZULUAGA VILLEGAS
SANDRA FABIOLA MORENO MOLINA
ALAN ZULUAGA MORENO
LUNA SOFIA ZULUAGA MORENO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, a family of four, are citizens of Colombia. In 2018, they fled that country for the United States after Mr. Zuluaga Villegas received death threats from the *Aguilas Negras* (the Black Eagles), a paramilitary group. In May 2021, the family left the United States for Canada, where they sought refugee protection. In December 2022, the Refugee Protection

Division of the Immigration and Refugee Board of Canada rejected the claims on the basis that the applicants have an internal flight alternative in Colombia.

[2] In August 2023, the applicants applied for permanent residence in Canada on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). They based the application on their establishment in Canada, the hardship they would face in Colombia, and the best interests of the two children – Alan, who was 12 years of age when the application was submitted, and Luna, who was 17.

[3] The H&C application was refused by a Senior Immigration Officer with Immigration, Refugees and Citizenship Canada on October 15, 2024.

[4] The applicants have applied for judicial review of this decision under subsection 74(1) of the *IRPA*. They submit that the officer's analysis of the factors on which they based their request for H&C relief is unreasonable.

[5] As I will explain, the applicants have not persuaded me that there is any basis to interfere with the officer's decision. This application for judicial review will, therefore, be dismissed.

[6] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10).

[7] 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 that constrain the decision maker” (*Vavilov*, at para 85). When conducting reasonableness review, a reviewing court must take a “reasons first” approach that examines and evaluates the justification the administrative decision maker has given for its decision, always bearing in mind the history of the proceeding and the administrative context in which the decision was made (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 58-60). The reviewing court must read the decision maker’s reasons “holistically and contextually” (*Vavilov*, at para 97) and in light of “the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker’s work, and past decisions of the relevant administrative body” (*Vavilov*, at para 94). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov*, at para 100).

[8] Reasonableness review “finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers” (*Vavilov*, at para 13). Absent exceptional circumstances, it is not the role of the reviewing court to reweigh or reassess the evidence or interfere with the decision maker’s factual findings (*Vavilov*, at para 125). As well, in the present context, since decisions under subsection 25(1) of the *IRPA* are highly discretionary, the decision maker’s weighing of relevant factors warrants a considerable degree of deference from the reviewing court, as long as that assessment bears the hallmarks of transparency, intelligibility and justification (*Williams v Canada (Citizenship and Immigration)*,

2016 FC 1303 at para 4; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15; *Vavilov*, at para 126). Reasonableness review nevertheless remains “a robust form of review” (*Vavilov*, at para 13; *Mason*, at para 63).

[9] As noted above, the applicants submit that the officer’s analysis of the factors on which they based their H&C application is unreasonable. They take issue with essentially every finding the officer made; however, for the most part their objections are simply disagreements with the officer’s assessment of the evidence or with the weight the officer gave to the relevant factors. Such disagreements do not provide grounds for interfering with the decision.

[10] As just stated, H&C relief is a discretionary measure. The onus was on the applicants to present sufficient evidence to warrant the exercise of such discretion in their case (*Kanthasamy*, at paras 23-25; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45; *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2008 FC 646 at para 31; *Zlotosz v Canada (Citizenship and Immigration)*, 2017 FC 724 at para 22). The officer’s conclusion that the applicants had failed to provide such evidence is reasonable.

[11] The applicants attack several of the officer’s findings by contending that the officer engaged in speculation and made findings in the absence of evidence but I am unable to agree. If anything, it is the applicants who engage in speculation in challenging the officer’s reasoning. Two examples will suffice to illustrate this flaw in their approach to this application, which runs throughout their submissions.

[12] First, the officer found that the applicants have strong family ties to Colombia (where their immediate family members all reside) and none to Canada. The officer also found that the applicants had provided insufficient evidence to indicate that, if they were to return to Colombia, they could not resume their relationships with their family there. In challenging the reasonableness of these findings, the applicants submit that they “may have strained or distant ties with their family in Colombia, or those relationships may no longer provide the emotional support or security assumed by the officer” (*Applicants’ Memorandum of Fact and Law* at para 33). There is, however, no evidence that any of this is the case. Such speculative possibilities do not call the reasonableness of the officer’s findings into question.

[13] Second, while noting the friendships the applicants had formed in Canada, the officer found that insufficient objective evidence had been provided “to demonstrate the existence of any barriers prohibiting the applicants’ friends from visiting them in Colombia.” The applicants submit that this finding “disregards practical and legal barriers,” arguing that their friends in Canada “may face difficulties obtaining travel documents, affording travel costs, or taking time off work or personal responsibilities to visit the applicants in another country” (*Applicants’ Memorandum of Fact and Law* at para 40). Once again, there is no evidence that any of this is the case.

[14] The applicants also submit that it was unreasonable for the officer to give positive but “slightly lessened” weight to the adult applicants’ work history in Canada because, for part of the time they have been working here, they did so without authorization. I do not agree. The adult applicants acknowledge that they worked without authorization for a period of time (explaining

that it was necessary to do so to support themselves and their children) but contend that their lack of authorization was due to an error by a previous representative. However, no such information was provided in the H&C application. In any event, there is no basis to interfere with the officer's assessment of this factor. It is well established that an H&C officer may take an applicant's contravention of the *IRPA* and lack of status in Canada (including lack of authorization to work) in assessing their establishment in Canada. After a comprehensive survey of the relevant case law, Justice McHaffie observed in *Browne v Canada (Citizenship and Immigration)*, 2022 FC 514, that the jurisprudence has established that "it is not unreasonable for an officer to take into account the circumstances giving rise to establishment, including lack of status or misrepresentations, and to conclude that the positive weight to be given to establishment ought to be attenuated because of those circumstances" (at para 28). This is exactly what the officer did here.

[15] Further, the applicants submit that it was unreasonable for the officer to infer from their ability to establish themselves in Canada that they would be able to re-establish themselves in Colombia. I do not agree. In assessing this finding, one must not forget that the adult applicants were already well established in Colombia when they left and, relatively speaking, they have not been away from Colombia for very long.

[16] Turning to the best interests of the children, the officer's reasons demonstrate that the officer understood that this was an important factor that had to be assessed carefully. In determining the reasonableness of the officer's assessment, one must bear in mind that, given the fact-specific nature of the inquiry into the best interests of a child affected by the decision,

evidence to support reliance on those interests must be provided (*Kanthasamy*, at para 35; *Zlotosz*, at para 22; *Lovera v Canada (Minister of Citizenship and Immigration)*, 2016 FC 786 at para 38).

[17] The applicants attempt to impugn the decision for failing to explore further the implications of a statement Luna made in a letter submitted as part of the H&C application. In that letter, Luna stated that she feared returning “to a country where I will not be able to be myself, where I know I will be judged and rejected by others because of my sexual orientation.” Apart from a statement in Mr. Zuluaga Villegas’s affidavit in support of the H&C application that Luna had confided to her parents that “she fears that in Colombia, as a consequence of the persistent homophobic and misogynist culture in that country, she will be judged and rejected by others because of her sexual orientation,” nothing else was said about this concern in the H&C application. While country condition evidence touching on this issue was provided, counsel’s submissions in support of the H&C application were silent on this point.

[18] In the decision, the officer notes that Luna does not provide any “additional details or evidence with respect to her sexual identity that would provide further context to her statement.” Indeed, she does not even say what her sexual orientation is. As a result, the officer was unable to give this factor any weight.

[19] The applicants submit that the officer’s apparent expectation that there be detailed evidence of Luna’s sexual orientation “ignores the fact that many individuals in marginalized communities may be reluctant to disclose or to fully document their identities due to fear of

stigma or persecution” (*Applicants’ Memorandum of Fact and Law* at para 52). Further, the applicants submit that “Luna’s reluctance to elaborate on her sexual orientation in her affidavit [sic] might stem from personal trauma or cultural pressures” (*Applicants’ Memorandum of Fact and Law* at para 54). As with the other factors reviewed above, however, there is no evidence to support these assertions. The place to have made this case (with supporting evidence) was in the H&C application itself, not in legal submissions on judicial review. On the basis of the (at best) very limited information before the officer concerning Luna’s sexual orientation, the officer’s assessment of this factor was altogether reasonable.

[20] The only other issue raised by the applicants that requires comment is the reasonableness of the officer’s assessment of conditions in Colombia. The officer noted that the submissions in support of the H&C application pointed to evidence demonstrating political and economic instability, unemployment, crime and violence, and discrimination against women. The officer found that, while the conditions described by counsel are not ideal, “they are general in nature and would be applicable to most similarly situated persons in Colombia.”

[21] Read in isolation, this passage could suggest that the officer had erroneously required that the applicants demonstrate that the hardship they would face is greater than that faced by anyone else in Colombia (see *Rubayi v Canada (Citizenship and Immigration)*, 2018 FC 74 at paras 17-19). Furthermore, as the Supreme Court of Canada held in *Kanthasamy*, reasonable inferences can be drawn from generalized evidence of adverse conditions to demonstrate hardship in a home country (at para 56). In the present case, however, the officer went on to find that there was “insufficient evidence pointing to any specific adverse country conditions that could impact

the applicants upon their return.” The officer returned to this point later in the decision, stating: “I have also taken into consideration the applicants’ concerns regarding the general state of affairs in Colombia including the economic situation, crime and violence. I have balanced these concerns against the lack of supporting evidence that they will be negatively impacted, given their personal circumstances.” In other words, the officer found that the applicants had not established a basis to draw a reasonable inference from the general country conditions to their own particular circumstances. In challenging this finding, the applicants submit that they may face “a range of difficult circumstances” in Colombia such as “long-term emotional distress, family separation, difficulty reintegrating into their home country, and the potential for physical or mental harm.” This, however, simply repeats the grounds on which H&C relief was sought in the first place. It does not show that the decision is unreasonable.

[22] The applicants also submit that the officer erred when, in assessing the country condition evidence, the officer stated that an applicant for H&C relief “must clearly demonstrate exceptional circumstances” in order to be granted relief. It is certainly arguable that this is not the test for relief under subsection 25(1) of the *IRPA*: see *Henry-Okosama v Canada (Citizenship and Immigration)*, 2024 FC 1160 at paras 29-47; *Buchberg v Canada (Citizenship and Immigration)*, 2024 FC 1581 at paras 6-8; *Olasehinde v Canada (Citizenship and Immigration)*, 2024 FC 1634 at paras 4-5; and *Shams v Canada (Citizenship and Immigration)*, 2025 FC 544 at paras 17-21. However, even assuming that the officer had an unreasonably high threshold in mind, I am not persuaded that this affected the ultimate result. This is because the assessment of country conditions and the applicants’ personal circumstances turned on the

finding that the applicants had not established how, if at all, they will be negatively affected by conditions in Colombia. As just stated, this finding was not unreasonable.

[23] In sum, while the applicants must have been disappointed that their application for H&C relief was refused, they have not shown that the decision is unreasonable. The decision is responsive to the evidence provided and the submissions made in support of the application. The officer's assessment of the relevant factors as well as the information and evidence relied on by the applicants is transparent, intelligible, and justified. There is no basis for me to interfere with the decision. As a result, this application for judicial review must be dismissed.

[24] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-20354-24

THIS COURT’S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-20354-24

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THE MINISTER OF CITIZENSHIP AND
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