

Federal Court



Cour fédérale

Date: 20251031

Dockets: IMM-11238-23

IMM-8590-24

Citation: 2025 FC 1762

Toronto, Ontario, October 31, 2025

PRESENT: Mr. Justice Brouwer

Docket: IMM-11238-23

BETWEEN:

**RAJA FAISAL KIANI,
AYSHA FAISAL KAYANI,
DUR E SHEWAR KAYANI,
MUHAMMAD HAMZA KAYANI,
AMINA KAYANI,
By their litigation guardian,
RAJA FAISAL KIANI**

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AND BETWEEN:

**RAJA FAISAL KIANI
AYSHA FAISAL KAYANI
AMINA KAYANI
DUR E SHEWAR KAYANI
MUHAMMAD HAMZA KAYANI**

Docket: IMM-8590-24

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, a family from Pakistan, seek judicial review of the refusals of their applications for Pre Removal Risk Assessments [PRRA] pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and for permanent residence on humanitarian and compassionate grounds [H&C] pursuant to section 25(1) of the IRPA. For the reasons set out below, I find that both decisions are unreasonable and must be set aside.

I. Background

[2] Raja Faisal Kiani, his spouse Aysha Faisal Kayani, and their three children Amina, Dur E Shewar, and Muhammad Hamza, are nationals of Pakistan who fled to Canada in June 2016 following threats from religious extremists. Ms. Kayani and Mr. Kiani have a fourth child born in Canada, Muhammad Taha, who is now eight years old.

[3] The family sought refugee protection soon after their arrival in Canada, asserting a well-founded fear of persecution at the hands of Lashkar-e-Jhangvi [LeJ], a violent extremist group targeting Shia Muslims in Pakistan, and from family members of Ms. Kayani who threatened violence against the family for converting from Sunni Islam.

[4] Their refugee claims were initially refused by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] on the basis of credibility and the availability of an internal flight alternative [IFA] where the Applicants could be free from persecution by the LeJ, but their appeal was allowed by the Refugee Appeal Division [RAD]. On redetermination the RPD again dismissed their claims on credibility and IFA grounds. They appealed both findings to the RAD. However, by decision dated March 11, 2021, the RAD determined that the

Applicants have an IFA in Karachi and that this was determinative. The RAD declined to make any finding about the Applicants' credibility.

[5] The Applicants submitted H&C applications on November 1, 2022, citing their establishment and ties in Canada, the best interests of the children, factors in their country of origin that would adversely impact them, health issues faced by Mr. Kiani and Ms. Kayani, and the disproportionate hardship to the family, including the Canadian child, that would arise from removal.

[6] On July 24, 2023, while their H&C applications were pending, the Applicants were served with PRRA applications. They completed and filed their PRRA applications, explaining that they continued to fear persecution by the LeJ and Ms. Kayani's family members, and they supported their applications with affidavit evidence about new threats, recent news articles and human rights reports about the persecution of Shia Muslims, including women, in Pakistan, and detailed counsel submissions.

[7] Both applications were refused, and those refusals are now before this Court for judicial review.

A. *H&C decision (IMM-11238-23)*

[8] A Senior Immigration Officer refused the H&C application on August 9, 2023, finding that the hardship the Applicants might experience upon returning to Pakistan does not warrant relief under section 25(1) of the IRPA.

[9] The Officer gave some positive weight to the Applicants' establishment in Canada but found that it is not uncommon for individuals to establish roots while awaiting the outcome of their refugee claims and appeals. The Officer assigned little weight to evidence showing that socioeconomic conditions in Pakistan would adversely affect the best interests of the children, however, and found that while the best interests of the Canadian-born child Muhammad Taha warrants some positive consideration, his interests would be served by remaining with his parents, who could mitigate the negative impact of the move to Pakistan.

[10] The Officer assigned little weight to the hardship the family would face in Pakistan, relying on the previous findings of the RPD and the RAD regarding the availability of an IFA in Karachi. The Officer also gave little weight to the negative impact on Canadian employees hired by Mr. Kiani, Ms. Kayani's medical history, and Mr. Kiani's mental health condition.

B. *PRRA decision (IMM-8590-24)*

[11] A different Senior Immigration Officer refused the PRRA application on December 29, 2023, finding that there was less than a mere possibility that the Applicants would be subject to a risk of persecution, torture or cruel and unusual treatment or punishment, or a risk to life, if returned to Pakistan.

[12] The Officer placed little weight on the sworn affidavits submitted with the PRRA application because they lacked details about the alleged continuing threats against Mr. Kiani and his family and were not supported by other corroborative evidence. Although the Officer accepted, based on the updated news and country conditions documents, that sectarian violence

occurs in Pakistan and that Shia Muslims face security threats, the Officer assigned these documents little weight because they did not sufficiently address the specific situation or personalized risk of the Applicants. Instead, the Officer relied on the IRB's 2023 National Documentation Package on Pakistan to find that Shia Muslims do not experience treatment from either the state or non-state actors that amounts to persecution.

[13] The Officer also reaffirmed the findings of the RPD and the RAD regarding the availability of a reasonable IFA in Karachi, concluding that the family had not demonstrated that they had a sufficiently high profile such that LeJ would mobilize resources to find them and that Karachi was a large city away from the Applicants' hometown where they could have a low profile and live in peace. The Officer found that the new evidence submitted with the PRRA application did not overcome the RPD's initial findings.

II. Issues

[14] The Applicants assert that the Officer's decision refusing their H&C application (IMM-11238-23) was based on unreasonable assessments of the best interests of the children, the hardship the family will face in Pakistan, and their establishment in Canada.

[15] They assert that the PRRA decision (IMM-8590-24) was also unreasonable because the Officer (a) failed to consider the Applicants' full profile, (b) dismissed evidence based on what it did not say, (c) rendered an internally inconsistent decision, and (d) required the Applicants to "overcome" previous findings of the RPD.

[16] H&C and PRRA decisions are reviewed by this Court on a standard of reasonableness. Reasonableness review entails an assessment of whether a decision is based on an internally coherent and rational chain of analysis and 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 hallmarks of reasonableness are justification, transparency and intelligibility (Vavilov at para 99). The reasons must reflect the stakes, which are very high in both matters under review (Vavilov at para 133).

III. Analysis

A. *H&C decision (IMM-11238-23)*

[17] The Applicants identified the best interests of the four directly affected children as a central consideration justifying an exercise of humanitarian and compassionate discretion in their case. In submissions supported by extensive evidence they highlighted the negative impact that removal to Pakistan would have on the children's education, health, socioeconomic well being, and security. They submitted that removal from Canada, where the children were well-established and had strong emotional bonds to friends and family, would seriously adversely affect their health and well-being. They noted further that the youngest child of the family was born in Canada and as a citizen had the right to continue to benefit from Canadian socioeconomic and security conditions, but that he would be deprived of these if his family were removed as he would of course need to accompany his parents.

[18] The Officer acknowledged the submissions and reviewed the county conditions evidence, but concluded with respect to the three minor Applicants:

The applicants have provided little evidence that the children require any specialized treatment for identified medical conditions. As to the quality of education and healthcare being less than the quality of education and healthcare in Canada, I can appreciate that the applicants would like to raise their children in Canada and provide them with the best of education and healthcare as most parents for their own children. However, it must be recalled that the comparative socio-economic advantage that Canada offers is not in and of itself determinative to the outcome of this application. The purpose of an H&C is not to make up for differences in the standards of living between countries, but to provide an exceptional response to circumstances that are unforeseen by the IRPA. The submitted and objective evidence indicate that both public and private education and healthcare is available in Pakistan and would be reasonably accessible to the applicants and their children. While it may be that the quality of education and healthcare in Canada is higher, that carries little weight for an H&C. I give little weight to this element within my BIOC considerations.

[19] As for the Canadian-born child, the Officer determined:

I acknowledge that the Canadian born child has only lived his life in Canada and there is little evidence before me as to his level of proficiency in Urdu. I acknowledge that the child will face the negative impact of either his parents and siblings leaving Canada without him or if they take him along of being removed from Canada. Therefore BIOC of this Canadian born child warrants some positive consideration. However, I do note that if the parents choose to take him with them to Pakistan, the negative impact will be mitigated by the fact that they will remain as a family unit and the child will continue to receive the care and support that his parents have shown him throughout his life. I therefore conclude that the best interest of the Canadian born child would be served if he remained with his parents, who would, based on available information, be able to mitigate any negative impact of the child's move to Pakistan.

[20] The Applicants argue that this analysis falls well short of the “alert, alive and sensitive” standard required by the controlling jurisprudence and is unreasonable. I agree.

[21] The best interests of the child are to be “a singularly significant focus and perspective” (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 40 [*Kanthasamy*]) in the consideration of H&C applications, and decision makers are required to show “attentiveness 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...” (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 74). As the Supreme Court of Canada explained in *Kanthasamy*:

[39] A decision under s. 25(1) will therefore be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered: *Baker*, at para. 75. This means that decision-makers must do more than simply *state* that the interests of a child have been taken into account: *Hawthorne*, at para. 32. Those interests must be “well identified and defined” and examined “with a great deal of attention” in light of all the evidence....

[22] In *Williams v Canada (Citizenship and Immigration)*, 2012 FC 166 [*Williams*], as cited in *Kanthasamy* at para 59, Justice Russell (as he then was) explained:

[64] There is no basic needs minimum which if “met” satisfies the best interest test. Furthermore, there is no hardship threshold, such that if the circumstances of the child reach a certain point on that hardship scale only *then* will a child’s best interests be so significantly “negatively impacted” as to warrant positive consideration. The question is *not*: “is the child suffering enough that his “best interests” are not being “met””? The question at the initial stage of the assessment is: “what is in the child’s best interests?”

[23] As Justice Zinn observed further in *Sebbe v Canada (Citizenship and Immigration)*, 2012

FC 813 [*Sebbe*]:

[16] Undoubtedly placing a child in an environment where his or her basic needs are not met can never be said to be in that child's best interest. However, to suggest that the child's interest in remaining in Canada is balanced if the alternative provides a minimum standard of living is perverse. This approach completely fails to ask the question the Officer is mandated to ask: What is in this child's best interest?

[24] The Applicants maintain, and I agree, that the Officer unreasonably applied the very analytical approach rejected by this Court in *Williams* and *Sebbe*, and in many cases since (see, e.g., *Trinidad de Jesus v Canada (Citizenship and Immigration)*, 2025 FC 1022 at paras 24-25; *Raposo Arruda v Canada (Citizenship and Immigration)*, 2024 FC 1691 at paras 10-13; *Obeid v Canada (Citizenship and Immigration)*, 2022 FC 88 at para 16; *McDonald v Canada (Citizenship and Immigration)*, 2022 FC 394 at paras 36-38; *De Oliveira Borges v Canada (Citizenship and Immigration)*, 2021 FC 193 at paras 6-9; *Tisson v Canada (Citizenship and Immigration)*, 2015 FC 944 at paras 16, 19). The Respondent's argument that there was no need for the Officer to engage more deeply to determine what was actually in the best interests of the children, and to weigh those interests when coming to a determination, because "it can safely be assumed a minor's interests will almost always be in staying in this country with his parents" is unpersuasive. If accepted, the Respondent's argument would allow H&C decision makers to take a short cut past *Baker*, *Kanthasamy*, and the related jurisprudence, to avoid the hard work required by the principle of the best interests of the child.

[25] I therefore find that the Officer's treatment of the best interests of the children in this case was unreasonable, as it is not justified in light of the legal and factual constraints that bear on the

decision (*Vavilov* at paras 105-106). Therefore, the decision must be set aside and the application remitted to a different Officer for redetermination in accordance with law.

[26] Having made this finding, there is no need to address the other arguments raised by the Applicants with respect to the Officer's treatment of the family's establishment in Canada or the hardship they will face on return, regardless of the strength of those further arguments.

B. *PRRA decision (IMM-8590-24)*

[27] The evidence before the PRRA Officer established that the adult Applicants are Shia converts and that three of the five family members are women or girls. Jointly they claimed a well-founded fear of persecution by LeJ and highlighted in their submissions that their specific identity as converts exposed them to heightened risk.

[28] While the Officer accepted that the adult Applicants are indeed converts, and the gender identities of the Applicants were never in dispute, the Officer's risk analysis fails entirely to engage with these intersecting elements of their risk profiles. The Applicants argue that this was unreasonable, notwithstanding that their counsel did not make submissions highlighting this intersectional aspect of their risk profiles. They rely on the principle identified by the Supreme Court in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*] that refugee decision makers must consider all the grounds of persecution covered by Article 1(A) of the *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 whether or not the grounds were specifically articulated by the claimant (*Ward* at 745-746; *Pastrana Viafara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526 at para 6; *Ingabire c Canada (Citoyenneté et*

Immigration), 2025 CF 1545 at paras 40-46; *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1020 at para 12; *Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 at paras 17-19 [*Jama*] ; *Varga v Canada (Citizenship and Immigration)*, 2013 FC 494 at para 5; *Gutierrez v Canada (Citizenship and Immigration)*, 2011 FC 1055 at para 35).

[29] The Respondent raises several arguments in rebuttal.

[30] First, she alleges in her written memorandum, without authority, that it is “improper” for the Applicants to challenge the PRRA decision maker’s failure to assess these risks because previous counsel did not identify those profiles before the RPD or the RAD. Counsel provided no authority for this proposition and wisely declined to attempt the argument orally. There is nothing improper about the Applicants raising this challenge to the PRRA decision.

[31] Next the Respondent points out, somewhat contradictorily, that the Officer acknowledged that the Applicants had asserted a fear of persecution and mistreatment based on their conversion from the Sunni to the Shia faith. This, according to the Respondent, demonstrates that the Officer did not “miss” this aspect of the Applicants’ risk profile. However, I do not take the Applicants’ argument to be that the Officer “missed” the fact of their conversion; the argument is that the Officer did not take it into account when analyzing the evidence to assess the safety and reasonableness of Karachi as an IFA. Based on my review of the Officer’s risk analysis, this conclusion is inescapable. The same is true with respect to the gender identities of the Applicants. They were not considered in the analysis.

[32] The Respondent's third argument is that PRRA decision makers have no obligation to look beyond the risk profiles explicitly articulated by PRRA applicants. The Respondent acknowledges the principle from *Ward* relied on by the Applicants but argues that it only applies to claims before the RPD and the RAD, not to PRRA applications. As her counsel puts it:

One would have to treat both the same, as such, to expect the same duties in both. It is trite law, however, that PRRAs are not de novo refugee claims. It is best, therefore, not to treat PRRA officers just like the RPD. Their job is to consider new risks, not to reformulate the miscast claims of an original risk.

[33] There is no merit to this argument. Not only has the Respondent failed to identify any relevant authority for this proposed limitation on the application of well-established refugee law, she has also failed to acknowledge and propose any basis upon which to distinguish the long line of jurisprudence consistently upholding precisely the opposite principle: that the duty does apply to PRRA officers with equal force as to other refugee decision makers (see *Ramsuchit v Canada (Citizenship and Immigration)*, 2025 FC 1164 at para 22; *Cali c Canada (Citoyenneté et Immigration)*, 2025 CF 587 at para 25; *Cao v Canada (Citizenship and Immigration)*, 2020 FC 500 at para 28; *Nsungani v Canada (Citizenship and Immigration)*, 2019 FC 107 at para 35; *Pacheco v Canada (Citizenship and Immigration)*, 2018 FC 872 at para 55; *Jama* at para 19).

[34] The reason for applying this principle to PRRA decision makers was explained well by Justice Yves de Montigny (as he then was) more than a decade ago in *Jama*, and applies with equal force today:

[17] It is trite law that the PRRA engages the state's independent and fundamental obligation not to *refoule* individuals to torture, persecution and other impermissible outcomes. It is

clear that Parliament's intention in enacting the PRRA process was to comply with Canada's domestic and international commitments to the principle of *non-refoulement*: see *Figurado v Canada (Solicitor General)*, 2005 FC 347, at para 40; *Revich v Canada (Minister of Citizenship and Immigration)*, 2005 FC 852, at para 14; *Solis Perez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 663, at para 23, *aff'd* 2009 FCA 171; *Ragupathy v Canada (Minister of Public Security and Emergency Preparedness)*, 2006 FC 1370, at para 27. As a result, a PRRA officer cannot confine or exhaust its analysis to the exact arguments raised by an applicant or even to the exact evidence presented.

[35] The Respondent's final argument is that the Applicants' challenge should fail because, even if the Officer erred by failing to assess the Applicants' full intersectional risk profiles, the objective evidence does not support a finding of heightened risk based on gender or conversion. This argument amounts to an invitation to the Court to make findings of fact on issues that the officer with delegated authority and relevant expertise failed to address. That is not the role of this Court on judicial review; the proper remedy is to remit the application for redetermination by an officer with the delegated authority and expertise to assess risk under sections 96 and 97(1) of the IRPA.

[36] I therefore find that the PRRA decision must be set aside because the Officer unreasonably failed to assess all the grounds of persecution raised by the evidence. Having come to this conclusion, no purpose would be served by making findings on the other arguments raised by the Applicants and I again decline to do so.

JUDGMENT in IMM-11238-23

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. No question of general importance is certified.

JUDGMENT in IMM-8590-24

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. No question of general importance is certified.

"Andrew J. Brouwer"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8590-24
STYLE OF CAUSE: RAJA FAISAL KIANI, AYSHA FAISAL KAYANI,
AMINA KAYANI, DUR E SHEWAR KAYANI,
MUHAMMAD HAMZA KAYANI v MINISTER OF
CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING: TORONTO, ONTARIO
DATE OF HEARING: SEPTEMBER 3, 2025
JUDGMENT AND REASONS: BROUWER J.
DATED: OCTOBER 31, 2025

DOCKET: IMM-11238-23
STYLE OF CAUSE: RAJA FAISAL KIANI, AYSHA FAISAL KAYANI,
DUR E SHEWAR KAYANI, MUHAMMAD HAMZA
KAYANI, AMINA KAYANI, BY THEIR LITIGATION
GUARDIAN, RAJA FAISAL KIANI v MINISTER OF
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DATE OF HEARING: SEPTEMBER 3, 2025
JUDGMENT AND REASONS: BROUWER J.
DATED: OCTOBER 31, 2025

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