

Federal Court



Cour fédérale

Date: 20251119

Docket: IMM-17415-24

Citation: 2025 FC 1841

Ottawa, Ontario, November 19, 2025

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

FADUMO YUSUF MOHAMED ABDILLE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Fadumo Yusuf Mohamed Abdille [Applicant], came to Canada in 2012 and was granted refugee status. Her status was vacated in 2023 due to misrepresentation on her refugee claim. As she was married to a Canadian citizen, the Applicant applied for permanent residency under the Spouse or Common-Law Partner in Canada Class pursuant to section 12(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Moreover, because she

was inadmissible in Canada following the loss of her status as a refugee and due to her misrepresentation, she also had to apply for relief of her inadmissibility on humanitarian and compassionate [H&C] grounds pursuant to section 25 of the *IRPA*.

[2] In a decision dated September 10, 2024 [Decision], an Immigration Officer [Officer] rejected her spousal sponsorship application and dismissed her request for H&C relief, on the basis that her relationship was not genuine because there was insufficient evidence that the Applicant and her husband's lives were physically and financially intertwined in a manner typically associated with a married couple. The Officer also ruled that there were not sufficient H&C grounds to grant her relief from her inadmissibility to Canada due to misrepresentation. The Applicant now seeks judicial review of that decision.

[3] For the reasons that follow, the application for judicial review is granted.

II. Background Facts

[4] The Applicant was born in and is a citizen of Somalia, who later acquired citizenship in the Netherlands. In September 2002, she met her future husband in the Netherlands. The Applicant was introduced to her husband, a Canadian citizen who also originates from the same region of Somalia, by their mutual uncle. The Applicant's future husband was already married in Canada, and the Applicant was aware of that fact. However, as they are both of the Muslim faith, the Applicant understood that men are permitted to have multiple wives. Accordingly, they celebrated their Islamic marriage on October 26, 2002.

[5] The Applicant's husband travelled frequently to the Netherlands for various purposes and that is how their relationship evolved. Between 2002 and 2012, two children were born from that union and both children resided with their mother in the Netherlands.

[6] Seeking to reunite with her husband and the father of her children in Canada, the Applicant came to Canada from the Netherlands with their children unannounced on July 31, 2012. The Applicant obtained refugee status for herself and their two children under false names, false birth dates, as citizens of Somalia, and seeking protection from persecution in Somalia.

[7] Despite being married under Islam since 2002, the Applicant could not be sponsored in Canada by her husband, because polygamous marriages are not legally recognized under Canadian law. Moreover, given that her husband was married and had a child with his first wife, the Applicant lived separately from her husband in Canada.

[8] In March 2014, the Applicant and her husband had their third child.

[9] In 2018, the husband's first wife passed away following an illness. Sensitive to the circumstances and their impact on the Applicant's husband's child from his first marriage, the Applicant and her husband continued to live separately, while progressively integrating each other's lives.

[10] In early 2022, the Applicant moved into her husband's residence. On October 26, 2022, they celebrated a civil marriage, according to Canadian law.

[11] In 2022, the Minister of Immigration, Refugee and Citizenship Canada requested a reassessment of the Applicant's refugee status. In a decision dated March 9, 2023, the Applicant's refugee status was vacated because she misrepresented material facts in her original claim. The Applicant admitted to having provided false information on her refugee claim for the sole reason of reuniting with her husband, and for her children to be close to their father.

[12] Following the vacation of their status, the Applicant applied for permanent residence under the Spouse or Common-Law Partner in Canada Class on May 30, 2023, being sponsored by her husband. Similarly, the children are currently in the process of obtaining citizenship as their father is a Canadian citizen.

[13] In a decision dated September 10, 2024, the Officer rejected the Applicant's permanent residency and H&C applications.

A. *The Decision Under Review*

[14] The Officer rejected the Applicant's applications on the basis that her marriage with her spouse was not genuine, because the Officer found that the evidence was insufficient to establish that they lived together. Moreover, the Applicant did not demonstrate sufficient H&C grounds to allow her to overcome her inadmissibility as a result of her misrepresentation on her refugee claim.

[15] According to the Global Case Management System [GCMS] notes, the Officer found that the Applicant's misrepresentation in her original refugee claim was a serious violation of

Canadian immigration law. The Officer noted that many of the Applicant's documents contained inconsistent information relating to her and her husband's living arrangements; notably many documents continued to be sent to her previous address, such that the Officer concluded that the marriage was not genuine. Furthermore, the GCMS notes mention that while the best interest of children was considered on the H&C request, the hardship that may be caused by her removal did not outweigh the serious nature of her misrepresentation. As a result, her H&C application was also dismissed.

III. Issues and Standard of Review

[16] The Applicant argues that the decision is unreasonable and breached her right to procedural fairness.

[17] The applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [Mason]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (Vavilov at para 99; Mason at para 59). The decision must be read holistically and contextually, in light of the evidence, the submissions and the context in which it was rendered (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 47 [Pepa]; Vavilov at paras 94, 97). A decision may be unreasonable if the decision maker misapprehended the evidence before it (Vavilov at paras 125-126; Mason at para 73). However, the reviewing Court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (Vavilov at para 125). In determining reasonableness, the reviewing Court must not

create its “own yardstick” and use it to measure what the decision maker did (*Pepa* at para 48; *Vavilov* at para 83, and *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at para 40). Reasonableness review is not a “rubber-stamping” exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100). Any alleged flaws must be “sufficiently central or significant to render the decision unreasonable” or causing the “reviewing court to lose confidence in the outcome reached” (*Vavilov* at paras 100, 106; *Pepa* at para 49).

[18] On the other hand, procedural review is a form of analysis that “focuses on the nature of the rights involved and the consequences for affected parties” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 [*Canadian Pacific Railway*]). When dealing with matters of procedural fairness, the role of a reviewing court is to determine whether “the applicant knew the case to meet and had a full and fair chance to respond” (*Canadian Pacific Railway* at para 56). The Court thus conducts a “reviewing exercise... ‘best reflected in the correctness standard’ even though, strictly speaking, no standard of review is being applied” (*Canadian Pacific Railway* at para 54). Concretely, this requires the Court to “assess the procedures and safeguards” in place to protect the rights of a party appearing before the administrative decision maker and determine whether they have been followed in the Applicant’s case. If they have not been followed, it is then incumbent on the Court to intervene. Such intervention is an essential part of safeguarding the fairness of the administrative process and holding administrative decision makers to account (*Vavilov* at para 13).

IV. Analysis

A. *The Decision is Unreasonable*

[19] The Applicant first argues that the Officer was silent on several evidentiary issues that establish the genuineness of her relationship with her husband, including the children's DNA Testing Report, the affidavit of the Applicant's husband in support for her sponsorship, and the additional affidavit of the Applicant in response to the procedural fairness letter which demonstrated that she lived with her husband.

[20] Regarding the DNA Testing Report, the Applicant submits that this evidence is particularly crucial as it establishes that the Applicant and her husband are the biological parents of three children, including those born in the Netherlands, and that this evidence should have been given significant weight in the Officer's assessment of the genuineness of their relationship.

[21] The Applicant also submits that the Officer's principal concern was tied to the lack of sufficient documentary evidence proving that their lives were intertwined physically or financially in a manner typically associated with married couples. Precisely, the Officer found that many documents continued to indicate that the Applicant remained at her old address and that the banking information submitted did not demonstrate sufficient financial family transactions; therefore, the evidence showed that the Applicant and her husband led separate lives.

[22] The Applicant also argues that the Decision clearly demonstrates that the Officer's true concern was not tied to the lack of documentary evidence but rather the *bona fide* nature of her relationship with her husband. The Applicant submits that she provided several identification documents, letters of support from family and friends, copies of their children's birth records, DNA records, a lease agreement, and marriage and family photos. Moreover, in response to a procedural fairness letter, she provided an additional affidavit stating that her old address was now used by the couple's eldest child who is now an adult because the Applicant's husband's apartment is too small for the entire family, and included proof of a joint bank account and statements, additional letters of support, and a letter from Toronto Community Housing. The Applicant recognizes that the Officer was not required to accept these explanations; however, given that the Officer had specific credibility concerns, the Officer should have given her the opportunity to respond to these concerns during an interview (*Chitterman v Canada (Minister of Citizenship and Immigration)*, 2004 FC 765 at para 4; *Pham v Canada (Minister of Citizenship and Immigration)*, 2005 FC 539 at para 17). Not doing so constitutes a breach of procedural fairness.

[23] The Respondent submits that the Officer reasonably assessed the evidence as a whole in determining that the Applicant had failed to demonstrate that she met the criteria of the Spouse or Common-Law Partner in Canada Class, and reasonably determined that the Applicant had not demonstrated sufficient H&C grounds to warrant an exemption from the statutory five-year bar on immigration to Canada due to her misrepresentation. Notably, the Applicant's proven fraud on the immigration system had an impact on the credibility of the documents she submitted which included inconsistent documentary evidence of a genuine marital relationship; and her

cynical manipulation of the refugee determination system for the purpose of family reunification does not warrant exempting her from the five-year inadmissibility she faces as a result of her own conduct.

[24] I agree with the Applicant.

[25] With respect to the DNA Testing Report, despite acknowledging that the three children were her husband's biological children, the Officer did not consider that fact in their analysis on the genuineness of their marriage. The conception of children, while not determinative, is an important factor in assessing the genuineness of a relationship and ought to be accorded significant weight (*Amin v Canada (Citizenship and Immigration)*, 2021 FC 67 at para 23, citing *Gill v Canada (Citizenship and Immigration)*, 2010 FC 122 at paras 8-9; *Mutneja v Canada (Citizenship and Immigration)*, 2019 FC 1624 at paras 21-22; *Chen v Canada (Citizenship and Immigration)*, 2016 FC 61 at paras 20-23; *Zhou v Canada (Citizenship and Immigration)*, 2020 FC 633 at para 55, citing *Nijjar v Canada (Citizenship and Immigration)*, 2012 FC 903 at para 31). By overlooking this evidence in their assessment of the genuineness of the relationship, the Officer failed to consider the factual constraints bearing on its decision which undermines the reasonableness of the Decision (*Vavilov* at paras 101, 105, 126, 128).

[26] Concerning the lack of evidence demonstrating that the Applicant's life with her husband was physically and financially interconnected, the absence of a joint bank account or the lack of both names on certain utility bills does not necessarily negate the *bona fide* nature of their

marriage (*Hakrama v Canada (Minister of Citizenship and Immigration)*, 2007 FC 85 at para 23 [*Hakrama*]). More is required to support such a finding.

[27] Furthermore, where inconsistencies were identified, explanations were provided by the Applicant through her additional sworn affidavit. For example, the Officer notes that many bills continue to be mailed to the Applicant's former address. However, the Applicant's additional affidavit addressed that relevant concern and explained that their eldest daughter, who is of legal age, continues to reside at that location – the Applicant's husband's apartment being too small for the entire family. The Officer failed to weigh this evidence, despite the explanations provided, and instead put great emphasis on the Applicant's previous misrepresentation. Most importantly, the Officer failed to explain why the evidence was not sufficient to allow the Applicant to discharge her burden.

[28] The factual findings of the Officer in this case relate to the credibility of the evidence adduced by the Applicant, and not merely its sufficiency. While the Officer could have been satisfied that the evidence was not sufficient to allow the Applicant to discharge her burden and demonstrate the genuineness of her marriage, the conclusions of the Officer relate to the credibility of the evidence adduced. As stated, the Officer made credibility findings (albeit without providing their reasoning on some evidentiary issues) in, *inter alia*, deciding that the DNA Testing Report and the explanation by the Applicant on the continuing use of her old apartment could be ignored, could not be believed, or was only warranted limited or no weight.

[29] Section 10.2 of IP8 “Spouse or Common-law Partner in Canada Class”, states that an Immigration Officer may need to interview the sponsor and the applicant separately to establish whether the relationship is genuine (Citizenship and Immigration Canada *Inland Processing Manual*, Chapter IP 8: Spouse or Common-law partner in Canada Class (current to May 15, 2015)). Given the implicit credibility concerns, the Officer should have given the Applicant and her husband the opportunity to address them during an interview (*Eroglu v Canada (Citizenship and Immigration)*, 2022 FC 1305 at para 23; *Hakrama* at paras 23-25). While an interview is not always necessary and depends on the facts of each particular case, I find that in this case, the failure does constitute a breach of the Applicant’s right to procedural fairness and to be able to answer the case to be met with a full and fair chance to respond (*Canadian Pacific Railway* at para 56).

[30] In light of these findings, the Decision is not justified, transparent or intelligible (*Vavilov* at para 99), and must be sent back for redetermination.

[31] That being said, there are many discrepancies in the evidence and several other documents that are not responsive to the Officer’s concerns. It will be for the officer that redetermines this application anew to weigh all the evidence, in determining whether the Applicant has discharged her burden to establish the genuineness of her marriage.

B. *The H & C application will be sent back for reconsideration*

[32] In relation to the reasons denying the application for an exemption of the Applicant’s five-year bar on immigration to Canada due to her misrepresentation on H&C grounds, given the

errors noted above, the Court has lost confidence in the outcome reached as a whole and therefore, the matter must be sent back for reconsideration (*Vavilov* at para 106).

[33] While it may have been open to the Officer to conclude, based on the evidence before them, that relief on H&C grounds was not warranted on the facts of this case, a different officer could also have come to a different conclusion on some of the evidence that appears to have been omitted or given no weight. As such, the reasons are not sufficiently intelligible to allow the Court to conclude that the Officer properly grappled with the entire evidence (*Vavilov* at para 128) and the shortcomings noted above are sufficient for the Court to lose confidence in the outcome reached (*Vavilov* at paras 106, 122, 194).

[34] On that note, it is obvious that the Applicant's misrepresentation is serious and a blatant disregard for the *IRPA* and cannot be understated. As held by the Officer, H&C considerations can be outweighed by serious misrepresentation in some circumstances and on the facts of a particular case. Misrepresentation is a serious offence, and an applicant should not be exonerated simply because they are remorseful and have filed an H&C application. Moreover, as argued by the Respondent in oral argument, the Applicant came to Canada under false premises in order to "reunite" her family. She now argues that she should be granted H&C relief so that her family remains "reunited". As the Respondent notes, the argument is circular and would in essence exonerate, and perhaps even reinforce, the Applicant's blatant misuse of Canada's immigration system.

[35] However, an application on H&C considerations exists specifically to overcome inadmissibility issues. While the Applicant's conduct and her misrepresentation are relevant, as well as the severity of the offence, that issue must be weighed accordingly, along with other genuine H&C considerations. The analysis must not be limited to the Applicant's conduct but also on other relevant considerations such as the Applicant's personal circumstances and the reasons for the misrepresentation (ineligibility to be sponsored in Canada due to her polygamous marriage), any remorse, the genuine establishment in Canada, the impact on the best interest of any child, and any future prospect for family reunification. All of these relevant considerations and potentially others, taken individually, may weigh in favour of a positive or a negative outcome. However, all of the relevant considerations must be weighed together as a whole and the misrepresentation, and the seriousness of past actions, on their own cannot be determinative and the Officer cannot fetter their discretion on that basis alone (*Sultana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 533 at paras 30-31; *Henson v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1218 at para 38; *Weng v Canada (Citizenship and Immigration)*, 2014 FC 778 at para 35).

V. Conclusion

[36] The Application for Judicial Review is granted and the decision is remitted back to a different Officer.

[37] The parties have not proposed a question of public importance to certify, and I agree that none arises in this case.

JUDGMENT in IMM-17415-24

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is granted.
2. The matter is remitted back for redetermination by a different Officer.
3. There is no question of general importance for certification.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-17415-24

STYLE OF CAUSE: FADUMO YUSUF MOHAMED ABDILLE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO (ONTARIO)

DATE OF HEARING: NOVEMBER 4, 2025

JUDGMENT AND REASONS: RÉGIMBALD J.

DATED: NOVEMBER 19, 2025

APPEARANCES:

Sumeya Mulla	FOR THE APPLICANT
Lorne McClenaghan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman and Associates Barristers and Solicitors Toronto (Ontario)	FOR THE APPLICANT
Attorney General of Canada Toronto (Ontario)	FOR THE RESPONDENT