Federal Court  Cour fédérale

Date: 20260430

Docket: IMM-6501-24

Citation: 2026 FC 575

Ottawa, Ontario, April 30, 2026

PRESENT: Madam Justice Azmudeh

BETWEEN:

GRACE MARQUILLER

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Grace Marquiller, seeks judicial review of the rejection of her permanent resident application on humanitarian and compassionate grounds (H&C). I grant her application for the following reasons.

[2] The Applicant is a 54-year-old citizen of the Philippines. She sought an exemption from the ordinary requirements of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA]

on H&C grounds. She based her application on her establishment in Canada and the hardship she, her Canadian employer and her family in the Philippines would suffer if she must return.

[3] The Applicant arrived in Canada as a visitor on February 8, 2008. She has been living in Canada ever since, and by the time she applied for H&C, she had lived in Canada for 16 years. After the Applicant's request for a work permit renewal was refused on March 9, 2018, she has been living and working in Canada without status.

[4] The Applicant has worked in Canada as a personal caregiver, housekeeper and factory worker. When she applied for H&C, she was employed as a personal support worker for the elderly mother of her employer (both are Canadian citizens). She began working for the family in 2016.

[5] The Applicant had applied for permanent residence under different streams on three previous occasions, which were refused. These refusals numbered two under the "Live-in Caregiver Class" and one under H&C.

[6] On her establishment, the Applicant has led evidence that her current employer believes that she provides exceptional care for her mother and that the family was reliant on her. The Applicant also provided support letters from a previous employer who also spoke to the exemplary quality of her caregiving services. She also provided other support documents from her community and friends. The Applicant also provided extensive evidence on the scarcity of elderly caregivers in Canada.

[7] The Applicant had submitted that she financially supported her entire family in the Philippines and how they would suffer if she had to return. This included an adult son who until

2021 was a student, as well as her siblings, one of whom is a widowed sister. They are all unemployed and depend on her for financial support.

[8] The Applicant was married to an abusive man who had threatened to kill her with a machete in the Philippines. Divorce is illegal in the Philippines, but the Applicant completed the divorce process in Canada after she filed her H&C application. She had submitted that she continued to fear her ex-husband because he had not accepted the service of the divorce paperwork, and was angry with her for not wanting to support him and for not sponsoring him to Canada, and for making death threats against her. The ex-husband is believed to be with another woman now. The Applicant had submitted documentary evidence on the poor economic conditions of women in the Philippines, particularly returnees, as well as on the prevalence of domestic violence and lack of state protection.

II. Issues and Standard of Review

[9] The only issue before me is whether the Officer's decision was reasonable.

[10] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 12-13 and 15 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 63 [*Mason*].

[11] I have started by reading the reasons of the decision-maker in conjunction with the record that was before them holistically and contextually. As the reviewing judge, I have focused on the decision-maker's reasoning process (*Vavilov* at paras 83–84, 87). I have not considered whether the decision-maker's decision was correct, or what I would do if I were deciding the matter

itself: *Vavilov,* at para 83; *Canada (Justice) v D.V.*, 2022 FCA 181 at paras 15, 23. It is not this Court's role to reweigh the evidence: (*Vavilov* at para 125).

[12] A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision-maker (See *Vavilov* at paras 85, 91–97, 103, 105–106, 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 28–33, 61; *Mason* at paras 8, 59–61, 66). For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention.

III. Legislative Overview

[13] Section 25(1) of IRPA governs foreign nationals' requests for H&C applications:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
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 — other than under section 34, 35, 35.1 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35, 35.1 or 37 — 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	25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35, 35.1 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

> the foreign national, taking into account the best interests of a child directly affected.

IV. Analysis

A. *The Officer's decision is reasonable*

[14] H&C applications are exceptional in the sense that an applicant requests the Minister to exercise Ministerial discretion to relieve them from requirements in the IRPA. The Supreme Court of Canada 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" (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at paras 13, 21 [*Kanthasamy*]; citing *Chirwa v Canada (Minister of Citizenship and Immigration)*, (1970) 4 IAC 338, p 350).

[15] The purpose of humanitarian and compassionate discretion is to "mitigate the rigidity of the law in an appropriate case," and that no limited set of factors warrants relief (*Kanthasamy* at para 19). As such, I agree with my colleague, Madam Justice Sadrehashemi in *Tuyebekova v Canada (Citizenship and Immigration)*, 2022 FC 1677 at para 11 that:

> 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 citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74-75 [*Baker*]).

[16] In this case, like with other H&C cases that turn on the facts, context matters. These are the undisputed elements of that context:

A. By the time the Officer reviewed her application, the Applicant lived in Canada for 16 years and for much of that time, she provided a sought-after and scarce service to Canadians, namely personal caregiving to the elderly, at a high quality and in an exemplary fashion. For a part of this period, the Applicant has been living and working in Canada without status.
B. If the Applicant returns to the Philippines, not only she, but also her Canadian employer, her employer's mother, and the Applicant's entire family in the Philippines would face some degree of hardship.
C. The Applicant is a survivor of domestic violence and continues to fear her ex-husband who is seeing another woman.
D. The evidence before the Officer established the scarcity of caregiving in Canada, particularly for the elderly. The evidence also established that divorce is illegal in the Philippines on religious grounds, that domestic violence is a significant problem and that the authorities do not provide adequate deterrence or protection.

[17] It is well established that it is not for this Court to reweigh evidence (*Vavilov* at para 125). In this case, the Officer specifically gave the Applicant establishment in Canada "positive weight", but found that it was "offset by various factors". A coherent chain of reasoning would include a reference to negative factors and some analysis on how those factors were weighed against an explicit positive finding. As an attempt to do this, the Officer noted that the Applicant had lived and worked illegally in Canada for some of her time here. However, it is unclear whether this was seen as a sufficient factor to "offset" the positive weight of her establishment, or whether there were also other factors. Counsel for the Respondent agreed that while the illegal

status of the Applicant cannot be determinative, it is a relevant alleviating factor, and it can be read as such in the reasons. This is because H&C offers an equitable remedy when there are otherwise legal impediments. I accept this argument that while the Applicant's prolonged lack of status was reasonably seen as a negative factor by the Officer, it did not negate the positive establishment. Overreliance on non-compliance can be a reviewable error, so it is important for a transparent decision to demonstrate how this alleviating factor was weighed (*Babiarz v Canada (Citizenship and Immigration)*, 2023 FC 611 at paras 12–14 [*Babiarz*]; *Toussaint v Canada (Citizenship and Immigration)*, 2022 FC 1146 at paras 23–24 [*Toussaint*]).

[18] As Justice Lafrenière points out in *Toussaint*, section 25(1) "effectively presupposes a failure to comply with one or more provisions of the IRPA and is designed to provide relief from that non-compliance" (*Toussaint* at para 23, citing *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 at para 23). In *Babiarz*, justice Sadrehashemi found a decision unreasonable where "[t]here was no evaluation of the nature or the severity of the non-compliance, the circumstances leading to the non-compliance, nor how this non-compliance relates to the other factors raised in the application" (at para 12).

[19] The Federal Court has also held that establishment during the time a person has remained in Canada without status is to be considered in "a realistic and empathetic decision" (*Lin v Canada (Citizenship and Immigration)*, 2011 FC 316 at para 2). However, when I asked the Respondent's counsel to point to the other negative factors the Officer considered to contribute to "offset" the positive findings, counsel agreed that there were none and stated that H&C assessments are nuanced and that the Officer's holistic analysis concluded that there was

insufficient evidence to warrant the exemption contemplated by section 25. This would have required the reasons to be responsive to the evidence before the Officer.

[20] I find that the Officer's remaining analysis reached the conclusion because it was in part non-responsive to the evidence and devoid of the relevant context. Furthermore, since it was the officer who chose to find sufficient "offsetting" factors, one should reasonably expect a chain of reasoning that would support the Officer's conclusion. Such a chain of reasoning was absent.

[21] The Respondent points to jurisprudence where Officers reasoned along similar lines to argue that establishment did not rise to *Browne v. Canada (Citizenship and Immigration)*, 2022 FC 514 at paras 22, 25 [*Browne*]; *Malaekeh v Canada (Citizenship and Immigration)*, 2024 FC 1058 at paras 16, 22 [*Malaekeh*]). However, unlike in the present case, I note that the Applicants in Malaekeh lacked evidence for their primary submissions (para 16). Furthermore, Justice McHaffie in *Browne* highlights a line of jurisprudence holding that it is unreasonable to wholly disregard evidence of establishment simply because it arose while the Applicant was without status (*Browne* at para 25). Without further analysis from the Officer, who simply expressed that the positive establishment was "offset by" the Applicant's "decision to work in violation of Canada's immigration laws", that disregard occurred here.

[22] One example that demonstrates how context was lost on the Officer is the Officer's lack of engagement with the impact of the Applicant's job, both on her Canadian employer and the family, and on the larger Canadian society. The Applicant had submitted extensive evidence on the scarcity of caregiving to the elderly in addition to her particular rapport with her employer

and the elderly mother. The uncontested evidence on the scarcity of the service included not only media articles on the significant need for personal support workers in Canada, and particularly in Ontario, but also evidence of job bank outlook in light of Canada's aging population. The Officer never engaged with any of this evidence. The Officer's failure to acknowledge or consider any of the documentary evidence stating that Canada has a critical need for people like the Applicant, willing to care for elderly and vulnerable Canadians, leaves the decision unresponsive to a central submission (*Vavilov* at para 128). Further, when the Applicant's establishment is in an area that offers significant benefit to Canadians, the "offsetting" factors should be clearly articulated. They were not. This further contributed to a breakdown in the chain of reasoning (*Vavilov* at para 96).

[23] The Applicant had also led unequivocal evidence of her family's financial dependence on her and objective documentary evidence on the hardship associated with the returnees, particularly women, finding employment. Without any evidence to the contrary, the Officer concluded that she will successfully re-establish herself in the Philippines "after an initial period of transition". The officer reached this conclusion because the Applicant had lived there prior to coming to Canada and had family in the country. The Applicant had provided evidence on the hardship returnees faced, particularly women. The documents did not cite lack of linguistic abilities to be the cause of the hardship. Without any analysis, it is hard to see a rational connection between having a family that depends on the Applicant with their ability to help her re-establish. I find that the Officer reached a conclusion that was not based on any evidence, was in fact contrary to the evidence before them, and therefore contained a fundamental gap (*Vavilov* at para 96).

[24] The Officer's conclusion that the Applicant's husband was probably no longer interested in hurting her because he was with another woman and has moved on was equally speculative. The Officer accepted the Applicant's history of domestic abuse, the husband's threat with a machete in 2013, and the further threats to her life to be credible. The Officer also did not take issue with her other evidence, including his disagreement with the divorce, his anger and grudge at her decision to no longer support him financially, and his expectation that she would sponsor him. The Officer also accepted that there had been further threats against the family. Given the evidence that the Applicant's history with her ex-husband was defined by abuse and control, and given the lack of explanation, it is hard to see a rational connection between his decision to be with another woman with his decision to no longer bother the Applicant. One of the reasons articulated by the Officer to conclude that he would no longer be motivated to harm her was that they are divorced, but the only evidence before the Officer showed that he had not accepted the divorce and was infuriated by it. The Officer substituted their own assumptions, unfounded and contradicted by the evidence, that a "Canadian" divorce and having another partner would probably mean that the ex-husband had moved on and was no longer interested in controlling the Applicant.

[25] Reading the reasons globally, I cannot understand what factors, other than those based on the Officer's speculation, sufficiently offset the Applicant's establishment. The Officer's unfounded assumptions also contributed to the reasons' global unintelligibility and are unjustified.

V. Conclusion

[26] The Officer's decision does not engage with the relevant evidence and the Applicant's arguments and does not exhibit the requisite degree of justification, intelligibility, and transparency. The application for judicial review is therefore granted.

[27] Neither party proposed a question for certification. I agree that none arises.

JUDGMENT IN IMM-6501-24

THIS COURT'S JUDGMENT is that

1. The Judicial Review is granted. This matter is sent back to the Respondent to be decided by a different Officer.

2. There is no question to be certified.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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