Federal Court  Cour fédérale

Date: 20200205

Docket: IMM-3144-19

Citation: 2020 FC 198

Ottawa, Ontario, February 5, 2020

PRESENT: Mr. Justice Russell

BETWEEN:

LUZ MARIA NATAD SANTIAGO
ROMAN ROY BALDOVINO SANTIAGO
ZAKE DYLAN NATAD SANTIAGO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the decision of an Immigration Officer [Officer], dated March 21, 2019 [Decision] wherein the Officer denied the Applicants' application for permanent residence on humanitarian and compassionate [H&C] grounds.

II. BACKGROUND

[2] Ms. Luz Maria Natad Santiago and her spouse, Mr. Roman Roy Baldovino Santiago, are citizens of the Republic of the Philippines. The couple have two children together: Zake Dylan Natad Santiago, born in the Philippines on September 17, 2007; and Zhia Alexa Santiago, born in Canada on February 28, 2017.

[3] Ms. Santiago first came to Canada in 2013 as a temporary resident on a work permit, which expired on November 30, 2015. Ms. Santiago's work permit was renewed until February 4, 2017. During this time, Ms. Santiago worked for Glory of India, a restaurant in Calgary.

[4] On June 4, 2016, Ms. Santiago travelled to the Philippines for over a month to visit her family. Upon her return to Canada, she discovered that she was pregnant with her daughter Zhia. Ms. Santiago gave birth to Zhia in Canada on February 28, 2017.

[5] Shortly after the birth of Zhia, Ms. Santiago's Alberta Immigrant Nominee Program [AINP] application was refused on March 28, 2017, for failing to include an underlying Labour Market Impact Assessment [LMIA]. Ms. Santiago states that her immigration consultant erroneously advised her that she did not require a LMIA for an AINP application. Ms. Santiago was subsequently refused a work permit in May 2017 for not providing a LMIA and since the restaurant for which she worked had since closed down.

[6] On June 30, 2017, Ms. Santiago was issued a study permit, thus maintaining her temporary resident status. However, despite being accepted into a Designated Learning Institute, Ms. Santiago was unable to pursue her studies given the cost of child care for her newborn daughter. Ms. Santiago was subsequently issued a work permit valid until February 5, 2019, after securing employment at Marble Slab Creamery.

[7] Unfortunately, Ms. Santiago was diagnosed with breast cancer in May 2018. It was discovered that she carried a genetic mutation known as TP 53, which makes cancer much more likely. Ms. Santiago underwent a double mastectomy in October 2018 and has since continued to undergo treatment. Her doctors expect she will make a full recovery with continued monitoring and follow-up.

[8] Before Ms. Santiago's surgery, Mr. Santiago entered Canada on October 7, 2018, with a multiple entry work visa expiring February 5, 2019. The Applicants state that Mr. Santiago came to Canada in order to care for Ms. Santiago and their daughter while Ms. Santiago recovered from her surgery. Their son Zake remained in the Philippines with extended family.

[9] In December 2018, the Applicants submitted an application for permanent residency on H&C grounds. The application was denied on March 21, 2019. However, the Applicants only became aware of the Decision on April 2, 2019 and did not receive the Officer's reasons until May 8, 2019. An Application for Leave and Judicial Review with a request for an extension of time was filed with this Court on May 17, 2019. On August 29, 2019, Justice Ahmed granted leave as well as the request for the extension of time.

III. DECISION UNDER REVIEW

[10] The Applicants contest the Decision rejecting their application for permanent residency on H&C grounds pursuant to s 25(1) of the *IRPA*.

[11] In essence, the Officer was of the opinion that, upon considering the H&C factors in this case, the granting of permanent residence was not justified on H&C grounds. The Officer noted that applying for H&C considerations is an exceptional measure and not simply another means to apply for permanent residence from within Canada.

[12] The Officer began by listing the relevant H&C factors for consideration. The Officer noted that the Applicants' establishment in Canada, the best interests of the children, Ms. Santiago's breast cancer, and the refusal of Ms. Santiago's AINP application, were relevant factors to consider in this case.

A. *Establishment in Canada*

[13] The Officer outlined Mr. and Ms. Santiago's history in Canada, acknowledging that Ms. Santiago has worked in Canada since 2013 and has friends here. However, the Officer noted that Mr. and Ms. Santiago have provided little reason as to why they would be unable to return to the Philippines. The Officer noted that Ms. Santiago returned to the Philippines to visit in 2016 and that Mr. Santiago lived there until October 2018 working for the Philippine government. Moreover, the Officer noted that they are educated individuals with Canadian work experience.

B. *Best Interests of the Children*

[14] The Officer noted that Mr. and Ms. Santiago have two children together. With regard to Zhia, the Officer found that, given her age and level of dependency on her parents, her best interests would be served by remaining in the care of both of her parents. The Officer acknowledged that she could return to Canada in the future given the fact that she is a Canadian citizen but, in the meantime, she would have her parents to help her adjust to her new life in the Philippines. The Officer noted she would even have the benefit of meeting her older brother Zake.

[15] Concerning the best interests of Zake, the Officer noted that he would benefit from his parents returning to the Philippines as well as from meeting his younger sister Zhia.

[16] The Officer assigned little weight to the best interests of Ms. Santiago's nieces, who she had supported financially through university, as they have now graduated and are most likely over the age of 18.

C. *Ms. Santiago's Illness*

[17] The Officer gave little weight to Ms. Santiago's cancer, double mastectomy, and recovery. The Officer took notice of the note from Dr. Rene Lafrenière confirming her diagnosis, her surgery, and her inability to work. The Officer also took notice of the letter from Dr. Carey Johnson, who in addition to confirming the information stated by Dr. Lafrenière, noted that Ms. Santiago requires follow-up and further management throughout the year.

[18] However, the Officer noted that both doctors indicated that the surgery was successful in removing the cancer and they did not indicate when Ms. Santiago would be able to return to work. They are also silent on whether she could travel, and whether she would be able to access the healthcare she requires in the Philippines. Consequently, the Officer was of the opinion that Ms. Santiago was able to return to the Philippines despite her previous breast cancer diagnosis, surgery, and need for recovery.

D. *Previous Refusal of AINP Application*

[19] Finally, the Officer found that the Applicants' previous refusal of their AINP application did not bar them from reapplying. Moreover, the Officer noted that the Applicants could apply from the Philippines as the chances of obtaining permanent residence are no greater if the Applicants were to apply within Canada.

IV. ISSUES

[20] The issues raised in the present matter are the following:

1. Did the Officer err in applying the legal test in weighing the best interests of the children?
2. Should this Court find that the Officer applied the appropriate legal test, did the Officer err in their assessment of the best interests of the children?
3. Did the Officer erroneously ignore critical evidence relating to the Applicants' financial hardship?
4. Did the Officer properly assess the Applicants' establishment in Canada?

V. STANDARD OF REVIEW

[21] This application was argued prior to the Supreme Court of Canada's recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. This Court's judgment was taken under reserve. The parties' submissions on the standard of review were therefore made under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] framework. However, given the circumstances in this matter, and the Supreme Court of Canada's instructions in *Vavilov* at para 144, this Court found that it was necessary to ask the parties to make additional submissions on the standard of review. I have applied the *Vavilov* framework in my consideration of the application. Although it has changed the applicable standard to this Court's review of whether the Officer erred in applying the test for weighing the best interests of the children, it has not changed my conclusion.

[22] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[23] Prior to the Supreme Court of Canada's decision in *Vavilov*, the Respondent submitted that the standard of reasonableness applied to all of the issues in this case. The Applicants appeared to agree in their Memorandum of Argument, although they also appeared to suggest in their Reply that the standard of correctness applied to the issue of whether the Officer erred in applying the legal test for assessing the best interests of the children.

[24] On January 16, 2020, the parties were asked to make written submissions on the applicable standard of review in light of the *Vavilov* decision. Both the Applicants and the Respondent submitted that the standard of reasonableness applies to this Court's review of all the issues in this case.

[25] I agree with both parties that the standard of reasonableness should be applied to this Court's review of all the issues at bar as there is nothing to rebut the presumption that the standard of reasonableness applies.

[26] In the past, courts have often found that the standard of correctness applies to questions concerning whether a decision-maker applied the correct legal test. See, for example, *Apura v Canada (Citizenship and Immigration)*, 2018 FC 762 at para 21, and *Mohammed v Canada (Citizenship and Immigration)*, 2019 FC 271 [*Mohammed*]. However, following the Supreme Court of Canada's decision in *Vavilov*, a decision-maker's application of a legal test does not fall into any of the listed exceptions to the presumption of reasonableness, baring a constitutional dimension to the legal question, or a generality or "central importance to the legal system as a whole." However, clear language in a governing statutory scheme and a significant body of

jurisprudence establishing a certain applicable legal test will impose strict constraints on a decision-maker's discretion, and a departure from such would generally be considered unreasonable in the absence of explicit persuasive reasons for this departure. See *Vavilov*, at paras 105-114, 129-132, and notably para 111:

> [111] It is evident that both statutory and common law will impose constraints on how and what an administrative decision maker can lawfully decide: see *Dunsmuir*, at paras. 47 and 74. For example, an administrative decision maker interpreting the scope of its regulation-making authority in order to exercise that authority cannot adopt an interpretation that is inconsistent with applicable common law principles regarding the nature of statutory powers: see *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, at paras. 45-48. Neither can a body instructed by legislation to determine what tax rate is applicable in accordance with an existing tax system ignore that system and base its determination on a "fictitious" system it has arbitrarily created: *Montréal (City)*, at para. 40. Where a relationship is governed by private law, it would be unreasonable for a decision maker to ignore that law in adjudicating parties' rights within that relationship: *Dunsmuir*, at para. 74. Similarly, where the governing statute specifies a standard that is well known in law and in the jurisprudence, a reasonable decision will generally be one that is consistent with the established understanding of that standard: see, e.g., the discussion of "reasonable grounds to suspect" in *Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006, at paras. 93-98.

[27] As for this Court's review of the remaining questions, the application of the standard of reasonableness to these issues is also consistent with the existing jurisprudence prior to the Supreme Court of Canada's decision in *Vavilov*. See *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at para 26; *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at para 22.

[28] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov*, at para 89 citing *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). These contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90). Put in another way, the Court should intervene only when "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). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker's reasoning process; and (2) untenability "in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, at para 101).

VI. STATUTORY PROVISIONS

[29] The following statutory provision of the *IRPA* is relevant to this application for judicial review:

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	25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada

permanent resident status and who is inadmissible — other than under section 34, 35 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 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 the foreign national, taking into account the best interests of a child directly affected.	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 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 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.

VII. ARGUMENTS

A. *Applicants*

[30] The Applicants argue that the Decision is plagued with numerous reviewable errors. Specifically, the Applicants argue that the Officer: (1) applied an incorrect elevated hardship test for assessing the BIOC; (2) unreasonably assessed the BIOC by failing to be "alert, alive and sensitive" to the best interests of Zake and Zhia; (3) unreasonably ignored critical evidence concerning Ms. Santiago's role as the financial provider for her siblings and mother; and (4) unreasonably ignored critical evidence of the Applicants' establishment in favour of

speculative assertions. For these reasons, the Applicants submit that this judicial review should be allowed and the matter be remitted for review by a different officer.

(1) Legal Test for BIOC Analysis

[31] The Applicants argue that the Officer applied the wrong legal test when assessing the best interests of Zake and Zhia. The Officer imported an elevated hardship test into the BIOC analysis in coming to the conclusion that neither of the children's best interests would be "severely affected" if their parents were removed from Canada.

[32] Instead, the Applicants state that the Officer failed to engage in a proper BIOC analysis, as set out by the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 34-41, which requires a decision-maker to give the BIOC substantial weight and to be "alert, alive, and sensitive" to the best interests of the children.

[33] The Applicants cite this Court's decision in *Etienne v Canada (Citizenship and Immigration)*, 2014 FC 937 at paras 8, 9 and 11 where it was held that it was incorrect for the officer in that case to introduce an elevated hardship test by requiring evidence of "severe harm" in the context of a BIOC assessment.

(2) Assessment of BIOC

[34] Should this Court find that the Officer applied the proper legal test when assessing the best interests of the children, the Applicants say that the Officer inadequately analyzed the

children's best interests. Although the Applicants admit that their H&C application included limited BIOC submissions, they state that the Officer still had a duty to conduct an analysis that was "alert, alive, and sensitive" to the interests of Zake and Zhia. They submit that the Officer's analysis was entirely inadequate as it contained several statements of fact but little analysis besides a general statement that they would not be "severely affected."

[35] The Applicants state that the Officer: (1) was not alert to the children's interests and failed to even identify the best interests factors at play; (2) was not alive in assessing the BIOC and failed to articulate whether or not allowing the Applicants to stay in Canada was in the best interests of the children; and (3) was not sensitive in assessing the BIOC as the Officer failed to consider how Ms. Santiago's medical condition would impact the best interests of the children should they be forced to return to the Philippines.

(3) Financial Hardship Assessment

[36] The Applicants argue that the Officer also erred by failing to consider relevant evidence regarding the financial hardship the Applicants and their family would face should they be forced to return to the Philippines. The Applicants state that it was unreasonable for the Officer not to explicitly consider the fact that Ms. Santiago's Canadian income is key in supporting her mother and siblings in the Philippines, especially since her mother's heart attack.

[37] The Applicants state that it is trite law that a failure to mention evidence that is central to an applicant's claim supports a conclusion that the evidence was simply ignored or overlooked. The Applicants cite in support *Cepeda-Gutierrez v Canada (Minister of Citizenship and*

Immigration), [1998] 157 FTR 35 at para 17 as well as *Salguero v Canada (Citizenship and Immigration)*, 2009 FC 486 at para 13.

(4) Assessment of Establishment in Canada

[38] The Applicants further argue that the Officer undertook a cursory and selective analysis of the Applicants' establishment in Canada and failed to consider relevant factors based on the evidence. This Court has provided specific direction regarding the H&C factors a decision-maker must consider when assessing an applicant's establishment in Canada. See *Brar v Canada (Citizenship and Immigration)*, 2011 FC 691 at paras 63-68 [*Brar*].

[39] The Applicants submit that the Officer failed to meaningfully assess Ms. Santiago's close community ties in Calgary given the fact that the Applicants provided several letters demonstrating the close friendships Ms. Santiago has cultivated in Canada. They also highlight the Officer's failure to assess the Applicants' conduct in Canada and their diligent respect for Canada's immigration laws.

[40] Moreover, the Applicants submit that the Officer improperly disregarded their establishment in Canada based on the Officer's own opinion that other immigration options existed for the Applicants which they could apply for from abroad. The Applicants submit that this is not only speculative but also misleading, as Ms. Santiago would likely not be successful in obtaining any future work permits or temporary resident status in Canada as her cancer diagnosis and her double mastectomy raise the issue of potential medical inadmissibility.

B. *Respondent*

[41] The Respondent submits that the Officer did not commit a reviewable error in this case. An exemption under s 25(1) of the *IRPA* is an exceptional and discretionary measure which imposes on an applicant a high threshold to meet. As the onus was on the Applicants to put forward sufficient evidence to establish their request for exceptional relief, it was reasonable for the Officer to reject the Applicants' claim for exceptional relief given the evidence and submissions put forward by the Applicants. As such, the Respondent submits that this judicial review should be dismissed.

(1) Legal Test for BIOC Analysis

[42] The Respondent argues that the Officer applied the correct legal test in assessing the best interests of the children in this case. The Respondent states that the use of the term "severely affected" does not demonstrate that the Officer used an improper test. This Court has stated that there are no "magic words" that must be used when assessing the BIOC. Instead, the emphasis must be on whether a decision-maker's reasons demonstrate that they were "alert, alive, and sensitive" to the BIOC factors raised (*Jaramillo v Canada (Citizenship and Immigration)*, 2014 FC 744 at paras 69-74).

(2) Assessment of BIOC

[43] The Respondent submits that the Officer's assessment of the best interests of the children was reasonable in this case in light of the lack of submissions on this point by the Applicants. In

fact, the Respondent points to the fact that the Applicants did not even mention the best interests of Zake in their application, and only made a general statement regarding the best interests of Zhia. In the absence of any meaningful submissions on this point, the Respondent notes that the Officer was not required to consider all future contingencies and possibilities.

[44] The Respondent argues that this case is distinguishable from *Francois v Canada (Citizenship and Immigration)*, 2019 FC 748 and *Mohammed*, above, as the decision-makers in those cases erred by failing to address more extensive evidence and submissions than can be found in this case. Indeed, the Respondent submits that the general statement regarding the best interests of Zhia, and the absence of submissions regarding the best interests of Zake, makes this case analogous to *Owusu v Canada (Citizenship and Immigration)*, 2004 FCA 38 where the Federal Court of Appeal noted that a decision-maker cannot be faulted for not being "alert, alive, and sensitive" to factors that an applicant failed to raise.

(3) Financial Hardship Assessment

[45] The Respondent states that the Officer did, in fact, consider the financial impact the Applicants' return would have on their family and submits that the Officer was not required to list every piece of evidence submitted. Nevertheless, the Respondent notes that the letters provided by the Applicants are "relatively vague and contain very little detail with respect to any financial support her extended family continues to require." The Respondent highlights the fact that Ms. Santiago even indicated that she had stopped sending money to her family at the time of the application. Consequently, the Respondent submits that the Applicants failed to provide

sufficient evidence of financial hardship justifying the granting of an exemption on H&C grounds pursuant to s 25(1).

(4) Assessment of Establishment in Canada

[46] The Respondent submits that the Officer's assessment of the Applicants' establishment in Canada was reasonable and complete. The Respondent notes that the Officer did, in fact, consider the Applicants' work history and friendships, as well as Ms. Santiago's medical history and previous AINP application. However, the Officer was not required to list every piece of evidence submitted.

[47] The Applicants cannot now argue that the Officer was required to consider factors like financial management, community integration, studies, or the Applicants' civil record when there were no evidence or submissions on these matters before the Officer. The Respondent cites this Court's decision in *Brar*, above, at para 66 where this Court stated that "the assessment of the application must be in accordance with the evidence before the officer."

VIII. ANALYSIS

[48] In the recent case of *Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 [*Huang*], Chief Justice Crampton provided the following summary of the purpose and scope of s 25 of the *IRPA*:

> [17] Section 25 of the IRPA provides exceptional relief from what would otherwise be the ordinary operation of the IRPA. To obtain such relief, an applicant bears the onus of establishing circumstances that "would excite in a reasonable [person] in a

civilized community a desire to relieve the misfortunes of another": *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, at para 21 [*Kanthasamy*], quoting from *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970) 4 IAC 338, at 350.

[18] To meet this test, it is not sufficient to simply establish the existence or likely existence of misfortunes, relative to Canadian citizens and permanent residents of Canada. This is something that one would expect could be readily established by most persons facing removal to, or currently living in, a country where living standards are significantly below those in Canada. As the Supreme Court of Canada has recognized, "[t]here will inevitably be some hardship associated with being required to leave Canada": *Kanthasamy*, above, at para 23. Similarly, there will inevitably be some hardship associated with being an unsuccessful applicant for H&C relief from outside Canada.

[19] Section 25 was enacted to address situations in which the consequences of deportation "might fall *with much more force on some persons … than on others*, because of their particular circumstances …": *Kanthasamy*, above, at para 15 (emphasis added), quoting the *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on Immigration Policy*, Issue No. 49, 1st Sess., 30th Parl., September 23, 1975, at p. 12. Accordingly, an applicant for the exceptional H&C relief provided by the IRPA must demonstrate the existence or likely existence of misfortunes or other H&C considerations *that are greater than those typically faced by others who apply for permanent residence in Canada*.

[20] Put differently, applicants for H&C relief must "establish exceptional reasons as to why they should be allowed to remain in Canada" or allowed to obtain H&C relief from abroad: *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, at para 90. This is simply another way of saying that applicants for such relief must demonstrate the existence of misfortunes or other circumstances that are exceptional, *relative to other applicants who apply for permanent residence from within Canada or abroad*: *Jesuthasan, v Canada (Citizenship and Immigration)*, 2018 FC 142, at paras 49 and 57; *Kanguatjivi v Canada (Citizenship and Immigration)*, 2018 FC 327, at para 67.

…

[22] In the absence of any requirement to demonstrate the existence or likely existence of misfortunes or other H&C

> considerations that are greater or more significant in nature than those typically faced by persons who apply for permanent resident status in this country, s. 25 would risk becoming the alternative immigration scheme that the Supreme Court of Canada explicitly sought to avoid: *Kanthasamy*, above, at para 23. To the extent that this would also increase both the degree of subjectivity in the application of s. 25 and the divergence across decision-makers, it could also be expected to reduce certainty, predictability, and eventually public confidence in the IRPA.
>
> [Emphasis in original.]

[49] In the present case, besides evidence, the Applicants' entire submissions in their application for H&C relief read as follows:

> Dear Visa Officer,
>
> Please find attached complete H&C application **by LUZ MARIA NATAD SANTIAGO**
>
> Luz Maria Natad Santiago landed in Canada as a temporary worker on Sep 10, 2013. She was so excited & had a lot of dreams while coming to Canada because she was the only earning daughter of her family. She started her job in a restaurant & worked really hard for 3.5 years. She also applied for her permanent residency under AINP. Unfortunately, her status got expired while she was waiting for the result from AINP & her application got refused.
>
> She restored her status as a student & also during that period she had given birth to a baby girl in Canada. She was alone here & it was really hard for her to take care of her baby & to manage her study at the same time so she couldn't continue her study. Also, she was not stable financially & she started looking for a LMIA to get the work permit.
>
> She got a LMIA in 2018 & also applied for her work permit. She started her job again after finishing her maternity leave. Everything was going well, she was doing her job & was also managing her baby by herself but life is not that easy. **One day, she came to know that she is suffering from breast cancer. She was broken. Her dreams shattered & she started counting her days. She was diagnosed with 3rd stage of breast cancer & doctor advised her to get her surgery done asap**.

> She was alone in Canada & was the only one to take care of her baby so she was blank. It was not easy for her to manage these things by herself & also when you are suffering from a life threatening disease you need someone to support you emotionally.
>
> She applied for her husband's open work permit so he could come here to support her during the dark phase of her life. Her husband got the visa & joined her soon. He is working now.
>
> She went through the surgery & now she is recovering her health day by day.
>
> As per doctors, she can not work for the time being. Letter from Alberta health attached.
>
> She is a very hard-working woman. She has worked all times when her health allowed. NOA and T4 are attached.
>
> In the light of above and keeping best interest of **Canadian child**, we are requesting you to please grant her Permanent Residency so that she can raise her Canadian child in Canada.
>
> Hope foregoing is satisfactory.
>
> Please let us know of if you need anything else
>
> [Emphasis in original.]

[50] The best that one can say about these submissions made by the Applicants' immigration consultant is that they are sparse. My own description of them is that they are woefully inadequate and make no attempt to explain or establish why, if the H&C relief is not granted, the Applicants will face "misfortunes or other circumstances that are exceptional, relative to other applicants who apply for permanent residence from within Canada or abroad…," or misfortunes that could be readily established "by most persons facing removal to … a country where living standards are significantly below those in Canada."

[51] The gist of the submissions is that Ms. Santiago's dreams of coming to Canada have been shattered because she has, in the recent past, gone through a serious illness and had difficulty maintaining employment and has not been stable financially, but is normally "a very hard-working woman." Nothing at all is said about the child who lives in the Philippines and nothing of significance is said about the Canadian child except that Ms. Santiago would like to raise her in Canada.

[52] Ms. Santiago deserves considerable sympathy for her struggles to provide financially for her Canadian family and her extended family in the Philippines. But, as the submissions and the record show, Mr. Santiago was granted a visa so that he could come to Canada to support her through the "dark phase of her life." And if returned to the Philippines, there is nothing to suggest Mr. Santiago will not be returning with her and will not be providing his support there.

[53] The main thrust of the Applicants' claim is that Ms. Santiago will be able to achieve better financial stability in Canada to support her family than if returned to the Philippines. This can hardly be called an exceptional claim or one that places the Applicants in a more unfortunate position from other applicants who come from other countries where standards of living are significantly below those in Canada.

[54] Sympathy and congratulations Ms. Santiago deserves. But this does not, without more, translate into a convincing basis for an H&C claim.

[55] With little assistance from the Applicants' submissions, the Officer attempted to pick his or her way through some rather sparse and inconclusive evidence to try to identify possible grounds for granting an H&C claim.

[56] In this Application for Judicial Review, the Applicants now fault the Officer for his/her failure to address a range of considerations that the Applicants did not place before him/her, thus forgetting that the onus was upon the Applicants to provide the submissions and the evidence to support their application. In Reply submissions, the Applicants tempered their initial accusations somewhat and conceded that there were, indeed, some deficiencies in their own submissions. At the hearing before me, the Applicants' main grounds of review related to the Officer's treatment of:

(a) Financial hardship if required to return to the Philippines;
(b) A deficient BIOC analysis; and
(c) The failure to consider establishment.

[57] It is notable that in the Applicants' submissions to the Officer these issues can hardly be said to be addressed at all. In addition, the Applicants now say that Ms. Santiago has friends and community support in Canada, while their submissions to the Officer say that, before Mr. Santiago arrived to assist her, "She was alone in Canada …" and it was "not easy for her to manage these things by herself and also when you are suffering from a life threatening disease you need someone to support you emotionally."

[58] The Applicants' assumption is still very much that, notwithstanding the scant evidence they provided, the Officer was obliged to consider a range of possible scenarios that could result

from the Applicants' removal. In addition, the Applicants still do not say why, Ms. Santiago's personal circumstances warrant the exceptional relief that s 25 is intended to provide. As the Court pointed out in *Garas v Canada (Citizenship and Immigration)*, 2010 FC 1247:

> [46] An H&C application is not a mathematics formula that is applied in a vacuum. The officer does not have the responsibility to consider all possible scenarios that could possibly result from the applicant's removal, nor does she have to address issues that are purely speculative. The officer's role is to assess the special circumstances that the applicant raises and to determine whether they warrant the application of an exceptional exemption.
>
> [Emphasis in original.]

[59] The law is clear that the onus was upon the Applicants to put forward the factors that they wanted the Officer to consider, and to provide sufficient submissions and evidence to establish that they require exceptional relief under s 25 of the *IRPA*. See *Daniels v Canada (Citizenship and Immigration)*, 2019 FC 469 at para 32.

[60] Notwithstanding the absence of any meaningful submissions, the Decision shows that the Officer made what he/she could of the evidence provided.

A. *Financial Support of Extended Family in the Philippines*

[61] The Applicants say that the Officer failed to consider how Ms. Santiago's family in the Philippines would be affected if she returns there, and the Officer ignored evidence of their financial dependence on Ms. Santiago. She says that she continues to support them and is the breadwinner of the family.

[62] There is no mention at all of such financial dependency in the Applicants' submissions to the Officer, so that the Officer could not know that this factor was of particular importance to the Applicants from their submissions.

[63] In Ms. Santiago's personal letter to the Officer which she calls "My Journey to Canada," she speaks of her poor family and how, after she acquired an education, she provided financial support to her family.

[64] In 2007, Ms. Santiago says she got married and gave birth to her eldest son. Mr. Santiago was working but she says that she "wanted to help him and to help and fulfill my dreams for my mother as well." So she went to Dubai and worked as a domestic help but she says "[m]y salary in Dubai was not enough to support my family, mother and my niece who was in college at that time."

[65] Mr. Santiago's cousin found Ms. Santiago a job in Canada and she arrived here in September 2013. She says she wasn't able to save money because she "used to send all my salary to my family." She does not provide any information as to whom in her family she provided support, or the extent and reasons for any such support, except that she says:

> My own family didn't have a house yet, we live in my parents' in-laws house, honestly, I don't have plan to have our own house in Philippines coz I want them to be with me here in Canada.

[66] She also says that once she arrived in Canada, "I fulfilled my mother's wish to have a decent house, my 2 nieces graduated in University and support my husband's monthly allowance."

[67] This suggests that Mr. Santiago's parents are able to house "her own family," and that Ms. Santiago has provided a decent house for her mother and assisted her two nieces to graduate through university, no less.

[68] As to the situation at the time of the H&C application she says that, after she became ill with breast cancer and could not work:

> … I don't have any income from the government. I got only my baby Zhia allowance worth 541 a month and I am paying everything but despite of this I and my baby still survived. But I stop sending money to everybody, I am not ok coz my brother had a heart attack at that time. He needs my help especially as he couldn't walk and talk until now. Sometimes if my friend gave me money, I sent it to my mother, so they can buy medicine for him. I thanked to the immigration for allowing my husband to be with me before my surgery last Oct 2017. My surgery was successful with the help of my friends and prayers and now I am on healing process. Hopefully if I am ok, I can go back to work if the government will give me a chance to stay here.

[69] The reference to the "brother" here appears to be inaccurate. Ms. Santiago's hand-written version of this letter refers to her "mother" and there is medical evidence to support this.

[70] Apart from saying that her mother needs her help, we are told nothing about the present needs of her family and who specifically needs her support, or the extent of that support, and why that support cannot be met if the Applicants return to the Philippines. If Ms. Santiago is healthy enough to return to work in Canada, then there is no explanation as to why she cannot return to work in the Philippines, or why Mr. Santiago and her in-laws will not be there to assist. To put it bluntly, there really is no evidence in this personal letter that the Officer can use to decide the extent to which any family member in the Philippines still require Ms. Santiago's

financial help. Apart from her sporadic contributions to the cost of her mother's medicine, Ms. Santiago tells us nothing about how her family in the Philippines has managed to survive since she stopped sending money in May 2017. In fact, she tells us that the reason she is concerned is because of her mother's heart attack. If her family in the Philippines were totally dependent upon her in the way that she now claims they are, why would she only be concerned with her mother?

[71] In relation to this issue, the Applicants also point to proof of money transfers sent to Ms. Santiago's family oversees, as well as certain other pieces of evidence that simply do not explain the present needs of her family in the Philippines. The summary of remittances before the Officer shows 8 transfers to 3 different family members between June 27, 2018 and November 20, 2018. In her letter, Ms. Santiago says she stopped working in May 2017 and that she doesn't receive money from the government except for Zhia's baby allowance of "541" per month. She also says she is "paying everything" but has stopped "sending money to everybody," except that sometimes her friend gives her money which she sends to her mother to assist with the purchase of medicine. There is no explanation provided for the 2018 remittances, how they were financed, why they were sent to the 3 individuals identified, or the extent to which any family member is dependent on such remittances. The fact that Ms. Santiago sends money to her family does not establish that they cannot live normal lives in the Philippines without that money. The Applicants' submissions on this issue are contradictory, and lack sufficient evidence to allow the Officer to see the full picture. The remittance summary before the Officer does not show any money sent to Ms. Santiago's mother, Conchita Verano Natad (Ms. Natad).

[72] In the face of this dearth of evidence on the present needs of her family, Ms. Santiago now asserts in the present application that

> … the Decision did not deal with Mrs. Santiago's submission that she was not making enough money overseas in Dubai to support her family, and her decision to come to Canada as a worker. The Decision also did not deal with the evidence relating to the continued financial dependency of Mrs. Santiago's entire extended family overseas and her immediate family in Canada on her, as well as the proof of her continuous working history and financials in Canada. In particular, Mrs. Santiago's mother suffered a heart attack, amoung [*sic*] the many other above-noted medical/surgical problems that was before the reviewing Officer, and requires money for her medication, which Mrs. Santiago has paid for.

[73] As regards Ms. Santiago's immediate family in Canada, the evidence is clear that Mr. Santiago has been in Canada for some time now and there is no evidence to explain how they are being supported since she stopped working in May 2017.

[74] The Applicants also refer to three medical documents related to Ms. Santiago's mother, Ms. Natad, and say the Officer did not mention this evidence in relation to financial dependency and the fact that Ms. Natad requires money for medication.

[75] However, neither the submissions to the Officer or the remittance summary before the Officer suggest that money was sent to her mother, so it is difficult to see how the Officer could assess the continuing support that her mother requires from the Applicants. All that the unsworn personal letter tells us is that only "[s]ometimes if my friend gave me money, I sent it to my mother…." This is in the past tense, and doesn't say that Ms. Santiago still sends money, or that she still needs to in order to pay for medicine.

[76] I really don't see any real evidence of what counsel says is "the continued financial dependency of Mrs. Santiago's entire extended family overseas…" (emphasis added), or even evidence to support that any individual member is entirely supported by the Applicants, or the extent to which any support is needed at the present time.

[77] In the face of this dearth of submissions, the lack of a full explanation from Ms. Santiago herself and a scarcity of evidence, I don't see how the Officer could have said much more than he did on this issue. The extent to which Ms. Natad requires or receives Ms. Santiago's continuing support is unclear. Ms. Santiago tells us in her personal letter that "me and my other sister, we graduated in University with the help and support of our parents, siblings and relatives as well," and we are not told if this network of family support has changed. When she worked in Dubai Ms. Santiago says that "My salary in Dubai was not enough to support my family, mother and my niece who was in college at the time," but we are not told who presently in the family requires her support and why. She asserts that, "I fulfilled my mother's wish to have a decent house [and] my two nieces graduated in University…" so it is clear the family situation has changed at least somewhat since Ms. Santiago came to Canada but she provided nothing clear on present needs. She also says of her own immediate family, "I don't have a plan to have our own house in Philippines coz I want them to be with me here in Canada." Having a preference for Canada does not support submissions that Ms. Santiago and her immediate family cannot achieve a decent life in the Philippines, or that they cannot re-establish themselves there.

[78] In summary, there was insufficient evidence before the Officer on financial issues to establish anything more than that Ms. Santiago and her immediate family would be returning to a

country where living standards are significantly below those in Canada. This was insufficient evidence of an exceptional reason before the Officer that requires him or her to say more than he or she did on this issue.

B. *Best Interests of the Children*

[79] The Applicants say that the Officer failed to properly assess the best interests of the children. They complain that "Although the Applicants' H&C Application included limited submissions, the Officer still had a duty to consider the BIOC."

[80] On this issue, the H&C submissions merely say:

> In the light of above and keeping best interest of Canadian child, we are requesting you to please grant her Permanent Residence so that she can raise her Canadian child in Canada.
>
> [Emphasis in original.]

[81] This is a request to consider the best interests of only one of the children, presumably because the Applicants feel that their older child is better off in the Philippines, at least for the time being.

[82] In her personal letter, Ms. Santiago says that "I don't have a plan to have our own house in the Philippines coz I want [my own family] to be with me here in Canada."

[83] I think it can be safely assumed that the Applicants' position is that it is in the interests of both children that the Applicants remain in Canada. Nothing specific is said about the children's

present and future needs but, in the context of the Applicants' submissions and evidence as a whole, it would seem that the children's best interests are part of the family's quest for economic viability and a more hopeful future in Canada, and this requires the older child to remain with other family members in the Philippines until this is achieved.

[84] In most H&C cases where children are involved it can be assumed that their interests will be best served by the whole family remaining in Canada, and I see no reason to suggest that assumption was not applied in the present case. But the best interests of children, although extremely important, do not trump every other factor.

[85] Before me, the Applicants now argue that the Officer applied an elevated standard by requiring that Zhia's (the Canadian child) best interests be "severely affected." They also say that the Officer failed to consider that both children depend upon their parents' financial support for a safe and loving home in Canada, and failed to consider the impact of Ms. Santiago's medical condition on the children if she is returned to the Philippines.

[86] The Applicants' principal argument for remaining in Canada is economic. Ms. Santiago wishes to remain here so that she can assist her immediate and extended families with financial support. If her medical condition prevents her from working in the Philippines then she will not be able to work in Canada either. In any event, the medical evidence before the Officer did not suggest that Ms. Santiago could not travel to the Philippines or work there.

[87] Mr. Santiago was permitted to come to Canada to assist Ms. Santiago when she became ill, and the evidence is that he had a job in the Philippines, and there was no evidence before the Officer that he would not be employed if the Applicants returned to the Philippines. Nor is there any evidence that Ms. Santiago will not be able to work in the Philippines.

[88] The Applicants' fundamental position is that the children will be better off if Mr. Santiago and Ms. Santiago remain in Canada and find work here. This is obvious and does not need to be stated by the Officer.

[89] This is why the Officer focussed upon what would happen to the children if the family was reunited. He concluded, for reasons given, that Zhia's interests would not be "severely affected." This is not a test; it is merely a statement that the impact upon Zhia would not be severe.

[90] The Officer also addressed the one specific factor in relation to Zhia that the Applicants raised in their submissions; the fact that Zhia is a Canadian child:

> Mrs. Santiago and Mr. Santiago have two children Zhia and Zake. Zhia is a Canadian born toddler. She is currently 2 years old. She was primarily taken care of by her mother. Though I recognize that given Mrs. Santiago's medical treatment Mr. Santiago has been involved in the care of Zhia since October 2018. Given Zhia's age and level of dependency on her parents, I find it is in the best interest of Zhia to remain in the care of both of her parents. I recognize that in the event Mrs. Santiago and Mr. Santiago have to leave Canada, Zhia would also need to leave Canada. Zhia currently has a Canadian passport which enables her to travel abroad. As a Canadian citizen, she could return to Canada in the future. I note that in the event Zhia leaves Canada with her parents, she will continue to have her parents to help her adjust to her new surroundings in the Philippines and most importantly continue to

> be in the care of her parents. Zhia may also benefit from the presence of her maternal and paternal extended family and meet her older bother Zake. I do not find that the best interest of Zhia would be severely affected in the event that Mrs. Santiago and Mr. Santiago are not granted permanent resident status under the H&C application.

[91] Although the Applicants did not request that Zake's best interests be considered, the Officer was legally obliged to do so and found that Zake's best interests would not be severely affected either. In fact, Zake would benefit:

> Zake is currently 11 years old and is attending school. He is Mrs. Santiago and Mr. Santiago's older son. Zake lives with his maternal family in the Philippines. Mrs. Santiago left Zake in the Philippines to work abroad in Dubai and later in Canada. Zake have [*sic*] not seen Mrs. Santiago since 2016 when she last visited the Philippines. Prior to that Zake have [*sic*] seen Mrs. Santiago intermittently as she was working abroad. Most recently, Zake's father, Mr. Santiago has also left to work in Canada too, leaving Zake behind in the Philippines. I find that the best interest of Zake would not be severely affected in the event that Mrs. Santiago and Mr. Santiago returns to the Philippines, in fact, Zake would benefit from a return of both his parents to the Philippines to take care of him and be reunited as a family unit. Zake may also benefit from meeting his younger sister Zhia.

[92] Given the submissions and the evidence that was before him, I can find no reviewable error in the Officer's BIOC analysis.

C. *Ms. Santiago's Illness*

[93] The Applicants say that the Officer failed to take into account Ms. Santiago's medical condition. However, as the Decision makes clear, the Officer refers to the medical evidence submitted and concludes that the medical evidence does not say she cannot travel and there is

little to suggest she cannot access whatever medicine or follow-up appointment she may require in the Philippines:

> There is little evidence provided to indicate that Mrs. Santiago is unable to access health care in the Philippines to do follow up checks. I note both doctors have indicated that the surgery was successful at removing the cancer. I do not find that Mrs. Santiago is unable to return to her home country due to her previously [*sic*] breast cancer diagnosis, successful surgery and need for recovery. I give this factor little weight.

[94] In her personal letter, Ms. Santiago confirms that "[m]y surgery was successful with the help of my friends and prayers and now I am on healing process." There is no indication of any reviewable error with regard to Ms. Santiago's medical condition or its impact on other factors.

D. *Establishment in Canada*

[95] In her personal letter, Ms. Santiago says "[h]opefully if I am ok, I can go back to work if the government will give me a chance to stay here." Ms. Santiago's future prospects in Canada are no more than a hope.

[96] At the time of the H&C application, Ms. Santiago was not working, and her prospects of ever being allowed to work in Canada were not clear. She recounted that in 2017 it was "really difficult to find an employer who will process LMIA at that time" but she was "approved for a study permit" for 7 months. However, she did not go to school for financial reasons and there was no one to look after baby Zhia. Eventually, she found work in March 2017 at Marble Slab Creamery until she was diagnosed with breast cancer. She left work in May 2017 so that she received no government support except for a baby allowance of $541 per month. It seems that

the situation was relieved in October 2017 when Mr. Santiago was allowed to come to Canada to support her.

[97] In addition to the employment information, the Applicants submitted support letters from Canadian friends who, counsel argues "have stood by and supported the family when Mrs. Santiago was diagnosed with cancer and recovering from the double mastectomy."

[98] It is noteworthy that Mr. Santiago had to be allowed into Canada to support Ms. Santiago and that the Applicants' immigration consultant made the following submissions to the Officer describing the support situation in Canada following Ms. Santiago's diagnosis:

> She was alone in Canada and was the only one to take care of her baby so she was blank. It was not easy for her to manage these things by herself and also when you [*sic*] are suffering from a life-threatening disease you need someone to support you emotionally.
>
> She applied for her husband's open work permit so he could come her to support her during the dark phase of her life. Her husband got the visa and joined her soon. He is working now.

[99] The few letters of support from friends that the Applicants submitted confirm Ms. Santiago's history and say very positive things about her personally, but they do not suggest anything more than that they are friends who would like the Applicants to stay in Canada because, as Ms. Reginia Junio puts it, "[i]t's a dream of every Filipino here in Canada to have a Permanent residence that the government is offering. This country is offering is a better life and a better future, especially for our children" [*sic* throughout].

[100] In other words, the evidence of any establishment for the Applicants was very thin. Ms. Santiago was out of a job and her future prospects for work were precarious to say the least. And she has some friends who would like her to stay.

[101] The Officer gives a full and detailed account of Ms. Santiago's work history and status, and also mentions the government job that Mr. Santiago had in the Philippines before he came to assist his wife in Canada. There is nothing to suggest that he will not be able to work if they return to the Philippines. The Officer points out that both adult Applicants are educated.

[102] The Officer also acknowledges that Ms. Santiago has made friends in Canada and, given the evidence, there is not much else that could be said about the relationships she has established here.

[103] I see nothing in the Decision to suggest that the Officer did not give the establishment factors the full weight they deserve. The fact is that the Applicants are not well-established in Canada and, as the Officer says, "Mrs. Santiago and Mr. Santiago have provided little reasons why they are unable to return to their home country."

IX. CONCLUSION

[104] The above are the principal factors that the Officer has to balance. Weight is a matter for the Officer, not this Court. Given the evidence before the Officer, the conclusion was reasonable and I can find no reviewable error that requires this matter to be reconsidered.

[105] As the Applicants' friend Ms. Junio points out, it is the dream of every Filipino to come to Canada to "find a better life and a better future, especially for our children." The Applicants have this dream, as Ms. Santiago makes clear in her personal letter, but this is not a ground upon which to qualify for the exceptional relief under s 25 of the *IRPA*. As Chief Justice Crampton pointed out in *Huang*, above:

> Accordingly, an applicant for the exceptional H&C relief provided by the IRPA must demonstrate the existence or likely existence of misfortunes or other H&C considerations *that are greater than those typically faced by others who apply for permanent residence in Canada*.
>
> [Emphasis in original.]

[106] The Applicants did establish that living standards in the Philippines are significantly below those in Canada, and this is why they want their family to remain in Canada. It is, in fact, the principal reason for their H&C application, but it is not a sufficient ground upon which to acquire H&C relief under s 25.

[107] And this does not mean that they have to give up on their dream. As the Officer points out, there may be other immigration options open to them.

[108] I can find no reviewable errors in the Decision.

X. CERTIFICATION

[109] Counsel agree there is no question for certification and I concur.

JUDGMENT IN IMM-3144-19

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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