

Federal Court



Cour fédérale

**Date: 20220428**

**Docket: IMM-2870-21**

**Citation: 2022 FC 624**

**Ottawa, Ontario, April 28, 2022**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**RIANI SUHANDI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The officer who refused Riani Suhandi's application for permanent residence on humanitarian and compassionate (H&C) grounds failed to consider an important aspect of her submissions on the best interests of the child (BIOC), namely the potential reestablishment of her son's relationship with his father. They also responded unreasonably to another aspect of the BIOC analysis regarding the ability to enforce the right to child support payments from the

father. I conclude that these flaws rendered the officer's BIOC analysis, and consequently their H&C analysis, unreasonable.

[2] Ms. Suhandi's application for judicial review is therefore granted and her application for permanent residence on H&C grounds is remitted for redetermination by another officer.

## II. Issues and Standard of Review

[3] The sole issue raised by Ms. Suhandi on this application is the reasonableness of the officer's decision on her H&C application. The parties agree, as do I, that the decision is subject to review on the reasonableness standard, that is, the Court will only set the decision aside if it fails to display the transparency, justification, and intelligibility required of a reasonable decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

## III. Analysis

### A. *Ms. Suhandi's H&C Application*

[4] Ms. Suhandi is a citizen of Indonesia. She met a Canadian man in Bali in 2015 when she was working there. They began a romantic relationship, and she came to Canada in late 2015 to visit him in Montreal. She became pregnant, and returned to Indonesia in early 2016 to have her family's support during her pregnancy. The father joined her in Indonesia that summer, and the couple made plans to raise their child in Indonesia. However, shortly after their son was born, the father returned to Canada, having found it too difficult to start a business in Indonesia.

[5] For the next few years, the couple remained in an intermittent relationship. However, in the summer of 2019, the father obtained proof of Canadian citizenship for the son, obtained a visitor's visa for Ms. Suhandi, and promised to sponsor her for permanent residence.

Ms. Suhandi and the child arrived in Canada in October 2019. However, within a few days, the father had changed his mind about the relationship. Over the next few months, Ms. Suhandi lived in an apartment with the father, who also spent time at the residence of another woman. During this time, he was emotionally and financially abusive to Ms. Suhandi and their son, restricting her movements and contacts, refusing to cover basic expenses, threatening to report her to police and immigration authorities, and threatening to put their son up for adoption if she did not leave Canada.

[6] In January 2020, after an interview with a child protection worker, Ms. Suhandi moved with her son to a women's shelter. Two days later, she applied for permanent residence on H&C grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[7] Ms. Suhandi filed documents and submissions in support of her H&C application in March 2021. She described her relationship with the father of her child, including the domestic abuse she had suffered, and the lack of financial support she had received since leaving him in January 2020. A court application for custody and support remained in process at the time of her submissions in March 2021. Her H&C submissions focused on three primary considerations: (a) the hardship she would face if required to return to Indonesia, including the difficulty in enforcing child support obligations and the discrimination she would face as a single unwed

mother; (b) the best interests of her son; and (c) her establishment in Canada, which was developing despite her need to care for her young son during the COVID-19 pandemic.

[8] With respect to the BIOC, Ms. Suhandi submitted that it was in her son's best interest to continue to live with her in Canada, where he could develop a relationship with his father, where his mother has the right and legal means to receive child support, and where he can continue his education.

*B. Refusal of the H&C Application*

[9] In a decision dated April 14, 2021, a Senior Immigration Officer with Immigration, Refugees and Citizenship Canada refused Ms. Suhandi's H&C application. In their decision, the officer considered Ms. Suhandi's establishment in Canada, the BIOC, and the risk and adverse country conditions in Indonesia.

[10] In considering the BIOC, the officer concluded there was insufficient evidence the son would be unable to attend school in Indonesia, and that he would be able to readapt to life in Indonesia with the care and support of his mother. The officer recognized the submission regarding child support, but found there was insufficient evidence "to support that the applicant and her family would be unable to support the child, regardless of child support." Noting that Ms. Suhandi sought support from her family when she was pregnant and stayed for three years, the officer concluded that the family was able to support them and that the son "would benefit from the familiar ties in Indonesia." The officer also found there was insufficient evidence to show that Ms. Suhandi would be unable to find employment in Indonesia to support her son and

herself. Overall, the officer found there was insufficient evidence the BIOC would be negatively impacted to such an extent that it warranted H&C relief when weighed against other factors.

C. *The Officer's Decision was Unreasonable*

[11] I conclude that the officer's analysis of the BIOC does not meet the requirements of a reasonable decision as outlined by the Supreme Court in *Vavilov*. I reach this conclusion for two reasons.

[12] First, the officer did not refer to, and apparently did not consider, Ms. Suhandi's submission that her son's best interests would be to remain in Canada so that he could develop a relationship with his father. While the father had not recently paid child support and had no current relationship with the son, Ms. Suhandi had underscored the importance of her son having a relationship with both of his parents. In my view, the officer failed to "meaningfully account for" one of the central issues and concerns raised by Ms. Suhandi: *Vavilov* at para 127. Given the importance of the decision maker being "alert and sensitive to the matter before it," particularly in considering a child's best interests, this was a material omission from the officer's reasoning: *Vavilov* at para 128; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 34–40; *Perez v Canada (Citizenship and Immigration)*, 2016 FC 511 at paras 5–9; *Paul v Canada (Citizenship and Immigration)*, 2012 FC 194 at para 20.

[13] As the Minister notes, an administrative decision maker is not required to "respond to every argument or line of possible analysis" raised by a party: *Vavilov* at para 128, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*,

2011 SCC 62 at para 25. Having reviewed Ms. Suhandi's evidence and submissions filed on the H&C application, I conclude her submissions regarding her son's interest in having a relationship with her father was a central issue raised in respect of the BIOC, and not simply a subordinate or unimportant matter that could reasonably pass without consideration. Contrary to the Minister's argument, the issue was not "raised in only a single bullet point" in Ms. Suhandi's H&C submissions. It was identified in submissions as the second of five matters that pointed to the son's best interests being to remain in Canada. It was subsequently repeated in counsel's closing paragraph on the BIOC. It was also raised expressly in three separate paragraphs in Ms. Suhandi's affidavit filed in support of her application, where she gave her evidence both of her belief "in the importance of children having a relationship with both of their parents" and desire to remain in Canada "so that [her son] can have a relationship with his father."

[14] The Minister also argues that the evidence indicated the father had no interest in having a relationship with his son, distinguishing the situation from the *Perez* and *Paul* cases cited above, in each of which there was an ongoing relationship with the father. While the factual circumstances may be different, as they are in each case, this does not mean that the officer could simply ignore the son's potential relationship with his father in their BIOC analysis. The Court in *Perez* and *Paul* reached different outcomes based not on the factual nature of the particular relationship, but on whether the officers considering the H&C applications had adequately considered that relationship in their BIOC assessments: *Perez* at para 9; *Paul* at para 17.

[15] Second, I agree with Ms. Suhandi that the officer's treatment of the availability of child support was unreasonable. Ms. Suhandi had submitted that she had a right to child support, filing

evidence of the father's paternity and the steps she had taken to obtain such support. She pointed to the father's stated resistance to support and submitted it would be difficult, if not impossible, to enforce support obligations from Indonesia, noting that Indonesia is not a reciprocating jurisdiction with Canada and referring to country condition evidence stating there is no system to enforce alimony in Indonesia. As noted above, the officer responded to this submission by finding there was insufficient evidence that Ms. Suhandi and her family would be unable to support the child, regardless of child support.

[16] Ms. Suhandi's son has a legal right to child support from his father. Where that right would be jeopardized through Ms. Suhandi's removal to Indonesia, this is a relevant factor in the BIOC analysis and, in my view, it is no answer to this concern to note that other family members may be able to fill some of the financial gap caused by the inability to enforce that right. The officer was tasked with assessing the son's best interests, the extent to which those best interests would be adversely affected by a refusal of the application, and the role of that impact in the overall H&C assessment. I agree with Ms. Suhandi that the officer's analysis does not adequately consider the impact on the son's interests in receiving financial support from both of his parents as he is entitled. This error was further exacerbated by the officer's reliance on Ms. Suhandi previously receiving support from her family when in Indonesia, without giving consideration to the subsequent death of her father and how that might impact her family's ability to support her and her child.

[17] In my view, these errors on the part of the officer are sufficient to render their analysis of the BIOC unreasonable. Given the importance of the BIOC to Ms. Suhandi's H&C application, I

consider these errors to go beyond a “minor misstep.” Rather, they are sufficiently serious that the decision cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency.

D. *Establishment*

[18] Although not determinative in this case given the conclusions above, I note some concern with the officer’s treatment of Ms. Suhandi’s establishment in Canada. Ms. Suhandi’s H&C submissions and evidence made extensive reference to her abusive relationship with her son’s father. Her submissions on establishment in particular noted that she had succeeded in leaving an abusive relationship and making a new home for herself and her son, and noted that she had had to receive financial assistance after leaving that relationship, but hoped to become financially self-supporting. This was an important aspect of Ms. Suhandi’s personal history generally and her submissions on establishment in particular.

[19] The officer made no apparent mention of this history of abuse in their decision. In addressing Ms. Suhandi’s establishment, the officer did note that they were “mindful of her circumstances,” but found that her establishment was nonetheless limited. In my view, even if one could read this reference to “circumstances” as invoking her position as a survivor of abuse, which is far from clear, the officer did not show they engaged with Ms. Suhandi’s experience with spousal abuse as an element of her application. To the extent the officer wished to avoid undue reference to the abuse Ms. Suhandi had faced, I believe this concern was misplaced in the circumstances. Ms. Suhandi clearly referred to this issue and her personal history of abuse as part



of her H&C application, and was entitled to a decision that clearly showed the officer had understood and considered the gravity of the situation as a relevant factor in their assessment.

IV. Conclusion

[20] I therefore find that the officer's decision refusing Ms. Suhandi's H&C application does not show the justification, intelligibility, and transparency required of a reasonable decision, and must be set aside. The application for judicial review is granted and Ms. Suhandi's H&C application is remitted for redetermination by another officer.

[21] Neither party proposed a question for certification and I agree that none arises in the matter.

**JUDGMENT IN IMM-2870-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted. The decision of a Senior Immigration Officer dated April 14, 2021 refusing Riani Suhandi's application for permanent residence on humanitarian and compassionate grounds is set aside, and the application is remitted for redetermination by another officer.

“Nicholas McHaffie”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2870-21

**STYLE OF CAUSE:** RIANI SUHANDI v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 15, 2021

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** APRIL 28, 2022

**APPEARANCES:**

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