Federal Court  Cour fédérale

**Date: 20221117**

**Docket: IMM-3404-21**

**Citation: 2022 FC 1572**

**Toronto, Ontario, November 17, 2022**

**PRESENT: The Honourable Madam Justice Furlanetto**

**BETWEEN:**

**ANVITA DIPAK RAO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] This is a judicial review of a May 5, 2021 decision [Decision] of a senior immigration officer [Officer] of Immigration, Refugees and Citizenship Canada, rejecting an application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27.

[2] For the reasons that follow, I find that the Officer did not make a reviewable error and that the application should be dismissed.

## I. Background

[3] The Applicant, Anvika Dipak Rao, is a citizen of the United Kingdom [UK]. At the time of her application, she was 68 years old. The Applicant has been in Canada since January 2019 and is living with her adult son who has two children and is now divorced.

[4] The Applicant also has a second son who is married and lives in the UK. Her husband is also in the UK and is currently serving the remainder of an 18-month prison sentence that will follow with probation.

[5] On November 18, 2019, the Applicant submitted an H&C application in which she relied on her establishment in Canada and the best interests of her grandchildren [BIOC]. The Applicant provided evidence describing how she helps take care of her grandchildren when they are in her son's custody and how she works one-on-one with her granddaughter, who requires additional support with her schoolwork.

[6] On May 5, 2021, the Officer denied the application. The Officer gave establishment little weight on the basis that the Applicant had only been in Canada for two years. The Officer was also not satisfied that the Applicant's ties to Canada outweighed her ties to the UK.

[7] The Officer reflected on the importance of the BIOC, but was of the view that the BIOC would not be compromised if the Applicant returned to the UK. The Officer noted that the children still had their parents who share responsibilities and would be able to provide support

for the children along with resources available at school to assist with her granddaughter's schoolwork.

[8] The Officer further noted that the Applicant could travel freely between the UK and Canada with an electronic travel authorization and that there were other immigration options, such as the Super Visa program, available to reunite the Applicant with her family in Canada.

## II. Issues and Standard of Review

[9] The following issues are raised by this application:

A. Did the Officer err in his assessment that the Applicant's family ties in Canada were not outweighed by her family ties in the UK?

B. Did the Officer err in his assessment of the BIOC?

C. Did the Officer err by relying on the existence of other immigration routes?

[10] The standard of review of an officer's H&C decision is reasonableness. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17.

[11] In conducting a reasonableness review, the Court must determine whether the decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

## III. Analysis

### A. *Did the Officer err in his assessment that the Applicant's family ties in Canada were not outweighed by her family ties in the UK?*

[12] The Applicant argues that the Officer's assessment that the Applicant's family ties in Canada are equivalent to those available in the UK is unintelligible, as it is not supported by the evidence or by sufficient explanation.

[13] As evidence of her family ties in Canada, the Applicant submitted a declaration from her son in Canada and a letter from her son in the UK. The Applicant asserts that the evidence was consistent and described the care and support the Applicant provides to her grandchildren and to her son in Canada and expressed the desire of both sons to have their mother remain in Canada where she will live with family.

[14] In the Decision, the Officer acknowledged that the Applicant was living with her son in Canada and that she was providing care and support to her granddaughters since her son's divorce. However, the Officer found insufficient evidence to support a relationship characterized by a degree of interdependency and reliance that if separation were to occur it would justify an exemption under H&C grounds.

[15] The Officer referred to the letter from the Applicant's son in the UK that indicated he and his spouse were doctors who worked long hours and that while they would like to have the Applicant stay with them, it would be extremely difficult for them to care for her. However, the Officer was not persuaded that the letter indicated that the son in the UK would not provide

assistance or be unable to make adequate arrangements for care and support for his mother, if needed. The Officer also considered the presence of the Applicant's spouse in the UK. While acknowledging that he was completing his sentence, the Officer stated that there was no indication that the Applicant did not maintain communication, or a relationship, with her spouse.

[16] The Respondent contends that it was open for the Officer to view the evidence as indicating that while the Applicant's UK son is very busy, he loves his mother and would be willing to support and assist her if necessary. It argues that there remains strong ties in the UK in view of the presence of the Applicant's son and husband and the Applicant's history of having lived there for 40 years.

[17] I agree that it was reasonable for the Officer to consider the Applicant's overall ties to the UK, the length of time she lived there, as well as the nature of the evidence provided. It was open for the Officer to consider that the family ties to the UK did not stop at the Applicant's son but would also include the Applicant's husband who was temporarily incarcerated and for which there was no evidence the Applicant did not maintain a relationship.

[18] Similarly, in my view, it was open to the Officer to view the letter from the Applicant's son in the UK as demonstrating that he cares for his mother and while he could not provide care personally that he would provide some family support.

[19] I agree that the Officer does not expressly state that he weighed the tone of the letter in reaching his conclusion. However, in my view it is apparent from the Officer's reasons that he

considered the statement made by the Applicant's son that he "would love" for his mother to stay with him to be indicative of his love for his mother and that his limitations reflected only his inability to care for her personally because of his busy schedule.

[20] This situation is not one where the Respondent is substituting its own justification for the outcome to overcome a deficiency in the reasons. In my view, the dots can logically be connected on the page and the reasoning of the Officer can be inferred from the analysis given: *Vavilov* at paras 96-97.

[21] Further, I do not consider the circumstances of this case to reflect those in *Gill v Canada (Citizenship and Immigration)*, 2017 FC 792 [*Gill*], cited by the Applicant. In *Gill*, the officer found that the applicant would receive support from her brother when reintegrating in her home country. However, the evidence showed that the brother had never been supportive of the applicant and that the presumption that he would provide support was entirely speculative: *Gill* at para 43. In this case, the evidence indicates that the Applicant maintains a relationship with her son in the UK and with her husband who resides there, although she would prefer to remain with her son in Canada.

[22] Similarly, the circumstances here do not parallel those in *Nwaeme v Canada (Citizenship and Immigration)*, 2017 FC 705 [*Nwaeme*]. In that case, the officer found that the applicant had a network of support in her home country. This finding was considered unreasonable as it was made without any supporting evidence and despite evidence before the officer that the applicant

had been abused in her home country: *Nwaeme* at paras 75-77. In this case, I do not view the Officer's findings as being made wholly without evidence.

[23] I also do not consider the Officer's reasons to invoke a veiled credibility finding. While the Officer referred to not being persuaded that the Applicant's son in the UK would be unable or unwilling to provide some assistance or arrange for support for his mother, this statement was made with consideration to the evidence.

[24] The Officer's reasons demonstrate that the Officer considered all of the evidence submitted on behalf of the Applicant when looking at the issue of family ties. While the Applicant does not agree with how the Officer weighed that evidence, it is clear that the evidence was considered.

[25] In my view, the Applicant's argument amounts to a disagreement with how the Officer weighed the evidence, which I do not consider to be outside the realm of available interpretations to constitute a reviewable error.

B. *Did the Officer err in his assessment of the BIOC?*

[26] The Applicant argues that the Officer's analysis of the BIOC is deficient because it viewed the children's interests through a narrow lens, focussing on whether the children could cope with separation from their grandmother and if other resources were available, rather than considering what was truly in the best interests of the children.

[27] The Applicant relies on the decision of *Bernabe v Canada (Citizenship and Immigration)*, 2022 FC 295 [*Bernabe*] as support for its position. In *Bernabe*, the Court found that the officer focussed his analysis on only two limiting questions – *i.e.*, whether the applicant in that case, who was also the grandmother of the children in issue was the primary caregiver; and whether the applicant was the only one who could provide care to her youngest grandchild who had a severe disability – even though the family never made those claims. In that case, the Court found that the evidence showed the applicant was an integral part of the family who had lived in the family home for ten years and provided significant care to the youngest grandchild who had exceptional medical needs. By focussing on the narrow issues, the Court found the officer failed to take a compassionate approach to the evidence and the analysis was devoid of real consideration of how the two children would be impacted, both practically and emotionally, by the departure of the applicant in the particular circumstances of that case: *Bernabe* at para 26.

[28] In this case, I do not consider the Officer's analysis to be so limiting, but rather to consider both the emotional and practical impact that the departure of the Applicant would have on the children.

[29] The Officer acknowledges the support the grandchildren receive from their grandmother and the emotional bond they share when they are together. However, the Officer notes that the biological mother also maintains responsibilities for the children and that she would be expected to provide emotional support to her children as well. The Officer finds there to be insufficient evidence to demonstrate that the children would not be able to emotionally handle the Applicant's departure.

[30] The Officer refers to evidence indicating that the Applicant plays a matriarchal role in her son's family, providing cleaning, cooking, care and emotional support and assistance for homework for her grandchildren. However, the Officer highlights that the children have their biological parents in Canada and that while they are divorced, they share custody and responsibilities for the best interests of their children. The Officer notes that there is no indication that the biological mother is unable to provide assistance related to the children's school work.

[31] While the Applicant argues that this analysis unreasonably relies on the biological mother in Canada as a means of providing care and support to the children, I do not read the Officer's comments in this manner. Rather, in my view the Officer's comments are intended to emphasize that as the parents are both responsible for the care of their children, this includes both contributing to the emotional and practical aspects of their well-being. The Officer's analysis notes that there is no evidence to suggest that the mother is unwilling to contribute in this manner.

[32] With respect to the Applicant's youngest granddaughter, the Officer acknowledges that the Applicant provides one-on-one assistance to help with her schoolwork. However, the Officer reasonably notes that there is also additional supports in place at the school and that the evidence does not establish that there is insufficient care when the mother has the children, nor does it demonstrate the father could not provide additional support at home when he has the children and is not working.

[33] Contrary to the situation in *Bernabe*, this is not a case where one of the children has a severe disability with associated exceptional medical needs. In this case, as noted by the Officer, the parents maintain care and responsibility for the children and there was no evidence that the youngest granddaughter's learning difficulties could not be supported by the parents and the resources at school.

[34] In my view, while not supportive of the request made by the Applicant, the analysis made by the Officer considered both the emotional and practical interests of the grandchildren and the evidence provided, and meets the criteria for reasonableness set out in *Vavilov*.

C. *Did the Officer err by relying on the existence of other immigration routes?*

[35] The Applicant's further argument that the Officer erred by relying on the existence of other immigration routes as support for denying the application is, in my view, not persuasive as I do not consider the mention of these additional routes to ground the refusal of the application.

[36] In my view, the reference to the sponsorship program and Super Visa program were made to raise further alternatives for how the Applicant might be able to maintain her connection to her family in Canada, while acknowledging that some of the routes may not be appropriate. As similarly found in *Tosunovska v Canada (Citizenship and Immigration)*, 2017 FC 1072 [*Tosunovska*] at paragraph 34, this was to mitigate some of the hardship that might result in returning to the UK.

[37] While I recognize as the Court did in *Tosunovska* that this would not fulfil the Applicant's goal of residing with her family permanently, I do not consider the Officer to be making a suggestion to that effect. Nor do I consider the Officer to have erred in his reference to these programs.

[38] As such, it is my view that this last argument does not raise a reviewable error.

## IV. Conclusion

[39] For all of these reasons, the application is dismissed.

[40] No question for certification was proposed by the parties and I agree that none arises in this case.

**JUDGMENT IN IMM-3404-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3404-21 |
| **STYLE OF CAUSE:** | ANVITA DIPAK RAO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HEARD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | NOVEMBER 10, 2022 |
| **JUDGMENT AND REASONS:** | FURLANETTO J. |
| **DATED:** | NOVEMBER 17, 2022 |

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