

Federal Court



Cour fédérale

Date: 20230112

Docket: IMM-1046-22

Citation: 2023 FC 49

Ottawa, Ontario, January 12, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

NICOLE PRETEL BLASCHKE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the bench at Ottawa, Ontario on January 12, 2023)

[1] Ms. Pretel is applying for judicial review of the dismissal of her application for permanent residence based on humanitarian and compassionate [H&C] factors.

[2] She is a citizen of Colombia, where she was born and raised. She also holds German citizenship, although she has never lived there. She has been in Canada since 2019, initially as a

student, and then as a visitor. She has been living with a cousin and the cousin's family. She describes herself as bisexual and she has met a same-sex partner in Canada.

[3] She applied for H&C relief in 2021, based on (1) the disproportionate hardship she would encounter as a bisexual person in Colombia, (2) her parents' lack of ability to support her, (3) the practical difficulty of relocating to Germany, and (4) the ties she developed with her cousin's family, especially the 15-year old son who suffers from social developmental disorder.

[4] An H&C decision is discretionary. The officer must weigh several relevant factors, but there is no rigid algorithm that determines the outcome. On judicial review, my role is not to assess the relevant factors myself or exercise the discretion anew, but simply to verify that the officer turned their mind to the relevant factors and gave them due consideration.

[5] To challenge the decision, Ms. Pretel first argues that the officer erred in assessing her establishment in Canada. She says that the officer erroneously required her to show an exceptional degree of establishment. Upon a global reading of the decision, however, I am satisfied that the officer did not do so. Rather, as in *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158, the officer used the word "exceptional" in a descriptive manner. Given the circumstances of the case, the officer could reasonably find that living two or three years in Canada does not warrant H&C relief: *Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4.

[6] Second, Ms. Pretel challenges the officer's assessment of the hardship she would endure as a bisexual person in Colombia. The officer would have disregarded or misconstrued evidence of the mistreatment of sexual minorities in Colombia. After carefully reviewing the evidence, I do not agree that the officer made such a mistake. To be sure, there have been acts of violence and harassment against sexual minorities in Colombia, and the officer acknowledged as much. The global picture that emerges from the evidence, however, is that sexual minorities have achieved a significant degree of tolerance and recognition. The officer's lengthy reasons on this topic show that they were alive to the nuances of the situation, including the fact that social attitudes are still in a process of change. The officer's conclusion that the situation of sexual minorities in Colombia did not warrant H&C relief was open to them on the evidence. Ms. Pretel is essentially asking me to reweigh the evidence before the officer, which is not my role. Moreover, in reaching this conclusion, the officer did not focus exclusively on the state's efforts to combat discrimination, as opposed to the actual results. While the officer should not have said that violence against sexual minorities also takes place in Canada, this does not render the decision unreasonable.

[7] For these reasons, the application for judicial review will be dismissed.

JUDGMENT in IMM-1046-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1046-22

STYLE OF CAUSE: NICOLE PRETEL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 12, 2023

JUDGMENT AND REASONS: GRAMMOND J.

DATED: JANUARY 12, 2023

APPEARANCES:

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