

Federal Court



Cour fédérale

Date: 20231228

Docket: IMM-7112-22

Citation: 2023 FC 1760

Ottawa, Ontario, December 28, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JOSE LUCAS EULOGIO SOLIS OLVERA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jose Lucas Eulogia Solis Olvera, seeks judicial review of a decision of a Senior Immigration Officer (the “Officer”) of Immigration, Refugees and Citizenship Canada, dated March 25, 2022, denying his application for permanent residence on humanitarian and compassionate (“H&C”) grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Officer was not satisfied that the Applicant's establishment in Canada and the hardship upon removal to Mexico warranted an H&C exemption.

[3] The Applicant submits that the Officer's decision is unreasonable, and that the Officer breached procedural fairness by raising the possibility of relocation without providing the Applicant an opportunity to respond.

[4] For the reasons that follow, I find that the Officer's decision is unreasonable. This application for judicial review is granted.

II. **Facts**

[5] The Applicant is a 62-year-old citizen of Mexico.

[6] The Applicant's daughter, with whom he is close, is pursuing a graduate degree in Calgary.

[7] The Applicant arrived in Canada in March 2009. On July 18, 2011, he submitted a claim for refugee protection. On April 4, 2012, the Refugee Protection Division refused his claim. From September 2013 until June 2021, the Applicant submitted and had refused six H&C applications.

[8] On July 29, 2021, the Applicant submitted a Pre-Removal Risk Assessment (“PRRA”) application. It was rejected on March 25, 2022. The Applicant submitted he feared returning to Mexico, stating that he was targeted by gangs.

[9] While in Canada, the Applicant maintained regular employment as a sub-contractor in construction. He is a member of the Church of Jesus Christ of Latter-Day Saints and has engaged in volunteer work.

[10] In a decision dated March 25, 2022, the Officer found that the Applicant’s circumstances did not warrant H&C relief pursuant to section 25(1) of the *IRPA*.

[11] The Officer assigned only some weight to the Applicant’s establishment, as anyone living in a place for a period of time would have some level of establishment. The Officer acknowledged that the Applicant would be able to work and practice his religion in Mexico, and that while there would be some level of hardship upon separation from his daughter, she is an independent adult.

[12] The Officer considered the Applicant’s alleged fear of being targeted by gangs in Mexico and found that there was no additional information to corroborate the Applicant’s claim that he had been targeted by gangs, thus giving this claim little weight. The Officer further found that there was insufficient evidence that the Applicant would be forced to live in the same area he was threatened, and that there would not be extreme hardship in relocating to Mexico. The Officer thus gave some weight to adverse country conditions.

[13] For these reasons, the Officer concluded that an H&C exemption was not warranted.

III. Issues and Standard of Review

[14] The application for judicial review raises the issues of whether the Officer's decision is reasonable and procedurally fair.

[15] The standards of review are not disputed. The parties agree that the applicable standard of review for the merits of the decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“Vavilov”). I agree.

[16] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (“*Canadian Pacific Railway Company*”) at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record

before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[18] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100). While a decision-maker is not required to respond to every line of argument or mention every piece of evidence, a decision’s reasonableness may be called into question where the decision exhibits a “failure to meaningfully grapple with key issues or central arguments” (*Vavilov* at para 28).

[19] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

IV. Analysis

[20] The Applicant submits that that the Officer’s analysis of the Applicant’s establishment and hardship upon removal is unreasonable, and that the Officer breached procedural fairness by

raising the possibility of relocation without providing the Applicant an opportunity to respond. I agree that the decision is unreasonable and therefore find it unnecessary to address the procedural fairness concerns.

[21] The Applicant submits that the Officer applied the wrong legal framework and failed to conduct an individualized assessment of the Applicant's personal circumstances, especially in relation to establishment.

[22] The Respondent submits that the Officer reasonably discussed relocation in the context of hardship upon return to Mexico. The Respondent notes that the Applicant has had six unsuccessful H&C applications, but has failed to demonstrate a material change that would warrant H&C relief.

[23] I agree with the Applicant. I reject the Respondent's submission about the Applicant's six unsuccessful H&C applications. Counsel for the Applicant rightly raised that the other six decisions are not in the record. This is the judicial review of *this* decision and its reasonableness. I do not find that previous negative H&C decisions, which the Court does not have before it, are relevant to the reasonableness of the decision under review.

[24] I agree with the Applicant that the exceptionality of H&C relief is not based upon an applicant's "exceptional circumstances." Rather, section 25(1) of the *IRPA* is an "exception" to the normal operation of the law (*Apura v Canada (Citizenship and Immigration)*, 2018 FC 762 at para 23; *Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 at paras 1-2). The

reasons reflect that the Officer evaluated the Applicant's claim through the erroneous exceptionality lens. The Officer considered the Applicant's financial, religious, and family establishment in Canada. But the Officer's conclusions that "an H&C application is for exceptional circumstances" and that "the purpose of an H&C is for exceptional circumstances that would cause a high level of hardship" demonstrate that the Officer evaluated the Applicant's claim through an unduly elevated threshold. The Officer's decision is not justified in relation to its legal constraints (*Vavilov* at paras 99-101).

[25] Additionally, I agree with the Applicant's reliance on *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 ("*Lauture*"). There, the Court determined that the decision was unreasonable as "[i]nstead of assessing whether the applicants would be able to volunteer and attend church in Haiti, the Officer should have assessed the applicants' evidence of employment, volunteer work, and integration in their community *in Canada*" (*Lauture* at para 23 [emphasis in original]). Here, the Officer focuses on the Applicant's ability to work and attend church in Mexico, rather than his evidence of employment and religious involvement in Canada. I find that this constitutes the same error as in *Lauture*. I endorse the Court's repudiation of the analysis that "the more successful, enterprising and civic minded an applicant is while in Canada, the less likely it is that an application under section 25 will succeed" (*Lauture* at para 26). The Officer's decision is not justified in relation to this legal constraint (*Vavilov* at paras 99-101).

V. Conclusion

[26] The application for judicial review is granted. The Officer's decision is not justified. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-7112-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a different officer.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7112-22

STYLE OF CAUSE: JOSE LUCAS EULOGIO SOLIS OLVERA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

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JUDGMENT AND REASONS: AHMED J.

DATED: DECEMBER 28, 2023

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