Federal Court  Cour fédérale

Date: 20250716

Docket: IMM-325-23

Citation: 2025 FC 1263

Ottawa, Ontario, July 16, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SOROR YARMOHAMMADI ANARAKI
SAEID RAJAEI ANARAKI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a married couple. They have two adult children and a granddaughter who are permanent residents of Canada. The Applicants came to Canada as visitors and applied to remain permanently based on humanitarian and compassionate factors ("H&C Application").

An officer at Immigration, Refugees and Citizenship Canada (the "Officer") refused their H&C Application.

[2] The Applicants are challenging this refusal on judicial review, arguing the Officer made unreasonable assessments on the best interests of their granddaughter and the hardship they would face in Iran. I agree with the Applicants that the Officer's assessment of their hardship of return is unreasonable, particularly the Officer's consideration of the impact of the religious conversion of one of the Applicants and their family relationships in Iran. As I find this to be a sufficient basis to send the matter back to be redetermined, I have found it unnecessary to comment on the Officer's best interests of the child analysis.

II. Procedural History

[3] The Applicants first came to Canada in 2016 as visitors. Their most recent entry was in 2020 and they have remained since that time, living with their daughter's family. The Applicants' daughter, son-in-law and granddaughter came to Canada in 2016 through the skilled worker stream. The Applicants' son converted from Islam to Christianity and later was accepted as a Convention refugee in Canada in 2020.

[4] The female Applicant converted to Christianity and submitted evidence with her H&C Application of her baptism and membership in a particular ministry. The Applicants also explained the strained relationships with their extended family members in Iran and in particular the male Applicant's family since learning of their son's conversion to Christianity.

[5] The Applicants extended their visitor visas in Canada two times prior filing their H&C Application. The Applicants filed the H&C Application in February 2022 and it was refused on January 5, 2023.

III. Issue and Standard of Review

[6] The Applicants are not challenging the procedure followed by the Officer; they are challenging the substance of the decision. The parties agree, as do I, that I ought to review the merits of the Officer's decision on a reasonableness standard.

[7] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] described a reasonable decision as "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). Administrative decision makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

IV. Analysis

[8] Foreign nationals applying for permanent residence in Canada can ask the Minister to exercise ministerial discretion to relieve them from requirements under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because of humanitarian and compassionate factors (IRPA, s 25(1)). The Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship*

and Immigration) (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is "to offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (*Kanthasamy* at para 21).

[9] Given that the purpose of humanitarian and compassionate discretion is to "mitigate the rigidity of the law in an appropriate case," there is no limited set of factors that warrants relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but "officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them" (*Kanthasamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74-75).

[10] The female Applicant's religious conversion was a key factor raised in the H&C Application. The female Applicant explained that she feared being at risk in Iran due to the conversion, that she would not be able to practice her faith freely and that they were shunned by their extended family because of her son's conversion.

[11] Though the Officer accepted that the female Applicant had converted, that she was a member of a church in Canada, and that she could face risk in Iran as a result, the Officer found that this factor could only be given little weight because there was "little evidence submitted to suggest what kind of hardships (beside from potential persecution or risk to their lives or unusual treatment and punishment) they would experience if they were to return to Iran."

[12] In my view, this is an illogical finding that exemplifies a misunderstanding of the restriction set out in subsection 25(1.3) of IRPA which states:

> In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.

[13] The Supreme Court of Canada in *Kanthasamy* confirmed that the restriction in subsection 25(1.3) of IRPA does not preclude H&C officers from considering evidence filed in relation to section 96 or 97(1) risk; the facts and circumstances related to a risk claim could be considered but through the lens of a hardship assessment (paras 91-92, citing the Federal Court of Appeal's decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at paras 66, 73-74 with approval).

[14] That the same facts could potentially give rise to a risk claim under section 96 or section 97 of IRPA does not mean that they are irrelevant or cannot be assessed in relation to whether an applicant would face hardship. The Officer's approach meant that a core factor raised in the Applicants' request for relief was not evaluated because of the mistaken view that subsection 25(1.3) of IRPA precluded any consideration of this factor.

[15] The Respondent argues that the Officer did, in fact, consider the religious conversion but simply found that there was "little corroborative evidence" to establish hardship, outside of the risk. I do not agree that this statement about the corroborative evidence establishes that the Officer considered the facts relating to the Applicants' conversion through a lens of hardship.

[16] The Officer does not explain, with reference to the Applicants' request for relief, which aspects relating to the religious conversionwere considered and which they found could not be considered because of their interpretation of subsection 25(1.3) of IRPA. There is also no mention of the female Applicant's evidence relating to the hardship they would face from her extended family.

[17] Ultimately, the Officer's reasons are hard to follow on this critical part of the H&C Application. The Officer's reasons do not demonstrate that they grappled with the Applicants' submissions on the hardship of return. This is a sufficient basis to find the decision unreasonable and requiring redetermination.

[18] The application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-325-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated January 5, 2023 is quashed and sent back for redetermination by a different decision maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-325-23
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