Federal Court Cour fédérale

Date: 20200820

Docket: IMM-1488-19

Citation: 2020 FC 841

Ottawa, Ontario, August 20, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

LUCRECIA GARCIA BALAREZO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Lucrecia Garcia Balarezo worked as a live-in caregiver in Canada from 2012 to 2016. Having applied for and received work permits as a live-in caregiver, she believed she was part of the Live-in Caregiver Program (LCP) and that she was working to qualify for permanent residence under that program. She knew one of the requirements of the LCP was that she apply for a work permit from outside Canada, but she was already legally in Canada on a student

permit, studying English to gain enough proficiency to qualify for the LCP. She therefore applied for her first work permit from within Canada, expecting to be told she needed to take a medical exam outside the country and then re-enter as a live-in caregiver. When Immigration, Refugees and Citizenship Canada (IRCC) simply issued her first work permit, it was not what she expected but it appeared that all was well. This perception was reinforced when the work permit extension she obtained in 2015 stated she was "eligible to apply for permanent residence after completing employment requirements."

[2] However, when Ms. Garcia applied for permanent residence in 2016, having completed the employment requirements of the LCP, her application was refused. An immigration officer found she did not qualify for the program since she had not applied for the program before entering Canada, and had not entered Canada as a live-in caregiver. Justice Boswell quashed that decision on the basis that the officer should have considered humanitarian and compassionate (H&C) factors even though Ms. Garcia had not expressly requested relief under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]: *Garcia Balarezo v Canada (Citizenship and Immigration)*, 2017 FC 1060 at paras 20–24.

[3] I conclude Ms. Garcia's application for permanent residence must again be returned for redetermination. The officer who made the redetermination decision did assess the H&C factors, but did so unreasonably. The officer's errors in assessing the relevant factors and applying Justice Boswell's decision were sufficient to render the decision as a whole unreasonable.

[4] The application for judicial review is therefore granted.

II. Issue and Standard of Review

[5] The redetermination of Ms. Garcia's application for permanent residence was refused in a January 15, 2019 letter that addressed both her eligibility for permanent residence under the LCP and her request for H&C consideration. The same officer rejected Ms. Garcia's request for reconsideration on February 19, 2019. While Ms. Garcia's judicial review application challenges the reconsideration decision and seeks to quash the refusal of her application for permanent residence under the LCP, her arguments are focused on her H&C request.

[6] The only issue on this application for judicial review is therefore whether the officer's decision refusing Ms. Garcia's request for H&C consideration was reasonable.

[7] The parties agree that H&C decisions are reviewable by this Court on the reasonableness standard: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18. While this matter was argued a few days before the Supreme Court of Canada issued its decision in *Vavilov*, that decision does not affect the applicable standard, but simply confirms the reasonableness standard applies: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. Nor does *Vavilov* change any of the principles regarding the application of the reasonableness standard that are relevant in this matter.

[8] As the Minister points out, reasonableness review of an H&C decision must recognize the discretionary nature of that decision. Parliament has left the exercise of the discretion with the Minister's delegate, and the Court is not to engage in a re-weighing of the relevant factors, nor

substitute its own decision for that of the H&C officer: *Legault v Canada (Citizenship and Immigration)*, 2002 FCA 125 at para 11.

[9] At the same time, an H&C decision must be reasonable. It must reasonably review and consider the evidence and the H&C factors presented in a manner respectful of H&C considerations: *Kanthasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 63–66. As part of this review, the decision maker must assess the best interests of any children affected in a manner that is "alert, alive and sensitive" to those interests: *Kanthasamy* at paras 35–40; *Baker* at paras 74–75. All the relevant factors are weighed globally to assess whether the circumstances would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another, so long as those misfortunes justify the granting of relief: *Kanthasamy* at paras 13–21, 25, 28–31; *IRPA*, s 25(1).

[10] In the present case, IRCC's Global Case Management System (GCMS) shows that the officer considered Ms. Garcia's eligibility under the LCP and her H&C request on January 3 and 15, 2019, respectively, while the reconsideration request was considered on February 19, 2019. The GCMS notes on these days give the officer's reasons for decision. I will refer to them as the January 3, January 15 and February 19 GCMS Notes. The parties agree that the January 15 GCMS Notes dealing with the H&C factors are the most relevant, although there are also relevant matters raised in the January 3 GCMS Notes and the February 19 GCMS Notes.

III. Analysis

A. *Ms. Garcia's Application for Permanent Residence*

[11] Ms. Garcia came to Canada from Peru in 2009. She studied English for a few years on a study permit, specifically to acquire enough English to participate in the LCP. The January 15 GCMS Notes confirm that Ms. Garcia's intention to apply for a work permit under the LCP was conveyed to the visa officer who granted the study permit, and noted in her file. Ms. Garcia was supported in her endeavours by Jose Alberto Castillo Balarezo and Rita Roxana Villanueva Meza, a couple who then had one young child, with whom Ms. Garcia lived during her studies.

[12] At the time, paragraph 72(2)(*a*) and sections 110 to 115 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], now repealed, defined the "live-in caregiver class" as a class of foreign nationals who may become permanent residents. The LCP operated as part of the Temporary Foreign Worker Program. Thus, section 111 of the *IRPR* required a person seeking to enter Canada as a live-in caregiver to apply for a work permit in accordance with Part 11 of the *IRPR*, which governs the worker class of temporary residents. Section 112 contained requirements for work permits for live-in caregivers, while section 113 contained requirements for becoming a member of the live-in caregiver class and thereby being eligible for permanent residence.

[13] One of the requirements of the LCP was that the foreign national had to apply from outside Canada. Subsection 112(*a*) stated that a work permit "shall not be issued" to a foreign national who seeks to enter Canada as a live-in caregiver unless they applied for the permit

before entering Canada. Similarly, paragraph 113(1)(*d*) included a requirement that the foreign national “entered Canada as a live-in caregiver” in order to become a member of the live-in caregiver class.

[14] In 2012, with the support of Mr. Castillo and Ms. Villanueva, Ms. Garcia applied for a work permit to become their live-in caregiver. As was required, Mr. Castillo and Ms. Garcia entered a “Live-in Caregiver Employer/Employee Contract” in the template form provided by Service Canada, and obtained a Labour Market Opinion (LMO) from Service Canada based on that contract and related information about the market. The LMO referred to the Temporary Foreign Worker Program, and was issued for the job title “Live-in caregiver.” The LMO also confirmed that Mr. Castillo had attested to having signed the contract “containing all the provisions required by the Live-In Caregiver Program.” The LMO and contract were submitted as part of Ms. Garcia’s application for a work permit.

[15] Ms. Garcia knew it was a program requirement to apply from outside Canada. Having applied from inside Canada while on her student permit, she expected to be told by IRCC that she needed to leave Canada for a medical examination, and then re-enter as a temporary worker under the LCP.

[16] Instead, IRCC issued a work permit to her in May 2012. The January 15 GCMS Notes confirm that “[t]his work permit was issued in error” as it should not have been issued until medical examinations were completed.

[17] The May 2012 work permit stated in the “Remarks” section that Ms. Garcia had to undergo an immigration medical examination within 90 days, and that medical forms had been mailed separately. Those forms advised Ms. Garcia to attend a medical examination in Toronto, which she did. After submitting the medical forms, a further work permit was issued in October 2012, valid until May 2015. The October 2012 work permit did not have the remark regarding medical forms, but was otherwise effectively the same as the May 2012 work permit, and referred to the same LMO number.

[18] Ms. Garcia worked for the Castillo Villanueva family for the next three years, during which time the couple welcomed their second daughter. Ms. Garcia applied to extend her work permit in 2015 to bring her to the end of the four-year period set out in the LCP. That application was granted and a further work permit issued in June 2015, valid until May 2016. The “Remarks” section of that work permit included the note “LCP, SAME EMPLOYER,” again referred to the number of her original LMO, and further stated “ELIGIBLE TO APPLY FOR PERMANENT RESIDENCE AFTER COMPLETING EMPLOYMENT REQUIREMENTS. SEE WWW.CIC.GC.CA FOR DETAILS.”

[19] The January 15 GCMS Notes confirm that this June 2015 work permit was also “issued in error” and should have been refused for not having a new Labour Market Impact Assessment (LMIA, the term that replaced LMO in the Temporary Foreign Worker Program). The error also included the “incorrect remarks” regarding Ms. Garcia’s eligibility to apply for permanent residence.

[20] Ms. Garcia worked for the Castillo Villanuevas for another year. Then, in accordance with her original plan, her understanding of the LCP and the indication on her June 2015 work permit, she applied for permanent residence in 2016.

B. *Refusal and Judicial Review*

[21] On July 7, 2016, IRCC advised Ms. Garcia that her application was not approved because she had not been assessed from outside Canada and was therefore not under the LCP. A further application filed with the assistance of counsel was refused on February 8, 2017 on grounds that Ms. Garcia had not been examined for the LCP prior to entering Canada, as required by subsection 112(*a*) of the *IRPR*, and had not entered Canada as a live-in caregiver, as required by paragraph 113(1)(*d*) of the *IRPR*. That decision was upheld by IRCC after consideration of additional submissions.

[22] On November 22, 2017, Justice Boswell issued his decision in *Garcia Balarezo*, quashing the refusal of permanent residence. He concluded that although Ms. Garcia had not explicitly requested H&C relief under subsection 25(1) of the *IRPA*, there was an implicit request for such relief by raising H&C factors. This triggered an obligation to consider such factors: *Garcia Balarezo* at paras 20–21. Justice Boswell then underscored Ms. Garcia's reliance on an earlier decision of Justice Lemieux in *Jacob v Canada (Citizenship and Immigration)*, 2012 FC 1382. Justice Boswell said the following at paragraph 22 of his decision:

> Moreover, it appears the Officer **either misapprehended or may not have fully considered the court decisions submitted by the Applicant**, notably the decision in *Jacob*, a case which was factually similar to the Applicant's circumstances. Although the applicant in *Jacob* had made an explicit request for an exemption

> from the requirement that he had to have entered Canada as a live-in-caregiver, the Officer here **appears to have overlooked or disregarded Justice Lemieux's comments**:
>
> > [33] …What the applicant was seeking was an exemption from the requirement he had to have entered Canada as a live-in-caregiver. He entered Canada legally under a student visa but owing to circumstances beyond his control the institution which he attended closed its doors. He then applied for authorization as a live-in-caregiver and was so authorized. He fulfilled his obligations under the IRPR and was advised he met the requirements for permanent residence. In short, the Officer erred in processing Mr. Jacob's application as if it was a simple exemption request from having to apply for permanent residency to Canada from abroad. He was applying for permanent residency in Canada because that is what he was entitled to as a live-in-caregiver which he was <u>but for having entered</u> in Canada legally but <u>as a student</u>.
>
> [Bold added; emphasis in Justice Lemieux's original.]

[23] Justice Boswell therefore quashed the decision and returned the matter for reconsideration by a different officer.

[24] Ms. Garcia was invited to make additional submissions on the redetermination. She did so in December 2017, attaching copies of the *Garcia Balarezo* and *Jacob* decisions.

C. *The Officer's Decision on Redetermination is Unreasonable*

[25] On redetermination, the officer concluded that Ms. Garcia did not qualify under the LCP. In the January 3 GCMS Notes that deal with this aspect of the decision, the officer concluded that Ms. Garcia was eligible to apply for a work permit from within Canada because she held a

study permit: *IRPR*, s 199(*c*). Nonetheless, the officer concluded that since she did not apply from outside Canada, she was not eligible to apply for permanent residence under the LCP by operation of paragraph 113(1)(*d*) of the *IRPR*. Ms. Garcia did not challenge this aspect of the officer's decision before me.

[26] In assessing the H&C grounds, the officer's January 15 GCMS Notes recited the background, including the fact that both the May 2012 and June 2015 work permits had been issued in error. The officer considered the various arguments raised by Ms. Garcia, but found there was not sufficient evidence of H&C grounds to warrant relief from the eligibility requirement of applying from outside of Canada for her initial work permit.

[27] The Minister submitted that the reasonableness of a decision must be assessed with reference to the submissions made to the decision maker, and that responsiveness to such submissions is a "badge" of a reasonable decision. The Minister noted that the officer had considered each of Ms. Garcia's arguments in reaching their decision. While I agree that the submissions made to the decision maker are an important context, and that responding to those submissions is an important element of a reasonable decision, this does not mean that an unreasonable decision can be justified on grounds that it cites and responds to the arguments put forward. In other words, the fact that a decision responds to submissions is not enough; the response must be a reasonable one.

[28] I conclude that the officer's H&C decision was unreasonable, as it (1) unreasonably relied on the existence of notes in IRCC's file that Ms. Garcia was not privy to; (2) inconsistently

relied on her ability to apply under an as yet-unannounced new live-in caregiver program while rejecting concerns about her eligibility since program criteria had not been announced; (3) took an unreasonable approach to the best interests of the child (BIOC) as a factor in Ms. Garcia's application; and (4) failed to consider the *Jacob* decision to which Justice Boswell had specifically directed attention. Since I conclude that these matters render the decision unreasonable as a whole, I need not address the other grounds raised by Ms. Garcia.

(1) Hidden notes

[29] The officer recognized that both the May 2012 and June 2015 work permits were issued by IRCC in error. However, the officer asserted that Ms. Garcia's May 2012 and October 2012 work permits "had clear notes on them that PA [principal applicant] was not part of the LC program." This appears to have been very important in the officer's thinking, as they repeated the point both in responding to one of Ms. Garcia's submissions, and again in their conclusion, stating:

> The errors made on CIC's part (including issuing first work permit with med instructions to work in childcare field and adding the incorrect remarks to clients third work permit in 2015) have been taken into consideration and there is still insufficient evidence of H&C grounds to warrant exemptions. PA's rep stated that PA and her employers were aware of Section 112 of the Immigration and Refugee Protection Regulations and were aware that the initial work permit had to be assessed and issued from outside of Canada and that an immigration medical needed to be completed in order to be eligible to apply for permanent residence. PA could have inquired through the Call Centre as PA's first 2 work permits had very clear notes on them that PA was not part of the LC program.
>
> [Emphasis added.]

[30] The "very clear notes" in question were not, however, notes visible on the face of the work permits issued to Ms. Garcia or in any other document sent to Ms. Garcia. Rather, as is clear from the February 19 GCMS Notes, they were "hidden notes" that were available only to IRCC in their own system:

> When she was issued the document and medical forms from within Canada, client should have questioned why. If client did question it and did not receive an answer, there was opportunity again to contact the Call Centre for clarification. […] The first two work permits that client was issued clearly indicates in hidden notes that client was not part of the LC program.
>
> [Emphasis added.]

[31] The officer's conclusion was thus that when Ms. Garcia applied for and received her first work permit, despite there being no indication that she was not in the LCP, she should have been sufficiently curious about not receiving the expected instruction to leave the country that she should have made inquiries of IRCC. Upon making such inquiries, IRCC would then have advised her of the "hidden notes" saying that IRCC considered her not to be in the program. Certainly if Ms. Garcia had made such inquiries and been told this, this might have cleared matters up in 2012. However, in my view, despite the onus that is on applicants to ensure that they meet program requirements, it was unreasonable for the officer to have effectively required Ms. Garcia to proactively find out the source of errors made by IRCC, and to substantially discount this as an H&C factor in consequence.

[32] In this regard, there was apparently sufficient uncertainty within IRCC regarding Ms. Garcia's status that her 2015 work permit expressly stated that she was in the LCP and was eligible for permanent residence after completing employment requirements. Although this

statement did not appear until 2015, it was reasonable for Ms. Garcia to rely on it as she worked for a further year in Canada on the continued understanding that she was a part of the LCP. This would appear to be a strong positive factor in Ms. Garcia's H&C application.

[33] However, rather than underscoring the impact of this statement, the officer appeared to take it as further grounds on which to blame Ms. Garcia for her conduct. In the January 15 GCMS Notes, the officer relied on the general reference in the remark to see the IRCC website "for details," noting that despite IRCC expressly stating she was in the program, if Ms. Garcia had "referred to the website she would have realized that she did not meet all of the eligibility requirements." In the February 19 GCMS Notes, the officer went further, concluding that even after receiving a direct statement from IRCC confirming she was in the LCP, it was "presumptuous of the client to assume she was part of the program and this was another opportunity for client to check the website regarding being eligible" [emphasis added].

[34] In my view, it is unreasonable to find an immigration applicant "presumptuous" for relying on the accuracy of statements being made by IRCC with respect to their case. This Court has previously recognized the unreasonableness of imposing a duty on an applicant to check the website and regulations to ensure that statements on a work permit are accurate: *Sanie v Canada (Citizenship and Immigration)*, 2019 FC 189 at para 15.

(2) Ms. Garcia's ability to apply for a new program

[35] Ms. Garcia made submissions regarding the hardship she would face if forced to return to Peru at age 60 after being out of the country since 2009. The officer found that given the

apparent connection between Ms. Garcia and the Castillo Villanueva family, it "seems very possible that PA could apply for a new LMIA for the same employer and continue working for them until a new Caregiver Program is announced, which she may likely be eligible to apply under." However, when Ms. Garcia submitted in her request for reconsideration that she would likely not qualify under the new caregiver program, the officer found this to be "an assumption as the new program criteria has not been officially announced yet."

[36] The officer therefore assumed that Ms. Garcia could be eligible for a yet to be announced program in order to discount the hardship she might face, while at the same time discounting the suggestion that she might not qualify as a mere "assumption" since the program had not been announced. In addition to being internally inconsistent, and thus unreasonable, this approach signals an attitude on the part of the officer that seems to seek grounds for denying the application, rather than reasonably assessing the H&C factors weighing for and against the request.

(3) Best interests of the child

[37] The officer recognized Ms. Garcia's submissions regarding the impact of her departure on the two Castillo Villanueva children, who view her as part of the family. The officer's treatment of this issue reads as follows:

> Employer's daughters are approximately 11 & 4 years of age. PA leaving Canada may be stressful at the time and I agree that family structure change may disrupt the settings of a child's daily life. However, the children still have both of their parents and change is inevitable and important for growth. Children are quick to adapt to change provided they are guided the right way and taught how to

> cope with the changes beforehand. Learning to cope with change is a skill that will help children all through their life.
>
> [Emphasis added.]

[38] The inclusion of the BIOC as a factor for consideration in H&C determinations calls for an officer to be "alert, alive and sensitive" to the children's best interests: *Kanthasamy* at para 38; *Baker* at paras 74–75. Discounting the identified hardship to the children affected by the decision on the basis that change is good for them as "important for growth" and that coping was "a skill" that would help them fails to be alert, alive and sensitive to the children's interests and is unreasonable.

(4) The *Jacob* decision

[39] As set out above, Justice Boswell's decision reviewing the first refusal of Ms. Garcia's application for permanent residence noted, among other things, that the officer either misapprehended or did not fully consider the decision in *Jacob* that Ms. Garcia had referred to and relied on in her submissions. I agree with Ms. Garcia that the officer considering the matter on redetermination unreasonably failed to take Justice Boswell's discussion of *Jacob* into account in their decision.

[40] The *Jacob* decision dealt with an applicant who was in a similar position to Ms. Garcia. Mr. Jacob had applied for and received a work permit as a live-in caregiver, worked as a live-in caregiver for several years, was told that he was eligible to apply for permanent residence and did so, only to be told that he was not eligible because he had not applied for a work permit from outside Canada. As with Ms. Garcia, he had been in Canada when he applied under a student

permit. Unlike Ms. Garcia, his work permits had expressly stated that they were not issued under the LCP, a notation Mr. Jacob misunderstood: *Jacob* at paras 3–11, 23, 33.

[41] Justice Lemieux noted that Mr. Jacob was applying for permanent residency in Canada "because that is what he was entitled to as a live-in-caregiver which he was but for having entered in Canada legally but as a student": *Jacob* at para 33 [emphasis in original]. He quashed the refusal of Mr. Jacob's request for relief from the requirement to have entered Canada as a live-in caregiver on this ground among others: *Jacob* at paras 32–35. Justice Boswell highlighted this reasoning, noting the similarities with Ms. Garcia's case, and finding that the first decision had been made without full consideration of *Jacob*. He noted in particular that the officer had apparently overlooked or disregarded Justice Lemieux's comments about the factually similar situation in that case: *Garcia Balarezo* at para 22.

[42] Where a matter is remitted for redetermination, a tribunal is required to follow the directions of the reviewing court: *Canada (Commissioner of Competition) v Superior Propane Inc*, 2003 FCA 53 at paras 1, 54. This includes matters set out in the reasons for judgment, although the decision maker is only bound by outcomes, factual determinations or evidentiary assessments that are expressly set out as directions in the judgment: *Superior Propane* at paras 10, 17–18; *Canada (Citizenship and Immigration) v Yansane*, 2017 FCA 48 at paras 16–19, 24–25. This requirement is implicit in any remittance, even if the Court's order does not expressly state, as Justice Boswell did, that the matter is to be redetermined "in accordance with the reasons": *Yansane* at para 25; *Garcia Balarezo* at para 24.

[43] On my read of *Garcia Balarezo*, the reasons for judgment identified not just the need to consider the H&C factors, but to fully consider the decision in *Jacob*, which was identified as factually similar to Ms. Garcia's circumstances. While the officer was not bound by any particular result or factual finding, as Justice Boswell did not make any such finding or express it in his judgment, the officer on redetermination was required to take the issues raised in Justice Boswell's decision into account: *Yansane* at paras 19, 25.

[44] However, the officer gave no apparent consideration to either the *Jacob* case or Justice Lemieux's assessment, as Justice Boswell called for. Rather, their assessment of Justice Boswell's decision appears limited to the conclusion that H&C factors had to be considered. While a decision maker is certainly not obliged to refer to or cite every decision raised by a party, in the current circumstances and in light of Justice Boswell's decision and order, I consider the failure to consider *Jacob*, by name or in substance, to be unreasonable.

[45] I note in this regard that the officer did not fall into some of the errors described in *Jacob*. For example, unlike in *Jacob* the officer did recognize that Ms. Garcia's request was simply a request for relief from the requirement to have entered Canada as a live-in caregiver. However, as in *Jacob*, the officer gave no consideration to the purpose of the underlying regulatory scheme, despite Ms. Garcia's submissions on that issue.

(5) Unreasonableness of the decision as a whole

[46] I am satisfied that the foregoing unreasonable aspects of the officer's decision were sufficient to render their decision as a whole unreasonable. The officer placed significant reliance

on Ms. Garcia's ability to make proactive inquiries to uncover what was written in the hidden notes in IRCC's file, using this as the primary reason to discount IRCC's errors in its handling of Ms. Garcia's file.

[47] In this regard, it is worth noting that subsection 25(1) is designed to "mitigate the rigidity of the law," and effectively presupposes that an applicant has failed to comply with one or more provisions of the *IRPA*: *Kanthasamy* at para 14; *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 at para 23; *Lopez v Canada (Citizenship and Immigration)*, 2019 FC 349 at para 11. An H&C decision maker should therefore assess the nature of the non-compliance and its relevance and weight in the context of the other H&C factors, and not simply invoke the non-compliance as an obstacle to the granting of relief: *Mitchell* at para 23; *Lopez* at para 11. Ms. Garcia certainly bore the onus of both informing herself of and satisfying the program requirements. However, the officer's refusal of H&C relief focused almost exclusively on her not having satisfied one of those requirements, and not having made proactive inquiries that would have confirmed that non-compliance.

D. *Costs*

[48] Ms. Garcia seeks her costs of this application on a substantial indemnity basis. Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 provides that "[n]o costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, <u>for special reasons,</u> so orders" [emphasis added]. This Court has found "special reasons" to exist in situations where, for example, a party has unnecessarily or unreasonably prolonged legal

proceedings, acted in an unfair, oppressive or improper manner, or acted in bad faith: *Johnson v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1262 at para 26.

[49] Ms. Garcia made few submissions as to why there were “special reasons” to award costs in this case. I conclude that special reasons do not exist for the granting of costs. Errors on the part of an officer, absent bad faith, do not constitute special reasons for costs: *Ge v Canada (Citizenship and Immigration)*, 2017 FC 594 at para 40. In the present case, I have concluded that the officer’s decision was unreasonable and that they took an approach that was focused on assigning blame to Ms. Garcia for not confirming matters with IRCC rather than assessing the overall H&C considerations. However, despite these errors, the officer’s decision does not show bad faith. The request for costs is refused.

IV. Conclusion and Disposition

[50] The application for judicial review is granted.

[51] Neither party proposed a question for certification. I agree that no certifiable question arises in the matter.

<u>JUDGMENT IN IMM-1488-19</u>

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted, and the matter is returned for a further redetermination by a different immigration officer.

"Nicholas McHaffie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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