

Federal Court



Cour fédérale

**Date: 20220110**

**Docket: IMM-5946-19**

**Citation: 2022 FC 25**

**Ottawa, Ontario, January 10, 2022**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**CONSUELO YERO HEREDIA**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Ms. Consuelo Yero Heredia, is a citizen of Cuba who applied for permanent residence from within Canada on Humanitarian and Compassionate [H&C] grounds. In a decision dated December 12, 2019, a Senior Immigration Officer [Officer] found that in all of the circumstances the H&C considerations identified in the application did not justify relief under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Yero Heredia seeks judicial review of the Officer's decision under section 72 of the IRPA. Having considered the parties' submissions and the record, I am of the opinion that the Officer's decision was reasonable. The Application is dismissed for the reasons that follow.

## II. Background

[3] Ms. Yero Heredia entered into a common-law relationship in 1974 when she was 15 years old. She had three children with her partner and reports that he became financially, verbally and physically abusive. They separated in 1986 after she suffered a particularly severe incident of physical abuse. Due to the family's poverty, she continued to reside in the same house as her ex-partner and she and her children continued to experience abuse. Ms. Yero Heredia reported this abuse to the police, who took no action. She states her ex-partner forced her out of the home with her children in 2005 and again the police provided no assistance.

[4] Ms. Yero Heredia remarried in 2007 but reports her ex-partner continued to verbally abuse her whenever he saw her in public. She reports she fears him because he is a passionate Communist, works as a border guard and is a police informant.

[5] Two of Ms. Yero Heredia's three adult children, her husband and her sister remain in Cuba. Ms. Yero Heredia's third daughter is a permanent resident and resides in Canada with her husband and children. Ms. Yero Heredia visited her daughter in Canada on numerous occasions between 2014 and 2016. She last entered Canada in September 2016 on a visitor's visa and has resided with her daughter's family since that time. She submitted her H&C application in November 2017.

III. Decision under Review

[6] In seeking H&C relief, Ms. Yero Heredia relied on her level of establishment in Canada, adverse country conditions in Cuba, her mental health as it related to her experiences with domestic abuse and the best interests of her grandchildren in Canada. The Officer considered each of these factors.

[7] The Officer acknowledged Ms. Yero Heredia had lived in Canada for three years, she assisted her daughter and son-in-law with childcare and household responsibilities, and friends and family members had provided letters of support. The Officer assigned some positive weight to her establishment but also noted her relationships in Canada could be maintained through emails, telephone calls and visits should she be required to return to Cuba.

[8] The Officer also recognized that Ms. Yero Heredia had experienced violence from her ex-partner and that this abuse continued after the relationship ended. However, the Officer found it was unclear why Ms. Yero Heredia had not made a refugee claim if she believed she was at risk in Cuba and noted she had returned to Cuba from Canada on a number of occasions. Ms. Yero Heredia reported that after her remarriage, her ex-partner continued to subject her to verbal abuse whenever they encountered each other. The Officer found this inconsistent with her claim that she was “assaulted, insulted and intimidated in [her] daily life”. The Officer found Ms. Yero Heredia had provided insufficient evidence to establish that she continued to be harassed after she remarried or that she would face violence from her ex-partner or any other party in Cuba. The Officer also assigned little weight to her claim that she had been arrested and incarcerated in

1991 and that her ex-partner was involved, noting there was insufficient objective evidence to substantiate this aspect of the claim.

[9] The Officer referred to a psychological report in accepting that Ms. Yero Heredia was a victim of domestic violence. This report indicated Ms. Yero Heredia meets the diagnostic criteria for chronic symptoms of Post-Traumatic Stress Disorder secondary to the abuse she had endured and stated she also suffers from a depressive disorder stemming from distress related to her immigration matters. The Officer accepted that a return to Cuba might lead to retraumatization. However, the Officer stated there was nothing to guarantee retraumatization would not occur in Canada. The Officer noted there was no evidence to demonstrate Ms. Yero Heredia's previous repeated returns to Cuba affected her mental health. Similarly, there was no evidence to demonstrate she would not have access to mental health treatment in Cuba. Finally, the Officer found Ms. Yero Heredia could continue to receive emotional support from her Canadian family even if she were to return to Cuba and that she has a strong support network, including a husband and daughters, in her home country.

[10] In considering the best interests of Ms. Yero Heredia's nine year old and three year old grandchildren in Canada, the Officer acknowledged she had taken on a caregiving role. However, the Officer also noted Ms. Yero Heredia's daughter and son-in-law were caring and loving parents who could meet the needs of their children and encourage a close relationship between them and their grandmother should she return to Cuba. The Officer found Ms. Yero Heredia's return to Cuba would not directly compromise the best interests of the grandchildren.

[11] Having globally assessed all of the identified factors, the Officer concluded H&C relief was not warranted.

IV. Preliminary Issue – Fresh Evidence

[12] In written submissions, the Respondent argued that paragraphs 8 and 9 of Ms. Yero Heredia's October 31, 2019 affidavit supporting the Application contains evidence that was not before the decision maker. The Respondent argues this evidence is inadmissible as it does not fall within any exceptions for the admission of fresh evidence on judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

[13] In oral submissions, counsel for Ms. Yero Heredia advised that paragraphs 8 and 9 of the October 31, 2019 affidavit would not be relied upon.

[14] I am satisfied that the evidence in issue is not admissible on judicial review. The contents of paragraphs 8 and 9 of the October 31, 2019 affidavit have not been considered.

V. Issues and Standard of Review

[15] The Application raises a single issue. Was the Officer's assessment of the H&C application reasonable?

[16] The standard of review is not in dispute. The Officer's H&C decision is to be reviewed against the standard of reasonableness. A reasonable decision is one that is justified, transparent and intelligible. It 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 16 and 85 [*Vavilov*]).

## VI. Analysis

[17] Ms. Yero Heredia relies on *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanhasamy*], in submitting the Officer was obligated to consider and approach the identified H&C factors in a manner that reflected humanitarian and compassionate values and ask whether those factors "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (at para 21; also see *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 at paras 33-34).

[18] Ms. Yero Heredia submits the evidence, including the psychological report, established that she had experienced a lifetime of mistreatment in Cuba, that she had finally attained peace of mind in Canada and that she could not return to Cuba despite missing her husband and family. She submits the Officer focused entirely on hardship despite this evidence and erred by failing to consider the application through the lens of compassion. I am unpersuaded.

[19] The Officer's reasons begin with an overview of Ms. Yero Heredia's life circumstances. The Officer acknowledged her difficult childhood, the poverty she experienced and the physical and verbal abuse she suffered from her ex-partner during and after their relationship. The Officer

did not ignore the psychological report that addressed how aspects of Ms. Yero Heredia's life in Canada, including the emotional support provided by family and her stable living conditions, had contributed to the improvement of her mental health. The Officer's analysis of risk and adverse conditions in Cuba acknowledged, considered and grappled with evidence relating to the compassionate aspects of the application.

[20] Ms. Yero Heredia relies on *Bhalla v Canada (Citizenship and Immigration)*, 2019 FC 1638 [*Bhalla*], where the Court held that an Officer's failure to consider compassionate factors may render an H&C decision unreasonable. I do not take issue with either the outcome or the underlying analysis in that case. However, the Officer's consideration of the compassionate elements of the application in this instance readily distinguishes *Bhalla*. As noted above, the Officer acknowledged Ms. Yero Heredia's difficult life history and grappled with the compassionate circumstances within the broader context of the factors identified and the evidence provided in support of the application. I cannot agree with Ms. Yero Heredia's argument that the decision fails to disclose an assessment of the compassionate aspects of the application and instead focuses entirely on hardship.

[21] Ms. Yero Heredia further argues that the Officer's treatment of the psychological evidence was unreasonable. She notes the Officer acknowledged the psychologist's diagnosis and prognosis that a return to Cuba would lead to retraumatization but nonetheless concluded there was insufficient evidence to demonstrate a level of hardship warranting H&C relief. In doing so, she argues the Officer erred by (1) failing to explain why the evidence was insufficient,

(2) failing to identify what level of hardship would warrant relief and (3) substituting the Officer's opinion for that of the psychologist. I disagree.

[22] The Officer does not substitute their view for that of the psychologist. The Officer accepted the diagnosis and the prognosis. Having done so, the Officer was not required to ignore or exclude from consideration other evidence and circumstances. The Officer notes, among other things, the relatively recent and numerous returns to Cuba and the absence of evidence indicating Ms. Yero Heredia's mental health had been negatively impacted on any of these occasions. The Officer had previously noted it was unclear why Ms. Yero Heredia had not pursued a refugee claim in light of the reported forward-looking risks in Cuba and reiterated that there was insufficient evidence to conclude harassment by her ex-partner had continued after she remarried or that her ex-partner had any ongoing interest in causing her harm. I am satisfied that the factors and circumstances canvassed by the Officer, in addition to the psychological report, were relevant to the overall assessment of psychological hardship.

[23] Nor can I find fault with the Officer's conclusion that the evidence was insufficient to establish an inability to access mental health services in Cuba. That access to mental health services may require a referral from a family physician who has not necessarily been trained to address domestic violence or that psychologists may hold outdated beliefs in respect of domestic violence is generalized evidence that may demonstrate shortcomings in Cuba's healthcare system. However, this evidence does not undermine the reasonableness of the Officer's conclusion – the evidence was insufficient to establish an inability to access mental health services.

[24] Similarly, the Officer considered the issue of emotional support in light of the broader circumstances and evidence. The Officer noted Ms. Yero Heredia would benefit from the loving support of family members present in both Cuba and Canada and that her husband in Cuba wanted her to return. In this context, it was not unreasonable for the Officer to conclude the psychological support provided by members of her family in Canada could be effectively maintained, albeit in a different manner, with the use of technology, correspondence and visits.

[25] In assessing the grandchildren's best interests, the Officer acknowledged Ms. Yero Heredia's active role in supporting her grandchildren and the assistance she provided her daughter and son-in-law in their home. The Officer engaged with the evidence and considered it within the context of the grandchildren's circumstances, their ages, the support of their parents, the grandchildren's evolving needs and the ability of the grandchildren to maintain a relationship with their grandmother. The Officer concluded the evidence failed to disclose that Ms. Yero Heredia's return to Cuba would compromise the best interests of the grandchildren. While Ms. Yero Heredia takes issue with the Officer's conclusion that she and the grandchildren can maintain a meaningful relationship through technology, correspondence and visits, this argument reflects nothing more than disagreement with the Officer's conclusion. The Officer's best interests finding is one that was reasonably available to the Officer and is supported by a reasoned and logical analysis.

VII. Conclusion

[26] The Officer's assessment of the H&C factors identified in support of the application was reasonable and those factors were considered globally. I am of the opinion that the Officer's decision was reasonable.

[27] The Application is dismissed. The parties have not identified a question of general importance for certification and I am satisfied that none arises.

**JUDGMENT IN IMM-5946-19**

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

1. The Application is dismissed.
2. No question is certified.

**"Patrick Gleeson"**

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5946-19

**STYLE OF CAUSE:** CONSUELO YERO HEREDIA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 7, 2021

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** JANUARY 10, 2022

**APPEARANCES:**

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