Federal Court  Cour fédérale

Date: 20220111

Docket: IMM-1506-21

Citation: 2022 FC 31

Ottawa, Ontario, January 11, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

DAMIJIDA KAMBASAYA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Damijida Kambasaya, seeks judicial review of the refusal of his application for permanent residence on humanitarian and compassionate (H&C) grounds.

[2] The Applicant claims that he was denied procedural fairness because the visa officer (Officer) questioned the credibility of his evidence without giving him the opportunity to respond. He also argues that the decision is unreasonable because the Officer failed to take into account relevant evidence and failed to explain the reasoning in support of the decision's key findings.

[3] For the reasons that follow, this application will be granted.

I. Background

[4] The Applicant is a citizen of Nigeria, who originally travelled to the United States and then came to Canada as a visitor in May 2008. In December 2008, he claimed refugee status. He said he was at risk from his father and others in Nigeria because of his conversion from Islam to Christianity. His refugee claim was rejected in December 2012.

[5] The Applicant has a criminal record in Canada. In October 2008, he was charged with criminal negligence causing bodily harm and criminal negligence causing death because a car he was driving was involved in an accident in which his brother was killed and another passenger was injured. He pled guilty to these charges and was sentenced to 15 months in custody. In addition, he pleaded guilty to failing to appear, breach of his bail conditions, and fraud under $5,000 and uttering a forged document. All of these convictions occurred in 2009 and early 2010. Since then there is no indication the Applicant has had any criminal involvement. At the relevant period for this judicial review, he was in the process of applying for a record suspension but was subject to the 10-year waiting period. He also faced delays in obtaining the necessary court records, in part because of COVID-related restrictions.

[6] In June 2012, the Applicant married a Canadian citizen and they have three children, aged three, five, and seven. The Applicant is separated from his wife. He pays child support and has shared guardianship over the children. He has parenting time with his children each week from Thursday after school until Saturday late afternoon. He says that he is actively involved in his children’s lives and volunteers at their school.

[7] The Applicant had work permits to remain in Canada between 2010 and 2015. He had applied for permanent residence under the Spouse or Common-law Partner in Canada Class in May 2013, but he was found to be ineligible because of his criminal record. The Applicant was granted a Temporary Residence Permit (TRP) in 2017, and has since been granted other TRPs.

[8] In November 2019, the Applicant applied for permanent residence on H&C grounds, under section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*]. At that time, he also filed a second Pre-Removal Risk Assessment (PRRA) which, like an earlier PRRA, was refused. No application for leave and judicial review was filed to challenge either PRRA refusal.

[9] In January 2020, the Respondent sent a procedural fairness letter to the Applicant, requesting further information relating to his criminal record. Following several extensions of the deadline, the Applicant submitted his response in September 2020. In a decision dated January 5, 2021 (Decision), the Officer refused the Applicant's H&C application. The Applicant submitted further information in support of his claim in February 2021, but the Officer advised him that the Decision in his case had already been made.

II. The Decision Under Review

[10] The Applicant based his claim for H&C relief on the best interests of his three Canadian-born children, his establishment in Canada, and adverse country conditions in Nigeria. He acknowledged his previous criminal convictions. However, the Applicant noted that these convictions dated from 2009-2010, that since then he had no criminal involvement, and that he was in the process of seeking a record suspension. The Applicant pointed to his history of

employment, his involvement in his church including his role as a lay pastor, as well as to the letters of support he received from the pastors and friends from his church. The Applicant also described his relationship with his children and involvement in their lives as well as the financial support he provides for them. Finally, the Applicant argued that country conditions in Nigeria would put him at risk because he converted from Islam to Christianity.

[11] The Officer refused the H&C claim, finding that the Applicant's degree of establishment did not go beyond what any person residing in Canada for a length of time would be expected to achieve, and noting that the Applicant was criminally inadmissible.

[12] On the best interests of the Applicant's children, the Officer found that this "constitute[d] the most compelling aspect of this application", noting that the Applicant was legally separated from his wife and the children's mother but he shared guardianship and had parenting time with them each week. The Officer stated that the Applicant had provided copies of ten cheques for $600 each as evidence that he was paying child support, but then observed "it is unclear if these cheques have been cashed" and "it is unclear how the child support that the [Applicant] states he pays is allocated." The Officer also mentioned a peace bond in effect which prevents the Applicant from contacting the children's mother.

[13] In view of the centrality of this issue to the case, it is worth quoting the Officer's conclusion on this point:

> The best interest of the children constitutes the most compelling aspect of this application, as such I have given it very careful consideration. I have no doubt that the [A]pplicant only wants the best for his children, this is a desire shared by most parents around the world. I accept that it is generally in the best interest of

> children to be in contact with both of their parents and a physical separation between Mr. Kambasaya and his children will likely be emotionally difficult for both parties. For these reasons I am of the opinion that having Mr. Kambasaya remain in Canada would likely be in the best interest of the children. However, as previously stated, the best interest of the child principle is not the only factor to be considered in the context of the H&C application, nor does it outweigh all other factors.

[14] Turning to the Applicant's submissions on country conditions and risk from his father (whom the Applicant described as a radical Islamist) because the Applicant had converted from Islam to Christianity, the Officer found that these risks had previously been assessed and rejected in the context of the Applicant's refugee claim. The Officer also found that the country condition evidence did not support a finding that the Applicant would be at significant risk as a Christian returning to Nigeria.

[15] The Officer denied the Applicant's request for permanent residence on H&C grounds. The Applicant seeks judicial review of that Decision.

III. Issues and Standard of Review

[16] The Applicant pursued two main arguments:

A. The Officer's analysis of the best interests of the children amounted to a denial of procedural fairness and was also unreasonable; and

B. The Officer's analysis of the Applicant's establishment in Canada was unreasonable.

[17] In addition, the Applicant submits that the Officer failed to undertake a holistic assessment of the Applicant's situation using an empathetic lens, as required by s 25 of *IRPA*.

[18] The standard of review that applies to the Officer's H&C assessment is reasonableness (*Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 [*Vavilov*]). Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The burden is on the applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

[19] Questions of procedural fairness require an approach resembling the correctness standard of review that inquires "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107). As noted in *Canadian Pacific* at paragraph 56, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond", and at paragraph 54, "[a] reviewing court… asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed".

[20] The Respondent raised a preliminary issue regarding the Applicant's affidavit and the inclusion of new information about the refusals rate of H&C applications processed by a particular office, but the matter was not raised by either party during oral argument, and this information plays no role in the Decision that follows. I would simply add that the Court would pay little if any heed to an argument based on unofficial raw data without any expert evidence, separate and apart from the question of whether any such new evidence would be admissible at the judicial review stage.

IV. Analysis

[21] It is not necessary to discuss all of the issues the Applicant raised, because the determinative issue in this case is the Officer's failure to explain their consideration of crucial elements of the best interests of the children and the Applicant's establishment in Canada. These gaps are sufficiently important to make the Decision unreasonable. I will review each element separately and then offer some concluding comments.

A. *The Best Interests of the Children*

[22] The Applicant claims he was denied procedural fairness because the Officer made credibility findings without giving him the opportunity to respond. He also argues that the Officer's analysis of the best interest of the children (BIOC) factors was unreasonable, because the Officer ignored certain key evidence and did not engage with the substance of the Applicant's claim.

[23] The procedural fairness claim relates to the comments by the Officer questioning whether the child support cheques provided by the Applicant had been cashed and indicating it was not clear how the child support was allocated.

[24] The Applicant argues that these amount to credibility findings, casting doubt on his relationship with his children and on whether he is abiding by the court Order that he provide child support. He says it was unfair for the Officer to draw these negative inferences without giving him the opportunity to reply. In the alternative, the Applicant submits that this finding is unreasonable because the Officer's conclusions are unintelligible and not supported by the evidence.

[25] The Respondent argues that the Officer's decision must be assessed within its proper legislative framework, including the principle that H&C relief is discretionary and exceptional, and not intended to alleviate every hardship an applicant faces. This has been discussed in cases such as *Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 at para 17, and *Braud v Canada (Citizenship and Immigration)*, 2020 FC 132 [*Braud*] at para 50.

[26] The Respondent submits that the procedural fairness claim should be rejected because it fails to take into account that the Officer found that the BIOC analysis weighed heavily in favour of the Applicant, and there is no indication that the Officer made any credibility findings at all. On the contrary, the Officer found that the BIOC analysis favoured the Applicant remaining in Canada.

[27] I do not find it necessary to discuss the procedural fairness argument in any detail, because I am not persuaded that the Officer's statements amount to credibility findings. Quite frankly, in the context of the record that was before the Officer, and the legal framework that applied, these statements are simply incomprehensible. And, although the Officer lists the positive factors in the BIOC portion of the Decision, there is no meaningful explanation as to how the Officer weighed these in the overall assessment. That is sufficient to make the Officer's BIOC analysis unreasonable, whether or not it also amounted to a denial of procedural fairness.

[28] The Applicant had provided court orders establishing three things: (i) he and the children's mother shared guardianship; (ii) he had parenting time each week with the children; and (iii) he was required to pay child support amounting to $600 per month. In addition, he had provided copies of cheques made out to the mother in the required amount, as well as bank records showing three monthly withdrawals in amount of $600, each connected with a specific cheque number corresponding to one of the child support payment cheques.

[29] The Officer does not explain whether or how the question of whether the child support cheques had been cashed was a pertinent consideration in the BIOC analysis, but the fact that the Officer raised it illustrates that the bank records showing monthly withdrawals for cheques in the amount of $600 were ignored. Furthermore, the Officer similarly does not explain whether or how the allocation of the child support was relevant to a consideration of the BIOC factors in this case. These statements simply make no sense, in the context of this Decision.

[30] The Officer could reasonably have considered the practical impact of the payment of child support in the children's lives, and the consequent impact of the loss of those funds if the

Applicant was removed to Nigeria and unable to continue to pay these amounts. But that was not done; in fairness to the Officer, it should be noted that this was not specifically argued by the Applicant in his H&C submissions. I mention it here only to underline that whether the Applicant was, in fact, complying with the Order to pay child support was a relevant consideration, but it needed to be considered in light of the factual context – in particular the copies of the cheques and the associated bank statements - butthis was not done here. Under the *Vavilov* framework for analysis, a decision may be found to be unreasonable if it is not "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[31] A related concern is the Officer's lack of any meaningful analysis of the evidence about the relationship between the Applicant and his children. It bears repeating that the children are three, five and seven years old. The Applicant provided a letter describing his relationship and activities with them when he has parenting time, and that he volunteers in their school. He also provided pictures of himself with the children.

[32] In the passage of the Decision cited above, the Officer stated that the BIOC element "constitutes the most compelling aspect of this application" and that it was given "very careful consideration." That is consistent with what is required in accordance with the jurisprudence since *Kanthasamy v Canada (Citizenship and Immigration),* 2015 SCC 61 [*Kanthasamy*]. What is lacking, however, is any explanation of how the officer engaged with the evidence about the relationship between this particular applicant and these particular children. The Officer's statements that their separation "will likely be emotionally difficult" and that having the Applicant remain in Canada "would likely be in the best interest of the children" are both

inexplicably qualified and unreasonably vague, given the evidence before the Officer about the Applicant's involvement in his children's lives.

[33] The problem with this Decision is not that the Officer appears to have ignored many crucial facts, though as noted above, it does appear that the Officer disregarded some of the evidence. The problem is that the Officer does not explain the relevance of several of the points mentioned in the decision that tend to cast the Applicant in a negative light (e.g. whether child support payments are being cashed and how the child support is allocated, as well as the reference to the no contact order). At the same time, the Officer does not mention other, more obviously relevant facts that cast the Applicant in a more favourable light in regard to his ongoing relationship with his children, nor explain how these factored into the analysis. This falls short of the type of BIOC analysis that *Kanthasamy* calls for and that *Vavilov* requires.

[34] I agree with the Respondent that it is not the task of a reviewing court to re-weigh the evidence. It is, however, the task of a reviewing court to determine whether a decision is "justified in relation to the relevant factual and legal constraints that bear on the decision…" (*Vavilov* at para 99). In this case, I have found that the Decision was not.

[35] While this alone may not have been sufficiently serious to make the Decision unreasonable, I find it is not the only serious gap in the Officer's analysis. This brings us to the second issue.

B. *Establishment in Canada*

[36] The Applicant argues that the Officer simply listed the establishment factors with no meaningful analysis. The Officer acknowledged positive elements in the Applicant's evidence, namely that:

- He had resided in Canada for over 11 years and has been employed since 2012;
- He has three Canadian-born children;
- He is a volunteer and regular attendee at his church and there were several letters of support from pastors and other members of his church; and
- He has obtained immigration status over the years, including work permits and more recently TRPs.

[37] The Applicant contends that the Officer then unreasonably discounted this by stating that "establishment is generally created by way of an extended stay in the country" and "it is not uncommon to begin to put down roots by finding employment, and forming friendships with those around you."

[38] The Applicant argues that the Officer's conclusion that his work experience and connections to the community were not "beyond what any person residing in Canada for a length of time would be expected to do" is unreasonable because it repeats the error the Court has cautioned against in cases such as *Sebbe v Canada (Citizenship and Immigration),* 2012 FC 813. In particular, the Applicant claims that the Officer's comparative analysis of his degree of establishment failed to take into account the steps he had taken to make a positive and meaningful contribution to his family and his community.

[39] The Applicant also contends that the Officer's comments on his criminal record are also unreasonable. The Officer said the following:

> In addition, detracting somewhat from his establishment, is the fact that Mr. Kambasaya spent 15 months in prison while in Canada, and despite applying for record suspension, he continues to be criminally inadmissible at this time.
>
> …
>
> Furthermore, I cannot negate that Mr. Kambasaya is inadmissible to Canada as per section A36(l)(a) of IRPA, I find that this factor greatly diminishes the positive aspects of this application.

[40] The Applicant submits that this conclusion is unreasonable because there is no analysis of the context for his criminality or his efforts to rehabilitate himself. The Applicant argues that, in failing to consider these factors, the Officer ignored the guidance set out in the Operations Manual in regard to assessing criminal inadmissibility in a H&C claim. That document instructs officers to consider factors such as the length of time since the conviction, whether it was an isolated incident or part of a pattern of criminality, and any other pertinent information. The Applicant states that the Officer could also have considered the factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IADD No 4, [1985] DSAI No 4 [*Ribic*] including the possibility of rehabilitation, the degree of establishment in Canada and the impact that removal will have on his children in Canada.

[41] Furthermore, the Applicant argues that it was unreasonable for the Officer to fail to consider that he had been granted two TRPs. He argues that when granting a TRP, an officer is required to engage in a careful balancing of the safety and security of Canadians while being sensitive to the particular circumstances of the claimant. The Applicant argues that this Court

recognized, in cases such as *Williams v Canada (Citizenship and Immigration)*, 2020 FC 8, at para 56, that TRPs have been employed "in effect as a form of probation to give someone who is criminally inadmissible to Canada but who has compelling reasons to remain here the chance to continue to build a track record of law-abiding behaviour." The Officer's failure to consider this is another factor that makes the Decision unreasonable, according to the Applicant.

[42] Once again, the Respondent emphasizes the wide discretion available to an Officer under s. 25, and the onus on the Applicant to demonstrate that the H&C considerations outweigh his criminality, taking into account the public policy set out in subsection 36(2) of *IRPA*. The Respondent points to the decision in *Braud* at paragraph 52, in support of the proposition that it is for officers to weigh the H&C and criminality factors to determine whether waiving inadmissibility for criminality is justified, and that such determinations deserve significant deference.

[43] In this case, the Respondent points out that the Officer was entitled to consider that the Applicant was still criminally inadmissible when he submitted his H&C application. Similarly, the fact that the Applicant had been granted TRPs only gave him temporary status in Canada, and the Decision shows that the Officer was aware that these had been granted. The Respondent argues it was reasonable for the Officer to not give this factor more weight.

[44] On the other aspects of the Applicant's establishment, the Respondent points out that the Applicant made a series of choices knowing he only had temporary status in Canada, including the decisions to get married, have three children, and remain in Canada. None of these considerations were beyond the Applicant's control, and this is an important factor set out in the

Guidelines for assessing H&C claims. It is also recognized in cases such as *Mann v Canada (Citizenship and Immigration)*, 2009 FC 126 at para 15.

[45] On the Officer's assessment of the Applicant's criminal record, the Respondent submits that the fact that he had accumulated most of his establishment after his convictions and incarceration is a relevant consideration, as affirmed by this Court in *Gill v Canada (Citizenship and Immigration)*, 2019 FC 772, at paras 70-71.

[46] I find that the Officer's establishment analysis falls short because it does not explain how the Officer considered the positive elements in the Applicant's establishment or how these were weighed against the Applicant's criminal history, which by the time of the Officer's Decision was a decade in the past. The Officer was required to engage with the relevant evidence, including a consideration of the Applicant's positive contributions to his family and wider community, as well as an examination of his criminal record, including the length of time since the last offence and whether there was a pattern of criminal conduct. This was simply not done.

[47] I am not persuaded by the Respondent's argument that the Applicant's establishment was based on choices he made knowing he was without status in Canada – such an approach fails to give meaning to the long-accepted purpose of humanitarian and compassionate relief. Courts have repeatedly emphasized that it is important not to overshoot the mark by granting too wide a scope to H&C relief (e.g. by failing to recognize that "[t]here will inevitably be some hardship associated with being required to leave Canada" :*Kanthasamy* at para 23). However, Courts have also underlined that it is equally important to give effect to the animating purpose behind the provision: "namely, 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, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, [1970] IADD No 1, at p. 350 [*Chirwa*]).

[48] I am also not persuaded that the Officer reasonably determined that the Applicant's establishment was not sufficient to outweigh his history of criminality, because this was not explained as the basis for the Officer's Decision, and because there is no discussion of the key evidence. The key relevant evidence on this point includes documents depicting the nature of the crimes themselves, which had to be considered against evidence delineating the Applicant's expressions of remorse and guilty pleas, followed by a significant period with no criminal involvement in which he has made positive contributions to his family and community. In the context of the facts before the Officer, the failure to explain how these elements were analyzed and assessed is unreasonable.

[49] The Respondent, relying on the recent case of *Braud*, set out the correct legal framework to be applied by officers assessing H&C applications made by criminally inadmissible applicants. The problem is that the Officer did not conduct the analysis described in *Braud.* At paragraph 40 of that decision, Justice Gascon wrote:

> An application based on H&C considerations under subsection 25(1) is a balancing exercise in which an immigration officer is called upon to consider different and sometimes divergent factors. When, as is the case with Ms. Braud, the applicant invokes H&C considerations in support of an application for exemption from inadmissibility for criminality, the immigration officer must review the public policy set out in subsection 36(2) of the IRPA with respect to the applicant's personal circumstances and decide whether the H&C considerations outweigh the criminality and warrant an exemption from the usual rule that grounds of criminality result in deportation from Canada. In other words,

> criminality must be weighed against all H&C factors. There is undoubtedly a tension between the two public policy objectives of the IRPA which are then at issue, and it is for immigration officers, in their reasons for decision, to consider and assess both H&C and criminal factors and determine whether it is justified to waive the inadmissibility for criminality.

[50] In paragraph 42 of *Braud*, Justice Gascon stated that "automatically ruling out an exemption based on H&C considerations on the basis of the mere existence of a form of criminality could have the practical effect of deviating from the spirit of subsection 25(1) of the IRPA." However, Justice Gascon found the decision under review in *Braud* did not disclose such an approach. Rather, and in contrast to the present case:

> the Officer stated that he took all H&C considerations into account while referring more specifically to the factors set out in *Ribic*... namely, (1) the seriousness of the offence; (2) the possibility of rehabilitation; (3) the time spent in Canada and the degree of establishment in the country; (4) family in Canada and the dislocation that Ms. Braud's deportation would cause to her family; (5) the support available for Ms. Braud from her family and the community; and (6) the degree of hardship that would be caused to Ms. Braud by her return to France (*Braud* at para 20).

[51] Here, as noted by the Applicant, there was no consideration of the *Ribic* factors, and no global assessment of whether the H&C factors outweigh the Applicant's criminal history warranted an exemption. The Decision is outside of the legal bounds on the Officer because there is no assessment of the Applicant's criminality beyond the observations that it exists and that rehabilitation of his criminal record has been sought but not yet granted. This is unreasonable.

[52] In addition, in this case the Officer needed to explain how the decisions to grant the Applicant TRPs were considered in balancing the various factors. This is all the more relevant in

light of the explanation for granting the Applicant a TRP following the finding that he was inadmissible for spousal sponsorship because of serious criminality:

> …I have considered your request through your representative to remain in Canada with your Canadian spouse and two Canadian born children. I have considered your establishment in Canada including your family ties and employment history in Canada as well as the best interests of your children against your inadmissibility due to your criminal convictions in Canada. I have weighed your needs to remain in Canada against the potential risk facing the Canadian society to have you here in Canada. I have also carefully considered the circumstances under which you have committed the offences and the remorse you have expressed since your convictions. I have also taken into consideration that you have submitted an application for record suspension and remained free of criminal activities since your last conviction. Therefore I am willing to solicit and recommend a Temporary Residence Permit (TRP), to allow you to remain in Canada with your spouse and children until you become eligible to be considered for a record suspension in Canada.

[53] The point of citing this is not to suggest that the Officer was bound to follow the TRP decision, but rather to note that this factor needed to be weighed and assessed against all of the other relevant factors in determining whether H&C relief should be granted. The Respondent rightly notes that the legal tests for granting a TRP and permanent residence on H&C grounds are distinct. However, the TRP decision was in the record before the Officer and the Applicant's H&C submissions discuss the TRP to a significant extent. Therefore, the Officer was required to consider the TRP decision.

[54] Similar policy reasons exist for the existence of H&C exemptions and TRPs, and similar balancing must occur in granting both. One might suggest that the type of weighing and balancing indicated in the extract cited above could serve as a model for how to approach the analysis required in this case, whether or not the Officer assessing the H&C claim would come to

the same result. Instead, the discussion cited above stands in stark contrast with that of the Officer in the Decision under review.

[55] For these reasons, this aspect of the Decision is unreasonable.

V. Concluding Comments

[56] Life is complicated. Families more so. Section 25 of *IRPA* exists because successive Parliaments have recognized that, in some cases, the strict application of the technical and formal rules set out in *IRPA* and its regulations would result in a significant hardship to an individual, their family and their community. The oft-cited test, referred to above, is whether an applicant for H&C relief has demonstrated facts that, viewed in their totality "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at para 13, citing *Chirwa* at para 27).

[57] It must be acknowledged that one of the challenges facing officers in conducting a reasonable H&C analysis is that the possibilities are endless. To take but one example, an officer analyzing the BIOC, just one component of the overall analysis, might consider the following:

- Are the children leaving with the claimant, or staying in Canada?
- Are both parents leaving with the children, or only one of them, and if so, would the children go or stay?
- Are they living with and dependent upon the claimant, or are they living apart?

- Does the claimant play an active role in their daily lives, or simply interact with them on a haphazard and intermittent basis, or not at all?
- Do the children have special needs that the claimant plays a significant role (either practical or financial or otherwise) in meeting, or is the claimant's contribution not a meaningful one?

[58] Combine these elements with the many other factors that can be relevant in a H&C assessment, and one can begin to understand the enormity and complexity of the task facing an officer encountering such a dizzying array of facts and considerations.

[59] I agree with the Respondent that there is abundant jurisprudence that supports the view that officers have a broad discretion to consider a wide range of factors in assessing H&C claims, and that their decisions therefore deserve significant deference.

[60] The very nature of the discretion granted to officers demands that they take into account the complexities of life, and the wide variety of immigration paths that individuals can follow in their efforts to gain status in Canada. This sort of analysis resists boilerplate language or reliance on templates, as *Kanthasamy* emphatically underlines.

[61] In many cases, and in the instant case in particular, the H&C claim was largely based on the web of relationships that the Applicant has developed during his time in Canada, specifically with his children, through his employment, and at his church. This is important under s 25 of *IRPA* because removing the Applicant from Canada will have an impact not only on him, but

also on those connected to him through this web. Disturbing the web negatively affects not only the Applicant, but also his family and the wider community.

[62] *Vavilov* demands two key things of officers assessing a claim for H&C relief:

(i) That they demonstrate that they considered the specific facts that are most pertinent to the legal assessment required under s 25 of *IRPA*. An officer needs to demonstrate an engagement with these facts that goes beyond a mere listing of them followed by a conclusion. The officer's job is to weigh the individual component elements (in this case, the BIOC factors and the Applicant's establishment, considered in relation to his criminal inadmissibility), and then step back to examine the circumstances holistically.

(ii) That an officer explain their chain of reasoning, taking into account the key facts, in determining whether H&C relief is warranted. The essence of the required analysis is whether the Officer is persuaded that the facts call out for a favourable decision to "relieve the misfortunes of another" (*Kanthasamy* at para 13). Once again, merely listing the factors considered is not enough; what is required is an effort to explain how these were weighed, and why that assessment leads the officer to the conclusion stated in the decision.

[63] In this case, I have found the Officer's analysis falls short on both the BIOC and establishment analysis. This is an example of a decision that is not "justified" in accordance with the requirements set out in *Vavilov*.

[64] For all of these reasons, the application for judicial review is granted. The matter is remitted back to a different officer for re-consideration.

[65] No question of general importance was raised by the parties, and none arises.

JUDGMENT in IMM-1506-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted back to a different officer for reconsideration.

3. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1506-21
STYLE OF CAUSE:	DAMIJIDA KAMBASAYA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	EDMONTON, ALBERTA
DATE OF HEARING:	DECEMBER 13, 2021
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	JANUARY 11, 2022

APPEARANCES:

GEN ZHA	FOR THE APPLICANT
MEENU AHLUWALIA	FOR THE RESPONDENT

SOLICITORS OF RECORD:

GEN ZHA and STEWART SHARMA HARSANYI Barristers and Solicitors City, Province	FOR THE APPLICANT
MEENU AHLUWALIA Attorney General of Canada City, Province	FOR THE RESPONDENT