Federal Court  Cour fédérale

**Date: 20220406**

**Docket: IMM-5637-20**

**Citation: 2022 FC 494**

**Toronto, Ontario, April 6, 2022**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**FUNG KWAN TWINKLE ROMAINE AU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant is a citizen of Hong Kong in her mid-fifties. In 1996, her daughter was born in Canada, and she separated from her daughter's father shortly thereafter. The Applicant raised her daughter as a single mother.

[2] The Applicant came to Canada in 2010 as a visitor, and has remained in Canada with valid visitor status ever since. Her purpose in coming to Canada was to allow her daughter to live in Canada as a citizen and to accompany her daughter in order to care for her. Her plan was to remain in Canada while her visitor status allowed, and then find her daughter a suitable guardian when she needed to return to Hong Kong. Since she never found the right person to act as her daughter's guardian, the Applicant continued to stay in Canada by renewing her visitor visa.

[3] As her daughter attended high school and then university in Canada, the Applicant and her daughter supported one another emotionally and practically. Financially, the Applicant is supported by her younger sister who lives in Hong Kong. The Applicant is fluent in English, has friends in Canada, and is involved in a local Buddhist association.

[4] As the Applicant's daughter was unable to satisfy the income requirements in order to sponsor her, in April 2019, the Applicant applied for permanent residency on humanitarian and compassionate grounds [H&C application] pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. A Senior Immigration Officer [Officer] refused her H&C application [the Decision].

[5] The Applicant seeks judicial review of the Decision, arguing that that the Officer's assessment of her establishment in Canada and of family reunification factors was unreasonable.

[6] I dismiss the application as I find the Officer reasonably considered the evidence.

## II. Issues and Standard of Review

[7] The Applicant argues that the Officer unreasonably assessed (1) her establishment in Canada, and (2) family reunification considerations.

[8] The parties agree that the standard of review is reasonableness, in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] 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.

[10] 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.

## III. Analysis

### A. *Did the Officer unreasonably assess establishment in Canada?*

[11] By highlighting her family ties with her only child, her community involvement, and her English abilities, the Applicant argues that the Officer ignored evidence of establishment. The Applicant also submits the Officer failed to consider her financial stability given the support of her sister.

[12] I note, first of all, that the Officer accepted that the Applicant was financially self sufficient, but rejected counsel's suggestion that her fluency in English afforded her a possibility of future employment in Canada, as there was no evidence she had applied for a work permit. This finding was reasonable.

[13] The Applicant cites *Daugdaug v Canada (Citizenship and Immigration)*, 2018 FC 772 [*Daugdaug*] in which Justice LeBlanc found the Officer had unreasonably ignored letters of support in finding there was "scant evidence of community integration" (at paras 16-19). The Applicant also argues that the Officer provided scant reasons why her ten years of residence, many friends, sound financial management, English abilities, and the presence of her only child were not sufficient to justify granting an H&C exemption. The Applicant further submits her case is similar to *Joseph v Canada (Citizenship and Immigration)*, 2013 FC 993 [*Joseph*] at para 29, in which Justice Annis found "it was not explained why ten years of residence in Canada, successful employment, multiple close Canadian family members, and deep involvement in the

community did not constitute sufficient establishment to render removal an unusual and undeserved or disproportionate hardship."

[14] I find the case at hand can be distinguished from *Daugdang* and *Joseph* in that, unlike those two cases, the Officer did acknowledge the Applicant's community involvement and letters of support from her friends. The Officer commended the Applicant's contributions to the Buddhist community and acknowledged receipts of her donations. The Respondent submits that the Officer did explicitly consider the evidence of friendship but weighed it against the possibility of keeping in touch from abroad. Having reviewed the support letters, I agree.

[15] As the Decision noted, the letters of support from her friends describe the Applicant's close relationship with her daughter and her "good moral character." I note that these letters provided little in terms of details of the relationships between the Applicant and her friends. Still, the Officer acknowledged that she would be missed by her family and friends in Canada but found that "separation is one of the unfortunate and inherent outcomes that may arise from the immigration process, especially when residing in a country without status", that there was insufficient evidence she would not be able to keep in touch from a distance, and that there was insufficient evidence that her relationships were "to the extent that should separation occur it would justify granting an exemption under humanitarian and compassionate considerations." In light of the evidence, I find the Officer's conclusion reasonable.

[16] The Applicant submits that the Officer found her level of establishment was typical, but did not specify what would be required to show a more than typical level of establishment and

did not explain why her establishment was insufficient to warrant a positive H&C. The Applicant cites *Kambasaya v Canada (Citizenship and Immigration)*, 2022 FC 31 at para 27, in which Justice Pentney found that the officer listed the positive factors but gave no meaningful explanation as to how they were weighed in the overall analysis, and concluded that this was sufficient to render the decision unreasonable.

[17] I do not accept this argument. While the Officer did note, as the Applicant submits, that her establishment is "at a level that would be expected of a person in her circumstances to obtain", the Officer also made specific findings on the Applicant's establishment by noting that the Applicant "has demonstrated a level of integration into Canadian society" while acknowledging that the Applicant has resided in Canada for over 10 years. More importantly, the Officer did elaborate on what was "expected" establishment as follows: "I note that temporary and permanent residents in Canada are expected to be financially self-sufficient, maintain a good civil record and engage with those in their community." It was in light of the evidence proffered that the Officer gave the Applicant's establishment factors little weight. I see no basis to interfere with that finding.

[18] Additionally, in the Applicant's view, the Officer failed to apprehend that as a 57-year-old woman, it would be very hard for her to re-establish herself in Hong Kong as she does not have a job offer waiting for her.

[19] I am not persuaded by this argument. The Applicant submits that the Officer ignored evidence on this subject but does not specify which evidence. More to the point, the Officer did

consider the possible hardship that the Applicant may face in returning to Hong Kong. The Officer noted that her siblings reside in Hong Kong and although her family members may not be able to support her for a prolonged period, the Officer reasonably found, in my view, that the Applicant has provided no evidence that her sister's financial support would not continue if she were to return.

[20] As the Respondent submits, there would always be some hardship associated with leaving Canada: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 23. The onus is on the Applicant to demonstrate that the hardship she faces warrants the granting of H&C relief. The Officer's finding that the Applicant has not done so is reasonable.

B. *Did the Officer unreasonably assess family reunification factors?*

[21] The Applicant argues that the Officer failed to take into consideration an important and specific situation of family dependency as a category that might give rise to H&C relief, particularly because family reunification is one of the objectives set out in s. 3 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Applicant highlights that she and her daughter are one another's only family, have never been separated, and are dependent on one another as outlined in their letters.

[22] While the Officer suggested that temporary residence status could be an option, the Applicant argues that temporary status is not equivalent to permanent residence, and that she submitted to the Officer that an H&C is the only way she could obtain permanent residence. She further submits that travelling between Hong Kong and Canada would be difficult given the

realities of aging and the COVID-19 pandemic (although the Applicant notes that COVID-19 was not mentioned in the H&C submissions as they were filed before the pandemic). The Respondent submits that COVID-19 related travel restrictions are now gradually being lifted.

[23] The Applicant also argues that the Officer has failed to consider that her daughter has no family in Canada other than her mother. The Applicant submits that the Officer directly ignored relevant evidence, contrary to *Cezair v Canada (Citizenship and Immigration)*, 2018 FC 886 at para 27.

[24] In my view, the Officer did consider the relationship between the Applicant and her daughter by acknowledging that the Applicant would like to remain in Canada with her daughter, who has written a letter of support noting their close relationship. The Officer also acknowledged the photos submitted with the application, and the Applicant's statement that she and her daughter provided each other with emotional and psychological support.

[25] The Officer went on to note that "maintaining a long distance relationship using various means of telecommunication is not a substitute to a physical presence and that it would be easier for the applicant to provide her daughter with emotional and psychological support and guidance should she require it if she was physically here in Canada." However, noting that the Applicant's daughter "is an adult" and there is little objective medical evidence on file to demonstrate that she is physically, psychologically or emotionally unable to reside on her own without the Applicant's assistance, the Officer was not satisfied the Applicant's case warranted humanitarian relief.

[26] While I recognize the importance of family relationships, and the closeness between the Applicant and her daughter, the Applicant has not shown that the Officer overlooked or misunderstood any evidence in this regard. The Respondent submits, and I agree, that the Applicant simply has failed to provide evidence that her circumstances warrant special relief.

[27] The Applicant has been living in Canada on temporary status for 10 years. The Officer's finding that the Applicant would be able to continue visiting her daughter in Canada is not unreasonable.

[28] The Decision as a whole bears the hallmarks of reasonableness and is justified in relation to the facts and law. In view of the evidence that was put before the Officer, I conclude that the Decision was reasonable.

## IV. Conclusion

[29] The application for judicial review is dismissed.

[30] There is no question for certification.

**JUDGMENT in IMM-5637-20**

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

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5637-20 |
| **STYLE OF CAUSE:** | FUNG KWAN TWINKLE ROMAINE AU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD VIA VIDEOCONFERENCE |
| **DATE OF HEARING:** | MARCH 3, 2022 |
| **JUDGMENT AND REASONS:** | GO J. |
| **DATED:** | APRIL 6, 2022 |

**APPEARANCES:**

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| Pavel Filatov | FOR THE RESPONDENT |

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