

Federal Court



Cour fédérale

Date: 20241007

Docket: IMM-9914-23

Citation: 2024 FC 1574

Toronto, Ontario, October 7, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

**DOROTA TRYFON
GRZEGORZ MARCIN KOŁODZIEJCZYK**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are citizens of Poland who challenge a decision rendered by an officer (Officer) of Immigration, Refugees and Citizenship Canada (IRCC) refusing their application for permanent residency on humanitarian and compassionate (H&C) grounds. The Applicants based their application on their establishment in Canada and the difficulties they would face upon returning to Poland.

[2] For the reasons that follow, the decision is reasonable and the application is dismissed.

II. Background

[3] The Applicants are a common law couple who arrived in Canada in September 2015, and have lived here continuously since that time.

[4] On May 25, 2022, the Applicants' H&C application pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 was filed with IRCC. The first basis for the application was the Applicants' establishment in Canada. They identified their years of residence in Canada, their Canadian work histories and payment of taxes, their language abilities, and their network of friends as factors demonstrating establishment.

[5] The second basis for the application was the difficult circumstances the Applicants would face if they returned to Poland due to Polish country conditions. They presented evidence of the difficult economic and political conditions, gender discrimination, their family histories and employment difficulties to support their H&C arguments on this basis.

III. Issue

[6] The only issue in this application is whether the Officer's decision is reasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). The Applicants identified four other issues, but these are properly classified as arguments challenging the decision's reasonableness rather than independent issues.

IV. Analysis

[7] The Officer's findings are clear, intelligible and justified based on the facts presented in the application. The Officer divided the reasons into the two categories of "Canadian

establishment” and “country conditions” then clearly described the weight assigned to each factor under those categories.

A. *Establishment*

[8] The Officer acknowledged the Applicants’ years of residence and work histories in Canada, but assigned these factors negative weight because their residence was mostly out of status, their work was without authorization, and the Applicants did not make any efforts to regularize their status prior to filing the H&C application. The Officer also noted that insufficient evidence was presented to establish their financial self-sufficiency and English skills.

[9] The Applicants state that the Officer unreasonably imported a requirement of residing in Canada with legal status and discounted positive factors based on their evidence of non-compliance with immigration laws.

[10] A more accurate reading of the decision reveals that overstaying their status and working without status was not “conclusive as the regards the assessment of the degree of establishment” (*Jaramillo Zaragoza v Canada (Citizenship and Immigration)*, 2020 FC 879 at para 38). The non-compliance did not defeat the entire establishment basis for the application; it was merely conclusive regarding the weight assigned to the Applicants’ long-term Canadian residence when combined with their delayed efforts to regularize their status.

[11] The Applicants objected to the Officer’s use of the term “some negative weight” that was applied to the Applicants’ Canadian residence. However, the reasons demonstrate that the phrase was simply used to indicate that this factor detracted rather than supported the Applicants’ overall establishment argument.

[12] The Officer continued the establishment analysis by finding the Applicants' network of friends in Canada to be supportive of the application, but also noted that they have no family members in Canada. The Officer also found no evidence of courses or training demonstrating their English language skills. These findings were not unreasonable; but even if they were, they were not central to the establishment analysis. They do not undermine the decision's reasonableness.

[13] As part of the establishment analysis the Officer opined on the Applicants' ability to re-establish friendships in Poland given their familiarity with Polish language and culture. While this finding may have been speculative and may have been more properly placed in the analysis of country conditions awaiting the Applicants, it did not assume a prominent role in the decision. The establishment analysis was, on the whole, clear and justified. The decision did not need to be perfect (*Vavilov* at para 91).

B. *Country conditions*

[14] The Officer's analysis with respect to gender discrimination, Poland's anti-abortion culture, pollution issues, and political/judicial corruption in Poland was reasonable. The Applicants did not show how these adverse country conditions "personally and directly affected" them (*Maroukel v Canada (Citizenship and Immigration)*, 2015 FC 83 at para 33) and I do not see any reviewable error in the Officer's treatment of the adverse country conditions with respect to the Applicants' circumstances. This is especially so given the Applicants limited period of unemployment as described in the H&C application form. Based on the evidentiary record, the Officer's reasons regarding adverse conditions in Poland was reasonable.

V. Conclusion

[15] Counsel for the Applicants cited a number of decisions from this Court that guide the review of H&C decisions, but it is difficult to apply them to the factual matrix and reasons in this case. The Court has been able to understand the Officer's reasoning process and determine the decision is transparent and intelligible, as well as justified in light of the facts and law (*Vavilov* at para 99). The application is dismissed.

JUDGMENT in IMM-9914-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Michael Battista”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Adela Crossley FOR THE APPLICANTS

Jake Boughs FOR THE RESPONDENT

SOLICITORS OF RECORD:

Crossley Law FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario