Federal Court  Cour fédérale

Date: 20250702

Docket: IMM-9753-24

Citation: 2025 FC 1172

Ottawa, Ontario, July 2, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

SEYED HOSSEIN ALAVI TABARI
VIDA MOJTAHEDZADEH

Applicants

and

MINISTER OF IMMIGRATION AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated May 22, 2024, by a Senior Immigration Officer [Officer] that denied the Applicants' application for permanent residence [PR] with an exception on humanitarian and compassionate grounds [H&C Application] [Decision].

[2] The Applicants are challenging the reasonableness of the Decision. In addition, the Applicants argued that the requested alternative relief for a temporary resident permit was not addressed and this is a breach of procedural fairness.

[3] The Respondent argues that the Decision was reasonable. The Respondent acknowledged that the Decision did not address the requested alternative relief.

[4] For the reasons that follow, this application is granted in part.

II. Background

[5] The Principal Applicant, Seyed Hossein Alavi Tabari, and his accompanying spouse, Vida Mojtahedzadeh, are citizens of Iran.

[6] The Applicants' have two daughters, both of whom are Canadian citizens.

[7] The Applicants have come to Canada as visitors several times. The Applicants entered Canada most recently on June 2, 2019, with valid visitor visas. The Applicants applied and received extensions to stay in Canada, the most recent extension to their visitor visa was valid until September 15, 2024.

[8] The Applicants reside in Ottawa. Both the Applicants daughters and their families reside in Ontario. Their eldest daughter resides in Ottawa with her husband and their youngest daughter resides in Kingston with her husband and two sons.

[9] The Applicants submitted their H&C Application on October 20, 2022. Alternatively, the Applicants also requested a Temporary Resident Permit [TRP].

[10] On May 22, 2024, the Officer refused the Applicants' H&C Application.

[11] The Applicants filed an application for judicial review on June 5, 2024.

III. Issues and Standard of Review

[12] The issues in this application are:

a. Was the Decision reasonable?

b. Was the Decision procedurally fair?

[13] The parties submit and I agree that the applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86).

[14] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, 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).

[15] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[16] The Court has held that "the applicable standard of review in analyzing a discretionary decision based on H&C applications under subsection 25(1) of the [*Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]], is reasonableness" and that "[f]indings on the sufficiency of H&C grounds involve the exercise of discretion by immigration officers and the application of a specialized legislation to particular facts" (*Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 21, citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at para 44). *Vavilov* has not altered the applicable standard in this context.

[17] The standard of review for procedural fairness issues is correctness, or akin to correctness (*Vavilov* at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). The reviewing court must consider what level of procedural fairness is necessary in the circumstances and whether the "procedure followed by the administrative decision maker respect[s] the standards of fairness and natural justice" (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13). In other words, a court must determine if the process followed by the decision maker achieved the level of fairness required in the circumstances (*Kyere v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 120 at para 23, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

IV. Analysis

A. *Was the Decision reasonable?*

[18] The Applicants submit that the Decision is not reasonable because the Officer failed to engage with the Applicants' profile and circumstances. Specifically, the Applicants argued that the Officer failed to consider their establishment in Canada; concluded that they could maintain a close family relationship with electronic communication tools; erred by focusing on the Applicants' potential eligibility for other immigration programs; failed to properly consider the Applicants' health care considerations; and failed to consider the best interests of the Applicants' two minor grandchildren [BIOC].

[19] The Respondent argued that H&C relief is highly discretionary and reserved for exceptional cases. They argued that the Officer reasonably determined that the Applicants had failed to demonstrate sufficient H&C factors to warrant this exceptional relief.

[20] Officers reviewing an application for H&C relief consider relevant circumstances including *inter alia*: establishment in Canada; ties to Canada; the BIOC; health considerations; and any other relevant factor not related to section 96 and 97 of the IRPA (*Kanthasamy* at para 27). This is not an alternative stream to ordinary immigration processes.

[21] The H&C process is designed to provide applicants with exceptional and discretionary relief from circumstances that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at para 13).

[22] An applicant bears to burden of demonstrating that their H&C factors warrant the exercise of discretion (*Dale v Canada (Citizenship and Immigration)*, 2021 FC 1045 at para 30).

(1) Establishment in Canada

[23] The Respondent argued that the Decision is well-reasoned and explained as there was little evidence of establishment during the Applicants' five years in Canada.

[24] A review of the Decision illustrates that the Officer considered "[a] number of letters of support from their daughters and family friends". The Officer "accept[ed] the Applicant's [*sic*] family ties to Canada and acknowledge[d] the importance of being close to one's immediate family". The Officer clearly accepted that the Applicants have strong family ties and a close family relationship.

[25] The Officer clearly considered the Applicants' evidence that highlighted the importance of face-to-face communications, and that electronic communication tools are not a substitute. However, the Officer went on to find that although remote communication tools may not be ideal, "the Applicants and their daughters would have communicated with one another over the years prior to their arrival in Canada in 2019 and there is no indication why they cannot continue doing so". The Officer "[did] not find a level of interdependency between them and their daughters in Canada that would be harmful for their relationship should they return to Iran."

[26] Ultimately, the Officer found "[i]n regard to establishment in Canada, there is little evidence of establishment during the Applicants' five years in Canada. … I find that the

applicants' [*sic*] social ties and involvement in the community represent limited establishment in Canada."

[27] The Applicants have not persuaded me that the Officer made a reviewable error that warrants this Court's intervention. In my view, the Decision regarding the Applicants' level of establishment in Canada is supported by the factual and legal constraints and is reasonable.

(2) Use of communication tools to maintain relationships

[28] The Applicants argued that the Officer erred in finding that the relationship between them and their family in Canada could be maintained using electronic and other communication tools.

[29] The Respondents argued that this argument was without merit.

[30] This Court has cautioned against the use of boilerplate language concerning the use of technology to mitigate the hardships and impacts of separation and has indicated that officers need to account for the specific facts and circumstances of each case (*Vujicic v Canada (Citizenship and Immigration)*, 2022 FC 1590 at paras 59 -60).

[31] The Applicants have not persuaded me that the Officer made a reviewable error in determining that they could maintain their relationships with their daughters with communication tools. The Officer clearly acknowledged the limitations of these tools but noted that the Applicants have used these tools in the past and did not present clear submissions as to why they would not be able to use these same tools going forward. The Decision is intelligible, justified

and transparent, and I am not persuaded that the Officer committed a reviewable error that warrants this Court's intervention.

(3) Eligibility for other sponsorship programs

[32] The Applicants' argued that the Officer erred in their consideration of the availability of other sponsorship programs.

[33] The Decision states that the Applicants' daughters "attempted to sponsor their parents through the family class previously"; however, "they did not complete the correct forms and their application was subsequently refused." The Officer noted that the Applicants' daughters attempted to appeal this decision, without success. The Officer then found that "there is little evidence of hardship" in the H&C Application that would prevent the Applicants from reapplying for this program outside of Canada.

[34] The reasons for the Decision are intelligible, justified and transparent. The Officer clearly considered all the evidence in respect of this issue and found insufficient evidence to satisfy the H&C Application. Indeed, the Officer stated that "the H&C application is not simply another stream to apply for permanent residence".

[35] The Applicants have not persuaded me that the Officer made a reviewable error in respect of this issue that warrants this Court's intervention. The Officer's statements were clearly in response to the Applicants' submissions related to their earlier sponsorship applications and the

uncertainty in the selection process under the parents and grandparents' sponsorship program, which was a positive factor in the Officer's assessment of the application. This was reasonable.

(4) Health considerations

[36] The Applicants submitted that the Decision failed to consider their specific circumstances, particularly the Principal Applicant's health. In addition, the Applicants argued that the Decision does not grapple with contradictory evidence concerning the health care system in Iran.

[37] A review of the Decision indicates that the Officer grappled with the considerations advanced concerning the nature of the Principal Applicant's medical condition. After reviewing the doctor's note, the Officer noted that the Principal Applicant's diabetes is "very well-controlled and uncomplicated". The Officer considered the evidence of his daughters' supports and care but noted that "there is little evidence of hardship for the Applicant due to being unable to receive this care from Iran." The Officer acknowledged that the supporting medical letters indicated that travel, specifically longer flights, should be avoided; however, the Officer found that there was "little medical evidence provided [as to] why the Applicants would be unable to [travel]".

[38] The Decision also highlights that the articles were submitted to highlight the importance of family care for patients with diabetes, and the Officer agreed that this is generally beneficial. However, the Officer noted that to the extent that the articles highlighted other health conditions

that may accompany diabetes, there was “little evidence that the Applicants suffer from” those other conditions.

[39] Finally, the Officer found that there was limited evidence to indicate that the Principal Applicant would not be able to receive medical care in Iran, or that his daughters would not be able to continue to monitor his condition using communication tools.

[40] I agree with the Respondent that the Applicants are requesting that this Court reweigh the evidence, which is not the proper role of a court on judicial review. The reasons for the Decision are supported by the evidence.

[41] In my view, it was reasonable and open to the Officer to assign little weight to health considerations raised in the Applicants’ H&C Application. The Decision sets out intelligible, justified, and transparent reasons in support.

(5) Adverse country conditions

[42] The Applicants argued that the Officer misapprehended, misconstrued and mischaracterized evidence of adverse country conditions faced by the Applicants.

[43] The Respondents argued that this argument is without merit.

[44] The Decision clearly acknowledged that the human rights situation in Iran is not ideal. The Officer also noted that the Applicants provided little evidence to illustrate that they faced

risks if they returned to Iran because of their son-in-law's interview with a foreign news organization or that they would face treatment like that of known political activists, protestors or dual citizens. Similarly, the Officer found insufficient evidence that the Applicant's mental health and physical well being was at risk if they returned to Iran.

[45] Ultimately, the Applicants bear the burden of establishing their claim. In my view, it was open to the Officer to find there was little evidence that the Applicants would face risks due to the human rights situation in Iran and the Decision to assign this factor little weight was reasonable.

(6) Best interests of the child

[46] Finally, the Applicants argued that the BIOC, their two grandsons, necessitated their ongoing physical presence in Canada.

[47] The Decision demonstrates that the Officer considered the evidence submitted by the Applicants' concerning their relationship with their grandchildren and their role in the children's care and upbringing.

[48] The Officer acknowledged the general importance of grandparents in the growth and development of children. However, the Officer found insufficient evidence that the children would suffer hardships because there was "little evidence of any inter-dependency between the children and Applicants".

[49] In my opinion, it was open to the Officer to make these findings. A review of the Decision indicates that the Officer grappled with the applicable factual and legal constraints.

[50] The Applicants are essentially asking this Court to reweigh the evidence assessed by the Officer. It is not the proper role for a reviewing court. The fact that the Applicants would like the Decision to be different and disagree with the weight the Officer accorded to the evidence does not render the Decision unreasonable. The Applicants have not pointed to specific material facts that the Officer misconstrued or overlooked. The reasons for the Decision are intelligible, justified and transparent, and the Applicants have not persuaded me that there is a reviewable error that would warrant this Court's intervention.

[51] I agree with the Respondent that the concerns raised by the Applicants are the normal consequences of repatriation and an application of the IRPA.

B. *Was the Decision procedurally fair?*

(1) Failure to consider the TRP

[52] The Applicants included an alternative request for a TRP with their H&C Application; however, the Decision did not address this request, which they claim is a breach of the duty of procedural fairness.

[53] The Respondent acknowledged that the Decision does not address the request for a TRP and that this should have been addressed. The Respondent conceded that this issue ought to be returned for consideration by a different decision-maker.

[54] The jurisprudence from this Court is clear that where a party requests alternative relief of a TRP with an application, this request must be responded to (*Li v Canada (Citizenship and Immigration)*, 2020 FC 754 at paras 10–11; *Lee v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1461 at paras 16–18).

[55] Accordingly, the TRP request shall be remitted back to the Minister for consideration by a different officer.

(2) Extrinsic evidence

[56] The Applicants also submit that the Officer breached the duty of procedural fairness because they relied on extrinsic evidence without providing them notice.

[57] The Applicants argued that they had specifically requested that they be provided notice and an opportunity to respond, should the Officer choose to rely on information that was not submitted as part of their H&C Application. The Applicants noted that the Officer relied on extrinsic evidence concerning the Iranian health care system.

[58] The Respondent argued that the Officer properly considered the Applicants' submissions and noted that country condition documentation is one of many factors that were considered by the Officer.

[59] Further, the Respondent argued that the Officer was not required to give the Applicants notice or an opportunity to respond, as the evidence was not "novel and significant" and was a published, publicly article that the Applicants had access to.

[60] As was noted by Justice Boswell in *Azizian v Canada (Citizenship and Immigration)*, 2017 FC 379:

> [29] I am not convinced that, in the circumstances of this case, the Officer was required to disclose the open-source documents that supported the inadmissibility decision. The basic rule in this regard was set out by the Federal Court of Appeal in *Mancia v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9066 (FCA), [1998] FCJ No 565, [1998] 3 FC 461, (CA); there is no requirement to disclose published documentary sources of information before the decision is made. An officer's reliance upon information gleaned from websites has been found to be fair and not an improper resort to extrinsic evidence in several decisions of this Court (see e.g.: *Majdalani v Canada (Citizenship and Immigration)*, 2015 FC 294 at para 58, 472 FTR 285; *Sinnasamy v Canada (Minister of Citizenship and Immigration)*, 2008 FC 67 at paras 39-40, 164 ACWS (3d) 667; *De Vazquez v Canada (Citizenship and Immigration)*, 2014 FC 530 at paras 27-28, 456 FTR 124; *Pizarro Gutierrez v Canada (Citizenship and Immigration)*, 2013 FC 623 at para 46, 434 FTR 69).

[61] The information in the UN National Library of Medicine Article is an open-source document. Accordingly, I am satisfied that there has not been a breach of the duty of procedural fairness. There is no obligation for the officer to disclose to the Applicants reliance on information that is publicly available in advance of a decision.

[62] An applicant has an obligation to put its best foot forward. It is reasonable to expect that officers assessing applications will consider information that is published and publicly available in the determination of an application.

[63] The article in question was accepted on June 15, 2022, and was available in advance of the Applicants' H&C Application on October 20, 2022.

V. Conclusion

[64] The Decision was reasonable, and I find no breach of procedural fairness that would warrant this Court's intervention. Accordingly, the application in respect of the H&C Application is dismissed.

[65] However, the Decision failed to grapple with the Applicants' alternative request for a TRP. The application in respect of the requested alternative relief is granted. The TRP request shall be remitted back to the Minister for consideration by a different officer.

JUDGMENT in IMM-9753-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted in part.

2. The Applicants request for alternative relief, a TRP, shall be remitted back to the Minister for consideration by a different officer.

3. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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