

CANADA / JUDGMENT

Gaffar v. Canada (Citizenship and Immigration)

2024 FC 1878

COURT

Federal Court

DECIDED

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Gaffar v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2024-11-22 Neutral citation 2024 FC 1878 File numbers IMM-10467-23 Decision Content Date: 20241122 Docket: IMM-10467-23 Citation: 2024 FC 1878 Ottawa, Ontario, November 22, 2024 PRESENT: The Honourable Mr. Justice Manson BETWEEN: RUKSHANA GAFFAR Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Introduction [1] This is an application for judicial review of a decision (the “Decision”) by an officer at Immigration, Refugees and Citizenship Canada (“IRCC”) (the “Officer”) refusing the Applicant’s request for reconsideration of a decision excluding the Applicant’s two children from a spousal sponsorship application. The request for reconsideration was made on Humanitarian & Compassionate (“H&C”) considerations under section 25 of the Immigration and Refugee Protection Act, SC 2001, c 27 (the “IRPA”).

- [2] For the reasons set out below, the application is dismissed. II. Background [3] The Respondent’s Further Memorandum at paragraphs 3-10 aptly sets out the facts, which I substantially adopt below.
- [4] The Applicant is a citizen of Bangladesh and a parent of twin children, both born on August 8, 2000.
- [5] In 2017, the Applicant married a Canadian citizen. Nearly five years later, in August 2022, the Applicant initiated a spousal sponsorship application for permanent residence, and included her two children as dependents.
- [6] The Applicant’s application for permanent residence (“PR Application”) reached the IRCC office on August 9, 2022, one day after the Applicant’s children turned 22.
- [7] On June 12, 2023, the IRCC advised the Applicant of the concern that the two children were over the age of 22 at the time of the receipt of the PR Application and thus were not considered dependent children per the Immigration and Refugee Protection Regulations, SOR/2002-227 (the “IRPR”). The Applicant was provided an opportunity to respond and provide further information.

- [8] On June 21, 2023, the Applicant responded that she submitted the PR Application on August 2, 2022, prior to her children turning 22, but that “even with three-day guaranteed service” the PR Application was delayed in reaching the office. She indicated that her children are dependent on her for their expenses and that, due to Bangladeshi cultural customs, they live with her. She also provided screenshots of her DHL tracking page.
- [9] On June 30, 2023, the IRCC refused the inclusion of the two adult children as dependents. The Officer noted that the tracking receipts provided did not indicate the date the PR Application was shipped, but demonstrated that the PR Application was received earlier than expected.
- [10] On July 31, 2023, the Applicant made a request for reconsideration of the exclusion of her two adult children on H&C considerations under section 25 of the IRPA. III. The Decision [11] On August 7, 2023, the Officer refused the Applicant’s request for reconsideration. The Officer held as follows: The tracking receipt does not support the assertion that the PR Application was submitted in time and delayed in transit: There was no submission date printed on the receipt provided by the Applicant; the only date is the estimated delivery date of August 12, 2022. The actual delivery date was August 9, 2022. The children do not lack the necessary skill set and financial capabilities to support themselves: both children are educated and will be able to be gainfully employed in their home country. If the children want to pursue studies in Canada, as asserted, they can apply for a study permit. Even if it is the cultural norm to support children irrespective of age, less weight was given to this fact since the children are educated and are able to be self-supporting. Assertions regarding the over-aged children’s cognitive limitations was not supported: The Officer found the Applicant’s claims about the children at the age of 22 engaging in impulsive decision-making and risky behaviours to be generic and not supported by any specific evidence. Instead, given the dependents’ age and education, the Officer found it reasonable to expect them to be able to make clear judgements and not rely on family. The Applicant had almost five years to apply for sponsorship: The Officer noted that the Applicant married in 2017 and could have applied for sponsorship anytime since then, but did not, and provided no explanation for the delay. The Officer concluded by saying, “while I do understand that this situation can be upsetting for the family, I find that maintaining the integrity of our legislation and program takes precedence in this case.” IV. Issues [12] The only issue is whether the Decision is reasonable. V. Analysis [13] The standard of review applied to a request for reconsideration is reasonableness (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [Vavilov] at para 25).
- [14] The Applicant asserts that the Officer made three reviewable errors: (1) the Officer failed to recognize a discretion to reconsider the decision; (2) the Officer failed to apply the Chirwa approach, which is required post-Kanthasamy, when considering H&C grounds; and (3) the Officer disregarded the sworn evidence and relied on unfounded generalizations and speculation (Chirwa v Canada (Minister of Manpower & Immigration) (1970), 4 IAC 338 [Chirwa] adopted by the Supreme Court in Kanthasamy v Canada (Citizenship and

Immigration), 2015 SCC 61 [Kanthasamy]).

- [15] Relief under section 25 of the IRPA is intended to be exceptional and not an alternative immigration stream or appeal mechanism. As H&C assessments are highly discretionary, decision-makers must be accorded a considerable degree of deference (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4).
- [16] The Officer did not err in fettering their discretion by requiring new evidence that demonstrated that the original decision was in error. A request for reconsideration requires the applicants to show that circumstances warrant the exercise of the Officer's discretion in "the interest of justice" and "in unusual circumstances" (*Ghaddar v Canada (Citizenship and Immigration)*, 2014 FC 727 at para 19). The Officer did not dismiss the request for failing to adduce new evidence. Rather, the Officer considered the Applicant's arguments, and found the circumstances did not warrant an exception.
- [17] I also disagree with the Applicant's assertion that there is no connection between the Applicant's request and any effort to undermine "the integrity of the program." When the Officer is assessing whether a request is in the interests of justice, it is reasonable to weigh the Applicant's circumstances against the integrity of the program, which includes certainty, predictability and public confidence in the IRPA (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 at para 22). As the Respondent highlights, the definition of "family class" and "dependent child" represent Parliament's intent; definitions of "dependent child" and "family class" allow the IRCC to strike a balance between preserving the unity of family groups, yet filter out those who should seek status on their own merits in a stable and predictable way. Absent unusual and exceptional circumstances established under section 25(1) of the IRPA, officers and this Court should be hesitant to interfere with that intent.
- [18] The Applicant also asserts that the Officer failed to apply the Chirwa approach, which constitutes a reviewable error. In support of this argument, the Applicants re-state the considerations they provided to the Officer in their request and specifically assert that the Officer failed to reasonably consider the hurt that would be caused by separating the children from their parents (citing to *Reducto v Canada (Citizenship and Immigration)*, 2020 FC 511 [Reducto]).
- [19] Justice Zinn framed the Chirwa approach as asking the following question: "understanding that relief from the rigidity of the law is exceptional, do the particular circumstances of the applicant excite in a reasonable person in a civilized community a desire to relieve their misfortunes?" (*Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 at para 19). With respect to the Chirwa approach, this Court said that H&C Officers "must consider the Chirwa approach" but that they are not required to "recite Chirwa chapter and verse" and "nor that there are any magic formulae or special words these Officers must use" (*Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 [Marshall]).

- [20] In my view, the principles this Court described in *Marshall* apply here: the Officer took a comprehensive assessment of the PR Application, weighed all the factors raised by the Applicant, as well as additional factors, including the relevant dates and legislative definition, and found that the particular circumstances did not amount to unusual and undeserved or disproportionate harm.
- [21] I am not convinced that this case is analogous to the facts of the case of *Reducto*. That case concerned an applicant's application for permanent residence under the Caring for Children Program, which required the Applicant to work for two years in Canada before becoming eligible to apply, and by that time of her eligibility, her child had turned 22. The Applicant did not wait five years after her eligibility to apply, which is the case here. Furthermore, the evidence in that case establishing the harm caused by separating the adult dependent child from the family was significant and not reasonably addressed by the Officer.
- [22] In *Reducto*, the Court found that the officer failed to explain how the weight of the family circumstances outweighed the fact that the adult dependent child did not meet the definition of a dependent child. The evidence of family circumstances included the fact that the applicant mother had been away from the children for most of their lives for work in other countries, during which time the dependent adult child helped take care of his minor siblings. The officer ignored the best interests of all the children, including the minor children, as well as the psychological evidence of both the mother and the adult dependent regarding the effect of separation after an already prolonged separation.
- [23] Unlike in *Reducto*, where the officer relied on unfounded generalizations and paternalistic assumptions about other adults of the same age and the general resilience of children, the Officer in this case grounded their conclusions in the evidence before them. This evidence showed that the children are educated and able to get jobs after school, and able to make clear judgements and not rely on family for guidance. Contrary to the Applicant's assertion, the Officer's reliance only on evidence specific to these children is demonstrated by the fact that the Officer dismissed the Applicant's argument that the children are prone to "impulsive decision-making and risky behaviour" because the evidence was generalized and not specific to the two children in this case.
- [24] Additionally, while the Court in *Reducto* stated that proximity to the cut off line should be considered (*Reducto* at para 58), this cannot be done without due regard as to why the application was late. This is a key circumstance related to the Applicant's misfortunes raised in this judicial review not addressed by the Applicant. The Applicant had nearly five years to apply for sponsorship from the date of her marriage. While the Applicant asserts that she believed the "lock-in" age was 18 for dependent children, not 22, it still does not explain the delay in applying for sponsorship. The children were 17 at the time when the Applicant got married and the Applicant had about eight months to apply for sponsorship while the children were still dependents under the age of 18.

- [25] The Applicant failed to explain why she did not apply for sponsorship while the children were still 17, how and when she learned that “lock-in” age was 22, and why it took over a week to prepare and send the documents once learning of the cut-off age. I have difficulty accepting the Applicant’s argument that the Officer should have considered the one-day delay in the IRCC receiving their application, while they fail to explain their five-year delay in submitting their application.
- [26] Moreover, as pointed out by the Respondent, this Court’s jurisprudence establishes that it is reasonable for an officer to consider that the “lock-in” date for determining whether a person is a dependent child is the date on which the application is made (*Yebyo v Canada* (Citizenship and Immigration), 2019 FC 1212 at para 27; *Orduno Ferrer v Canada* (Citizenship and Immigration), 2021 FC 1010 at para 24; *Lepcha v Canada* (Citizenship and Immigration), 2024 FC 1076 at para 18). This is consistent with the Ministerial Guide (Sponsor your spouse, common-law partner, conjugal partner or dependent child – Complete Guide (IMM 5289) - Canada.ca), which states that children must meet the definition of dependent children “on the day we receive your complete application” and “[d]ependants must continue to meet these requirements until they enter Canada.” While I acknowledge that these guidelines are not binding, this demonstrates that the Officer’s Decision is consistent with the information provided to applicants and officers.
- [27] Lastly, the Applicant argues that the Officer ignored the “entire basis for the request”, instead focusing their Decision on the fact that the children are educated. I do not agree that this was the case. As mentioned above, the Officer considered the totality of the circumstances, including the Applicant’s significant delay in applying for sponsorship, the inconsistent evidence regarding delivery delays, as well as the children’s capacity for independence. The Officer referring to details within the affidavits, including the children’s desire to pursue studies in Canada, demonstrates this.
- [28] While the Applicant asserts that more weight should have been given to the cultural customs and the reliance of the children on their parents, this is not sufficient to render the Decision unreasonable (*Vavilov* at para 125). It is not this Court’s role to reweigh the evidence to overcome the discretion of an officer rendering an H&C application. VI. Conclusion [29] The Decision was reasonable. This application for judicial review is dismissed. JUDGMENT in IMM-10467-23 THIS COURT’S JUDGMENT is that: The application for judicial review is dismissed. There is no question for certification. "Michael D. Manson" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-10467-23 STYLE OF CAUSE: RUKSHANA GAFFAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: Toronto, Ontario DATE OF HEARING: November 18, 2024 JUDGMENT AND REASONS: MANSON J. DATED: november 22, 2024 APPEARANCES: Sumeya Mulla For The Applicant Hannah Shaikh For The Respondent SOLICITORS OF RECORD: Waldman & Associates Barristers and Solicitors Toronto, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

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