

CANADA / JUDGMENT

Ibrahimi v. Canada (Citizenship and Immigration)

2026 FC 265

COURT

Federal Court

DECIDED

26 February 2026

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Decision Content

Date: 20260226

Docket: IMM-9212-24

Citation: 2026 FC 265

Ottawa, Ontario, February 26, 2026

PRESENT: Madam Justice Conroy

BETWEEN:

OBAIDULLAH IBRAHIMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

- [1] This is a judicial review of an immigration officer's [Officer] decision to refuse Mr. Obaidullah Ibrahim's application for permanent residence under the One Year Window of Opportunity provision [OYW] with an exemption from the requirement in subsection 141(1)(a) of the Immigration and Refugee Protection Regulations, SOR/2002-227 [Regulations] on Humanitarian and Compassionate [H&C] grounds.
- [2] Mr. Ibrahim (the Applicant) and, Ms. Rustami, his wife, are citizens of Afghanistan. Ms. Rustami obtained permanent residency to Canada through the Temporary Public Policy for the Resettlement of certain vulnerable Afghan nationals [Temporary Public Policy]. Before Afghanistan fell to the Taliban, her brother provided legal services to the Canadian Embassy in Kabul.
- [3] Ms. Rustami married the Applicant after her family had filed their application under the Temporary Public Policy while she was still in Afghanistan. After she landed in Canada, Ms. Rustami advised Immigration, Refugees and Citizenship Canada [IRCC] that she wished to add Mr. Ibrahim to her application for permanent residency.
- [4] The Regulations provide that Convention Refugees who have resettled in Canada, such as Ms. Rustami, have one year to apply for permanent residency for their non-accompanying family members. However, s.141(1)(a) creates a bar where the family member is disclosed to IRCC after the refugee lands in Canada.
- [5] I conclude that the impugned decision is unreasonable for the reasons that follow.
- I. BACKGROUND A. Material Facts and Events Leading to this Application [6] Ms. Rustami's brother previously prosecuted domestic violence cases in Afghanistan and worked at a law firm that provided legal counsel to the Canadian Embassy in Kabul. After Kabul fell to the Taliban in 2021, Ms. Rustami and her family became a target due to her brother's work.
- [7] In October 2022 Ms. Rustami's brother applied for permanent residence in Canada under the Temporary Public Policy. The application included his wife and his sisters, including Ms. Rustami herself.
- [8] Beginning around February or March of 2023, Mr. Ibrahim's family commenced discussions with Ms. Rustami's family to arrange a marriage and on May 16, 2023 Mr. Ibrahim and Ms. Rustami were married.
- [9] On May 23, 2023, about a week after the marriage, Ms. Rustami's family left for Pakistan to await their visas to travel to Canada. Ms. Rustami's family were issued permanent residence visas on July 24, 2023. They landed in Canada in September 2023.

- [10] Up until this point, Ms. Rustami made no attempt to update her permanent residence application to include Mr. Ibrahim.
- [11] Once in Canada Ms. Rustami sent an email to Immigration, Refugees and Citizenship Canada [IRCC], requesting to add her “fiancé” to her application. Her email explains that she decided not to add him until her family were relocated because her brother’s life was in danger, and they wanted to get him out of Afghanistan as soon as possible. On October 5, 2023, IRCC responded to her email request, advising that her spouse would require his own application, possibly under the OYW program. She then retained legal counsel.
- [12] In February 2024, Mr. Ibrahim, in connection with Ms. Rustami’s permanent residence status, made an application for permanent residence under the OYW program including a request on H&C grounds for an exemption from s. 141(1)(a) of the Regulations.
- [13] The application included detailed written submissions, a sworn statement from Ms. Rustami, some objective country condition evidence, and letters from the former Consul at the Canadian Embassy in Afghanistan and the Department of Justice. The letters confirmed that the law firm that Ms. Rustami’s brother worked at had been local legal counsel for Canada in Afghanistan, and that the firm was well known by those in Kabul as counsel for the Canadian Embassy.
- [14] The application explained that Ms. Rustami’s brother was in significant danger in Afghanistan due to his work with the Canadian Embassy and the family was focused on escaping Afghanistan. Ms. Rustami’s sworn statement states that the family thought that adding Mr. Ibrahim to their application would cause further delay or even cancellation of the family’s, application thereby putting her brother further at risk. She states “[w]e were all extremely afraid of losing this chance to get to safety”. Her sworn statement further provides that she did not understand that failing to declare her marriage and add Mr. Ibrahim to her application before she landed could have negative consequences.
- [15] The negative consequence Ms. Rustami did not anticipate is the bar created by s. 141(1)(a) of the Regulations.

II. Decision Under Review [16] By decision letter dated May 21, 2024, Mr. Ibrahim’s OYW application was refused. The Officer determined that he was not eligible for the OYW category due to s. 141(1)(a) of the Regulations and there were not sufficient H&C considerations to overcome the Applicant’s ineligibility.

- [17] The Global Case Management System [GCMS] notes state the following with respect to the H&C assessment (“PD-CDA” referring to Ms. Rustami, “PA” referring to Mr. Ibrahim):

The PA-CDA is requesting to bring her spouse (the PA) to Canada through the OYW program. The representative for the PA-CDA states that she and her husband got married in May 2023 which is after her application to Canada was submitted. The PA-CDA had to flee with her brother to Pakistan shortly after her marriage and she left her husband behind in Afghanistan. The PA states that she did not understand the consequences she may face when not declaring her husband on her application.

I note that the hardships and circumstances outlined in the H&C submission are not insignificant, however the PA is an adult with the support of his siblings and one of his parents in Afghanistan. The rep for the PA-CDA has not adequately explained how the circumstances of the PA differ from many other individuals living in Afghanistan.

The level of dependency of the PA on the PA-CDA as demonstrated in the documents does not appear to be especially significant. I note that the PA-CDA stated in her affidavit that she fled from Afghanistan to Pakistan around one week after her marriage to the PA, which was arranged by her family. While I recognize that the PA-CDA feared experiencing a delay if she added her spouse on her application, I note that she did not declare any dependents on her CoPR.

Having taken into consideration the reasons PA-CDA had requested H&C, and having reviewed all of the supporting documents provided, I am not satisfied that the OYW requirements have been met per R141(1)(a), and that the reasons for requesting H&C to overcome this have not been sufficiently demonstrated for approving on humanitarian and compassionate grounds.

III. ISSUES AND STANDARD OF REVIEW [18] The Applicant argues the decision is unreasonable for several reasons. I address only two, as they are determinative:

Did the officer appropriately address family reunification?

Was the decision unreasonable in requiring the Applicant to demonstrate exceptionality in the H&C assessment by engaging in a comparative analysis?

[19] The parties agree, and I concur, that the applicable standard of review for each of the above issues is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25 [Vavilov].

IV. ANALYSIS A. Legal framework [20] The purpose of the Temporary Public Policy was to facilitate the resettlement of eligible Afghan nationals, including those who were connected with Canada in Afghanistan, as members of the Convention Refugee Abroad Class.

[21] Convention Refugees who have resettled in Canada have one year to apply for permanent residency for their non-accompanying family members. Section 141(1) of the Regulations, referred to as the OYW provision, sets out the criteria for non-accompanying family members:

Non-accompanying family member

141 (1) A permanent resident visa shall be issued to a family member who does not accompany the applicant if, following an examination, it is established that

- (a) the family member was included in the applicant's permanent resident visa application at the time that application was made, or was added to that application before the applicant's departure for Canada;
- (b) the family member submits their application to an officer outside Canada within one year from the day on which refugee protection is conferred on the applicant;
- (c) the family member is not inadmissible;
- (d) if the applicant is the subject of a sponsorship application referred to in paragraph 139(1)(f)(i), their sponsor has been notified of the family member's application and an officer is satisfied that there are adequate financial arrangements for resettlement; and
- (e) in the case of a family member who intends to reside in the Province of Quebec, the competent authority of that Province is of the opinion that the foreign national meets the selection criteria of the Province.

Membre de la famille qui n'accompagne pas le demandeur

141 (1) Un visa de résident permanent est délivré à tout membre de la famille du demandeur qui ne l'accompagne pas si, à l'issue d'un contrôle, les éléments suivants sont établis :

- a) le membre de la famille était visé par la demande de visa de résident permanent du demandeur au moment où celle-ci a été faite ou son nom y a été ajouté avant le départ du demandeur pour le Canada;
- b) il présente sa demande à un agent qui se trouve hors du Canada dans un délai d'un an suivant le jour où le demandeur se voit conférer l'asile;
- c) il n'est pas interdit de territoire;
- d) dans le cas où le demandeur fait l'objet de la demande de parrainage visée au sous-alinéa 139(1)f)(i), le répondant a été avisé de la demande du membre de la famille et l'agent est convaincu que des arrangements financiers adéquats ont été pris en vue de sa réinstallation;
- e) dans le cas où le membre de la famille cherche à s'établir au Québec, les autorités compétentes de cette province sont d'avis qu'il répond aux critères de sélection de celle-ci.

[22] As noted, because Ms. Rustami's Permanent Residency application did not include Mr. Ibrahimi before she landed, she required an H&C exemption under s. 25 of IRPA from subsection 141(1)(a) of the Regulations. Mr. Ibrahimi's application met the other criteria under s. 141(1).

B. Family reunification [23] Given the harsh consequences of s.141(1)(a) in this case there was a heightened obligation on the Officer to justify the denial of the application. The Officer's reasons fell short in two respects:

They were not responsive to central arguments in the OYW application, and

The reasons do not grapple with the severe consequences of a decision to refuse the application.

[24] In conducting a reasonableness review, the Court must be mindful of the impacts of the decision on the individual. The principle of "responsive justification" means that "[w]here the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes": *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 [Mason] at para 81, citing *Vavilov*.

[25] The impugned decision could result in the permanent separation of the couple: a significant and severe impact.

[26] Subsection 141(1)(a) of the Regulations acts as a complete bar to Mr. Ibrahimy – it provides no discretion to an officer.

[27] It appears that ss. 117(9)(d) and 125(1)(d) of the Regulations would also bar Ms. Rustami from sponsoring the Applicant under the family class or as a spouse, again, because of her failure to include him on her permanent residency application before landing: see for example *Hamedi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1166, *Krauchanka v. Canada (Citizenship and Immigration)*, 2010 FC 209.

[28] It must be remembered that Ms. Rustami is a Convention Refugee. It is not reasonable to expect her to return to Afghanistan.

[29] Accordingly, the stakes are high, and the reasons must reflect that.

[30] The Applicant's written submissions included with OYW application focus on the context and reasons for Ms. Rustami leaving Afghanistan without her husband, their desire to be reunited and the genuineness of the relationship. The reasons are not responsive to these submissions.

[31] Rather, the Officer focuses on dependency. The Officer states:

The level of dependency of [Mr. Ibrahimy] on [Ms. Rustami] as demonstrated in the documents does not appear to be especially significant. I note that the PA-CDA stated in her affidavit that she fled from Afghanistan to Pakistan around one week after her marriage to the PA, which was arranged by her family.

- [32] The Applicant submits that it can be inferred from this statement that the Officer gave less weight to the relationship because it was an arranged marriage. To the extent that is the case, this was unreasonable, particularly when coupled with silence in the reasons on the evidence about the genuineness of the marriage. Instead, the Officer focuses on dependency, an issue that was not raised in the application material.
- [33] Furthermore, the reasons do not demonstrate that the Officer meaningfully grappled with or understood the severe consequences of a refusal of the application on family reunification. This too was unreasonable: *Mason* at para 76. On this issue, the reasons state:

I note that the hardships and circumstances outlined in the H&C submission are not insignificant, however the PA is an adult with the support of his siblings and one of his parents in Afghanistan. The rep for the PA-CDA has not adequately explained how the circumstances of the PA differ from many other individuals living in Afghanistan.

The Officer's reference to "hardship" is with respect to the hardship Mr. Ibrahim faces in Afghanistan. It is not apparent that any consideration was given to the hardship arising from the couple's potentially permanent separation.

- [34] Family reunification was central to the OYW application and is an express object of IRPA (s. 3(1)(d)). Family reunification will not necessarily be determinative in all cases; however, the reasons must demonstrate that an officer appreciates and has considered the severe impact of s. 141(1)(a) on family reunification. If s. 25(1) of IRPA is to be meaningful, officers must carefully consider the H&C factors brought forward by an applicant, and truly assess them to decide whether they are sufficient to counterbalance the harsh consequences of s. 141(1)(a): *Sultana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 533 at para 25 [per de Montigny J, as he then was].

C. Comparative Hardship Analysis [35] The Applicant takes issue with the following statement in the GCMS notes:

The rep...has not adequately explained how the circumstances of the [Applicant] differ from many other individuals living in Afghanistan.

- [36] According to the Applicant, by engaging in such a comparison with other individuals living in Afghanistan, the Officer imposed a requirement that he demonstrate "exceptional" circumstances, which is the incorrect legal standard: *Apura v Canada (Citizenship and Immigration)*, 2018 FC 762 at para 23. In doing so, the Applicant argues that the Officer erroneously evaluated him against an unspecified and undefined standard: see *Afzal v Canada (Citizenship and Immigration)*, 2022 FC 1365 at para 31.
- [37] The Respondent says that it is not an error for an Officer to note in an H&C assessment that an applicant's situation is not atypical, relying on *Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 at paras 19-22.

- [38] I agree with the Applicant: the Officer appears to have engaged in a type of comparative analysis which the Supreme Court of Canada and several cases from this Court caution against: *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 29-33; *Zhang v. Canada (Citizenship and Immigration)*, 2021 FC 1482 [Zhang] at paras 24, 25 and 28; *Cheng v. Canada (Citizenship and Immigration)*, 2024 FC 560 at paras 20-21.
- [39] Section 25(1) of IRPA does not require that an applicant's circumstances be exceptional when compared to others. "[T]he sole question that must be asked is whether humanitarian and compassionate relief for this applicant is justified": Zhang at para 25.
- [40] Furthermore, there was scarce country condition evidence on the record that would allow the Applicant or the Court to understand the basis for the Officer's conclusion that Mr. Ibrahim's circumstances are not sufficiently "different" from others in Afghanistan. In this respect, the reasons lack transparency.
- [41] Accordingly, the comparison between the circumstances of the Applicant and others in Afghanistan was unreasonable.

JUDGMENT in IMM-9212-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is granted.

The matter will be remitted back to a different immigration officer to be determined.

There is no question for certification.

"Meaghan M. Conroy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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