

CANADA / JUDGMENT

Le v. Canada (Citizenship and Immigration)

2026 FC 441

COURT

Federal Court

DECIDED

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Decision Content

Date: 20260407

Docket: IMM-9461-24

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Ottawa, Ontario, April 7, 2026

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

QUANG LIEM LE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

- [1] The Applicant seeks judicial review of an Immigration, Refugees and Citizenship Canada Senior Immigration Officer [SIO] decision made on May 16, 2024 [the Decision], that refused his application for permanent residence on humanitarian and compassionate grounds [H&C], pursuant to subsection 25(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA].
- [2] The Applicant has not demonstrated that the Decision is unreasonable. There is accordingly no basis for the Court to interfere with the Decision or its result. The Applicant's application is dismissed for the reasons that follow.

I. Background [3] The Applicant is a citizen of Vietnam and resided there until March 2020. He has several siblings, including his sister Thi Thu Thao Le [the Sister] who resides in Toronto, Ontario. His other siblings reside in Vietnam.

- [4] The Applicant obtained a degree in veterinary studies in September 2010 and thereafter began working in the veterinary industry in Vietnam. He described his work there as enjoyable, despite considering that he felt that he was not treated well by management and that the pay he received was low.
- [5] The Applicant and his mother left Vietnam in March 2020 to visit family in North Carolina, USA. The COVID-19 outbreak occurred shortly after their arrival and COVID-19 restrictions prevented the Applicant or his mother from returning to Vietnam in the short term.
- [6] The Sister invited the Applicant's mother to visit her in Toronto in or about August 2021. The Applicant's mother suffered a health setback after she arrived in Canada. Worried about his mother's health, the Applicant entered Canada on August 18, 2021, on a visitor visa.
- [7] The Applicant stayed at his Sister's house and learned that his Sister's husband [the Estranged Husband] had recently left her and their three children. The Estranged Husband had also taken all of their jointly held monies and left her with the couple's debts. The Sister's house was in disrepair, and she had been left alone to care for herself and provide for her children's needs. The Sister eventually resigned from her job, borrowed money from some family members, and opened a nail salon in or about November 2022.
- [8] The Applicant married in July 2022 while in Canada. While he initially moved in with his spouse and her family, his relationship with his spouse's family proved to be challenging. He ultimately moved back to his Sister's home. His spouse filed for divorce soon after.
- [9] The Sister was depressed because of the changes and stressors in her life. The Applicant sought to alleviate her responsibilities by managing her household, including cooking, cleaning, taking care of laundry, and taking care of her children. He also worked at her nail

salon. He asserts that he used the money he earned at the nail salon to purchase necessities for the Sister's household and that he invested the remainder in the nail salon itself. He asserts that he wants to be near his Sister because he sees that she is struggling mentally. The Applicant is also an active member of his local temple and has made a number of friends there.

[10] The Applicant avers to having established himself in Canada since his arrival in August 2021. He asserts that he has adopted a paternal role in the lives of his Sister's children. He resides with his Sister and her children, cooks for them, and shops with and speaks with his Sister's children often.

[11] The Applicant fears returning to Vietnam because:

a) he does not wish to be separated from his Sister and her children while they navigate the difficult personal and financial consequences of the breakdown of his Sister's marriage;

b) he believes that his Sister suffers from mental illness;

c) he does not want his Sister's children to lose his financial and emotional support;

d) he does not wish to leave the family that has supported him through his divorce;

e) he believes he will have to be supported by his elderly mother if he returns to Vietnam;

f) he will not have a job if he returns to Vietnam, does not wish to face the financial hardship that may await him in there, and fears the financial instability that plagues the country.

[12] The Applicant's H&C application was refused in the Decision currently under review.

II. The Decision under review [13] In the Decision, the SIO concluded that the Applicant had not led evidence to demonstrate that his circumstances warranted the granting of an exemption pursuant to section 25(1) of the IRPA on H&C grounds. The SIO considered and weighed the evidence led by the Applicant as well as his circumstances as follows:

a) The Applicant's immigration status: The SIO noted that the Applicant had benefitted from several extensions of his visitor visa, knew that he was required to leave Canada at the end of his authorized period of stay, but remained in Canada without maintaining a positive immigration status. The SIO considered that the Applicant had remained in Canada since April 30, 2023, without a valid immigration status while ignoring Canada's immigration laws. The SIO weighed these facts negatively.

b) Returning to Vietnam: The SIO considered that it was reasonable for the Applicant to have expected that he would have to return to Vietnam because leaving Canada at the end of his authorized period of stay was one of the conditions of his visitor visa. The Applicant would be returning to a country in which he had resided for the majority of his life, where received an education, had acquired work experience, had family ties, and knew the language, customs, and culture. The Officer observed that there was little evidence led to suggest that the Applicant would not be able to re-integrate into Vietnam's society. The Applicant's time in Canada was

therefore given little weight.

c)Employment history and financial considerations: The SIO considered that the Applicant had been working without a work permit in Canada. Despite acknowledging the reasons why the Applicant worked at two different nail salons while in Canada, the fact remained that the Applicant has been working illegally. The SIO also considered that there was little corroborative evidence submitted to suggest that he would not be able to find a job upon his return to Vietnam. The SIO found that the Applicant's statements about prospective employment in Vietnam were speculative, noting that there was little evidence to suggest that he would remain unemployed for a prolonged period or be destitute upon returning to Vietnam. The SIO attributed little weight to his employment history in Canada and financial considerations.

d)Community involvement: The SIO acknowledged and considered the Applicant's community involvement, personal relationships, and that he is liked by his family and peers. The SIO considered the letters of support filed with the Applicant's H&C application. The SIO gave some positive weight to this evidence.

e)The Sister's depression: The SIO considered the medical evidence relevant to the Sister's depression following the breakdown of her marriage and the challenges that she faced as a result. The SIO nevertheless observed that there was a lack of information regarding the Sister's depression and any proposed treatment plan. They also noted a lack of evidence to support that the medical and social systems available to her are inadequate for her needs. The SIO observed that the evidence submitted by the Applicant did not explain why the Applicant would need permanent residence to help his Sister. The SIO placed little positive weight on the Sister's psychological condition and on family ties considerations.

The SIO also observed that there was little evidence submitted to suggest that the Sister's depression prevented her or would prevent her from taking care of her children, or how taking care of her children would worsen her depression.

f)Best interests of the children [BIOC]: The SIO set out that in assessing a child's best interests they must: 1) establish what is in the child's best interests, 2) establish the degree to which the child's interests are compromised by one potential decision over another, and 3) in light of first two assessments, determine the weight that this factor should play in the ultimate balancing of positive and negative factors assessed in the Applicant's H&C application.

As to the first point, the SIO found that the best interests of a child, in most cases, would be to be around their parents, to have all the basic requirements of life in food, shelter, clothing, to have education and medical systems to support their life, and to have social support from family and friends.

The SIO acknowledged that the Applicant has no children of his own, but has his Sister's (now) teenage children in Canada. The SIO acknowledged that the Applicant was helping his Sister take care of her children and had good relationships with them. The SIO considered that the lives of the three teenagers would remain the same with a positive H&C decision.

The SIO noted that there was little evidence submitted to suggest the severity or potential duration of negative effects on the children, if any, that would arise if the Applicant returned to Vietnam. More importantly, the SIO noted that there was little evidence submitted to suggest that the children were actually dependent on the Applicant, or that the education, medical and/or social support systems available to them in Canada would be inadequate for their needs in his absence. The SIO noted that the children would continue to have their mother's support as well as each other's support. The SIO therefore placed only some positive weight relating to the BIOC.

[14] After assessing and giving weight to the factors submitted by the Applicant cumulatively, considering the application globally, and the evidence submitted by the Applicant, the SIO concluded that the Applicant had not established that his particular circumstances warranted an exemption pursuant to section 25 of the IRPA.

III. Issues [15] The Applicant raises the following issues, all of which are to be considered by applying the appropriate standard of review:

- a) Did the SIO apply the wrong test, filtering each factor through a hardship lens?
- b) Did the SIO fail to properly assess the best interests of the children?
- c) Did the SIO err by failing to show any compassion when assessing the Applicant's application?
- d) Did the SIO err in their treatment of the psychological evidence?

[16] The Applicant argues that the applicable standard of review is the standard identified in *Dunsmuir v New Brunswick*, 2008 SCC 9. The Respondent argues that the applicable standard of review is the standard of review of reasonableness as discussed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. The Court agrees with the parties that the standard of reasonableness applies. The iteration of the reasonableness standard that governs in this case is the standard discussed and articulated in the more recent Vavilov decision.

IV. The Standard of Review [17] On a reasonableness review, the reviewing court considers the reasons provided by the administrative decision-maker and asks whether the decision bears the hallmarks of reasonableness (i.e., justification, transparency and intelligibility) in relation to the relevant factual and legal constraints that bear on the decision (Vavilov at para 99). The Court's role is not to reweigh, reassess or second-guess the evidence (*Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 3).

[18] The challenging party bears the burden of establishing that the decision under review is unreasonable due to "sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (Vavilov at para 100). This is not a "line-by-line treasure hunt for error" (Vavilov at para 102). Rather, where "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" the reviewing court will not intervene (Vavilov at para 102). The Court will interfere with the decision

under review where it is satisfied that the shortcomings or flaws relied on by the party challenging the decision are more than merely superficial or peripheral to the merits. They must be sufficiently central or significant to render the decision unreasonable (Vavilov at para 100).

V. The law applicable to the H&C Applications [19] My colleague Madam Justice Phuong T.V. Ngo succinctly summarized the law applicable to an H&C Application in *Panton v Canada (Citizenship and Immigration)*, 2024 FC 514 at paragraphs 23 to 29. I can do no better than to quote her at length:

- [23] Section 25(1) of the IRPA gives the Minister discretion to exempt foreign nationals from the ordinary requirements of the IRPA if the Minister is of the opinion that such relief is justified by humanitarian and compassionate reasons, taking into account the best interests of a child directly affected.
- [24] In considering an H&C application, the officer must consider whether the facts, established by the evidence, would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes “warrant the granting of special relief” from the effect of the provisions of the IRPA. The purpose of the H&C provision is to provide equitable relief in those circumstances (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 13 and 21) .
- [25] The onus of establishing that an H&C exemption is warranted lies with the applicant (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45). Lack of evidence or failure to adduce relevant information in support of an H&C application is at the peril of the applicant (*Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 at para 18).
- [26] In assessing whether an applicant has established sufficient H&C considerations to warrant a favourable exercise of discretion, all of the relevant facts and factors advanced by the applicant must be considered and weighed (*Kanthasamy* at para 25). The words “unusual and undeserved or disproportionate hardship” should be seen as instructive, but not determinative (*Kanthasamy* at para 33).
- [27] Assessing the BIOC [Best Interests of the Children] is highly contextual, and the guidance in *Kanthasamy* describes the application of this assessment to be responsive to each child’s particular age, capacity, needs, maturity, and level of development. The officer must determine what appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention. When legislation such as subsection 25(1) of the IRPA specifies that the BIOC who is “directly affected” be considered, those interests are a singularly significant focus and perspective (*Kanthasamy* at paras 35-36, 40).

[28] The Supreme Court in *Kanthasamy* cited its decision in *Baker v Canada* (Minister of Citizenship and Immigration), 1999 CanLII 699, [1992] 2 SCR 817 [*Baker*] where the “best interests” principle was identified as an important part of the evaluation of H&C grounds that the decision maker should give this factor substantial weight, and to be alert, alive and sensitive to it. It does not mean that children’s best interests must always outweigh other considerations, or that there will not be other reasons for denying an H&C claim. However, a decision under subsection 25(1) of the IRPA will be unreasonable if the interests of children affected by the decision are not sufficiently considered (*Kanthasamy* at paras 38 to 39).

[29] The decision maker must do more than simply state that the interests of a child have been taken into account. Those interests must be well identified, defined, and examined with a great deal of attention in light of all the evidence (*Kanthasamy* at para 39).

VI. Arguments and Analysis A. The SIO did not apply the wrong test [20] The Applicant argues that the SIO applied the wrong test and filtered each factor to be considered through a hardship lens. In particular, the Applicant submits that the SIO failed to assess his establishment as an independent factor to be weighed either in favour of or against approving the H&C application, and considered establishment solely in relation to hardship. Furthermore, in the context of determining the BIOC and assessing the evidence related to the Sister's mental health, the Applicant argues that the SIO also applied a hardship lens.

[21] The SIO is required to substantively consider and weigh all the relevant facts and factors before them as submitted by the Applicant (*Kanthasamy v Canada* (Citizenship and Immigration, 2015 SCC 61 at para 25 [*Kanthasamy*]). The words “unusual and undeserved or disproportionate hardship” serve as a descriptive concept that is meant to provide instructive guidance to the SIO when assessing and considering the evidence led by an H&C applicant; it is not a threshold or a test to be applied (*Kanthasamy* at paras 30-31, 33).

[22] A review of the Decision shows that the SIO did not apply a test that set out to measure whether the Applicant would suffer “unusual and undeserved or disproportionate hardship” with respect to any of the facts and factors considered in granted an exemption pursuant to subsection 25(1) of the IRPA. The SIO applied the Supreme Court of Canada’s guidance from *Kanthasamy* and substantively considered and weighed all the relevant facts, evidence and factors submitted by the Applicant to determine whether equitable relief was warranted in the circumstances established by the Applicant.

[23] The SIO noted that the Applicant’s H&C application lacked evidentiary support in general. A comprehensive analysis of an H&C application is not reduced to a hardship evaluation merely because the SIO highlights an absence of evidence or the speculative nature of some of the submissions.

[24] The Applicant’s first argument as to the test applied by the SIO must therefore be rejected.

B. The SIO properly assessed the best interests of the children [25] The Applicant's failure to lead sufficient evidence to establish the basis for equitable relief extended to his evidence of the best interests of his Sister's children. The SIO identified what would be in the best interest of each of the Applicant's nephew and two nieces, and noted repeatedly that the Applicant had led little evidence to support his claim for an exemption from the IRPA's requirements in light of his Sister's children's best interests.

- [26] The Applicant relies on *De Oliveira Borges v Canada (Citizenship and Immigration)*, 2021 FC 193 to argue that the SIO's use of the words "some positive weight" in the Decision makes it unreasonable. The Court must disagree.
- [27] As Mr. Justice Henry Brown noted at paragraph 33 of *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72, there are no magic formula or special words that officers assessing an H&C application must use in determining the best interests of the directly affected children. Officers are required, in light of all of the evidence submitted, to "consider the children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them" (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 75). This is to be done while acknowledging that the best interests of directly affected children are not intended to be a determining factor of H&C applications. This is precisely what the SIO has done in this case.
- [28] The Applicant has not persuaded me that the SIO's use of the words "only some positive weight to the BIOC consideration" in the context of the Applicant's failure to adduce sufficient evidence to establish his claim on the basis of the best interests of his Sister's children is indicative of an unreasonable decision.
- [29] Despite the Applicant's argument to the contrary, the SIO did not ignore evidence of the alleged interdependence between the Applicant, his sister and her children. The SIO acknowledged this evidence but also noted and concluded that there was little corroborative evidence submitted to explain how the children would be affected if the Applicant were to return to Vietnam. The submitted letter from the children does not mention how they would be affected if the Applicant returned to Vietnam, or how they are dependent on him. The children describe their relationship with the Applicant as "we are relatives", "he is our uncle", and that he helps them out. The SIO found that, while it is better to have the Applicant provide additional support to his Sister and her children, there was little evidence submitted to suggest that they were actually dependent on him.
- [30] The SIO's reasoning and conclusions are justified by the evidence submitted and have not been shown to be unreasonable.

C. The SIO was sufficiently compassionate [31] The Court appreciates that the Applicant believes that the SIO was insufficiently compassionate in the Decision. A careful review of the Decision in light of the Applicant's arguments and concerns does not lead the Court to find that the SIO lacked sufficient compassion or empathy in their consideration of the Applicant's evidence and submissions, or in the expression of their analysis and conclusions in the Decision itself.

[32] The Applicant has not established that the SIO lacked sufficient compassion or empathy that makes the Decision unreasonable.

D. The SIO reasonably considered the psychological evidence [33] The Applicant argues that he submitted evidence from his Sister's doctor with respect to her mental health, as well as from his Sister and friends that bear out her mental health struggles. He further argues that the SIO's conclusion to afford little positive weight to the Sister's mental health and the Applicant's role in helping her manage it is unreasonable.

[34] The SIO considered the evidence tendered and the arguments made. I find that the SIO's consideration of the psychological evidence and their assessment of the weight to be given to that evidence in the context of the H&C application is justified and reasonable.

[35] The Applicant's evidence regarding his Sister's psychological concerns and his support for her daily well-being was minimal and, considered objectively and empathetically, of little probative value or insight. The single medical letter submitted lacked substantive detail and openly advocated for an extension of the Applicant's visitor visa. It did not identify that the Applicant's presence in Canada was required for his Sister's well-being. Rather, the evidence led was that the Applicant's Sister "would benefit greatly from having someone be there for her to talk to and share her concerns".

[36] A review of the letters filed in support of the H&C application shows that the letters affirm their writers' belief and opinion that the Estranged Husband's actions have affected the Applicant's Sister, and that those actions have caused her stress and to be depressed. The letters of support reflect their writers' view that the Applicant is a supportive brother and that his presence helps reduce his Sister's stress. However, these letters fall short of demonstrating that the Applicant's presence in Canada is a necessity for the Sister's well-being.

[37] I find that the SIO engaged appropriately and reasonably with the psychological evidence led and reached reasonable conclusions with respect to its probative value in assessing the H&C application.

VII. Conclusion [38] The Applicant has not established that the SIO's consideration of his evidence and submissions in support of his H&C application was unintelligible, unjustified or unreasonable. As mentioned above, there is no basis for the Court to interfere with the Decision or its result.

[39] Neither party has suggested that there is a serious question of general importance arising from this proceeding that should be certified. The Court agrees with them.

JUDGMENT in IMM-9461-24

THIS COURT'S JUDGMENT is that:

The Applicant's application for judicial review is dismissed.

There is no serious question of general importance arising from this proceeding to be certified.

There shall be no costs awarded to any of the parties.

"Benoit M. Duchesne"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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