

CANADA / JUDGMENT

Samuel v. Canada (Citizenship and Immigration)

2025 FC 1966

COURT

Federal Court

DECIDED

15 December 2025

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Samuel v. Canada (Citizenship and Immigration)

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Decision Content

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Citation: 2025 FC 1966

Ottawa, Ontario, December 15, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

NICOLE NOELLE SAMUEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The same Senior Immigration Officer with Immigration, Refugees and Citizenship Canada [IRCC] assessed and refused Nicole Samuel's applications for a Pre-Removal Risk Assessment [PRRA] and for permanent residence on humanitarian and compassionate [H&C] grounds. The Officer considered the two applications jointly, acknowledging in the PRRA decision the relevance of the evidence filed in the H&C application, and referring to the PRRA application in the H&C decision.

- [2] However, the Officer's decisions on the two applications are inconsistent. In their PRRA decision, the Officer found there was insufficient evidence to establish that Ms. Samuel would be at risk of persecution because of her sexual orientation in St. Vincent and the Grenadines [St. Vincent], since the documents provided in support of her common-law same-sex partnership had low probative value. However, in their H&C decision, issued on the same day and on the same evidence, the Officer acknowledged both the existence of Ms. Samuel's common-law relationship with her partner, and the safety concerns and alleged risks in St. Vincent owing to her sexuality. The two decisions are thus inherently irreconcilable.
- [3] The H&C decision also suffers from two additional flaws. First, the Officer refused to consider the risks Ms. Samuel would face in St. Vincent, on grounds that an H&C application does not consider risks that are considered in a refugee claim. This approach is inconsistent with binding Supreme Court of Canada jurisprudence. Second, the Officer concluded that there was "little explanation" as to why Ms. Samuel's same-sex partner would be unable to accompany her to St. Vincent. This conclusion is inconsistent with the Officer's own acknowledgement of the safety concerns and risks faced by lesbians in St. Vincent, risks that are supported by the country condition documents the Officer was obliged to consider in assessing Ms. Samuel's PRRA application.
- [4] I therefore conclude that both the PRRA and H&C decisions are unreasonable and must be set aside. These two applications for judicial review, which were heard together, are therefore granted.

II. Issues and Standard of Review [5] The determinative issue on each of these applications for judicial review is whether the decision rendered by the Officer is reasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Mcphee v Canada (Citizenship and Immigration)*, 2023 FC 1371 at para 18; *Cobani v Canada (Citizenship and Immigration)*, 2025 FC 405 at para 7.

- [6] When reviewing a decision on the reasonableness standard, the Court starts from a “posture of judicial restraint,” focusing on the decision made and the justification offered for it, rather than the conclusion the Court would itself have reached: *Mason v Canada* (Citizenship and Immigration), 2023 SCC 21 at para 8, citing *Vavilov* at paras 15, 24. The reviewing court evaluates the decision maker’s justification to assess whether it is based on an internally coherent and rational chain of analysis, and is justified in light of the facts and law that constrain the decision maker: *Mason* at paras 8, 64–66, citing *Vavilov* at paras 84–86, 101–107.

III. Analysis A. Ms. Samuel’s Applications [7] Ms. Samuel arrived in Canada in 2011. She filed a refugee claim in 2012, which was refused in 2013. She filed a first H&C application in 2019, which was refused in 2021. In March 2023, after a warrant against her was executed, she filed a PRRA application pursuant to section 112 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. She then filed a second H&C application pursuant to section 25 of the IRPA in July 2023. It is these two latter applications, each filed without the assistance of counsel, that are at issue on this application for judicial review.

- [8] In her PRRA application, Ms. Samuel raised her fear of returning to St. Vincent as a gay woman, indicating she would be killed or prosecuted if she returned. In a written statement filed with her application, she noted that homosexuality was illegal in St. Vincent and referred to her experiences living in forced denial and fear. She described an early relationship with a woman in St. Vincent; her agreement to marry a man due to family and community pressures; her decision to reveal her sexuality to her family and some friends in 2012; the angry reaction of her parents; and her desire to live without fear.
- [9] In her H&C application, Ms. Samuel relied on her establishment in Canada and the hardship she would face if she returned to St. Vincent. With respect to the former, she referred to her role as a member of the Canadian cricket team, her engagement as a volunteer, and her ongoing relationship with a same-sex partner in Canada. With respect to the latter, she referred to the difficulty in separating from her partner, her lack of connections in St. Vincent, and a feeling of being “at a loss as to what the future holds.” To support her application, she filed some joint banking documents; a lease agreement naming her and her partner; support letters from Cricket Canada and the charitable organization she volunteered with; and pictures of her with her partner. While her application listed a support letter from her partner as one of the documents submitted, it appears this letter was not attached to her application.

B. The Decisions at Issue [10] As is often the case, the same Officer considered Ms. Samuel’s PRRA and H&C applications: see *Kim v Canada* (Minister of Citizenship and Immigration), 2005 FC 437 at para 65. This Court has held that when an officer decides a PRRA and an H&C application in close succession, the decisions are to be based on the totality of the evidence contained in both applications: *Donarus v Canada* (Citizenship and Immigration), 2021 FC 1457 at para 36, and the jurisprudence cited therein; see also *Atamanchuk v Canada* (Citizenship and Immigration), 2022 FC 767 at paras 28–34.

- (1) The PRRA decision [11] In their decision on the PRRA application, the Officer noted that Ms. Samuel's identified risk was based on her sexual orientation as homosexuality is illegal in St. Vincent. The Officer referred to the decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] refusing Ms. Samuel's 2012 refugee claim because it had not been satisfied that she had established her sexual identity. The RPD had also referred to Ms. Samuel's delay in making her refugee claim. I note that while the RPD's decision was clearly before the Officer, it does not appear in the certified tribunal record prepared by IRCC in respect of either of the Officer's decisions, and neither party put it before the Court on these applications. The Court is therefore left only with the excerpts referred to by the Officer in their decision.
- [12] The Officer reviewed Ms. Samuel's written statement filed with her PRRA application, as well as the evidence of her same-sex common-law partnership filed with her H&C application. The Officer expressly acknowledged that Ms. Samuel's H&C submissions were relevant to her PRRA application. However, the Officer found that the documents submitted "only demonstrate the applicant and her partner live together," with "little evidence of a romantic relationship." The Officer noted the absence of the listed letter of support from Ms. Samuel's partner and found that very little detail was provided about the relationship in either the PRRA or the H&C application. The Officer therefore gave the documents in support of her common-law partnership low probative value. Given the lack of supporting evidence, the Officer concluded there were insufficient reasonable grounds to believe that Ms. Samuel would face persecution or risk should she return to St. Vincent. The Officer therefore refused the PRRA application.
- (2) The H&C decision [13] The Officer's H&C decision addresses Ms. Samuel's establishment in Canada, and the risk and adverse country conditions in St. Vincent. On the former issue, the Officer referred to the submitted evidence, Ms. Samuel's long history in Canada, and her efforts to integrate, but noted that "time alone" was not a sufficient factor to grant an H&C application. The Officer accorded the establishment factor some weight.
- [14] The Officer also recognized that a return to St. Vincent would result in physical separation from her current common-law partner. The Officer wrote the following:

I acknowledge the existence of the applicant's common-law relationship with [her partner]. However, I note that the applicant has provided little explanation as to the hardship she may experience from being separated from her common law partner. She provides little explanation as to why her common-law partner would be unable to accompany her to St. Vincent and the Grenadines and provides little explanation as to why they would be unable to reunite outside of Canada. Further to this, the applicant would have access to modern communication technology and would be able to keep in close contact with her common-law partner through various means. I give this factor little weight.

[Emphasis added.]

- [15] On the question of risk and country conditions, the Officer noted that Ms. Samuel raised a fear for her life in St. Vincent because she identifies as a lesbian. The Officer “acknowledge[d] the concerns for the applicant’s safety and alleged risks in St. Vincent and the Grenadines at the hands of her family, community members as well as the state.” However, the Officer noted that subsection 25(1.3) of the IRPA reads as follows:

Non-application of certain factors

Non-application de certains facteurs

25 (1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.

25 (1.3) Le ministre, dans l’étude de la demande faite au titre du paragraphe (1) d’un étranger se trouvant au Canada, ne tient compte d’aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l’article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l’étranger fait face.

- [16] The Officer concluded this section meant they could only consider “hardships that would not be considered under section 96 or 97(1).” They noted that “[t]hrough the lens of hardship,” Ms. Samuel had provided little evidence on what hardships she would face outside of section 96 or 97 of the IRPA. The Officer considered that Ms. Samuel would be returning to St. Vincent “much better situated” than she had left, as she would be returning with unspecified “new skills” and a “furtherance of the English language and Canadian culture.” The Officer referred to Ms. Samuel’s sibling and adult children residing in St. Vincent, noting that she had not given any explanation as to why she could not lean on them for support. The Officer therefore gave this factor only “some weight.”
- [17] In conclusion, the Officer repeated that while Ms. Samuel had been in Canada for 13 years, “time alone” is not a sufficient reason to grant an H&C application. They also noted that she had provided little explanation as to why she would be unable to maintain her common-law relationship. The Officer recognized that Ms. Samuel might be subject to “some hardship” upon return, but that with the support of family, this hardship would only be temporary in nature. The Officer therefore refused the H&C application.

C. The Decisions are Unreasonable (1) The two decisions are inconsistent [18] As recounted above, the Officer effectively rejected Ms. Samuel’s PRRA application on the basis that the evidence before them, including the evidence filed on the H&C application, was insufficient to establish Ms. Samuel’s same-sex relationship and thus her sexual orientation, which was the central ground for her stated fear of return to St. Vincent. However, on the same day, and on the same record, the same Officer in their H&C decision accepted that Ms. Samuel had established her same-sex common-law relationship, acknowledging the existence of that relationship.

- [19] These two conclusions are inherently inconsistent. The Officer effectively decided that the same evidence was both sufficient and insufficient to establish the existence of Ms. Samuel's same-sex common-law relationship.
- [20] To be reasonable, an administrative decision must be based on an "internally coherent and rational chain of analysis": Vavilov at paras 85, 102–105; Mason at paras 8, 64–65. While the Supreme Court in Vavilov and Mason were referring to single decisions by an administrative decision maker, the same principle must hold in respect of simultaneous decisions issued by the same decision maker on the same evidentiary record. In particular, this Court has recognized that inconsistencies in findings between PRRA decisions and H&C decisions will render them unreasonable: Kuka v Canada (Citizenship and Immigration), 2024 FC 209 at para 31.
- [21] Contrary to the Minister's submissions, this inconsistency cannot be explained by the difference in the nature of the PRRA application and the H&C application. While the two applications address different issues, the Officer's contradictory findings were factual and evidentiary ones regarding Ms. Samuel's relationship, not ones going to the nature of the relevant tests in a PRRA application and an H&C application. Nor can I accept the Minister's explanation that the Officer in the H&C decision may have been making an alternative finding. As was the case in Kuka, the Officer gave no indication that they were making an alternative finding: Kuka at para 32. Rather, the Officer acknowledged the existence of the relationship, but gave it little weight as a factor for other reasons.
- [22] The existence of Ms. Samuel's same-sex relationship was a central point of her applications; her PRRA application was based on her sexual orientation, and her H&C application relied on her establishment and hardship with reference to that relationship. The existence of the same-sex relationship was particularly material to the question of risk, as the Officer did not contest Ms. Samuel's assertion that homosexuality was unlawful in St. Vincent.
- [23] This assertion appears to be supported by passages from the National Documentation Package [NDP] for St. Vincent and the Grenadines, published by the IRB, cited in Ms. Samuel's memorandum filed on the judicial review application of the H&C decision. While Ms. Samuel did not refer to these passages in her PRRA application, officers assessing PRRA applications have a duty to consult relevant aspects of the NDP even if they are not produced by the applicant, particularly, but not exclusively, where the applicant is unrepresented: Jama v Canada (Citizenship and Immigration), 2014 FC 668 at paras 17–19, 21; Cali c Canada (Citoyenneté et Immigration), 2025 CF 587 at paras 29–30 [currently only available in French]. In any event, the Officer did not engage in any substantive assessment of the country conditions in respect of homosexuality in St. Vincent, basing their decision solely on the evidence of Ms. Samuel's sexual orientation.
- [24] I therefore conclude that the unexplained inconsistency between the Officer's assessment of the evidence in the H&C application and their assessment of the same evidence in the PRRA application is sufficient to render the PRRA decision unreasonable.

- [25] With respect to the H&C decision, the same concern about internal coherence and intelligibility exists. However, as the factual finding made in the H&C decision—that the same-sex common-law relationship exists—was in Ms. Samuel’s favour, it could be argued that this incoherence should not render the H&C decision unreasonable. I need not decide this question since, for the reasons discussed further below, other aspects of the H&C decision are sufficient to render it unreasonable, even if the internal incoherence between the decisions does not.
- (2) The Officer’s assessment of hardship was unreasonable [26] As noted above, the Officer acknowledged the safety concerns and risks Ms. Samuel faced in St. Vincent at the hands of family, the community, and the state due to her sexual orientation. However, the Officer did not consider those concerns and risks in their assessment of hardship, as they found that subsection 25(1.3) of the IRPA limited them to considering “hardships that would not be considered under section 96 or 97(1)” of the IRPA.
- [27] This approach was unreasonable as it is contrary to binding caselaw regarding H&C applications.
- [28] As set out in subsection 25(1.3) of the IRPA, an officer considering an H&C application may not consider the factors taken into account in the assessment of whether someone is a Convention refugee or a person in need of protection, but they must consider “elements related to the hardship” that affect the applicant. In its leading decision on H&C decisions under section 25 of the IRPA, the Supreme Court confirmed that the facts underlying a refugee claim must nonetheless be considered in assessing an H&C decision, even though the H&C decision does not repeat or duplicate a risk assessment: *Kanthasamy v Canada* (Citizenship and Immigration), 2015 SCC 61 at paras 24–25, 50–51, see also paras 90–92 (per Moldaver J, dissenting). This basic principle of H&C applications has been confirmed and reiterated on multiple occasions in the decade since *Kanthasamy*: *Miyir v Canada* (Citizenship and Immigration), 2018 FC 73 at paras 15–22; *Rannatshe v Canada* (Citizenship and Immigration), 2021 FC 1377 at paras 21–22; *Hatami v Canada* (Citizenship and Immigration), 2024 FC 1854 at para 26; *Contreras Bravo v Canada* (Citizenship and Immigration), 2025 FC 1079 at paras 13–14.
- [29] Here, beyond simple acknowledgement, the Officer gave no consideration whatsoever to the harms, dangers, or discrimination that Ms. Samuel would face in St. Vincent, apparently on the basis that they could also constitute persecution under section 96 or a risk under section 97 of the IRPA. This does not conform to the approach set out in *Kanthasamy* and the jurisprudence that applies it. Nor does it conform with subsection 25(1.3) itself, which required the Officer to consider elements related to the hardship that would affect Ms. Samuel. The fact that country conditions associated with discrimination against homosexuality might arise to the level of persecution or risk does not mean that those country conditions may not also constitute a hardship for the purpose of an H&C application.

- [30] The Minister argues that Ms. Samuel did not put forward on her H&C application country condition evidence regarding the treatment of homosexuality in St. Vincent. The Minister objects to Ms. Samuel now referring to country condition evidence regarding risks and hardships faced by the LGBTQ community, describing it as new evidence that was not before the Officer and is thus not properly before this Court: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20.
- [31] I cannot accept these submissions, for two reasons. First, as indicated above, the Officer was reviewing not only Ms. Samuel's H&C application but also her PRRA application, treating the two jointly. The Officer had an obligation to consult the relevant country condition evidence in assessing the PRRA application, and the two applications were to be based on the totality of the evidence contained in both applications: *Jama* at paras 17–19; *Donarus* at para 36. The relevant country condition evidence from the NDP therefore was, or ought to have been, before the Officer. Second, regardless of whether these extracts from the NDP were before the Officer, the Officer themselves acknowledge the safety concerns and risks Ms. Samuel faced at the hands of family, community members, and the state. Their refusal to consider these concerns was not based on a lack of evidence but on their misunderstanding that they could not do so because they constituted grounds for a section 96 or 97 claim.
- [32] I therefore conclude that the Officer's assessment of hardship was unreasonable as it did not conform with the relevant legal constraints, namely the governing statutory scheme and the binding jurisprudence interpreting that scheme: *Vavilov* at paras 105–112; *Mason* at paras 67, 72. As hardship was a central element raised by Ms. Samuel's H&C application, I conclude that the unreasonableness of the hardship analysis is sufficient to render the decision as a whole unreasonable: *Vavilov* at para 100.
- (3) The Officer's assessment of establishment was unreasonable [33] While the foregoing is sufficient to dispose of these applications, I will also comment on another unreasonable aspect of the Officer's H&C decision. In their assessment of establishment, the Officer recognized that returning to St. Vincent would result in Ms. Samuel being physically separated from her common-law partner. However, the Officer asserted that Ms. Samuel had provided little explanation as to why her partner would be unable to accompany her to St. Vincent.
- [34] This conclusion is irreconcilable with the Officer's own recognition of the fears, safety concerns, and risks faced by Ms. Samuel due to her identifying as a lesbian. The Officer presents no explanation or justification for simultaneously (a) recognizing that lesbians face risks to their safety in St. Vincent, yet (b) concluding there was no explanation why Ms. Samuel's same-sex partner could not accompany her to St. Vincent. This lack of internal coherence is unreasonable: *Vavilov* at paras 85, 102–105; *Mason* at paras 8, 64–65.

[35] Again, this is not an incidental or superficial error: Vavilov at para 100. Ms. Samuel's relationship with her same-sex common-law partner was a central aspect of her H&C application. The Officer invoked the possibility of the couple simply living in St. Vincent—the very place where Ms. Samuel had identified fears arising from her sexual orientation—as a primary basis for giving the separation of the couple little weight in their analysis. While I need not decide whether this error alone would have been sufficient to render the entire decision unreasonable, at the very least, it confirms the conclusion above that the H&C decision is unreasonable and must be set aside.

IV. Conclusion [36] As the Officer's decisions in respect of both Ms. Samuel's PRRA application and her H&C application are unreasonable, both decisions must be set aside. Both applications for judicial review are therefore granted and each of Ms. Samuel's applications is remitted for reconsideration by a different officer. For clarity, the same officer may consider both applications, provided that they are not the Officer who previously assessed the applications.

[37] Finally, in the interests of consistency and in accordance with subsection 4(1) of the IRPA and subsection 5(2) of the Federal Courts Citizenship, Immigration and Refugee Protection Rules, SOR/93-22, the style of cause in each of Court files IMM-8573-24 and IMM-8750-24 is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-8573-24 AND IMM-8750-24

THIS COURT'S JUDGMENT is that

The application for judicial review in each of Court files IMM-8573-24 and IMM-8750-24 is granted.

The decision of a Senior Immigration Officer dated March 12, 2024, refusing the applicant's application for a Pre-Removal Risk Assessment is quashed and the applicant's application is remitted for reconsideration by a different officer.

The decision of the same Senior Immigration Officer dated March 12, 2024, refusing the applicant's application for permanent residence on humanitarian and compassionate grounds is quashed and the applicant's application is remitted for reconsideration by a different officer.

The style of cause in each of Court files IMM-8573-24 and IMM-8750-24 is amended to name the respondent as the Minister of Citizenship and Immigration.

A copy of this Judgment and Reasons is to be placed in each Court file.

"Nicholas McHaffie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

IMM-8573-24

STYLE OF CAUSE:

NICOLE NOELLE SAMUEL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

AND DOCKET:

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STYLE OF CAUSE:

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MCHAFFIE J.

DATED:

December 15, 2025

APPEARANCES:

Richard Odeleye

For The Applicant

Margherita Braccio

For The Respondent

SOLICITORS OF RECORD:

Rich Law Group

North York, Ontario

For The Applicant

Attorney General of Canada

Toronto, Ontario

For The Respondent

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