

Federal Court



Cour fédérale

**Date: 20221005**

**Docket: IMM-3105-20**

**Citation: 2022 FC 1378**

**Ottawa, Ontario, October 5, 2022**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**ANDA TRAMOSLJANIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP &  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Anda Tramosljanin (“Ms. Tramosljanin”), is 67 years old. She is a citizen of Bosnia and Herzegovina. Ms. Tramosljanin’s only immediate family member is her son. He lives in Canada with his wife and their 11-year-old child. Ms. Tramosljanin has lived in her family’s home in Canada continuously for approximately seven years, and for the majority of the five years preceding that period.

[2] Ms. Tramosljanin filed an application for permanent residence based on humanitarian and compassionate grounds (“H & C Application”). She asked to remain in Canada permanently primarily on the basis of the hardship she would face in returning to Bosnia and Herzegovina, including her separation from her only immediate family and the impact of separation on the best interests of her grandson. A Senior Immigration Officer at Immigration, Refugees and Citizenship Canada [IRCC] (“the Officer”) rejected the H & C Application. Ms. Tramosljanin challenges the refusal in this judicial review.

[3] Ms. Tramosljanin’s judicial review raises a number of issues. She argues that the Officer failed to globally assess the factors raised in her application and instead minimized each factor, considering each in a silo. She also argues that the Officer lacked compassion in their consideration of the hardship she would face in Bosnia and Herzegovina and the best interests of her grandson. Lastly, Ms. Tramosljanin argues that the Officer’s evaluation of the availability of the parental sponsorship stream was flawed.

[4] I find the determinative issues are the Officer’s evaluation of the hardship Ms. Tramosljanin would face in Bosnia and Herzegovina and the availability of the parental sponsorship stream. On both these issues, I find that the Officer ignored central submissions and evidence and relied on speculation that ran counter to the evidence in the H & C Application. Having identified reviewable error, I find it unnecessary to address the Applicant’s arguments on the best interests of the child, which should not be taken as approval of the Officer’s assessment of that issue.

[5] Based on the reasons set out below, I grant the judicial review.

## II. Background

[6] Ms. Tramosljanin is a citizen of Bosnia and Herzegovina. She has no immediate family in her country of citizenship. She is her parents' only child. Both her parents have now passed away; her mother many years ago and her father more recently. Ms. Tramosljanin's only child, her son Marko, left Bosnia and Herzegovina for Canada in approximately 2003. At that time, both Ms. Tramosljanin's husband and father were living in Bosnia and Herzegovina. In 2005, Ms. Tramosljanin's husband died and approximately two years later, after a lengthy illness, her father died.

[7] For the vast majority of the last 12 years, since June 2010, Ms. Tramosljanin has lived in Canada with her son, daughter-in-law, and grandson. She last entered Canada on December 15, 2015 and has continued to renew her visitor's status and live with her family since then.

[8] Ms. Tramosljanin filed an H & C Application in September 2018. The Officer refused her application on June 30, 2020.

## III. Issues and Standard of Review

[9] The determinative issues are the Officer's evaluation of: i) the hardship of returning to Bosnia and Herzegovina; and ii) the availability of the parental sponsorship stream.

[10] In reviewing the Officer's decision, I am applying a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. None of the exceptions to the presumption of a reasonableness standard of review apply in this case.

[11] In *Vavilov*, the Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the decision maker's reasons are the starting point of the analysis (*Vavilov* at paras 13, 296). A decision maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103).

[12] *Vavilov* described a reasonable decision as "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). Administrative decision-makers must ensure that the exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

#### IV. Analysis

##### A. *H & C Applications*

[13] Foreign nationals applying for permanent residence in Canada can ask the Minister for discretionary relief from requirements in the *Immigration and Refugee Protection Act*, SC 2001,

c 27 [IRPA] because of humanitarian and compassionate factors, including the best interests of any child directly affected (IRPA, s 25(1)). The Supreme Court of Canada in *Kanhasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanhasamy*], citing *Chirwa v Canada (Minister of Manpower and Immigration)* (1970), 4 IAC 338 (Immigration Appeal Board), confirmed that the purpose of this humanitarian and compassionate discretion is “to offer equitable relief in circumstances that ‘would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another’” (*Kanhasamy* at para 21).

[14] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case,” there is no limited set of factors that warrant relief (*Kanhasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them” (*Kanhasamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 SCC 699 at paras 74-75).

#### B. *Lack of Social Support in Bosnia and Herzegovina*

[15] A key issue raised by the Applicant was the lack of social support for her in Bosnia and Herzegovina. Ms. Tramosljanin explained that she no longer has family living there. She is her parents’ only child and her only child lives in Canada with his family. The Officer gave this factor “weight” yet went on to note that Ms. Tramosljanin has lived most of her life in Bosnia and Herzegovina and found “on a balance of probabilities that [she] likely continues to have important and viable ties in Bosnia as well (e.g. extended family, friends, former colleagues, members of religious community etc).”

[16] The Officer did not consider in this analysis that Ms. Tramosljanin has spent most of the last decade living outside of her country of citizenship. There is no evidence before the Officer that Ms. Tramosljanin continues to have “important and viable ties in Bosnia.” This finding is based on the assumption that if you lived most of your life in a country you must have “important and viable ties” regardless of your personal circumstances. Ms. Tramosljanin’s personal circumstances included the following: both she and her son affirmed that she had no one left in her country of citizenship; except for her son in Canada, all her immediate family had passed away; she hadn’t worked for many years; she is a senior; for a number of years prior to coming to Canada, she cared for her ill husband, and then her ill father; and for the last decade, she spent the vast majority of her time living in Canada. The Officer discounted one of the primary reasons that Ms. Tramosljanin is seeking relief based on an unsupported assumption. Given the evidence before the Officer, this is an unreasonable finding.

C. *Possibility of Parental Sponsorship*

[17] The Applicant’s counsel made submissions to the Officer on the limited and uncertain nature of parental sponsorships, noting the use of caps and a lottery system for selection. The Applicant’s counsel explained that there was no guarantee that the family’s sponsorship would even be selected for processing in a particular year because of the caps placed on the number of applications selected for processing per year. The Applicant therefore could not simply wait until the parental sponsorship application is inevitably processed; rather, her application may never be selected for processing. Counsel also noted that even when selected there are processing delays and the average processing time is approximately 20-26 months.

[18] At several points, the Officer relied on the Applicant's ability to apply through the parental sponsorship stream and wait for processing "in the normal fashion." The Officer's decision does not acknowledge counsel's submission that, though the family is financially eligible for the parental sponsorship program, its availability may nonetheless be theoretical because of the caps on applications processed in each year. Given the Officer's heavy reliance on the availability of processing through the parental sponsorship stream, the Officer needed to have addressed the Applicant's submissions regarding the limitations and uncertainty of this stream (*Vavilov* at paras 127-128).

V. Conclusion

[19] For the above reasons, the application for judicial review is granted and the matter is sent back to be re-determined by a different officer. Neither party proposed a serious question of general importance for certification and I agree that none arises.

**JUDGMENT IN IMM-3105-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted;
2. The decision dated June 30, 2020 is set aside and the matter is sent back for redetermination by a different officer; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3105-20

**STYLE OF CAUSE:** ANDA TRAMOSLJANIN v THE MINISTER  
CITIZENSHIP & IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 15, 2022

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** OCTOBER 5, 2022

**APPEARANCES:**

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