

Federal Court



Cour fédérale

**Date: 20231019**

**Docket: IMM-3777-22**

**Citation: 2023 FC 1391**

**Ottawa, Ontario, October 19, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**RUKHSANA FAROOQ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Rukhsana Farooq, is a 75-year-old citizen of Pakistan. All of her immediate family lives in Canada and she has no remaining close family in Pakistan. After approximately two and a half years living in Canada as a visitor with her daughter, Ms. Farooq applied for permanent residence on humanitarian and compassionate grounds (“H & C

Application”). Her application was based on her establishment in Canada, the hardship she would face on return to Pakistan, and the best interests of her two Canadian grandchildren.

[2] An officer at Immigration, Refugees and Citizenship Canada [IRCC] refused Ms. Farooq’s H & C Application. Ms. Farooq challenges the reasonableness of the Officer’s decision in this judicial review. She argues that the Officer erred in several ways, including by misapprehending her evidence and submissions, and by unreasonably requiring that she establish the hardship she would face was “exceptional”.

[3] Ms. Farooq raised a number of issues on judicial review. It is not necessary for me to address all of them. The Officer unduly focused the assessment on whether Ms. Farooq would be able to hire a support person in Pakistan to assist with administering her medicines. This is too narrow a view of a relevant factor. The key issue raised by Ms. Farooq and her family in Canada was their concern with Ms. Farooq living alone in Pakistan, at her advanced age with medical conditions, without any familial support. Further, the Officer placed too heavy a reliance on alternative avenues that are either not available to the family at the moment or only offer possible, insecure temporary relief.

[4] Based on the reasons below, I grant the judicial review.

## II. Issue and Overview

[5] The determinative issue on this judicial review relates to the Officer’s evaluation of the humanitarian and compassionate factors raised in the H & C Application. The parties agree, as

do I, that I should review the Officer's decision on a reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

### III. Analysis

[6] Foreign nationals applying for permanent residence in Canada can ask the Minister to exercise Ministerial discretion to relieve them 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 (Citizenship and Immigration)*, 2015 SCC 61 [Kanhasamy], citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, [1970] IABD No 1, 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).

[7] 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 warrants 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 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74-75).

[8] In my view, the Officer did not substantively consider and weigh the hardship factor raised by Ms. Farooq. The key impetus for Ms. Farooq's H & C Application was the sudden death of her husband in January 2019. Ms. Farooq's only two children, only two grandchildren, all seven of her siblings, and her cousins live in Canada. She has no remaining close family members in Pakistan. The central concern raised was Ms. Farooq living on her own in Pakistan, without family, given her age and medical conditions.

[9] While noting that it would "be easier for all involved emotionally" for the family to be able to stay together, the Officer ultimately concluded that "insufficient evidence has been provided to show that the applicant would not be able to manage her conditions in Pakistan or that she would be unable to overcome any hardships that may occur if she were to return to Pakistan."

[10] Ms. Farooq and her family had raised her medical conditions (weak eyesight, high blood pressure, balance issues and diabetes) as a factor of her hardship in returning to Pakistan on her own. The family explained that Ms. Farooq had relied on her husband to give her daily insulin shots and check her glucose levels. The Officer noted that "almost a year's time has elapsed from the time of the applicant's husband's death in January 2019 to the time the applicant came to Canada in Oct 2019 and little evidence has been provided to show that the applicant could not manage on her own."

[11] Ms. Farooq takes issue with this statement, arguing it is factually incorrect. She argues that the evidence before the Officer was that she could not manage on her own during that nine-month period. During this period, Ms. Farooq's daughter first came and stayed with her for a few weeks and then her daughter made an arrangement with Ms. Farooq's neighbour to bring Ms. Farooq her meals and do the daily injections and glucose checks. While I agree with Ms. Farooq that the Officer's statement referenced above could have been worded better, considering the rest of the reasons, I do not find the Officer made a factual error or ignored this evidence. The Officer went on to note the very facts that Ms. Farooq says were ignored by this statement, namely that during this nine-month period, her daughter had to stay with Ms. Farooq, and then that a neighbour was paid to do medical checks. I do not find the Officer misconstrued this evidence.

[12] Ms. Farooq and her daughter explained in their evidence that the arrangement with Ms. Farooq's neighbour could not be a long-term solution. The Officer accepted this but then noted that the family had not provided any evidence that another solution was not possible—for example, hiring a professional nurse or personal support worker. It is true that there is no evidence of this in the record. This then becomes the Officer's focus on the hardship analysis; the question became whether Ms. Farooq has provided sufficient evidence to show that she “would not be able to manage her conditions in Pakistan”. In my view, this is an unduly narrow focus.

[13] The core hardship raised by Ms. Farooq and her family was the concern for Ms. Farooq's well-being, living on her own, without any family. While a personal support worker or nurse may be able to manage the medications, this does not address the family's real concern—that she

would be living alone, without any family member. The hardship Ms. Farooq is asking for relief from is the impact of separation from any family at this stage of her life. In my view, this aspect of her hardship was not substantively considered and weighed by the Officer.

[14] The Officer's heavy reliance on perceived alternative applications also affected their consideration of the impact of family separation. At two parts of the Officer's assessment, when considering the factor of family ties under establishment and again under hardship, the Officer suggests that Ms. Farooq can rely on alternative ways to remain with her family in Canada. In effect, the Officer relies on these alternatives to diminish the strength of the family separation factor in the overall assessment. In my view, the Officer's reliance on these alternatives was flawed. The heavy reliance on the existence of these alternatives in the Officer's overall weighing of the relevant factors was unreasonable.

[15] The Officer notes that Ms. Farooq and her daughter had applied under the parent-grandparent program but were not selected to apply through the lottery system. Further, the evidence before the Officer was that Ms. Farooq was denied a parent-grandparent super-visa. The Officer suggests Ms. Farooq's ten-year multiple entry temporary resident visa and two past successful applications for extension of her visitor records in Canada serve as an indication that she can continue to apply to remain in Canada on a temporary basis. The Officer notes that Ms. Farooq currently has a visitor visa record extension application in process and could apply again.

[16] The Officer's only suggested alternative to permanent residence is through the parent sponsorship program. This is currently not available to Ms. Farooq or her family and it is unclear

whether it will be or when. The other suggestion that she can continue to apply for extensions of her visitor visa record is not a substitute for permanent residence. The nature of temporary status is insecure; the outcome of an application is certainly not in the Officer's control or Ms. Farooq's control. In these circumstances, the Officer's heavy reliance on alternatives that are currently not available to her or temporary in nature was unreasonable (See *Polinovskaia v Canada (Citizenship and Immigration)*, 2022 FC 696 at paras 28 and 29); *Akinkugbe v Canada (Citizenship and Immigration)*, 2022 FC 819 at paras 12-15; *Antoun v Canada (Citizenship and Immigration)*, 2022 FC 612 at para 13; *Bernabe v Canada (Citizenship and Immigration)*, 2022 FC 295 at paras 4 and 33 (citing *Rocha v Canada (Citizenship and Immigration)*, 2022 FC 84 at para 31); *Greene v Canada (Citizenship and Immigration)*, 2014 FC 18 at paras 9-10).

#### IV. Certified Question

[17] The Federal Court of Appeal has confirmed that in order to be certified, a question must be a serious question that (a) is dispositive of the appeal; (b) transcends the interests of the parties; and (c) raises an issue of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46).

[18] Ms. Farooq proposed the following question for certification:

Is it incorrect or unreasonable to require, as part of an H&C analysis that an applicant establish that the circumstances of hardship that she or he will face on removal are exceptional and are not those faced by others similarly situated?

[19] I have not decided the case on the issue raised by the proposed certified question. I agree with the Respondent that the Officer's assessment did not turn on whether Ms. Farooq's

circumstances were exceptional. This was not the basis for the Officer's determination. The Officer's use of the term "exceptional" once in the reasons was not as a threshold for which to judge Ms. Farooq's circumstances. The proposed question is not dispositive of the appeal. I decline to certify.



**JUDGMENT in IMM-3777-22**

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

1. The application for judicial review is allowed;
2. The decision dated April 8, 2022 is set aside and the matter is sent back to a different officer to be redetermined; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

---

Judge

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

**DOCKET:** IMM-3777-22

**STYLE OF CAUSE:** RUKHSANA FAROOQ v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 19, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** OCTOBER 19, 2023

**APPEARANCES:**

Micheal Crane FOR THE APPLICANT

Pavel Filatov FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Micheal Crane FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario