

Federal Court



Cour fédérale

Date: 20240205

Docket: IMM-706-22

Citation: 2024 FC 184

Calgary, Alberta, February 5, 2024

PRESENT: Madam Justice Go

BETWEEN:

JULIAN HERRMANN PAWLACZYK

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Julian Herrmann Pawlaczyk [Applicant] is a 29-year-old American citizen. He initially arrived in Canada on a study permit, issued August 30, 2016, to attend a visual arts program at the University of Windsor. The Applicant gave up his study due to changes in his family's financial circumstances and his study permit expired on October 1, 2020. The Applicant lives with his mother and stepfather and helps them operate an art supply store in Windsor. The

Applicant also teaches arts at the art supply store while being involved in the city's arts community and the broader community through volunteer work.

[2] The Applicant seeks a judicial review of a decision by a Senior Immigration Officer [Officer] denying his application for permanent residence on humanitarian and compassionate [H&C] grounds [Decision]. The Officer concluded the requested exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 was not warranted.

[3] For the reasons set out below, I grant the application as I find the Decision unreasonable.

II. Issues and Standard of Review

[4] The Applicant challenges both the reasonableness of the Decision and procedural fairness, but only addresses the issue of reasonableness in his submissions. The sole issue before me is thus whether the Decision was reasonable.

[5] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[6] A reasonable decision “is 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). The onus is on the Applicant to demonstrate that the decision is unreasonable (Vavilov at para 100). To set aside a decision on this basis, “the reviewing court must be satisfied that there are 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.

III. Analysis

[7] While the Applicant raises several arguments, I find the determinative issue was the Officer’s unreasonable assessment of the Applicant’s establishment.

[8] In his H&C application, the Applicant provided a dozen of letters of support, including one from the Arts & Cultural Alliance of Windsor Essex County, to demonstrate his level of establishment, most notably his volunteerism and community engagement. In one letter, a community member stated that the city of Windsor is “lucky” to have the Applicant to help grow its culture. The community member also noted the Applicant has “immersed himself into the arts community and has continued to support it,” and that as an “extremely talented artist himself,” the Applicant would continue to contribute positively towards the community. Several other letters similarly described the Applicant’s demonstrated connections with and contributions to, the city of Windsor’s arts community by working at the only art supply store in the city, and by teaching arts classes and selling his own artwork. Others lauded the Applicant as a “brilliant” and “respected” artist, and praised him for serving as “a role model for budding artists.” Still others commented on his work at the art supply store and described his involvement “has led to the rejuvenation of a core neighbourhood within the city of Windsor.”

[9] In the Decision, the Officer began their analysis on establishment by focusing on the Applicant’s initial entrance as a student and his legal authorization to work. The Officer noted

the Applicant “has been active in his church and committed time to volunteer actively within his community.” The Officer then ended his analysis with the following conclusion:

It is noted that the applicant was permitted to work and study while in Canada. Against this backdrop, it would not be considered unusual for some degree of establishment to take place during this time. I commend the applicant’s positive steps in establishing himself in Canada. The applicant has integrated into the community over an extended period of time by undertaking studies, finding employment, forming social networks and performing volunteerism. However, it is noted that these are not uncharacteristic activities undertaken by newcomers to a country. Rather, the applicant has demonstrated a typical level of establishment for a person in similar circumstances.

[Emphasis added]

[10] The Applicant argues his demonstrated establishment extends “beyond” the typical level of establishment for someone in Canada for over six years, in light of the evidence he submitted with his H&C application. The Respondent submits, in contrast, that the Officer reasonably considered the Applicant’s evidence of establishment and gave it a positive determination, but that it was open for the Officer to determine the Applicant’s activities were not uncommon for persons similarly new to Canada.

[11] As a starting point, I note the Officer never once mentioned the Applicant’s involvement in Windsor’s arts community despite this being the main crux of the Applicant’s submission on establishment. The Respondent submits that the Applicant’s involvement in the arts community was captured in the Officer’s findings with regard to the Applicant’s volunteerism, and that not being specific about the nature of the volunteer activities does not mean the Officer’s reasons were inadequate. While acknowledging that arts is important to the Applicant, the Respondent

submits these are activities that people engage with in Canada, and the Officer's finding that such establishment did not warrant an H&C relief was reasonable.

[12] Despite counsel's able submission, I disagree with the Respondent. The Applicant's involvement in the arts community was a focal point of his H&C submission. As the Respondent acknowledged, arts is important to the Applicant. The bulk of support letters spoke to the Applicant's accomplishment as an artist and his contributions to Windsor's arts community, yet none of the letters was mentioned in the Decision, as the Applicant points out.

[13] As *Vavilov* teaches us at para 127: "The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties ... The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties."

[14] Here, the Applicant's involvement and contributions to the arts community was one of the two central issues and concerns he raised in his H&C application, the other being his family tie in Canada. In contrast to the Officer's analysis of the family tie that reflected the evidence submitted by the Applicant, the Officer did not engage with the evidence about the Applicant's contribution to the arts community in Windsor. The Decision was thus not responsive to one of the Applicant's two core submissions.

[15] Further, contrary to the Respondent's submission, the Officer did not clarify what, if any weight, they assigned to the Applicant's establishment, other than noting it was at a "typical level" for someone in similar circumstances.

[16] Finally, as this Court noted in *Padernal v Canada (Citizenship and Immigration)*, 2022 FC 852 at paras 26-27: "[t]he problem with the Officer's finding is that it does not articulate, in any way, what the 'expected' level of establishment was for the Applicant" and "[i]t is simply not possible to understand how or why the Applicant fell short of an unspecified standard." In this case, the Officer did not specify the expected level of establishment for someone like the Applicant, nor did the Officer explain why his accomplishment as a respected artist and his involvement in Windsor's arts and cultural community was "typical."

[17] I agree with the Respondent that it is not the role of the Court to reweigh the evidence. However, in view of an absence of a proper analysis by the Officer of the core evidence and issue before them, I find the Decision fell short of the hallmarks of intelligibility, transparency and justification.

IV. Conclusion

[18] The application for judicial review is granted.

[19] There is no question for certification.

JUDGMENT in IMM-706-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-706-22

STYLE OF CAUSE: JULIAN HERRMANN PAWLACZYK v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 9, 2024

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APPEARANCES:

Mary Jane Campigotto FOR THE APPLICANT

Amy King FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mary Jane Campigotto FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario