

Federal Court



Cour fédérale

Date: 20240822

Docket: IMM-13072-23

Citation: 2024 FC 1310

Toronto, Ontario, August 22, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

**RAMZAN GAFOOR
SAVITRI GAFOOR**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application for judicial review challenges a decision refusing the Applicants' humanitarian and compassionate ("H&C") application. They based their H&C application on a number of factors, including their establishment in Canada, the mental health condition of Ms. Savitri (the "Associate Applicant") and the best interests of their Canadian child, Alana.

[2] For the reasons that follow, I find the decision's flawed assessment of Alana's best interests renders the decision unreasonable. I grant this application for judicial review.

II. Background

[3] The Applicants and their son Amir were granted refugee status in Canada in 2004 and became permanent residents in 2006. However, they lost their permanent resident status in 2019 when their refugee claims were ceased pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”) based on their repeated returns to Guyana.

[4] Prior to their removal in July 2019, they filed H&C applications pursuant to subsection 25(1) of the *IRPA*. Alana was 14 years old at the time of the application and was left behind in the care of family in Canada. Amir’s H&C application was approved and he is currently a Canadian permanent resident. The Applicants’ H&C application was refused on August 28, 2020, but that decision was returned for redetermination. The redetermination resulted in a second refusal of the application on September 29, 2023. The second refusal is the decision currently subject to judicial review in this application.

III. Issue

[5] The issue in this application is whether the decision under review is reasonable pursuant to the test described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”).

IV. Analysis

[6] The Applicants challenge the decision’s findings related to the Associate Applicant’s mental health, the Applicants’ establishment in Canada, and the best interests of their Canadian child, Alana.

[7] I agree that the decision is unreasonable regarding the best interests of Alana. It is therefore unnecessary for me to deal with the other challenged findings in the decision.

[8] The assessment of Alana's best interests is indecipherable. The decision reviews evidence submitted to illustrate the impact of the Applicants' separation from Alana on her best interests and notes that the factors support reunification of Alana with her parents in Canada. These factors are given "positive weight".

[9] The decision then identifies "mitigating" factors on her best interests, such as Alana's visits with her parents in Guyana and her parents' financial support of her in Canada.

[10] The decision concludes on this issue with the finding that "the impact of past and current separation from her parents has on her best interests weighs in favour of approval of this application." The decision then states that the above "mitigating" factors could not justify approval of the H&C claim on Alana's best interests alone.

[11] Counsel for the Applicant and the Respondent could not assist in identifying any logic to this basis of the decision. The decision is unintelligible and clearly unreasonable (*Vavilov* at para 99). It will be set aside and returned for redetermination before a different decision maker.

JUDGMENT in IMM-13072-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the decision on the Applicants' humanitarian and compassionate application for permanent residence is quashed.
2. The matter will be re-determined by a different officer.
3. There is no question for certification.

"Michael Battista"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13072-23

STYLE OF CAUSE: RAMZAN GAFOOR ET AL v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 21, 2024

JUDGMENT AND REASONS: BATTISTA J.

DATED: AUGUST 22, 2024

APPEARANCES:

Richard Wazana FOR THE APPLICANTS

Michael Butterfield FOR THE RESPONDENT

SOLICITORS OF RECORD:

Richard Wazana FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario