Federal Court  Cour fédérale

**Date: 20221011**

**Docket: IMM-2053-21**

**Citation: 2022 FC 1396**

**Halifax, Nova Scotia, October 11, 2022**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**HEINRICH FRIESEN LETKEMAN**
**AGANETHA JANZEN FRIESEN**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] Mr. Heinrich Friesen Letkeman and Ms. Aganetha Janzen Friesen, [together the Applicants] applied for permanent residence on humanitarian and compassionate grounds [H&C application] pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Applicants seek judicial review of the decision dated March 17, 2021 of a Senior

Immigration Officer [Officer] to refuse the H&C application [the Decision], and the Officer's decision to refuse the Applicants' alternative request for a Temporary Resident Permit [TRP].

[2] The Applicants, who are in their early 20s, are citizens of Mexico and followers of the Mennonite faith. They both grew up in an impoverished rural Old Colony Mennonite community in Campeche, Mexico.

[3] The Applicants married in 2017 and arranged to buy 10 acres of land sometime after but were worried about not being able to pay off their loan. In January 2018, they came to Canada with assistance from Mr. Letkeman's brother. After his arrival in Canada, Mr. Letkeman at first worked as an agricultural worker and later switched to construction work. Other than a visit to Mexico between December 2018 and January 2019, the Applicants have remained in Canada since they arrived. The Applicants have two minor children who are Canadian citizens by birth. They submitted their H&C application in April 2020.

[4] In refusing the H&C application, the Officer gave significant weight to the Applicants' disregard of Canada's immigration laws by overstaying their visas, diminished weight to the Applicants' financial establishment and modest weight to their social establishment. With respect to the Best Interests of the Child [BIOC], the Officer found the Applicants have not persuasively established that the children's education, health or well-being would be adversely impacted were they to relocate to Mexico with their parents. Finally, with respect to adverse country conditions, the Officer found that the Applicants provided insufficient evidence why their family in Mexico would not be able to accommodate or support them, and that there is no hardship associated with

crime and violence in Mexico given the absence of evidence that these generalized country conditions would personally and directly affected the Applicants.

[5] I find the Decision with respect to the H&C application to be unreasonable. I also find the Officer erred by refusing the Applicants' TRP request. I therefore grant the application.

## II. Issues and Standard of Review

[6] The Applicants raise the following issues:

a) The Officer's assessment of hardship relies on an error of law and ignores contradictory evidence;

b) The Officer engaged in a flawed analysis of the best interests of the Applicants' children;

c) The Officer's findings regarding the Applicants' establishment in Canada were made without regard for the evidence and were not rational;

d) The Officer made veiled credibility findings;

e) The Officer limited their assessment to a hardship lens, applying the wrong legal test; and

f) The Officer's decision regarding the Applicants' application for a TRP was unreasonable.

[7] 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*].

[8] The Applicants submit the issue of veiled credibility findings is a procedural fairness issue reviewed for correctness (*Ruszo v Canada (Citizenship and Immigration)*, 2017 FC 787 at para 16).

[9] 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. 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

[10] I will focus my analysis on the following issues:

a) The Officer's assessment of hardship;

b) The Officer's BIOC analysis; and

c) The Officer's decision not to grant TRP.

### A. *Did the Officer err in their hardship analysis by relying on an error of law and by ignoring evidence?*

[11] The Applicants submitted in their H&C application that crime rates in Mexico are climbing and criminal organizations and drug cartels are active in their area. In his affidavit to the Officer, Mr. Letkeman indicated he was concerned for his family's safety as Mennonite communities had become "easy targets" because they are known to be pacifists without weapons. Mr. Letkeman swore that he had been held at gunpoint in 2015 by someone he believes was trying to steal a piece of equipment and he called the police who intervened on his behalf. The Officer assigned this factor modest weight, finding:

> I accept that crime rates in Mexico may differ from Canada. However, I note that crime is a condition that affects the population

> of Mexico generally and indiscriminately. While the principal applicant may have been a victim of violence in an incident that occurred six years ago, I find that the applicant has provided little evidence that they are likely to be personally and directly affected by crime were they to return to Mexico in order to apply for permanent residence from abroad in the normal fashion. Without evidence that the generalized country conditions will personally and directly affect the applicants, I cannot find that there is an associated hardship, otherwise every applicant from a country experiencing problems would be compelled to be accepted, regardless of a relationship between these factors and the client's circumstances.
>
> [Emphasis added]

[12] The Applicants submit the Officer erred by requiring them to demonstrate they would be personally and directly affected by crime and other adverse country conditions in Mexico (*Gutierrez v Canada (Citizenship and Immigration)*, 2018 FC 906 at paras 6-8), since neither the jurisprudence nor the H&C Operational Manual [Manual] require proof to that effect. While the Manual is not binding, the Applicants submit it contains the Minister's implied interpretation of s. 25(1) and has helped the Court gauge the reasonableness of an H&C decision: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 58, 60, 84.

[13] The Applicants further submit they were only required to show a *link* between their personal circumstances and the adverse country conditions evidence, citing *Paramanayagam v Canada (Citizenship and Immigration)*, 2015 FC 1417 at paragraph 19. Associated hardship, the Applicant argues, can be inferred from the evidence: *Kanakasingam v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 457 at para 20 [*Kanakasingam*].

[14] While agreeing that H&C applicants may raise evidence of hardship that is faced by others in the country of removal, the Respondent submits the Applicants bear the burden of

establishing the link between their personal circumstances and the adverse country conditions. The Respondent cites *Gonzalez v Canada (Citizenship and Immigration)*, 2015 FC 382 at paras 55-56 [*Gonzalez*]; *Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6 at para 1 [*Lalane*]; and *Piard v Canada (Citizenship and Immigration)*, 2013 FC 170 at para 19 [*Piard*]. The Officer reviewed the evidence submitted by the Applicants, but without evidence that the Applicants are likely to be personally and directly affected by crime, the Respondent argues the Officer reasonably found they could not conclude there is a relationship between the alleged hardship and the Applicants' personal circumstances, including their religious denomination.

[15] I accept the Applicants' submissions for the following reasons.

[16] The Supreme Court of Canada found in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [*Kanthasamy*] at para 53, that evidence of discrimination and targeting can be inferred by an applicant showing they are a member of a group that is discriminated against. Similarly, in *Kanakasingam* this Court confirmed an applicant need not present direct evidence that they would face targeted risk, and that it can be inferred from circumstantial evidence indicating that they are a member of a group being discriminated against.

[17] In this case, the Applicants provided evidence regarding cartel violence in Mexico, as well as evidence specifically related to violence against Mennonites, including a National Post article citing worsening poverty and violent drug cartels operating in the area populated by Mennonites.

[18] Viewed against the evidence submitted, the Officer's findings erred in two respects. First, the Officer labelled the issue of crime and violence as part of the "general country conditions" that "affects the population of Mexico generally and indiscriminately", without addressing the evidence regarding the particular vulnerability faced by Mennonites who are perceived as easy targets. Second, the Officer erred by requiring the Applicants to demonstrate that they would be "personally and directly affected" by these conditions, when such a link can be inferred from the evidence indicating they are members of a group that is being targeted.

[19] The Officer's errors of overlooking the relevant evidence and failing to grapple with the Applicants' status as Mennonites and its impact on the hardship they would face in Mexico render the Decision unreasonable: *Nwaeme v Canada (Citizenship and Immigration)*, 2017 FC 705 at paras 69-70).

[20] As to the cases cited by the Respondent, I note that they were all decided before *Kanthasamy*. I also agree with the Applicants that the error the Court found in *Gonzalez* (which also considered *Lalane* and *Piard*) was that the Officer ignored evidence that *could have* established a link between the applicant's personal circumstances and the alleged risks (*Gonzalez* at paras 59-62, 67-68). *Gonzalez*, thus lends support to the Applicants' submission.

B. *Did the Officer engage in a flawed BIOC analysis?*

[21] The Applicant raises several flaws in the Officer's BIOC analysis, of which I find two to be most persuasive: First, the Officer found the Applicants did not advance evidence impugning the capacity of Mexico's education infrastructure, without regard to the objective evidence

before the Officer and cited in the Applicants' submissions. Second, the Officer erroneously concluded that the Applicants did not advance evidence that they would be unable to secure food and housing for their children, ignoring both the Applicants' sworn affidavit evidence, as well as the objective evidence they submitted regarding the economic conditions of Mennonites in Mexico.

[22] On the children's access to education, the Officer concluded:

> The clients indicate that they wish to enrol their children in a Mennonite school in Canada upon reaching the appropriate age, indicating that those in Canada "go all the way up to grade 12, unlike in our Mennonite colony in Mexico". The clients do not advance documentation which persuasively impugns the capacity of the educational infrastructure – either in the specific context of schools in Mennonite colonies, or in the broader context of Mexico's state education system – to effectively educate children.
>
> [Emphasis added]

[23] Contrary to the Officer's findings that the Applicant failed to advance documentation to impugn the capacity of the educational infrastructure, the Applicants did exactly that, by submitting an article titled "Education in Mexico." The article describes the inadequate funding for Mexico's educational system, particularly in marginalized rural regions. The article concludes by calling Mexico "the worst-performing country among all OECD member states."

[24] The Officer made no mention of this article in the Decision, yet faulted the Applicants for not submitting the necessary documentation in support of their H&C request. In so doing, the Officer erred by making a finding that was contradicted by the evidence before them, which undermined the intelligibility of the Decision.

[25] With respect to the issue of access to food and housing, the Officer found as follows:

> The clients advance in their affidavits that returning to Mexico would be "detrimental to [their] children's personal development". They indicate that the quality of food and housing in Canada "is such better than what is available in Mexico. The clients do not persuasively evidence a basis under which they would not be able to secure adequate food and shelter in Mexico were they to be required to exit Canada and apply for permanent residence from abroad in the normal fashion.

[26] Elsewhere in the Decision the Officer also found that the Applicants did not advance "a persuasive explanation as to why they would rely on family for housing."

[27] These findings were contradicted by the Applicants' sworn affidavit evidence, as well as the objective evidence they submitted regarding the economic conditions of Mennonites in Mexico.

[28] In their affidavits, the Applicants explicitly explained why they had to leave Mexico, as they could not rely on their family for housing, and were unable to continue to pay for the land that they had purchased.

[29] The Applicants also submitted evidence about the poverty and lack of housing Mennonites face in Mexico. This included, among others, a letter from a community support worker for Low German Mennonites from Mexico who described the struggles facing impoverished Mennonite families in Mexico.

[30] It was up to the Officer to assess the evidence submitted and determine its sufficiency. Here, the Officer did not even engage with the evidence, yet concluded erroneously that there was no evidence to show an inability to secure adequate food and shelter in Mexico.

[31] The accessibility of adequate food and shelter is an important part of the BIOC analysis in any H&C case, but was particularly so in this case in light of the lived experiences of the Applicants growing up in penurious circumstances, and their desire for a different future for their children. The Officer's failure to evaluate the evidence in this regard in my view tainted their BIOC analysis as a whole.

[32] The Respondent submits the Applicants essentially argued their children are better off living in Canada than Mexico in light of Canada's economic, social, educational and health infrastructure. The Officer accepted that "Mexico has a differential standard of living from that of Canada" but reasonably found the Applicants failed to provide persuasive evidence that their children's health, education, security, or well-being would be adversely affected in Mexico.

[33] I agree that officers need not grant a positive H&C simply due to the differential standard of living in Canada as compared to many other countries. The issue here is not whether Canada is a better country to live in; rather, it is about the Officer's failure to engage with the evidence that contradicted their findings, including evidence regarding challenges facing Mennonite children in Mexico, which calls into question whether the Officer was sufficiently alert, alive and sensitive to the two children's best interests.

C. *Was the Officer's assessment of the TRP application unreasonable?*

[34] The Officer dealt with the Applicants' request for a TRP in one brief paragraph:

> Client and counsel request, should the requested exemption not be granted, that the clients be issued a Temporary Residence Permit. The client does not advance a compelling reason to remain in Canada. I am not of the opinion that the issuance of a TRP is justifiable under the circumstances advanced by the applicant. Therefore the application for a TRP is refused.

[35] The Applicants submit the Officer's refusal of their TRP request was unreasonable. The Applicants put forward several factors in support of their request, yet the Officer did not examine their submissions and evidence, and provided no justification for the refusal.

[36] The Respondent submits the Officer was not required to conduct a distinct analysis of the TRP request because the TRP request and H&C application were intertwined and the reasons and factors advanced in support of the TRP request were the same as those advanced in support of the H&C application.

[37] Both parties rely on *Cojuhari v Canada (Citizenship and Immigration)*, 2018 FC 1009 [*Cojuhari*], at paragraphs 20-21, in their submissions.

[38] A TRP is a means by which an individual who is otherwise inadmissible can remain in or enter Canada if they are able to satisfy the officer that their presence in Canada is justified: s. 24(1) of the *IRPA*.

[39] As Justice Harrington, as he then was, explained in *Cojuhari*, there are cases which hold that it is not necessary to carry out a distinct analysis of a TRP, but the basis of those decisions is

that the H&C application and the TRP application are intertwined and the same reasoning may apply to both: *Cojuhari*, at para 20.

[40] There are other cases from this Court that suggest that a more fulsome analysis of whether the applicant has a compelling need to remain in or enter Canada is needed for the TRP analysis: *Williams v Canada (Minister of Citizenship and Immigration)*, 2020 FC 8, at paras 64-66.

[41] In this case, I note that the Officer did not address whether the submissions in support of the H&C application are the same as those in support of the TRP, which undermines the transparency of the Decision.

[42] If a separate analysis for TRP is not necessary because the basis for both applications are the same, then the errors made by the Officer with respect to the H&C application would also render the TRP analysis unreasonable. On the other hand, if a separate analysis is required because the Applicants have advanced additional submissions for their TRP request, then, the Officer offered no justification for refusing the TRP request and the reasons do not allow a reader to understand how the Officer arrived at the decision. Under either scenario, the Officer's refusal of the Applicants' TRP request was unreasonable and must be set aside.

## IV. Conclusion

[43] The application for judicial review is allowed.

[44] The decisions to deny the H&C application and a temporary resident permit are quashed and the matter is referred back to another Officer for a fresh redetermination.

[45] There is no question to certify.

**JUDGMENT in IMM-2053-21**

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

1. The application for judicial review is allowed.
2. The decisions to deny the H&C application and a temporary resident permit are quashed and the matter is referred back to another Officer for a fresh redetermination.
3. There is no question to certify.

"Avvy Yao-Yao Go"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2053-21 |
| **STYLE OF CAUSE:** | HEINRICH FRIESEN LETKEMAN, AGANETHA JANZEN FRIESEN v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD VIA VIDEOCONFERENCE |
| **DATE OF HEARING:** | SEPTEMBER 29, 2022 |
| **JUDGMENT AND REASONS:** | GO J. |
| **DATED:** | OCTOBER 11, 2022 |

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| | |
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