

Federal Court



Cour fédérale

Date: 20250411

Docket: IMM-1409-24

Citation: 2025 FC 678

Calgary, Alberta, April 11, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**JESUS ALFREDO ORTIZ RAMIREZ
ADRIANA RENE AGUILAR RODRIGUEZ
ADRIANA RENE ORTIZ AGUILAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of the decision of a senior immigration officer (the “Officer”) dated November 22, 2023, in which the Officer refused the Applicants’ application for permanent residence on humanitarian and compassionate (“H&C”) grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicants submit that the refusal decision is unreasonable and procedurally unfair, as the Officer erred in their assessment of the H&C factors and failed to disclose their reliance on extrinsic country condition evidence to the Applicants.

[3] For the reasons that follow, this application for judicial review is allowed. Although I do not find that the Officer breached the Applicants' procedural rights, I agree with the Applicants that the refusal decision is unreasonable.

II. **Facts**

[4] The Applicants are citizens of Mexico. The Principal Applicant, Jesus Alfredo Ortiz Ramirez, and the Associate Applicant, Adriana Rene Aguilar Rodriguez, are spouses. Their daughter is the Minor Applicant, A.

[5] The Applicants have lived in Canada since February 2014. They allege that they travelled to Canada to flee extortion and cartel-related violence in Mexico.

[6] In February 2018, the Applicants submitted an application for permanent residence on H&C grounds (the "First H&C Application"). The First H&C Application was refused in April 2019.

[7] The Applicants submitted a second H&C application in November 2022 (the "Second H&C Application") and a PRRA application in March 2023. The Second H&C Application and the PRRA application were both placed before the Officer.

[8] On November 22, 2023, the Officer refused the Second H&C Application. The Officer considered four factors: the Applicants' establishment in Canada; the best interests of the child ("BIOC") with respect to A; the Associate Applicant's health and medical issues; and risk and adverse country conditions. The Officer assigned negative weight to the Applicants' failure to abide by Canadian immigration laws and determined the Applicants' employment and community involvement in Canada were insufficient to warrant an exemption from the normal operation of the IRPA. With respect to the BIOC factors, the Officer found that the potential negative impacts of removal on A and her friends were insufficient to warrant H&C relief. Acknowledging the Associate Applicant's health concerns, the Officer found the Applicants had nonetheless failed to provide sufficient evidence that treatment would be unavailable in Mexico. The Officer further found that risk and adverse country conditions did not justify H&C relief in light of positive economic factors and the decline of criminal violence in Mexico, citing the Mexico Peace Index 2023. This is the decision that is presently under review.

III. **Issues and Standard of Review**

[9] The issues in this application for judicial review are whether the Officer's decision is reasonable and procedurally fair.

[10] The parties submit that the applicable standard of review for the merits of the Officer's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 86-87 ("Vavilov")). I agree.

[11] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 (“*Canadian Pacific Railway Company*”); *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada’s decision in *Vavilov* (at paras 16-17).

[12] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[13] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

[14] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 (at paras 21-28; see also *Canadian Pacific Railway Company* at para 54).

IV. Analysis

[15] The Applicants submit that the Officer infringed their procedural rights and rendered a decision that is unreasonable. According to the Applicants, the Mexico Peace Index 2023 constitutes extrinsic evidence that was central to the refusal of the Second H&C Application. The Applicants assert that the Officer's failure to disclose this evidence to the Applicants constitutes a breach of their procedural rights. The Applicants further assert that the Officer erred in their assessment of each of the four factors for H&C relief addressed in the Second H&C Application. It is the Applicants' position that the Officer unduly emphasized previous noncompliance with immigration laws in assessing their establishment in Canada, focused on the mitigation of hardship rather than A's best interests in analyzing the BIOC factors, disregarded the Associate Applicant's depression in assessing her health concerns, and failed to properly consider their allegations of risk in light of previous attempts to extort the Applicants in Mexico.

[16] The Respondent submits the Officer made no reviewable error. The Respondent submits that the Mexico Peace Index 2023 does not constitute extrinsic evidence and the Officer was therefore not obliged to disclose it in order to abide by their duty of procedural fairness. The Respondent further submits the refusal decision is reasonable. The Respondent asserts that the

Applicants disagree with the Officer's weighing of the evidence, but have failed to establish a reviewable error in the Officer's assessment of the Applicants' establishment, the BIOC factors, the Associate Applicant's health and medical conditions, and country conditions in Mexico.

[17] I agree, in part, with the Applicants.

[18] There was no infringement of the Applicants' procedural rights. The Mexico Peace Index 2023 is not extrinsic evidence, as it is included in the National Documentation Package ("NDP") for Mexico. Although the Applicants rightly note that this document post-dates the Second H&C Application, I observe that it only does so by a period of approximately six months. Furthermore, I agree with the Respondent that the document does not "disclose novel and significant evidence which affects the decision" (*Hoyte v Canada (Citizenship and Immigration)*, 2015 FC 175 at para 14). The Officer relied on the Mexico Peace Index 2023 for information on trends, rather than statistics exclusive to the period following the submission of the Second H&C Application. For instance, the Officer found:

...Mexico's peacefulness improved by 0.9% in 2022. This was the third straight year of improvement...

Since 2015, 11 states have recorded improvements in the economic impact of violence...The five states that improved the most in peacefulness in the past eight years...saw the economic impact of violence fall by an average of 30.3 percent...

[Emphasis added]

As a result, I do not find the Officer was obliged to disclose this document to the Applicants.

[19] However, I agree with the Applicants that the Officer's decision is unreasonable. The Applicants submit the Officer made several reviewable errors. Of these, I address one: the Officer's assessment of the BIOC factors with respect to A.

[20] The Officer's assessment of the BIOC factors runs contrary to the approach mandated in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("Kanthasamy").

Kanthasamy states that BIOC factors address "what...appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention" (*MacGyver v Richards*, 1995 CanLII 8886 (ON CA), cited in *Kanthasamy* at para 36 [emphasis added]). The Officer in this case did not evaluate these factors, instead assessing the extent to which hardship on A could be mitigated. For instance, the Officer noted:

[A] has a medical condition that is not uncommon and can be treated. The information provided by the [A]pplicants indicate [sic] that [A]'s condition is moderate and they do not provide a confirmation from the relevant health authorities in Mexico attesting to the fact that an acceptable treatment is unavailable...

While the report from [XXXX] School Board Psychological Services states that because of [A]'s high level of anxiety, she needs stability and structure in her daily life and a supportive environment to help her develop her skills and optimize her learning, I find that [A] has been able to make progress in her studies since before the preparation of the report in June 2022...

[21] The Respondent's assertion that the Officer was merely responding to the Applicant's submissions on hardship is meritless. Although the Applicants mention in their H&C submissions that A would face hardship upon removal to Mexico, the primary focus of their submissions was that it would be in A's best interest to remain in Canada. The Applicants wrote:

[A] is receiving the needed support, by the school board and her teachers, to improve her learning development...

...this family is very close to each other and the best interest for their child is to remain together in Canada as a complete family.

This child is part of our society and is much involved with her family, friends, and the community...

The best interest for this child is to remain in Canada, where she has her home, has an education and where she is safe and protected.

[Emphasis added]

[22] Citing *Shackelford v Canada (Citizenship and Immigration)*, 2019 FC 1313

(“*Shackelford*”), the Respondent states that “the notion of hardship continues to be an important consideration in the review of applications on H&C grounds. It has not been evacuated from H&C considerations” (at para 11). I do not find that *Shackelford* is of assistance to the Respondent in this case. The Officer did not err by discussing hardship. The Officer erred by failing to conduct an adequate BIOC analysis. That hardship “has not been evacuated from H&C considerations” does not cure the deficiencies in the Officer’s decision (*Shackelford* at para 11).

V. Conclusion

[23] For these reasons, this application for judicial review is allowed. The refusal decision does not accord with the legal framework for BIOC assessments and fails to account for the submissions of the Applicants (*Vavilov* at paras 99, 127).

JUDGMENT in IMM-1409-24

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is allowed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1409-24

STYLE OF CAUSE: JESUS ALFREDO ORTIZ RAMIREZ, ADRIANA RENE AGUILAR RODRIGUEZ AND ADRIANA RENE ORTIZ AGUILAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 18, 2025

JUDGMENT AND REASONS: AHMED J.

DATED: APRIL 11, 2025

APPEARANCES:

Clifford Luyt	FOR THE APPLICANTS
Idorenyin Udoh-Orok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Clifford Luyt Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT