

Federal Court



Cour fédérale

Date: 20250506

Docket: IMM-7413-24

Citation: 2025 FC 822

Ottawa, Ontario, May 6, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

MORAIMA GONZALEZ MADRUGA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Moraima Gonzalez Madruga, seeks judicial review of the decision refusing her application for permanent residence on humanitarian and compassionate (H&C) grounds.

[2] The Applicant is a citizen of Cuba. She came to Canada on a visitor visa in January 2020 and has remained here since then. She has complied with Canadian immigration law, extending

her visa through the period of the COVID-19 pandemic and subsequently. The Applicant has lived with her son and daughter-in-law, together with her two grandchildren who were aged 8 and 12 at the time of her H&C application. Her daughter-in-law's mother, Teresa, also lives in the household. Teresa used to provide assistance with childcare for the two grandchildren but is now unable to do so because of health issues.

[3] The Applicant's H&C application was based on two primary factors: the best interests of her grandchildren in light of the important role she plays in their lives, and the hardships she would face upon a return to Cuba. She also pointed to her establishment in Canada and her role in her Church as well as her service by sewing and distributing masks during the COVID-19 pandemic.

[4] The Officer who examined her H&C application gave some weight to the Applicant's establishment in Canada but found she had only been here for three years, which was a short period of time to become established. The Officer acknowledged the Applicant's family ties in Canada with her son, two brothers and their families residing here. This element was given modest weight.

[5] The Applicant claimed that her son's family had become dependent on her – and she on them. The Officer discussed the various contributions the Applicant made to the household, including helping to care for her daughter-in-law's mother who faced serious health challenges. The Officer also reviewed the best interests of the children (BIOC), noting the various ways the Applicant helps with the daily care of her grandchildren. The Officer acknowledged that Teresa

had provided childcare assistance in the past but was no longer able to do so because of her declining health. The Applicant helps the children get ready for school, and when they return home, she helps with their homework and accompanies them to the park and other after-school activities. In addition, the Applicant is teaching her grandchildren Spanish and introducing them to Cuban culture. She also provides emotional support to her grandchildren.

[6] In assessing the weight to assign to the BIOC factor, the Officer observed that the Applicant is not the “primary caregiver” for the children, because they live with both parents who love and care for them. The Officer acknowledged that the Applicant provided assistance with childcare and housework but found “insufficient evidence to show that the children would be in any particular hardships should the Applicant leave Canada.” The Officer accepted that the Applicant’s son and daughter-in-law both work long hours, but found “little evidence to show that childcare or after school care is not available...” In addition, the Officer found “little evidence why the parents cannot rearrange their schedules or access a babysitter to provide the childcare they need.” In the end, the Officer gave “little weight to the fact that the best interests of the children will be undermined should the Applicant depart Canada.”

[7] On the question of hardship, the Officer acknowledged the difficulties faced by the Cuban population, which had increased as a result of the COVID-19 pandemic. However, the Officer found that the Applicant had previously been employed in the hospitality industry in Cuba and was subsequently self-employed there. The Applicant would be returning to a country where she had spent much of her life and owned a home. The Officer found that there was

insufficient evidence that she would be forced into poverty if she returned to Cuba.

Consequently, the Officer gave little weight to adverse country conditions.

[8] Based on the cumulative analysis of the various factors, the Officer refused the Applicant's H&C application.

[9] The Applicant seeks judicial review of the decision, arguing that it is unreasonable because it is based on an incorrect BIOC assessment, and the Officer's failure to grapple with the evidence of hardship.

[10] Although I am not persuaded by all the Applicant's arguments, I find that the Officer's decision is unreasonable because it rests on a flawed analysis of the BIOC factor. Considering my finding on this point, it is not necessary to address the Applicant's other submissions.

[11] The Applicant's BIOC claim was based on her personal statement as well as the joint statement her son and daughter-in-law provided. Both documents describe in detail the Applicant's daily contribution to the household, with a particular focus on her deep connection with her two grandchildren.

[12] The Officer's BIOC analysis summarized this evidence but gave it diminished weight because the Applicant was not the primary caregiver for the children and there was insufficient evidence that the children would face "any particular hardships should the Applicant leave Canada." This conclusion rests, in part, on the Officer's finding that the Applicant's son and

daughter-in-law could either adjust their work hours or make alternate childcare arrangements. The Officer found that the Applicant could continue to pass on her knowledge of Cuban culture and heritage if she returned to Cuba using long-distance communication tools. The BIOC analysis concludes with the following statement: “As a result of the above information, I give little weight to the fact that the best interests of the children will be undermined should the Applicant depart Canada.”

[13] A reasonable BIOC assessment calls for the determination of what is in the children’s best interests, and an Officer must be “alert, alive and sensitive” to the children’s particular circumstances – viewed from the children’s perspective: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 143, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 75. This requires an Officer to grapple with the real-world situation of the children, examining their circumstances from a realistic perspective. There is no particular form of words that must be used by an Officer, as long as the decision demonstrates that they considered what is in the children’s best interests, separate and apart from other considerations that may weigh in favour or against the grant of H&C relief.

[14] In this case, I am not satisfied that the Officer applied this framework to the BIOC factors raised by the Applicant. In particular, the Officer focused on the fact that the Applicant was not the “primary caregiver” for the children because they live with their parents who “appear to meet their physical and psychological needs.” While that is undoubtedly true, it diminishes the very active – one might even say central – role the Applicant plays in the daily life of her two grandchildren. The parents work long hours. The evidence shows that the Applicant provides

childcare before and after school, accompanying the children for their after-school activities, supervising their homework and taking care of the household more generally. She provides the children advice and guidance, as well as introducing them to Cuban culture and the Spanish language. The Applicant has done all of this in the context of Teresa's declining health and her inability to participate in childcare to the extent she did when the children were younger.

[15] The Officer was required to assess whether the Applicant's continued presence in the grandchildren's lives would be in their best interests. The hardship they would face if she departed Canada was a separate but related consideration. In this case, it is not evident that the Officer considered the grandchildren's best interests as a stand-alone factor. Judicial review of an H&C decision should not involve parsing over language, looking for the use of a particular form of words (often referred to as a "treasure hunt for errors": *Vavilov* at para 102). However, an Officer is required to demonstrate a consideration of the BIOC factor, based on the legal framework that applies to this element as well as the evidence in the record.

[16] In this case, I am not satisfied that the Officer engaged with the evidence applying the proper legal framework for a BIOC assessment. This was one of the two primary grounds advanced by the Applicant in support of her H&C application. The insufficiency of the Officer's analysis is, therefore, sufficiently serious to call into question the justification for the entire decision: *Vavilov* at para 128.

[17] Based on the analysis set out above, the application for judicial review will be granted. The decision refusing her application for permanent residence based on H&C considerations is

quashed and set aside. The Applicant's H&C application is remitted back for reconsideration by a different officer. The Applicant shall be granted the opportunity to provide further evidence and submissions, should she wish to do so.

[18] There is no question of general importance for certification.

JUDGMENT in IMM-7413-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision refusing the Applicant's H&C application is quashed and set aside.
The matter is remitted back for reconsideration by a different officer.
3. The Applicant shall be granted the opportunity to provide further evidence and submissions, should she wish to do so.
4. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7413-24

STYLE OF CAUSE: MORAIMA GONZALEZ MADRUGA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 17, 2024

JUDGMENT AND REASONS: PENTNEY J.

DATED: MAY 6, 2025

APPEARANCES:

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Nimanthika Kaneira	FOR THE RESPONDENT

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