

Federal Court



Cour fédérale

Date: 20250605

Docket: IMM-10855-24

Citation: 2025 FC 1022

Ottawa, Ontario, June 5, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**CLEUZINI TRINIDADE DE JESUS,
MANOEL RAIMUNDO CANDIDO,
ANA ALICE CANDIDO DE JESUS, BY HER LITIGATION
GUARDIAN CLEUZINI TRINIDADE DE JESUS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of the refusal of their application for permanent residence (“PR”) on humanitarian and compassionate (“H&C”) grounds by a senior immigration officer (the “Officer”) on June 14, 2024. The Officer determined that the Applicants’

establishment in Canada, the best interests of the Minor Applicant and the hardship the Applicants would face upon removal to Brazil did not warrant H&C relief under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicants submit that the Officer’s decision is unreasonable, as the Officer elevated the test for H&C relief, failed to adequately assess the best interests of the Minor Applicant, and disregarded their submissions on country conditions in Brazil.

[3] I agree. For the reasons that follow, this application for judicial review is allowed.

II. **Background**

[4] The Applicants are citizens of Brazil. The Principal Applicant, Cleuzini Trindade de Jesus, is the spouse of the Associate Applicant, Manoel Raimundo Candido. Their daughter is the Minor Applicant, Ana Alice Candido de Jesus.

[5] The Principal Applicant and Associate Applicant lived in a small city in Brazil. They both left home and lived abroad for several years. Eventually, the Principal Applicant and Associate Applicant returned to Brazil, where the Minor Applicant was born in 2012.

[6] Following the Minor Applicant’s birth, the Principal Applicant and Associate Applicant grew concerned with criminality, violence, poor economic conditions, and limited social services in Brazil. In one incident, there was a shooting outside the Applicants’ residence, which culminated in the targeting of an individual inside their apartment building.

[7] On July 2, 2016, the Associate Applicant arrived in Canada using a false Portuguese travel document. The Principal Applicant and Minor Applicant travelled to Canada on visitor visas the following year.

[8] The Applicants have since resided in Toronto. The Principal Applicant and Associate Applicant work in the cleaning and construction industries, respectively. The Minor Applicant has attended school. The Applicants are highly involved in their church. They have made friends and established social and professional relationships.

[9] The Applicants applied for permanent residence on H&C grounds in 2023, citing their establishment in Canada, the best interests of the Minor Applicant, and country conditions in Brazil.

[10] On June 14, 2024, the Officer refused the Applicants' H&C application. The Officer determined that the Applicants' establishment was "not...out of the ordinary," the Minor Applicant would be able to adjust to life in Brazil, and country conditions in Brazil did not warrant H&C relief. This is the decision that is presently under review.

III. **Issue and Standard of Review**

[11] The sole issue in this application is whether the Officer's decision is reasonable.

[12] The parties submit that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 (“*Vavilov*”)). I agree.

[13] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). 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 decision that is reasonable as a whole 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).

[14] 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).

IV. Analysis

[15] The Applicants submit that the Officer’s decision is unreasonable. The Applicants submit that the Officer erred in law by requiring the Applicants to demonstrate an exceptional

level of establishment to qualify for H&C relief. The Applicants submit that the Officer similarly erred with respect to the best interest of the child (“BIOC”), as the Officer focused on hardship and the Minor Applicant’s basic needs rather than which outcome would be in her best interests. The Applicants further submit that the Officer failed to engage with their country condition evidence concerning economic conditions, gender-based violence, and criminality in Brazil.

[16] The Respondent submits that the Officer made no reviewable error. It is the Respondent’s position that the Applicants merely disagree with the Officer’s decision and seek to reweigh the evidence before the decision-maker. The Respondent submits that the Officer’s conclusions with respect to establishment, the BIOC factors, and country conditions in Brazil are justified in light of the evidence and consistent with the jurisprudence of this Court.

[17] I agree with the Applicants.

[18] This Court has previously held that “[a]n individual’s circumstances do not need to be “exceptional” to warrant H&C relief” (*Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 at para 41 (“*Henry-Okoisama*”). Withholding H&C relief except in exceptional circumstances therefore constitutes a legal error. The Officer in this case fell into this precise error. The Officer wrote: “I do not find it out of the ordinary to find housing and employment in order to sustain yourself in a new country. In the process of staying here for an extended period [the Applicants] have made friends and become part of a community, this is quite common” [emphasis added].

[19] Applying subsection 25(1) of the IRPA requires decision-makers to “[recognize] a person’s humanity” and “apparently, and actually, apply compassion” (*Henry-Okoisama* at para 45; *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 at para 33 (“*Damte*”). I do not find that this requirement has been met in this case.

[20] The Officer’s failure to apply a compassionate lens is highlighted by his treatment of the Associate Applicant’s breach of Canadian immigration laws in 2016. The Officer recognized that “the [Associate Applicant] is remorseful for his actions” and sought to secure “a better standard of living for his family.” The Officer nonetheless found that his actions weighed against the granting of H&C relief, as “[t]hose who disrespect and refuse to follow Canadian laws cannot by their misconduct become better placed than those who respect Canadian immigration laws and processes” (*Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904 at para 29 (“*Joseph*”).

[21] The Officer’s reasoning is at odds with the record. The Associate Applicant was not only motivated by the desire to provide a “better standard of living for his family.” He and the Principal Applicant were primarily concerned with criminality and violence in Brazil. The Officer’s disregard for this central aspect of the Applicants’ submissions constitutes a failure of both responsive justification and the requirement to “apparently, and actually, apply compassion” (*Damte* at para 33).

[22] Moreover, the Officer’s reliance on this Court’s ruling in *Joseph* is, in my view, misguided. The Officer cites *Joseph* for the principle that “[t]hose who disrespect and refuse to follow Canadian laws cannot by their misconduct become better placed than those who respect

Canadian immigration laws and processes” (at para 29). This holding is not applicable to the present matter. The Applicants in this case have not “profit[ed]” from or been placed in a “better position...for H&C relief” by their prior misconduct, as the Officer suggests. It is undisputed that the Applicants would be in a better position at this moment if the Associate Applicant had travelled to Canada in 2016 through legal means. The Applicants acknowledge this fact, stating that they “are embarrassed and ashamed” of the Associate Applicant’s actions, that he “is incredibly sorry for what he did,” and that “this was a terrible lapse in judgment which will be viewed poorly by IRCC officials.” The Applicants in this case have not been placed in a “better” position by their noncompliance with Canadian immigration laws, notwithstanding the statutory discretion to grant H&C relief in subsection 25(1) of the IRPA (*Joseph* at para 29).

[23] Turning to the BIOC analysis, I agree with the Applicants that the Officer erred in law by assessing hardship, rather than the best interests of the Minor Applicant. The Officer found:

...it is possible for the [Minor Applicant] to adapt to her new environment with the support of her parents and extended family in Brazil...

Concerning her education, while it may be interrupted, it does not mean that [the Minor Applicant] will not be able to get an education in Brazil...

...I am satisfied that the [Minor Applicant] will continue to have [her] needs [met] to include getting an adequate education, healthcare, food, shelter if she returns to Brazil.

[Emphasis added]

[24] The relevant considerations in a BIOC analysis are: (1) “what is in the child’s best interest”; (2) “the degree to which the child’s interests are compromised by one potential decision over another”; and (3) “the weight that [the BIOC factors] should play in the ultimate

balancing of positive and negative factors assessed in the application” (*Williams v Canada (Citizenship and Immigration)*, 2012 FC 166 at para 36 (“*Williams*”)). Whether a child will have their needs met or be capable of adapting to a new life upon removal is not the central metric in this assessment. Notably, “[t]he question is not: “is the child suffering enough that [her] “best interests” are not being “met”? The question at the initial stage of the assessment is “what is in the child’s best interests?”” (*Williams* at para 64 [emphasis in original]).

[25] The Officer has entirely failed to address this question. Rather than assessing “what [would be] in [the Minor Applicant’s] best interest,” the Officer instead evaluated whether the Minor Applicant would experience hardship upon removal (*Williams* at para 63). Although it was open to the Officer to address this factor, it was not open to the Officer to consider only this factor (*Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 40). A BIOC analysis cannot be reasonable if it does not identify what would be in the best interests of the child.

[26] Moreover, the findings contained within the Officer’s BIOC assessment are speculative and unjustified. The Officer determined that “it is possible for the [Minor Applicant] to adapt to her new environment with the support of her parents and extended family in Brazil” [emphasis added]. However, the family members of the Principal Applicant and Associate Applicant provided letters confirming that they cannot support the Applicants financially. The Applicants’ family members further state that that they reside in rural areas with limited social services. The Officer found that the Minor Applicant would not experience an interruption to her education. However, the Principal Applicant’s mother states that the local school “works until the eighth grade” and the Associate Applicant’s brother wrote that “many children do not finish their

studies.” The Officer noted that “there is little evidence that [the Minor Applicant] is in need of mental health care or has any mental or physical conditions that require immediate care.”

However, the Applicants did not claim that the Minor Applicant experiences mental health issues. They stated that the Minor Applicant would be profoundly and negatively affected by being separated from her friends, school, and church in Canada. A child need not have “mental or physical conditions that require immediate care” to be affected by removal in this manner.

[27] The Officer’s treatment of the country condition evidence was similarly flawed. In their H&C application, the Applicants submitted extensive evidence on poor economic conditions, gender-based violence, and criminality in Brazil. The Officer determined that these factors did not warrant H&C relief, citing four sources: the H&C application, the UK Home Office Report on Brazil (“UK Home Office Report”), an academic journal article about gender-based violence in Brazil (the “Journal Article”), and the OECD GPS Education Report on Brazil for 2024.

[28] Based on these documents, the Officer determined that the Applicants would be able to find employment in Brazil, as the Associate Applicant “was working steadily in Brazil before coming to Canada” and the Principal Applicant “has education and Canadian work experience that can assist her in finding employment in her home country.” These findings are inconsistent with the sworn affidavit of the Principal Applicant, which states that the Principal Applicant left Brazil “to find work” prior to her arrival in Canada and struggled to “find a job” following the birth of the Minor Applicant, despite her academic credentials.

[29] The Officer further determined that criminality and gender-based violence in Brazil did not warrant H&C relief, as the UK Home Office Report states that “the state is willing and able

to provide effective protection” and the Journal Article reports that new laws against gender-based violence “has produced a great change in Brazilian society and institutions.” The Officer concluded that “the option of redress would be available to the [A]pplicants which can help mitigate some of the hardships associated with this factor.” These findings are contradicted by the Applicants’ country condition evidence, much of which post-dates the UK Home Office Report and Journal Article. I further note that the scope of the UK Home Office Report was to assess “[w]hether, in general, those with a well-founded fear of persecution or serious harm from non-state actors can obtain effective protection.” Redress that may be adequate to address persecution in a refugee claim may not be sufficient to eliminate concerns related to hardship in an H&C context.

[30] Consequently, I agree with the Applicants that the Officer failed to adequately engage with their submissions about country conditions in Brazil (*Vavilov* at paras 126-128). In light of the evidentiary record, I am not persuaded that “the decision maker was actually alert and sensitive to the matter before it” (*Vavilov* at para 128).

V. Conclusion

[31] For these reasons, I find that the Officer’s decision is unreasonable. The Officer erred in law with respect to the threshold for H&C relief and the BIOC factors (*Vavilov* at para 108). Moreover, the Officer disregarded the submissions and evidence of the Applicants (*Vavilov* at paras 127, 126). For these reasons, this application for judicial review is allowed.

JUDGMENT in IMM-10855-24

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is allowed. The decision under review is set aside and the matter remitted for redetermination by a different officer.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10855-24

STYLE OF CAUSE: CLEUZINI TRINIDADE DE JESUS et al v THE
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