Federal Court Cour fédérale

**Date: 20260127**

**Docket: IMM-14271-23**

**Citation: 2026 FC 119**

**Ottawa, Ontario, January 27, 2026**

**PRESENT: Madam Justice Conroy**

**BETWEEN:**

**SHERNETTE ANTONETTE HAYLES**
**ADRIAN CHRISTOPHER CLARKE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] Ms. Shernette Antonette Hayles [Principal Applicant] and her son, Adrian Christopher Clarke [Minor Applicant, and together with the Principal Applicant, the Applicants], seek judicial review of an immigration officer's [Officer] refusal of their application for permanent residence on humanitarian and compassionate grounds [H&C].

[2] The Officer considered the Applicants' establishment factors, the best interests of the child [BIOC] with respect to both the Minor Applicant and the Principal Applicant's eight-year-old nephew, and the adverse country conditions in Jamaica. The Officer refused the H&C application, concluding that while the Applicants may face some difficulties on return to Jamaica, they did not establish that a positive exemption was warranted on H&C grounds.

[3] I conclude that the Officer's decision was unreasonable: (1) it was not sufficiently responsive to a central argument raised regarding the Minor Applicant's learning-related disability, (2) it failed to conduct a global assessment of the relevant facts in relation to the Minor Applicant, and (3) a portion of the BIOC analysis lacked intelligibility and transparency.

[4] Accordingly, this application for judicial review is allowed.

## II. Background

[5] The Applicants were issued temporary resident visas and entered Canada in 2016. Since arriving in Canada, the Applicants have been living with the Principal Applicant's sister.

[6] Because she is unable to work in Canada, the Principal Applicant has assisted her sister with housekeeping and childcare, and has developed a strong bond with her eight-year-old nephew as a result.

[7] On October 6, 2022, the Applicants made an H&C application for permanent residence. Their H&C application included detailed written submissions and appended significant objective

country condition evidence relating to crime, including information from the Immigration and Refugee Board's National Document Package [NDP] for Jamaica.

## III. Decision Under Review

[8] By letter dated October 31, 2023, the Officer refused their application. The Officer made the following key findings in support of the conclusion that the H&C application should be refused:

- The Applicants have shown some establishment in Canada – they have lived here for more than seven years, attend church, volunteer, and have developed a network of friends;

- The Applicants' prolonged stay in Canada beyond the time authorized by their visa shows a disregard for Canadian immigration laws and weighs negatively in the circumstances surrounding their establishment;

- The Applicants' separation from family and friends in Canada would not sever the bonds they have established; while there may be hardship, other means of maintaining contact are available and the degree of interdependency and reliance in those relationships is not such that it requires H&C relief;

- The Minor Applicant benefits from attending school in Canada, but at 17-years-old he is more resilient and adaptable to changing situations, and would be able to adjust to life in Jamaica with the benefit of his mother's support;

- Returning to Jamaica would reunite the Minor Applicant with his father;

- The Principal Applicant's nephew, who developed a close bond with her, will continue to have the care and support of his own father in Canada, and may maintain contact with the Principal Applicant via phone, letters, social media outlets, or visiting Jamaica should the family desire;

- "[t]he evidence indicates the child's father, sibling, grandmother, aunts and uncles [here, it is unclear which child is being referred to] currently live in Jamaica and insufficient evidence has been presented to satisfy [the Officer] that they will be unable or unwilling to assist her [*sic*]…the best interest of the child would be met if she [*sic*] continued to benefit from the personal care and support of his family in Jamaica";

- While the Applicants fear crime in Jamaica, the objective evidence shows the country is a democracy with functioning police and a judiciary committed to protecting citizens from criminal violence; and

- Although there is inadequate medical care, poor education, and lack of employment prospects in Jamaica, resulting in a different standard of living than Canada, H&C relief under s. 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 is not intended to make up for this difference in living standard – it is exceptional relief intended to deal with unforeseen situations compelling the Minister of Citizenship and Immigration to act.

## IV. Issues and Standard of Review

[9] The only issue is whether the Officer's H&C decision was unreasonable.

[10] The parties agree, and I concur, that the standard of review for the Officer's H&C decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*].

## V. Submissions and Analysis

[11] The Applicants allege several reviewable errors in the Officer's reasons for refusing their H&C application. I address the salient issues below.

### A. *Failure to conduct global assessment of all relevant factors for Minor Applicant*

[12] The Applicants submit that the Officer failed to engage in a global assessment of the Minor Applicant's particular circumstances. Specifically, they argue that the Officer failed to consider "the intersection of the Minor Applicant's identities as a young Black man with a disability" and the objective evidence included in their H&C application that indicates:

- young men (between 16 – 24) are particularly vulnerable to recruitment by gangs and are disproportionately victims of violence in Jamaica; and

- the Applicants would be returning to St. Catherine, the parish with the highest homicide rate, and within an area that has the highest concentration of violent crimes in Jamaica.

[13] They cite the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 25 [*Kanthasamy*] for the proposition that "[o]fficers making humanitarian and compassionate determinations must substantively consider and weigh *all* the relevant facts and factors before them" [emphasis original]. They also rely on *Abeleira v Canada*

*(Immigration, Refugees and Citizenship)*, 2017 FC 1008 , where Justice Elliott, at paragraph 34 explains:

> In other words, the changes brought about by *Kanthasamy* require officers to focus on humanitarian and compassionate factors writ large. The purpose of the analysis is to determine whether to offer equitable relief, in a manner that provides a flexible and responsive exception to the ordinary operation of the IRPA in order to relieve the misfortunes of an applicant. The officer is to make that determination by substantively considering and weighing, **cumulatively**, all the relevant facts and factors submitted by an applicant so that there is a global assessment. (emphasis added)

[14] I agree. In considering the Minor Applicant, the reasons fail to account for the Minor Applicant's learning disability. In addition, they fail to consider the particular features of the Minor Applicant (including his age, disability and race) cumulatively, and in combination with the objective country evidence which points to the vulnerability of young men to recruitment by organized gangs and violence, particularly in St. Catherine (the Applicants' hometown in Jamaica).

[15] First, the Officer's decision unreasonably fails to acknowledge the Minor Applicant's learning-related disability. The H&C application made repeated reference to this and noted that the Minor Applicant was diagnosed with a speech impediment in 2019 and has since benefitted from the many educational supports available in Canada. The H&C application observed that comparable supports would not be available if returned to Jamaica, where the education system is inadequate, especially for students with disabilities.

[16] The reasons make no reference to the Applicant's learning-related disability. Read alone, the reasons would lead one to believe the Minor Applicant does not suffer from any such disability, and is only concerned about the lower standards of education available to all children in Jamaica. The reasons were not responsive to this key issue and are unreasonable as a result.

[17] While a decision-maker need not respond to every submission made, "a failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision-maker was actually alert and sensitive to the matter before it": *Vavilov* at para 128.

[18] Second, the reasons fail to conduct a global assessment of all the relevant facts in relation to the Minor Applicant, particularly in relation to his vulnerability to being recruited into a gang.

[19] The H&C application included arguments and significant objective country evidence that highlighted how young men are particularly vulnerable to gang recruitment in Jamaica. Their application also included objective evidence that St. Catherine parish has the highest homicide rate, significant gang activity, and the highest concentration of violent crimes in Jamaica. The application argued that the Minor Applicant - a young Black man with a learning-related disability - would be particularly vulnerable to gang recruitment and violence if forced to return to St. Catherine.

[20] The reasons were silent on the Minor Applicant's vulnerability to gang recruitment. As noted, the reasons state that "the Applicants fear crime in Jamaica". In the circumstances, this

statement was insufficiently responsive to the arguments made in the H&C application and is therefore unreasonable.

[21] There is no magic formula in assessing the best interests of the child in an H&C application. What is required is highly contextual analysis that takes into account the many factors that may impinge on the child's best interests, in a manner that is responsive to each child's particular age and capacity: *Kanthasamy* at para 29, citing *Law v. Canada (Attorney General)*, 2004 SCC 4 at para. 11; *Gordon v. Goertz*, 1996 CanLII 191 (SCC), [1996] 2 S.C.R. 27, at para. 20; *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at para. 89.

[22] The reasons do not demonstrate that the Officer undertook the necessary highly contextual and individualized analysis. Based on the record here, the global analysis called for by the Supreme Court of Canada calls for reasons that take into account the Minor Applicant's specific circumstances (the intersectionality of his identities as a young Black man with a disability), alongside the objective evidence provided about the vulnerabilities of young men and gangs in St. Catherine, Jamaica. The failure to carry out this global assessment was unreasonable.

B. *Portion of BIOC Analyses unintelligible*

[23] The Applicants say that the Officer used boilerplate reasons, repeatedly resorting to the same phrases with respect to the best interest of the child. I do not consider this to be a reviewable error, as this Court has held that the use of boilerplate language is not forbidden and

there is no requirement for decision-makers to be original, so long as the reasons are intelligible and responsive to the legal and factual context: *Yu v Canada (Citizenship and Immigration)*, 2021 FC 1236 at para 29.

[24] However, the last paragraph of the BIOC analysis does lack intelligibility and transparency. The BIOC analysis first discusses the Minor Applicant's best interests, then moves on to consider the Principal Applicant's nephew. The Officer then states the following:

> Moreover, the evidence indicates the child's father, sibling, grandmother, aunts and uncles currently live in Jamaica and insufficient evidence has been presented to satisfy me that they will be unable or unwilling to assist her. In terms of the best interest of the child, I am satisfied that the best interests of the child would be met if she continued to benefit from the personal care and support of his family in Jamaica.

[25] At first, one is led to believe that this is a continuation of the BIOC analysis for the nephew, but as the Applicants point out, the reference to relatives in Jamaica suggests that this paragraph concerns the Minor Applicant. In any case, neither child is female, so the use of the pronouns "her" and "she" create further confusion. While written reasons are not held to a standard of perfection, they must also be transparent and intelligible, such that they shed light on the rationale for a decision: *Vavilov* at para 81.

[26] While the Court can understand certain typographical or grammatical mistakes, repeated mistakes with respect to key facts such as the sex of the individuals at issue can be cause for concern: see *Kolade v Canada (Citizenship and Immigration)*, 2019 FC 1513 at para 19.

C. *Immigration History as a Negative Establishment Factor*

[27] The Applicants maintain that the Officer erred in finding that their prolonged stay in Canada, past the expiry of their visa, was a factor which demonstrated disregard for Canadian immigration laws and undermined the circumstances of their establishment in Canada. They argue that a preoccupation with a lack of immigration status fails to recognize that the whole purpose of an H&C application is to overcome matters such as inadmissibility or a lack of immigration status: *Klein v Canada (Citizenship and Immigration)*, 2015 FC 1004 at para 11.

[28] Yet, the Applicants concede this Court has held that an officer is entitled to consider an applicant's negative immigration history, so long as they do not place disproportionate or undue weight on the applicant's non-compliance*: Dennis v Canada (Citizenship and Immigration)*, 2023 FC 1383 at para 49; *Samuel v Canada (Citizenship and Immigration)*, 2019 FC 227 at para 17.

[29] The Respondent cites *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313 [*Shackleford*] for the proposition that illegal presence in Canada should be a negative factor in the analysis, and that it would "defeat the purpose of the Act if the longer an applicant was to live illegally in Canada, the better his or her chances…to be allowed to stay permanently" (paras 23-24).

[30] The two lines of case law cited by the parties suggest that there is a balance to be struck when considering an applicant's immigration history in an H&C application. Factors such as illegal entry, overstaying a visa, or avoiding deportation may rightly colour the circumstances

surrounding an applicant's establishment in Canada, but they should not be allowed to overwhelm the entire analysis.

[31] In oral submissions, counsel for the Applicants argued that the Officer's reasons show that they assigned "negative overall weight" to establishment, and "eradicated" positive establishment factors due to the negative immigration history – I disagree. The Officer credited the Applicants for their positive establishment factors, but gave "negative weight to the circumstances surrounding their establishment" because they built their connections in Canada by overstaying their visitor visas. It was open to the Officer to note this as a factor for consideration; the reasons do not disclose an undue preoccupation with the Applicants' negative immigration history.

D. *Exceptional Nature of H&C Relief*

[32] Counsel for the Minister provided cogent submissions on the exceptional nature of H&C relief. The Minister notes the Principal Applicant expressly stated that her reason for overstaying her visa is because she realized that she could provide a better life for her son here – suggesting that perhaps H&C relief is being leveraged as an alternative to obtaining status in Canada through the proper means which all hopeful immigrants must pursue.

[33] The Respondent is correct that this Court has repeatedly held H&C relief to be exceptional, and not an alternative immigration scheme: *Canada (Minister of Public Safety and Emergency Preparedness) v Nizami*, 2016 FC 1177 at para 16. It is also true that the inevitable hardship associated with being required to leave Canada is not sufficient to warrant H&C relief:

*Shackleford* at para 12. However, the exceptional nature of such relief does not absolve immigration officers from the requirement to render reasons that are transparent, intelligible and justified, as per *Vavilov* at para 15.

## VI. Conclusion

[34] While it may have been open to the Officer in this case to ultimately refuse the H&C application, the reasons were not responsive to key submissions concerning the Minor Applicant's learning-related disability, failed to undertake a global assessment of the Minor Applicant, in particular with respect to his vulnerability to gang recruitment, and were unintelligible with respect to a portion of the BIOC analysis. Cumulatively, these render the decision unreasonable.

[35] This application for judicial review is granted, and the matter is remitted for redetermination by a different immigration officer.

**JUDGMENT in IMM-14271-23**

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

1. This application for judicial review is granted and the matter remitted for redetermination by a different immigration officer.

2. There is no question for certification.

"Meaghan M. Conroy"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-14271-23 |
| **STYLE OF CAUSE:** | SHERNETTE ANTONETTE HAYLE AND ADRIAN CHRISTOPHER CLARKE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
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| **JUDGMENT AND REASONS:** | CONROY J. |
| **DATED:** | JANUARY 27, 2026 |

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