Federal Court  Cour fédérale

Date: 20250113

Docket: IMM-8619-23

Citation: 2025 FC 65

Toronto, Ontario, January 13, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

GERARDO MARCIAL CORDOVA
ANTONIA MADRIGAL DE LOS SANTOS
DAVID ARTURO MARCIAL MADRIGAL
XIMENA MARCIAL MADRIGAL
ALEJANDRA MARCIAL MADRIGAL
GERARDO ANTONIO MARCIAL MADRIGAL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a Mexican family of six, including two children under the age of 18 [the Minor Applicants], who have been living in Canada since 2017. They have applied for

permanent residence from within Canada on Humanitarian and Compassionate [H&C] grounds [the H&C Application] pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Applicants applied based on their establishment in Canada, adverse country conditions and the best interests of the Minor Applicants [BIOC]. An Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada refused the H&C Application [the H&C Decision]. The Applicants bring this application for judicial review of the H&C Decision on the basis that it is unreasonable.

[2] For the reasons that follow, I find that the Applicants have discharged their burden of showing that the H&C Decision is unreasonable. The Officer's contention that the Applicants had failed to show that the Minor Applicants would not receive a "similar education" in Mexico was not justified on the record and the Officer failed to address country condition evidence that squarely contradicted this finding. Accordingly, this application for judicial review is granted.

II. Facts

[3] Gerardo Marcial Cordova [the Principal Applicant] is a Mexican national who arrived in Canada as a visitor on July 8, 2017. On November 30, 2017, the Principal Applicant's wife, Antonia Madrigal de los Santos, followed together with their four children, Gerardo Antonio Marcial Madrigal, David Arturo Marcial Madrigal, and the Minor Applicants [collectively, the Applicants].

A. *The Refusal of the Applicants' Refugee Claim*

[4] The Applicants made claims for refugee protection in May 2018. Their claims were refused by the Refugee Protection Division [RPD] on the basis that the Applicants' claims had not been credibly established.

[5] The Refugee Appeal Division [RAD] dismissed the Applicants' appeal of the RPD decision on January 9, 2020, and while the Applicants initiated a judicial review application in the Federal Court, they later withdrew it.

B. *The H&C Decision*

[6] The Officer considered the Applicants' three arguments in support of their H&C Application: the Applicants' establishment in Canada; adverse country conditions in Mexico; and the BIOC.

[7] On the issue of the Applicants' establishment in Canada, the Officer accepted that the Applicants have "some community establishment in Canada." The Officer acknowledged the documentation showing that the Applicant parents had been continuously employed in Canada and that the Principal Applicant started his own construction company in which he employs his adult children. The Officer noted, however, that while the Applicants are gainfully employed, there was "little evidence" to show that the business was registered or contributing taxes and the website for the business appeared to be invalid. The Officer acknowledged the Applicants' letters of support from members of their community.

[8] On the issue of hardship in Mexico, the Officer held that overall, there is little evidence to support that the Applicants would suffer difficulties re-establishing and residing in Mexico. The Officer considered the Applicants to have provided little if any evidence that they would not be able to obtain meaningful employment in Mexico or that they would face the threat of being extorted if they did. The Officer therefore attributed "little weight" to considerations going to adverse country conditions.

[9] On the issue of the BIOC, the Officer acknowledged that the Minor Applicants would face some difficulties re-establishing themselves in Mexico, but found that it would be in the best interest of the Minor Applicants for them to remain in the care of their parents as that factor "outweighs" the family's establishment in Canada and arguments related to the adverse country conditions in Mexico.

III. Legislative Framework

[10] Pursuant to subsection 25(1) of the *IRPA*, the Minister of Citizenship and Immigration [Minister] may grant a foreign national permanent resident status or an exemption from any applicable criteria or obligations of the *IRPA*. The Minister must be of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interest of a child directly affected. The test has been articulated as whether the circumstances "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 21 [*Kanthasamy*]).

[11] A decision made on H&C grounds is both discretionary and exceptional in so far as it is not intended to serve as an alternative path to immigration, and should be applied sparingly (*Kanthasamy* at paras 23, 85).

IV. Issues and Standard of Review

[12] At the hearing of this Application, the Applicants relied on the following issues that they say render the H&C Decision unreasonable:

A. The Officer's assessment of the BIOC was unreasonable; and

B. The Officer's assessment of the country conditions and the factor of hardship was unreasonable.

[13] I am in agreement with the parties that the appropriate standard of review is that of reasonableness as articulated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraph 10.

[14] A reasonable decision is one which is "based on an internally coherent and rational chain of analysis" and is justified in relation to the factual and legal constraints applicable in the circumstances (*Vavilov* at para 85).

[15] While a court must avoid reassessing and reweighing the evidence, it nevertheless must engage in a robust review. Courts must ensure that the decision under review is intelligible, justified and transparent (*Vavilov* at para 99), and that the decision maker did not fundamentally misapprehend or fail either to account for the evidence before it (*Vavilov* at paras 125-126) or to meaningfully address the central issues and concerns of the parties (*Vavliov* at para 127).

V. Analysis

A. *The Officer's assessment of the BIOC was unreasonable*

[16] The Applicants argue that the Officer minimized the best interests of the Minor Applicants. They say that despite the Officer's acknowledgment that the educational programs in Canada are "more desirable," the Officer nevertheless faulted the Applicants for having provided "little if any evidence, other than generalized articles" that the Minor Applicants would not be afforded "a similar education experience in Mexico."

[17] I agree with the Applicants that the Officer committed three errors in this less than rigorous BIOC analysis.

[18] First, the Officer's suggestion that there was "little to no evidence" that the Minor Applicants would not receive a "similar" education in Mexico is simply not born out by the country condition evidence submitted by the Applicants, which included the following evidence:

- Mexico ranks at the bottom of 41 Organisation for Economic Co-operation and Development [OECD] countries for educational attainment, compared to Canada, which ranks 7th.
- "Spending on elementary education is far below the OECD average and many observers consider elementary education in Mexico to be a lacklustre quality."
- In elementary education, Mexico is ranked as "the worst-performing country among all OECD member states."

[19] This evidence does not support the Officer's suggestion that the Applicant had not provided evidence that the Minor Applicants would not receive "similar educational opportunities" in Mexico. The Officer's reasons therefore lack justification.

[20] Second, as the country condition evidence squarely contradicts the Officer's reasons, the Officer was required to address it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17). This is in keeping with the Officer's duty in conducting a BIOC analysis to engage in a rigorous analysis that not only identifies and defines those interests, but also examines them "with a great deal of attention in light of all the evidence" (*Kanthasamy* at paras 39, 41).

[21] Finally, the Officer improperly dismissed this country condition evidence as "generalized." The Respondent justifies this reasoning on the basis that the Applicants failed to meet their onus of linking this evidence to the Minor Applicants' specific circumstances. I disagree. First, the Applicants' H&C Application identified the Minor Applicants as children of elementary school age by providing their class photos and reports cards for Grades 5 and 6, and 6 and 7, respectively. Secondly, the evidence cited by the Applicants bore directly on the quality of elementary school education the Minor Applicants would receive in Mexico as compared to Canada. Finally, the following excerpts from the Applicants' H&C application provide the necessary "link" between the general country condition evidence and the Minor Applicants:

> - The Mexican education system is of paramount importance because of the two [Minor Applicants]. OECD data indicates that the Mexican education system underperforms in terms of teaching children subjects such as reading, maths and science…

- Sending [the Minor Applicants] back to Mexico would irreparably damage all the gains that the two children have made since attending stable and well-resourced schools in Canada.

- Deporting both children and their family would create further disruptions to their education at a sensitive time in their young lives. It is in the best interest of both children for their educational stability to be maintained. To wrest them away from the impeccable learning environment that has been critical to their development would completely reverse the meaningful gains that each child has made here in Canada.

[22] I find that the Officer's analysis unjustly minimizes the BIOC of the Minor Applicants in a manner that is inconsistent with Canada's humanitarian and compassionate tradition, rendering it unreasonable (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75).

[23] In light of the Officer's errors in respect of the BIOC analysis, I do not find it necessary to address the second issue related to hardship.

VI. Conclusion

[24] The H&C Decision is unreasonable as the Officer failed to provide a rigorous BIOC analysis addressing the best interests of the Minor Applicants' in respect of their education.

JUDGMENT in IMM-8619-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted back for redetermination by a different decision maker; and

3. There is no question for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8619-23
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