Federal Court Cour fédérale

Date: 20250506

Docket: IMM-8053-23

Citation: 2025 FC 827

Toronto, Ontario, May 6, 2026

PRESENT: Madam Justice Go

BETWEEN:

ABUBAKAR OLADIMEJI ALABI
AWELE MEME OLUFUNKE
GADIL OLUWASENI ALABI
ZAIDA OLUWAFIKEMI NGOZI ALABI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Abubakar Oladimeji Alabi, his spouse Awele Meme Olufunke Alabi [Associate Applicant or AA], and their two children, Gadil Oluwaseni Alabi (now aged 18), and Zaida

Oluwafikemi Ngozi Alabi (now aged 16) [together, Applicants], are citizens of Nigeria. The Applicants entered Canada in September 2018.

[2] Over the course of their time in Canada, the Applicants have had a negative refugee claim, a negative Pre-Removal Risk Assessment [PRRA] application which was then set aside by the Federal Court on judicial review and was refused again on re-determination, a negative application for permanent residence on humanitarian and compassionate [H&C] grounds, and two successful stay motions. The Applicants are currently seeking leave for judicial review of the negative PRRA redetermination decision.

[3] The Applicants submitted their second H&C application in February 2023. The Applicant's second H&C application was refused in a decision rendered by a Senior Immigration Officer [Officer] on June 19, 2023 [Decision], the subject of the present application for judicial review.

[4] The Officer was not satisfied that the H&C considerations before them justified an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*].

[5] For the reasons set out below, I find the Decision unreasonable and I grant the application.

II. Issues and Standard of Review

[6] The Applicant raises the following issues:

a. Did the officer err in elevating the legal test under subsection 25(1) of the *IRPA* by imposing an elevated expectation of the level of establishment the Applicants should have required?

b. Did the Officer err in using the Applicants' positive establishment to reject their H&C application?

c. Did the Officer err in assessing the Applicants' mental health evidence?

[7] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. 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. The onus is on the Applicant to demonstrate that the decision is unreasonable: *Vavilov* at para 100.

III. Analysis

[8] I find the following to be the determinative issues.

[9] First, I find the Officer erred, with respect to the two children, Gadil and Zaida, by using their integration and establishment in Canada to find they would not experience hardship in Nigeria. In so finding, the Officer erred in their Best Interest of the Child [BIOC] analysis.

[10] Second, I find the Officer erred by discounting the mental health issues of the Associate Applicant and Zaida in their analysis.

A. *The Officer's Error with respect to the Children's Hardship*

[11] Under the heading "Best Interest of the Child (BIOC)," the Officer noted, among other things, that "Gadil and Zaida are well-settled in Canada, attending school and doing well in their classes, attending their church and church youth group, participating in various extra-curricular activities, and having made many friends." The Officer acknowledged that returning to Nigeria will likely entail Gadil and Zaida undergoing a period of re-adjustment and some initial disruption. However, the Officer noted that Gadil and Zaida resided in Nigeria and attended school in Nigeria for the first 10 and 9 years of their lives, respectively, before they came to Canada. Accordingly, the Officer found they have "some familiarity with Nigeria" which would assist them to readjust to life in Nigeria. The Officer also noted that the two children's "young age" will help them resettle; and with their demonstrated "skills and determination" they would be able to "successfully adjust to all aspects of life in a new country."

[12] In making these findings, I find the Officer erred by failing to adequately consider the best interests of Gadil and Zaida.

[13] I note, first of all, that nowhere in the Decision did the Officer determine what would be in the best interests of Gadil and Zaida, although the Officer did acknowledge, at one point, that returning to Nigeria would ***not*** be in the children's best interests. Instead, as the Applicant points

out, the Officer used the children's successful integration and establishment in Canada as a reason for suggesting that they would not experience hardship should they resettle in Nigeria.

[14] As the Supreme Court of Canada [SCC] in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] explained: "'[c]hildren will rarely, if ever, be deserving of any hardship', the concept of 'unusual and undeserved hardship' is presumptively inapplicable to the assessment of the hardship invoked by a child to support his or her application for humanitarian and compassionate relief:" *Kanthasamy* at para 41.

[15] By importing the hardship lens in assessing Gadil and Zaida's best interests, the Officer failed to heed the SCC's teaching in *Kanthasamy.*

[16] Further, as Justice Ahmed noted in *Igreja Ferreira de Campos v. Canada (Minister of Citizenship and Immigration)*, 2024 FC 1193 at para 22:

> This Court has warned against focussing on a child's resiliency and adaptability rather than their best interests (*Bautista v Canada (Citizenship and Immigration)*, 2014 FC 1008 at para 28; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at para 31, citing *Edo-Osagie v Canada (Citizenship and Immigration)*, 2017 FC 1084 at paras 27-29). The Officer here focussed on the former, finding that the Minor Applicants' ability to adapt to Canada's education system and learn a new language "demonstrates their resiliency and ability to adapt."

[17] Justice Ahmed reiterated the court's warning in *Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 at para 21 where he stated:

> [21] ...In my colleague Justice Norris's words, "[t]he life can be hard but children are resilient approach taken by the officer is the antithesis of the compassion that is meant to be shown under section

> 25(1) of the *IRPA*" (*Reducto v Canada (Citizenship and Immigration)*, 2020 FC 511 at para 53; see also *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 ("*Singh*") at para 31)

[18] By focusing on the children's "skills and determination" as well as their "successful integration and establishment" in Canada as a reason for finding they would not face hardship in Nigeria, the Officer in this case similarly erred by focusing on the children's adaptability rather than their best interests.

[19] The Respondent submits that this Court has found no error in an officer using positive establishment factors to discount potential hardship upon removal, citing *Zhou v Canada (Citizenship and Immigration)*, 2019 FC 163 at paras 15-17; *Zhang v Canada (Citizenship and Immigration)*, 2020 FC 503 at paras 23-25, 33, 36; *Del Chiaro Pereira* at paras 44-46; *Joo v Canada (Citizenship and Immigration)*, 2022 FC 1229 at paras 37-42; *Davis v Canada (Citizenship and Immigration)*, 2022 FC 238 at para 40; *Gutierrez v Canada (Citizenship and Immigration)*, 2021 FC 1111 at para 31; *Pretashi v Canada (Citizenship and Immigration)*, 2021 FC 817 at para 57.

[20] All of these decisions, however, are distinguishable on the facts, and the Court's comments were not made in the context of the BIOC analysis. More to the point, in none of these decisions did the Court ever suggest that an officer may consider a child's establishment in Canada in assessing the hardship the child may face in their home country.

[21] The Respondent further submits that BIOC is simply one factor to consider among many; so long as the Officer examines and weighs the interests of the children and does not minimize

their best interests "in a manner inconsistent with Canada's humanitarian and compassionate tradition and the Minister's guidelines," it is not for the Court to re-examine the weight assigned to this factor by the Officer: *Baker v Canada (Citizenship and Immigration)*, [1991] 2 SCR 817 [*Baker*] at paras 63, 75; *Legault v Canada (Citizenship and Immigration)*, 2002 FCA 125.

[22] While I have no quarrel with the principles underlying the Respondent's arguments, the dispute in this case is not about how much weight the Officer should have given to the BIOC factor. Rather, the error lies in the Officer employing the dual hardship and establishment lens that are more suited to analyzing the H&C factor for an adult, instead of adopting the BIOC framework that the SCC laid out in *Baker* and *Kanthasamy* for minor applicants.

B. *The Officer erred in their treatment of the mental health evidence*

[23] As part of the H&C application, the Applicants provided two reports from mental health professional detailing the mental health challenges facing the Associate Applicant and Zaida.

[24] In the Decision, the Officer accepted that the Applicants' return to Nigeria "might cause their mental health to worsen" when referring to the AA and Zaida, but found that the mental health treatment that they require in Nigeria would "greatly assist them with any worsening mental health issues that they might [*sic*] upon the applicants' return to Nigeria."

[25] In making these findings, I find the Officer erred.

[26] Specifically, I agree with the Applicant that in suggesting that a worsening of mental health is something that can be fixed by additional mental health supports, the Officer failed to adequately take into account the reality of mental health.

[27] As the SCC affirmed in *Kanthasamy* at para 48, the very fact that an applicant's mental health would likely worsen if they were to be removed "is a relevant consideration that must be identified and weighed regardless of whether there is treatment available" in the applicant's home country to help treat their condition.

[28] The Applicants further submit, and I agree, that the Officer committed a similar error as the one noted by the Court in *Montero v Canada (Citizenship and Immigration)*, 2021 FC 776 [*Montero*]. Citing *Kanthasamy*, the Court in *Montero* found the decision contradicts the SCC's guidance. The Court noted that the officer did not dispute the applicant's mental health diagnosis. However, rather than assessing whether the applicant's mental health would deteriorate due to her removal to Costa Rica, the officer relied solely upon the availability of healthcare and family support in Costa Rica as a justification for why H&C relief was not warranted: *Montero* at para 28.

[29] The error in this case is even more egregious than that in *Montero*. Here, there was evidence before the Officer, which the Officer accepted, showing that the mental health of both the AA and one of the minor applicants would deteriorate. Yet rather than weighing this as a relevant consideration, as the SCC directs, the Officer relied on their assessment of available mental health support in Nigeria to discount this factor.

[30] I reject the Respondent's submission that the Officer did not discount the effect that the Applicants' removal would have on AA's and Zaida's mental health and that the Officer reasonably found that this factor did not rise to a level that, overall, should result in a positive H&C determination.

[31] The Respondent's submission is not based on the Decision. Nowhere in the Decision did the Officer indicate what weight they attached to this factor, let alone why it did not rise to the level that would result in a positive H&C outcome.

[32] For these reasons, I grant the application. I need not consider the remainder of the Applicant's submissions.

IV. Conclusion

[33] The application for judicial review is granted.

[34] There is no question for certification.

JUDGMENT in IMM-8053-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Adrienne Smith	FOR THE APPLICANTS
Judy Michaely	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Smith Immigration Law Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT