Federal Court  Cour fédérale

Date: 20250623

Docket: IMM-6905-23

Citation: 2025 FC 1129

Ottawa, Ontario, June 23, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

AFUA ASANTEWAA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a Senior Immigration Officer [Officer], dated May 9, 2023 [Decision]. The Officer refused the Applicant's application for permanent residence on humanitarian and compassionate grounds [H&C] pursuant to s 25(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this application for judicial review is granted.

II. Background Facts

[3] The Applicant is a 67-year-old citizen of Ghana. The Applicant came to Canada in March 2015 on a Temporary Residence Visa [TRV] to visit her daughter and three minor grandchildren, who are Canadian citizens. The grandchildren are between the ages of 9 and 13.

[4] The Applicant's daughter is a single mother. The Applicant provides daily care to her grandchildren, who she says "view me as their mother since I spend so much time with them."

[5] The Applicant's TRV was valid until December 2, 2018. The Applicant attests that she was unaware of the renewal timeline. She also says she planned to return to Ghana before the visa expired, but realized it would cause hardship to her daughter and grandchildren.

[6] The Applicant is unemployed and financially dependent on her daughter. She has two elderly siblings in Ghana who are also financially dependent on their children.

[7] The Applicant's H&C Application was based on her health condition (high blood pressure), psychological and social needs, and the best interest of the children [BIOC].

III. Decision Under Review

[8] The Officer held the Applicant had not provided sufficient evidence to establish that H&C relief is justified. The Officer considered the factors of establishment, hardship, and BIOC,

finding “the crux of this application is predicated upon the applicant’s desire to remain in Canada to provide support for her grandchildren.”

[9] The Officer’s findings can be summarized as follows:

- The Applicant’s degree of establishment was minimal.
- The Applicant was not the primary caregiver of her three grandchildren, and did not provide evidence that suitable childcare could not be arranged.
- The Applicant failed to demonstrate that she will face a hardship if she returns to Ghana.
- Despite applying for an H&C, the Applicant has two available immigration pathways available to her, namely, sponsorship and super visa.

[10] On establishment, the Officer did not find the Applicant’s degree of establishment to be exceptional nor find her case to remain in Canada to be remarkable. The Officer found the evidence does not support she has integrated into Canadian society to the extent that her departure would cause hardship that was beyond her control and not anticipated by the IRPA. For the Officer, the Applicant’s caregiving duties for her grandchildren did not amount to any serious level of establishment. Therefore, the establishment factor was given little weight.

[11] The Officer considered the hardship of removal on the Applicant, including her financial dependence on her daughter and access to medication for high blood pressure. The Officer assigned little weight to either factor due to insufficient evidence. The Officer also found insufficient evidence to demonstrate that the Applicant is medically incapable of performing the activities of daily living, that it is medically required for her to have a caregiver, or that she is unable to live by herself. The Officer further determined that insufficient evidence was provided to demonstrate returning to Ghana would be catastrophic for the Applicant and that it would not

be possible or reasonable for her to live there and have her daughter send her money to support her as she was doing the Applicant's arrival to Canada.

[12] The Officer assigned little weight to the BIOC. The Officer indicated they remained alive, alert, and sensitive to the BIOC, having "no doubts" that the Applicant's grandchildren benefit from having her around, and accepting she teaches them about their culture and language. However, the Officer found that the children "will still have their mother to support their emotional, financial and other needs and to take care of them", and that "the children can also maintain contact with the applicant using various internet or telephonic tools or with the help of their mother." The Officer concluded that the removal of the Applicant would not compromise the best interests of her grandchildren.

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

IV. Issues and Standard of Review

[1] The issue in this application is whether the Decision is reasonable.

[2] The parties agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 23-25 [*Vavilov*]).

V. Legal Framework

[3] Subsection 25(1) of IRPA governs H&C considerations. It states:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35, 35.1 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35, 35.1 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35, 35.1 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché
[Emphasis added]	[Je souligne]

[4] H&C is an exceptional and discretionary form of relief that is not meant to operate as an alternative immigration scheme (*Kanthasamy v Canada (Citizenship and Immigration)* [2015] 3 SCR 909 [*Kanthasamy*] at paras 23, 93). In *Lewis-Asonye v Canada (Citizenship and Immigration)*, 2022 FC 1349, Justice Kane summarizes the *Kanthasamy* and post-*Kanthasamy* jurisprudence on H&C considerations (at paras 37-48).

[5] H&C factors are assessed globally and weighed cumulatively (*Kanthasamy* at para 28). The test is "whether, having regard to all of the circumstances, including the exceptional nature of H&C relief, the applicant has demonstrated that decent, fair-minded Canadians would find it simply unacceptable to deny the relief sought" (*Kanthasamy* at para 101).

VI. Submissions

[6] The Applicant submits the Decision is unreasonable because the Officer ignored some of the Applicant's evidence and failed to conduct a global assessment of the H&C factors.

[7] The Respondent submits the Decision is reasonable and the Officer's conclusion was open to them based on the evidence.

A. *Establishment*

[8] The Applicant submits it was unreasonable for the Officer to assign little weight to her establishment because they did not consider her "strong ties in her community developed in the eight years that the Applicant has lived in Canada", nor the Applicant's support to her daughter and grandchildren.

[9] The Respondent submits the Officer reasonably found the Applicant had not provided sufficient evidence that her establishment was extraordinary, and so reasonably gave this factor little weight (*De Sousa v Canada (Citizenship and Immigration)*, 2019 FC 818 at para 28; *Hadun v Canada (Citizenship and Immigration)*, 2018 FC 428 at para 32).

B. *Hardship*

[10] The Applicant submits the Officer's assessment of hardship was unreasonable for not giving any weight to the Applicant's medical condition, since she suffers from high blood pressure, nearly died in Ghana because of that, and has been able to regulate her blood pressure in Canada. The Officer was incorrect in stating that there is little evidence that medications would not be available to her in Ghana and that the return to her country would likely create a medical problem for the Applicant.

[11] According to the Applicant, the Officer also erred in failing to consider the totality of the evidence showing the poor country conditions in Ghana and her age, medical condition and the difficulties she would face in finding employment. The Officer erred in finding that it would be reasonable for her daughter to continue to send her money to help support in Ghana since she cannot even afford a caregiver in Canada.

[12] The Respondent emphasizes that the Applicant did not provide any country condition evidence or indicate what conditions should have been considered by the Officer. Further, "[a]ccess to a higher standard of living or better education in Canada is generally not enough to justify H&C relief" (*Adair v Canada (Citizenship and Immigration)*, 2020 FC 999 at para 17, citing *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1295 at para 18 and *Esahak-Shammas v Canada (Minister of Citizenship and Immigration)*, 2018 FC 461 at para 40).

C. *Best Interests of the Children*

[13] The Applicant submits the Officer's BIOC analysis was unreasonable for discounting the Applicant's very close relationship with her grandchildren and the severe hardship to them if she were removed from Canada. The Applicant argues this is contrary to the Supreme Court of Canada's instruction in *Kanthasamy*, at paragraphs 39-40 stating that:

> [39] A decision under s. 25(1) will therefore be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered: *Baker*, at para. 75. This means that decision-makers must do more than simply *state* that the interests of a child have been taken into account: *Hawthorne,* at para. 32. Those interests must be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence: *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 (CanLII), [2002] 4 F.C. 358 (C.A.), at paras. 12 and 31; *Kolosovs v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 165 (CanLII), 323 F.T.R. 181, at paras. 9-12.
>
> [40] Where, as here, the legislation specifically directs that the best interests of a child who is "directly affected" be considered, those interests are a singularly significant focus and perspective: *A.C.*, at paras. 80-81.

[14] The Applicant also referred to *Lopez Alvarez v Canada (Citizenship and Immigration)*, 2022 FC 130 in which this Court states the following:

> [38] I find the Officer conducted an inadequate Best Interests of the Child [BIOC] assessment when they concluded that the family – including the Applicant's two young children – could maintain their relationship by phone, internet, skype, email, etc. I have explained in *Chamas v Canada (Citizenship and Immigration)*, 2021 FC 1352 at para 43, quoting Justice Sadrehashemi in *Yu v Canada (Citizenship and Immigration)*, 2021 FC 1236 at para 30, my reasons for rejecting immigration officers' use of "boilerplate" language to assess BIOC by stating the child would be able to stay connected with their caregiver through technology, without considering the specific facts of the case.

[15] The Respondent submits the Officer reasonably balanced the BIOC against other H&C factors. The Respondent argues that a positive BIOC finding is less likely where the Applicant is not a primary caregiver, citing *Gutierrez Ortiz v Canada (Citizenship and Immigration)*, 2019 FC 339 at paragraphs 25-28.

[16] The Respondent also points out the Applicant provided no evidence to support her claims that her daughter could not afford alternate childcare.

D. *Alternative Immigration Pathways*

[17] The Applicant submits the Officer unreasonably speculated about alternative immigration pathways available to her because "sponsoring a parent is highly unlikely in Canada and that there are absolutely no guarantees when applying for a super visa."

[18] The Respondent submits it was open to the Officer to consider alternative immigration pathways because the Applicant did not provide any evidence, they would be unavailable to her.

VII. Analysis

[19] 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.

A. *Establishment – Adequately considered, adequately assessed*

[20] I respectfully disagree with the Respondent that the Applicant was required to demonstrate "extraordinary" establishment. While there is some debate on this issue, this Court

has held on numerous occasions that "imposing a requirement for extraordinary establishment is an error warranting intervention" (*Trinh v Canada (Citizenship and Immigration)*, 2024 FC 66 at para 27; see also *Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 at paras 41-45; *Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 at paras 15-26; *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at paras 17-21).

[21] However, I find that the record before the Officer was rather sparse, consisting only of the Applicant's prescription for medication, identity documents, and a Criminal Check from the Ghana Police Service, in addition to her application and written submissions. In my view, this is an issue of weighing and assessing the evidence. Therefore, it was reasonable for the Officer to conclude that the evidence does not support that she has integrated into Canadian society to the extent that her departure would cause hardship that was beyond her control and not anticipated by the IRPA.

B. *Hardship – Adequately considered, adequately assessed*

[22] I find that Officer did not fail to give weight to the Applicant's medical condition and did consider her submission that she was able to stabilize her high blood pressure in Canada. There is little evidence on file to indicate that medications to control her blood pressure would not be available to her in Ghana. Therefore, I find that the Officer's findings in that regard were reasonable. The Officer did consider Ghana's poor country conditions, the Applicant's age and medical condition as well as the hardship she would face if returned to Ghana, but simply noted that prior to her arrival in Canada, her daughter, who had three children at the time, was financially supporting her. The Applicant did not cite any evidence nor even indicate what

conditions should be considered. Subsection 25(1) of the IRPA is not designed to make up for the difference in standards of living between Canada and other countries (*Adair v Canada (Citizenship and Immigration)*, 2020 FC 999 at para 17 and *Esahak-Shammas v Canada* (*Citizenship and Immigration*), 2018 FC 461 at para 40).

[23] The Officer conducted a global assessment of the factors and examined the evidence on file regarding hardship. Here, I find that the Applicant is asking the Court to reweigh the evidence, which is not its role on judicial review (*Vavilov* at para 125).

C. *Best Interests of the Children – Not adequately considered and assessed*

[24] The Applicant submits the Officer's BIOC analysis was unreasonable for discounting the close relationship with her grandchildren and the severe hardship to them if she were removed from Canada. The Officer did write that he appreciates the Applicant's close relationship with her grandchildren, that he is alert, alive and sensitive to the BIOC, that the grandchildren benefit from having her around and that she teaches them about culture and language.

[25] However, 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* at para 143, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 75). In my view, this requires an officer not only to write that he is being alert, alive and sensitive, to the BIOC, but also "to grapple with the real-world situation of the children, examining their circumstances from a realistic perspective" (*Gonzalez Madruga v Canada*

(Citizenship and Immigration), 2025 FC 822 at para 13 [*Gonzalez Madruga*]). As held by Justice Pentney, "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" (*Gonzalez Madruga* at para 13).

[26] In the case at bar, I am not satisfied that the Officer applied this framework to the BIOC factors raised by the Applicant. For example, the Applicant's BIOC claim was based on her personal statements in the Applicant's Supplementary Information H&C Considerations form in which she states her contribution to her grandchildren but also the hardship they would suffer if she was to be removed from Canada. She indicates that her presence in the house has been promoted to the socio-economic development of the family, including the children. The Applicant explained that since her daughter is a single mother, her service as a caregiver has saved her daughter the cost of paying a private caregiver to take care of her children and allowing her to increase her output at work and that the cost of hiring a caregiver is more than what she earns from her current employment. However, the Officer's BIOC analysis did not grapple with these key submissions in their BIOC analysis or assess if it might cause any particular hardships on the children should the Applicant leave Canada.

[27] I find that the Officer gave diminished weight to BIOC this factor because the Applicant was not the primary caregiver for the children and they still have their mother to provide emotional and financial support and take care of their needs. While that is undoubtedly true, it diminishes the central role the Applicant plays in the daily life of her three grandchildren aged 9 to 13 years old. Her daughter is a single parent. According to the Applicant's statement, the child

caring she provides allow her daughter to increase her input at work and her daughter would not be able to afford hiring a caregiver.

[28] I am not satisfied that the Officer engaged with the evidence or applied the proper legal framework for a BIOC assessment. This was one of the three 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).

[29] Considering my finding on BIOC, it is not necessary to address the Applicant's submissions regarding the Officer's reference to the potential of alternative avenues of immigration.

VIII. Conclusion

[30] As a result of the above, the application for judicial review is granted.

[31] The decision refusing the Applicant's 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.

[32] The parties have not proposed a question for certification, and I agree that none arises.

JUDGMENT in IMM-6905-23

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. No question of general importance is certified.

"L. Saint-Fleur"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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