Federal Court  Cour fédérale

Date: 20250721

Docket: IMM-16102-24

Citation: 2025 FC 1292

Toronto, Ontario, July 21, 2025

PRESENT: Madam Justice Go

BETWEEN:

ZHIKUN ZHU
HUIXIAN SU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Zhikun Zhu and his spouse Huixian Su [together the "Applicants"] are citizens of China. They met each after coming to Canada at different times through different immigration programs. They both have had a negative refugee claim. The couple began living together in 2015 and have two daughters, born in 2016 and 2018, who are Canadian citizens.

[2] The Applicants submitted their application for permanent residency on humanitarian and compassionate grounds [H&C application] sometime in May 2023. The Applicants' H&C application was refused in a decision rendered by a Senior Immigration Officer [Officer] on August 21, 2024 [Decision]. The Officer was not satisfied there were sufficient H&C considerations to justify an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27.

[3] In their judicial review application before the Court, the Applicants argue the Officer failed to observe natural justice and the Decision was unreasonable.

[4] Applying the reasonableness standard of review per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, I find the Decision unreasonable as the Officer erred in their Best Interests of the Children [BIOC] analysis. As I find this error sufficient to grant the application, I need not address the remainder of the Applicants' submissions.

II. Analysis

[5] In support of their H&C application, the Applicants – who were self-represented at the time – submitted extensive documentary evidence under the themes of establishment in Canada, hardship upon return to China, family unity and the best interests of their daughters. The Applicants indicated that their two daughters are Canadian citizens who live with the Applicants and have never been to China. The Applicants also provided evidence about their extended family network in Canada including Mr. Zhu's sister, brother-in-law, niece, nephew, maternal grandparents, three aunts, three uncles, and cousins who are either Canadian citizens or

permanent residents, as well as Ms. Su's grandmother, four aunts, three uncles, and cousins who are also either Canadian citizens or permanent residents.

[6] With respect to the BIOC, the Applicants submitted, among other things, a letter from Dr. Kevin Lee, the Applicants' daughters' pediatrician, who wrote in support of the Applicants' plea to remain in Canada. In his letter, Dr. Lee "strongly recommended that the children continue to reside permanently in their home in Canada to ensure a safe and secure environment and prevent them developing separation anxiety disorder, trauma, and distress as a result of any sudden change in their environment of being forcibly separated from their loved ones and their familiar environment such as home, school, teachers, peers, friends, etc."

[7] The Applicants' submission also included a letter of support from Ms. Su's cousin, M.Y., a Canadian citizen working as a registered nurse at a hospital in Toronto. M.Y. described the care the couple provided to their daughters to ensure that the children are healthy and happy. M.Y. also stated that the Applicants will not be able to provide a good living and growing condition for their children in China, and that it will be best for the children "to stay in Canada with their parents to avoid any negative psychological and emotional impact for them; such as separation anxiety." M.Y. further noted that "the small village [*sic*] [the Applicants] came out from are very traditional, they value boys a lot more than girls; [the two children] have a very high chance of being treated unfairly there when the parents are not with them."

[8] In the Decision, the Officer acknowledged that the two children are Canadian citizens and have a right to live in Canada, but due to their young age, they must live with their

"caretaker(s)." The Officer noted the children's school reports and acknowledged they are progressing well in school. The Officer found "little evidence submitted to suggest [the two children] would not be able to live in China" while noting that China offers free education and free healthcare to children. The Officer also acknowledged that there will be changes if the children were to leave Canada, but that "young children are usually highly adaptable and there is little evidence submitted to suggest they will have difficulties in adjusting to life in China." The Officer found the Applicants "provided little information on how leaving Canada would actually affect [the children]" and noted that if the children were to go to China, "they will continue to have the love, support and care of their parents and reach other." Finally, the Officer found "little evidence submitted to suggest moving to China would have any long-term negative effects to [the two children]."

[9] The Applicants submit the Officer erred when they found little evidence to suggest moving to China would have any long-term negative effects to the two children. The Applicants point to the letter from Dr. Lee as evidence that contradicted the Officer's finding.

[10] I agree with the Applicants.

[11] Dr. Lee expressed concerns about the impact on the two children should they be forced to move to China, including concerns about separation anxiety and trauma. I observe the letter from M.Y. noted similar concerns, in addition to the concern about unfair treatment of the two children based on their gender. The Decision made no mention of these letters. Critically, the

Decision did not note that the Applicants also quoted Dr. Lee's letter extensively in their supplementary application form.

[12] I agree with the Applicants that while it was open to the Officer to find that this evidence did not establish the children would experience "long-term negative affects," it was not open to the Officer to ignore the evidence which squarely contradicted the Officer's conclusion, and as such ought to have been addressed.

[13] Further, these two letters also contradicted the Officer's finding that the Applicants "provided little information on how leaving Canada would actually affect [the children]."

[14] I find, unpersuasive, the Respondent's argument that the Officer considered the evidence and reasonably found "little evidence" of long-term negative effects on the daughters. The Respondent argues that there is nothing in the letter from the pediatrician or the letter from the Applicants' cousin that speaks to "long-term" effects, and to the contrary, the pediatrician's letter discusses the effects of a "sudden change" in the daughters' environment if forcibly separated from loved ones. Given that the Officer did not mention or analyse the two letters, the Respondent's argument amounts to bolster the reasons after the fact. Moreover, whether or not the pediatrician's letter speaks to the "long-term" effects on the children is an assessment that the Officer should have, but failed, to conduct.

[15] Further, while the Officer noted in one sentence, "I agree with Zhikun and other support letters that it would be detrimental to [the children] if they were separated from their parents," I

disagree with the Respondent that this means the Officer did consider Dr. Lee's letter. The above quoted comment was followed by the Officer noting that "there is little explanation submitted to clarify if Zhikun would choose to separate [the children] from himself and Huixian if they were return to China." As such, the Officer referred to the support letters only in the context of assessing the impact on the children should the Applicants depart for China without their children. The Officer did not consider the support letters in assessing the impact on the children should they relocate to China with their parents.

[16] For these reasons, I find the Decision unreasonable.

[17] The Applicants sought both a writ of *certiorari* quashing the Officer's decision, as well as a writ of *mandamus* requiring that they be allowed to make further submissions (including at an interview if necessary), and that a different officer render a decision within 18 months of the Court's order.

[18] The Respondent opposes these additional forms of relief, saying the Applicants have not provided evidence or argument in support of a timeline or for an interview, and that therefore the Court should decline to order them: *Bashir v Canada (Citizenship and Immigration)*, 2023 FC 71 at para 21. The Respondent concludes that, since the Supreme Court of Canada's decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, it has been held that H&C applications are assessed in writing without an interview: see e.g. *Guxholli v Canada (Citizenship and Immigration)*, 2013 FC 1267 at [*Guxholli*] para 25 (per Justice de Montigny, as he then was).

[19] While I do not find *Guxholli* to be on point and I note that in certain circumstances, an officer may be required to call an interview as part of the H&C application process, I agree with the Respondent that the Applicants have failed to make out their case for a *mandamus* order. In any event, once this matter is returned for redetermination, the Applicants will have further opportunity to provide additional submissions. The Applicants may also request for an interview once a new officer is assigned to this matter.

III. Conclusion

[20] The application for judicial review is granted.

[21] There is no question for certification.

JUDGMENT in IMM-16102-24

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

DOCKET:	IMM-16102-24
STYLE OF CAUSE:	ZHIKUN ZHU, HUIXIAN SU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	JULY 17, 2025
JUDGMENT AND REASONS:	GO J.
DATED:	JULY 21, 2025

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