

Federal Court



Cour fédérale

Date: 20250904

Docket: IMM-17901-24

Citation: 2025 FC 1427

Ottawa, Ontario, September 4, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

**FRANCIS DAVID BRITO CABRAL
(by his litigation guardian MICHELL DAVID BRITO GARCIA)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a minor child and citizen of the Dominican Republic, applied for permanent residence in Canada, as a member of the family class under paragraph 117(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Because the Applicant's father had failed to declare him as a dependent child when the father became a permanent resident in 2011, the Applicant was excluded as a member of the family class by virtue of paragraph 117(9)(d) of the IRPR. The same exclusion did not apply to the father's sponsorship of the Applicant's sister

because she was born after the father had applied for permanent residence. His sister's application for permanent residence was approved.

[2] The Applicant sought an exemption from exclusion based on humanitarian and compassionate [H&C] grounds, including best interests of the child [BIOC] considerations. In support, the Applicant submitted affidavit evidence from his father. More particularly, the father explained that the Applicant's mother was having difficulty raising him and his sister. As a result, the children were being raised partly by their mother, partly by their maternal grandmother, and partly by their paternal grandmother. Furthermore, the Applicant's mother provided written consent for her children immigrating to Canada. The children have no other siblings and the Applicant's father expressed great concern over separating his children.

[3] In written representations, the Applicant's representative articulated the relevant considerations as follows:

Now [the Applicant]'s mother gave up custody and supports [his] immigration for the child's well-being. This decision is based on the best interest of the siblings. The Mother has started a new life that does not include the children. They are being bounced around by different grandparents and others. It is best that they will have the opportunity to be raised in the same environment.

Letter dated August 19, 2024, Certified Tribunal Record [CTR] at 113–114.

[4] An immigration officer [Officer] refused the Applicant's application, finding that there were "insufficient grounds to overcome the exclusion" under paragraph 117(9)(d) of the *IRPR*. The Officer thus determined that the Applicant was "not a member of the family class" and thereby unable to be sponsored: Letter dated September 13, 2024, CTR at 3. The Applicant seeks judicial

review of the Officer's decision on numerous grounds. In my view, the determinative issue is the Officer's failure to engage with the Applicant's evidence and arguments about the BIOC.

[5] An officer's failure to meaningfully grapple with key issues or central arguments may vitiate their decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 127–128 [*Vavilov*]. Further, a BIOC assessment must be responsive to the affected children's circumstances: *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 35 [*Kanhasamy*]. In that vein, an officer must examine the interests “‘with a great deal of attention’ in light of all the evidence”: *Kanhasamy* at para 39, citing *Legault v Canada (Minister of Citizenship and Immigration)*, [2002] 4 FC 358 (CA) at paras 12, 31.

[6] Here, however, the Officer failed to engage with the evidence and arguments concerning the instability of the Applicant's family life in the Dominican Republic. In the Global Case Management System Notes, the Officer only states that the Applicant “would continue to reside with their mother in the [Dominican Republic] and be able to remain in school and a familiar environment in which they grew up”: CTR at 7.

[7] The Officer makes no mention of the evidence that the mother has been struggling to raise her children such that they are also being cared for by their grandmothers. This was key evidence that was submitted in support of an H&C exemption. In the circumstances, it was incumbent on the Officer to engage with the Applicant's evidence and arguments on this critical issue. Failure to do so is a reviewable error.

[8] The Respondent argues that the Officer's decision is reasonable because the Applicant's father's evidence was vague, there was no evidence from his mother, and there was no evidence about the relationship between the Applicant and his sister. As I stated at the hearing, however, these were not reasons cited by the Officer as justification for their refusal. The Respondent cannot now offer after-the-fact explanations for the Officer's decision. In accordance with *Vavilov*, the Court must focus on the Officer's reasons and whether they are "justified"; not whether the outcome is "justifiable": *Vavilov* at para 86.

[9] Finally, responsive justification in administrative decisions is even more important where the stakes are high: *Vavilov* at para 133. In this case, the Officer's decision results in a lifetime bar on the Applicant's ability to be sponsored by his father as a member of the family class. On this basis, the Officer had a "heightened responsibility" to ensure that their reasons were responsive to the Applicant's circumstances: *Vavilov* at para 135.

[10] For these reasons, the application for judicial review is granted. The Officer's decision dated September 13, 2024, is set aside and the matter is remitted to a different officer for redetermination. No question of general importance was proposed by the parties for certification, and I find that none arises in this case.

JUDGMENT in IMM-17901-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision dated September 13, 2024, is set aside and the matter is remitted to a new officer for redetermination.
3. There is no certified question.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-17901-24

STYLE OF CAUSE: FRANCIS DAVID BRITO CABRAL (by his litigation guardian MICHELL DAVID BRITO GARCIA) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 2, 2025

JUDGMENT AND REASONS: TURLEY J.

DATED: SEPTEMBER 4, 2025

APPEARANCES:

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