

Federal Court



Cour fédérale

Date: 20251107

Docket: IMM-24262-24

Citation: 2025 FC 1799

Toronto, Ontario, November 7, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

SHOOK KWAN CHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Shook Kwan Chang, applied for permanent residence in Canada on humanitarian and compassionate [H&C] grounds. Her application was rejected, and she now seeks judicial review of that rejection.

[2] This is the second time that the Applicant has sought judicial review in respect of her H&C application. An earlier decision rejecting the application was quashed by this Court in *Chang v Canada (Citizenship and Immigration)*, 2024 FC 1005.

[3] For the following reasons, judicial review in this matter is, once again, granted.

II. BACKGROUND

A. *Facts*

[4] The Applicant is an 82-year-old citizen of Hong Kong (SAR). Since the Applicant's husband died in 2016, she has been living with her daughter, Pang Yuen Man [Man], Man's husband, Chung Kwong Esmond Yeung, and Man's two children: Tsz Ching Yeung (Christy), who is 15 years old, and Cheuk Nam Yeung (Derek), who is 17 years old. The Applicant also has a son in Hong Kong, but she is estranged from him.

[5] From 2016 to 2020, the Applicant and her daughter's family lived together in Hong Kong, and in 2020 they moved to Canada. Man is a Canadian citizen, and the Applicant has been on a valid visitor visa for the duration of her stay in Canada.

[6] The Applicant has had a significant and, in her words, "essential" caregiving role for her two grandchildren. This has included providing full-time childcare while the parents work and taking an active and ongoing role in raising them, including teaching them to cook, teaching them about their culture and history, and caring for them when they are ill.

[7] The Applicant's support for her family has become particularly important since her daughter developed epilepsy and was subsequently diagnosed with glioma. Man reports that she now needs more support with housekeeping and childcare, because her illness makes it necessary for her to avoid stress and have adequate rest.

[8] The Applicant first applied for permanent residence in Canada on H&C grounds in March 2022. Her grounds for seeking H&C relief were: her relationship with her grandchildren and her role as a primary caregiver for them; her relationship with her daughter; the lack of family support or friends in Hong Kong to provide care for her should the need arise; the unstable and potentially deteriorating political situation in Hong Kong; and her establishment in Canada. The application also noted that, while Man's family do not have the financial means to sponsor the Applicant through the family class, they do have the means—through a combination of work income, savings, and property ownership—for the Applicant to remain financially self-sufficient in Canada.

[9] As noted above, this application was rejected on July 20, 2022. However, in June 2024, this Court granted the Applicant's judicial review, and the matter was remitted back to Immigration, Refugees and Citizenship Canada [IRCC] for reconsideration.

[10] In support of the redetermination of her application, the Applicant provided updated information and supporting documents. The grounds for the Applicant's H&C application were largely the same, but she provided updated letters from family members, including her grandchildren, and updated information on Man's health. Specifically, the Applicant provided documentation showing that Man has been diagnosed with a glioma and epilepsy, that her last

seizure had taken place in September 2023, and that the Applicant's support has been very important for Man and her family as she navigates these health issues.

[11] The Applicant's second H&C application was rejected on December 12, 2024. That rejection is the decision under review.

B. *Decision Under Review*

[12] The IRCC officer who redetermined the application found, in the aggregate, that the humanitarian and compassionate considerations raised by the Applicant did not justify an exemption under section 25(1) of the *Immigration and Refugee Protection Act* [IRPA]. This conclusion was drawn from the following key findings:

- There was little evidence to suggest that the Applicant could not live on her own, independently in Hong Kong, or that her daughter would be unable to make alternative arrangements for her care;
- There was little evidence to demonstrate that the Applicant, while 82 years old, could not travel back and forth to Canada to visit her family;
- There was little evidence to establish that any political instability in Hong Kong would affect the Applicant;
- Relationships are not bound by geography, and there was insufficient evidence to establish that the Applicant's separation from her immediate family in Canada would sever their bonds;
- The limited information in the record regarding Man's medical condition warranted limited weight in the analysis;
- Regarding the best interests of the children, there was no evidence to suggest that their parents would be unable to care for them should the Applicant return to Hong Kong, or that they would be unable to continue attending school in the Applicant's absence.
- Ultimately, there was insufficient evidence to demonstrate that the best interests of the children would be "compromised to such an extent that warrants humanitarian and compassionate relief for the applicant when weighed against all other factors."

III. ISSUES and STANDARD OF REVIEW

[13] The Applicant argues that the officer erred in two overarching respects. First, she argues that the officer unreasonably assessed the best interests of her grandchildren. Second, she argues that the officer failed to have adequate regard to the principle of family reunification, and its application to her situation. As I have concluded that the officer erred in the assessment of the first issue, I need not consider the question of family reunification.

[14] The parties do not dispute that the standard of review for these issues is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. In conducting a reasonableness review, a court “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

IV. ANALYSIS

A. *Best Interests of the Child*

[15] The bulk of the Applicant’s argument relates to the officer’s assessment of the best interests of her grandchildren.

[16] This is not a case where the officer simply failed to consider the best interests of the children [BIOC]; indeed, the officer considered various BIOC factors in some detail. The

question, therefore, is whether this analysis was reasonable, taking into consideration the relevant factual and legal constraints, including the decision of the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*].

[17] In *Kanthasamy*, the Supreme Court set out the characteristics of a reasonable (and unreasonable) BIOC analysis (at paras 39-40):

[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. [...]

[18] The Applicant suggests that this case is like other cases involving grandparents and grandchildren, in which this Court has found an officer’s BIOC assessment to be unreasonable: see, for example, *Motrichko v Canada (Citizenship and Immigration)*, 2017 FC 516 [*Motrichko*] and *Osipova v Canada (Citizenship and Immigration)*, 2024 FC 1055 [*Osipova*].

[19] The Respondent counters that this matter bears greater similarities to other cases, in which this Court has rejected applications for judicial review on the basis that the BIOC analyses were reasonable: see, for example, *Kaur v Canada (Citizenship and Immigration)*, 2022 FC 686;

Toor v Canada (Citizenship and Immigration), 2022 FC 773; and *Khaira v Canada (Citizenship and Immigration)*, 2018 FC 950. According to the Respondent, this court has “routinely” found that the separation of a grandparent and a grandchild, where the child remains in the care of their parents, is generally not sufficient to warrant H&C relief.

[20] Respectfully, however, I do not agree that the Court’s jurisprudence establishes such a bright line proposition. Rather, each of the above decisions (and there are many more) have been decided in the context of their own factual matrix.

[21] Across individual families, cultures, and traditions, grandparents play a wide-ranging, though often essential role in the lives of their grandchildren. As my colleague Justice Strickland noted in *Le v Canada (Citizenship and Immigration)*, 2022 FC 427, this Court “has recognized the important role that grandparents may play in the care of their grandchildren, especially in cases where the children’s parents may not be able to care for them or where the children have additional needs.” While I certainly agree with the above statement, I would clarify that our Court’s intervention in these cases is not limited to situations in which a child has special needs, or where the child would be essentially neglected without the presence of their grandparents.

[22] The jurisprudence is more nuanced than this, focusing on the interdependence of the family, the particular role of the grandparents in their grandchildren’s lives and, more importantly, on the officer’s attentiveness to the children’s interests. In addition to the cases cited above, see *Shah v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 398; *Sobhan v Canada (Citizenship and Immigration)*, 2023 FC 1540 [Sobhan]; *Farhat v Canada (Citizenship and Immigration)*, 2023 FC 1427 [Farhat]; *Bernabe v Canada (Citizenship and Immigration)*,

2022 FC 295 [*Bernabe*]; and *Safdar v Canada (Citizenship and Immigration)*, 2025 FC 1727.

Some of these cases did involve children with special needs, see for example *Bernabe* and *Sobhan*, but other cases make it clear that this is not a formal requirement: see, for instance, *Chamas v Canada (Citizenship and Immigration)*, 2021 FC 1352 at para 38.

[23] Turning to the matter at hand, the question is whether it can reasonably be said that the best interests of Tsz Ching and Cheuk Nam were a “singularly significant focus and perspective” in the officer’s analysis. I have concluded that, for at least three reasons, they were not.

[24] The first reason is that, while the officer acknowledged that the Applicant’s daughter has epilepsy, that she has suffered from seizures in the past, and that it was the Applicant who called emergency services and cared for the children in these moments, there is little sense that the officer considered these facts in the context of the BIOC assessment.

[25] It is true, as the Respondent notes, that the medical evidence in the record was not particularly detailed. Nevertheless, it is not a matter of dispute that Man suffers from epilepsy and that the onset of seizures, while normally controlled, can happen at any time. The fact that the Applicant has played a central role in these difficult and distressing moments is clearly important in assessing the children’s best interests. This being the case, the absence of any real consideration of Man’s healthcare condition in the context of the BIOC analysis is, in my view, unreasonable.

[26] The second reason is that, on a fundamental level, the officer’s assessment more resembles a hardship analysis than an affirmative assessment as to what is in the children’s best

interests. The result is that the officer focused more on whether the children would be deprived of their most basic needs – food, shelter, care, education – rather than what was truly in their best interests. This Court has found on numerous occasions that this is not the correct approach. As my colleague Justice Régimbald noted in *Farhat*, “[t]o say that a child’s best interests are met by avoiding “undue harm” is to misunderstand the word ‘best.’” Instead, Justice Régimbald notes, the officer “must evaluate the best interests of the child, after a proper identification and definition of those interests.” Justice LeBlanc put it this way in *Motrichko* (at para 27):

...the analysis the Officer was called upon to undertake was not whether the grandchildren would manage or survive in the absence of their grandmother but how they would be impacted, both practically and emotionally, by the departure of the Applicant in the particular circumstances of the case. To that end, the interests of each grandchild, including those of Shany, needed to be “well identified and defined” and examined “with a great deal of attention”. The Officer’s BIOC analysis falls well short of this standard.

[27] Ultimately, I am convinced that the officer’s approach in this case was, at root, similar to those that Justices Régimbald and LeBlanc found to be unreasonable in *Farhat* and *Motrichko*.

[28] My third concern is that in assessing the children’s best interests, the officer appears to have completely disregarded the statements of the children themselves. Tsz Ching and Cheuk Nam provided detailed, heartfelt, and thoughtful statements in support of their grandmother’s application. More than perhaps any other evidence, it was these statements that required a “great deal of attention” in the BIOC analysis: see *Kanthasamy* at para 39.

[29] While it is true that an officer need not specifically mention each item of evidence in the record, it should be self-evident that mature and detailed statements made by children who are at the heart of a BIOC analysis should be specifically considered.

[30] One example will illustrate why this is the case. The officer assumes, apparently without direct evidence on point, that the children's parents are really their primary caregivers, and that the Applicant is essentially a backup source of support to them. In many circumstances this may be a reasonable assumption, but the children's evidence suggests otherwise. Indeed, their evidence serves to establish that the Applicant is at least as involved in the children's care as their parents. For example, Cheuk Nam explains in his letters that it was always the Applicant who would sleep with him when he could not sleep or was scared. In Canada, he describes the Applicant as the "main person taking care of us" especially when he and his sister are sick. Similarly, Tsz Ching states that the Applicant is the "key person to take care us" and that this is particularly the case when she gets sick, which happens frequently due to her weak immune system.

[31] I refer to these passages not to reweigh the evidence that was before the officer, but to illustrate why the family structure assumed by the officer (two primary caregiver parents, with the Applicant as a secondary caregiver) was simply incompatible with the children's own understanding of their family and the role of their grandmother in it. In these circumstances, the officer's disregard of the children's own narratives was unreasonable.

V. CONCLUSIONS

[32] For the above reasons, this application for judicial review is granted. The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-24262-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated December 12, 2024 is set aside and sent back to be redetermined by a different decision-maker; and
3. No serious question of general importance is certified.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-24262-24

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APPEARANCES:

Anna Davtyan	FOR THE APPLICANT
Saudia Samad	FOR THE RESPONDENT

SOLICITORS OF RECORD:

EME Professional Corp Barristers and Solicitors Thornhill, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT