Federal Court  Cour fédérale

Date: 20260108

Docket: IMM-12890-23

Citation: 2026 FC 14

Ottawa, Ontario, January 8, 2026

PRESENT: Justice Andrew D. Little

BETWEEN:

TEMITOPE ELIZABETH ADEKO
OLUWATOMIWA EMMANUEL BADRU
OLUWATOMILOLA ELIZABETH BADRU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants applied to the Court to set aside a decision of a senior immigration officer dated August 18, 2023, made under section 25 of the of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA").* The decision denied the applicants' request for permanent residence in Canada with an exception based on humanitarian and compassionate ("H&C") grounds.

[2] The applicants contended that the decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[3] For the following reasons, I conclude that the decision was reasonable. Accordingly, the application for judicial review must be dismissed.

I. Background and Events Leading to the Decision under Review

[4] The applicants are a family comprised of a mother and two children, all citizens of Nigeria. The family includes another child who is a citizen of Canada and is not an applicant in this proceeding.

[5] In January 2018, the applicants entered Canada irregularly (i.e., other than through a port of entry). Three days after entry, they claimed refugee protection in Canada. Around this time, a departure order was issued against them, which does not appear in the record but was mentioned in the H&C decision under review.

[6] In January 2019, the Refugee Protection Division ("RPD") dismissed the applicants' claim for refugee protection as manifestly unfounded.

[7] In July 2019, the applicants applied for permanent residence with an exemption on H&C grounds under section 25 of the *IRPA*. In January 2021, an officer denied their H&C application. This Court dismissed an application for judicial review: *Adeko v. Canada (Citizenship and Immigration)*, 2022 FC 1047.

[8] In June 2021, the applicants filed an application for permanent residence with exemptions under the federal government's then-applicable public policy related to health care workers. In August 2021, their application was refused.

[9] Also in June 2021, the applicants filed a second H&C application. By decision dated August 18, 2023, a senior immigration officer denied their application. The second H&C decision is the subject of this application for judicial review.

II. The Second H&C Decision

[10] After an initial introductory section, the H&C decision analyzed the applicants' request for H&C relief under several headings: the applicants' refugee claim, establishment, best interests of the children, adverse country conditions, and a conclusion section that summarized and weighed the various factors.

[11] The H&C decision stated that the applicants' refugee claim was dismissed as manifestly unfounded because the claims were "clearly fraudulent". The H&C decision stated that the RPD found several areas in which the principal applicant was not credible. The H&C decision quoted the RPD's findings that she was "not in a bisexual relationship" as she claimed, that the incident that allegedly caused her to leave Nigeria "never happened", and that on two occasions, she "knowingly withheld material facts" in an attempt to mislead Canadian immigration officials when applying for a Canadian visa. The RPD stated that the applicants provided fraudulent information to support the material and substantive elements of their refugee claim.

[12] On establishment, the H&C decision considered that the applicant had been in Canada for more than 5 years. The decision considered documents related to the children's education, letters of support from members of their community, letters concerning the principal applicant's volunteer work and photographs. The decision found that the applicants' establishment warranted positive weight. However, the decision found that their ties to the community were only formed due to the principal applicant's falsified allegation of danger in Nigeria, which heavily reduced the positive weight of their establishment.

[13] The H&C decision considered the applicant's financial establishment in Canada, including that the principal applicant was a frontline health care worker during the pandemic, which was a factor that "attract[ed] specific positive weight in itself". The considerable positive weight of their financial establishment was again mitigated by the applicants' manifestly unfounded refugee claim that enabled the financial establishment.

[14] The H&C decision concluded that the applicants' establishment warranted modest positive weight in the overall H&C assessment.

[15] The H&C decision considered the best interests of the children ("BIOC") at length. The decision conducted a comparative analysis of the two minor applicants' best interests, comparing their situation in Canada with the conditions in Nigeria. The decision found that these children were at a young age when they are likely highly adaptable and the impacts of moving back to Nigeria would be mitigated by the continuing support of their mother and their adaptability. The decision considered their prior residence in Lagos, Nigeria, including their ability to access

necessary services and their mother's education there. The conditions in Nigeria impacted the children's best interests to some extent, but their mother's continued support and previous history in Nigeria mitigated the weight of that factor.

[16] The H&C decision considered the best interests of the youngest child in the applicants' family, who was born in Canada. The decision considered the medical evidence related to this child's diagnosis with sickle cell anemia shortly after birth. The decision accepted the diagnosis and recognized that the disease can lead to adverse health outcomes. After considering the filed medical evidence and a fact sheet concerning the disease, the H&C decision found that the diagnosis required little specific healthcare attention and carried little weight in assessing his best interests.

[17] The assessment of the BIOC next considered the possibility that, on return to Nigeria, the children would have to perform a dangerous family traditional rite to confirm that they were the children of their father. This possibility was also considered in a separate pre-removal risk assessment. The H&C decision found insufficient evidence of danger to the children from their father or his family. The decision noted evidence on the H&C application suggesting that the children have a neutral, if not positive, relationship with their father. Referring to evidence that contradicted the principal applicant's evidence that the father wanted the children to return to Nigeria for the rites, the decision found that it was not reasonable to believe that the father was seeking to have the children return to Nigeria or to harm them. Rather, they still had some degree of relationship with him, and it was reasonable to believe that his presence in their lives would benefit them.

[18] In sum, on the BIOC, the H&C decision found that there were factors that weighed positively and negatively in determining whether the children's interests supported the requested relief. The decision concluded that their best interests were to be in the care of their primary caregiver mother. The BIOC carried little positive weight in the H&C assessment.

[19] The H&C decision then considered adverse country conditions, concluding that the applicants would not face hardship in Nigeria due to the principal applicant's alleged same-sex relationship (the basis of which was not accepted by the RPD). The H&C decision assessed country condition evidence for Nigeria, including concerns that the applicant would be unemployed. The decision found that the applicant's statement that she had been unemployed for 10 years before coming to Canada was contradicted by the forms she submitted for the H&C application and her refugee claim, which advised that she owned a business from 2008 to 2017 when she left Nigeria.

[20] The H&C decision considered whether the applicants would not be safe as Christians in Nigeria and due to high crime rates. The decision considered country condition evidence for Lagos, finding that little evidence of likely hardship due to their faith and that they would face some level of hardship due to the security situation in Nigeria.

[21] The H&C decision considered issues faced by women in Nigeria but concluded that the applicant fit almost all of the categories described in the country evidence that enabled women to mitigate this hardship.

[22] Overall, on hardship from country conditions, the H&C decision accepted that adverse conditions in Nigeria would likely cause the applicants some level of hardship, based on the general conditions in Nigeria and the applicant's status as a divorced woman. The decision found that these hardships would be mitigated by various factors and concluded that this hardship warranted a moderate amount of positive weight in the H&C assessment.

[23] The conclusion section of the H&C decision considered the weight given to each of the factors, referring to an individual and global assessment. After a summary of the weight for each factor, the H&C decision found that the RPD's decision deserved considerable weight, both in itself and because the applicants' time in Canada was based on a claim that was "manifestly unfounded" and based on fraudulent information knowingly provided by the principal applicant.

[24] The H&C decision concluded that humanitarian and compassionate considerations in the application did not justify an exemption under section 25 of the *IRPA*.

[25] The applicant now seeks to set aside this decision as unreasonable.

III. Analysis

A. *Legal Principles*

[26] The standard of review of the H&C decision is reasonableness, as described in *Vavilov*. See *Kanthasamy v. Canada (Citizenship and Immigration),* 2015 SCC 61, [2015] 3 SCR 909, at paras 42-44; *Onifade v. Canada (Citizenship and Immigration),* 2025 FC 47, at para 64; *Adeko,* at para 18.

[27] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 63; *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Mason*, at paras 8, 59-61, 66; *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194.

[28] The requirements of the applicable statute and binding case law operate as constraints on a decision, unless reasons are provided for departing from them or the administrative context requires an adaptation of applicable case law or doctrine: *Vavilov*, at paras 106, 108, 111-113.

[29] The evidence before the decision maker also operates as a constraint on a decision maker: a reasonable decision must be justified in light of the facts. However, absent "exceptional circumstances", a reviewing court will not interfere with the decision maker's factual findings and will not reweigh or reassess the evidence. As the Supreme Court held, a decision may be jeopardized if the decision maker "fundamentally misapprehended or failed to account for the evidence before it". See *Vavilov*, at paras 125-126.

[30] Subsection 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of that statute and grant permanent resident status in Canada, if the Minister is of the opinion that such relief is justified by humanitarian and compassionate

considerations. The H&C discretion in subsection 25(1) is a flexible and responsive exception to the ordinary operation of the *IRPA*, to mitigate the rigidity of the law in an appropriate case: *Kanthasamy*, at para 19.

[31] Humanitarian and compassionate considerations refer to "those facts, established by the evidence, which would excite in a reasonable […] [person] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the [*IRPA*]": *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, at p. 350, as quoted in *Kanthasamy*, at paras 13 and 21. The purpose of the H&C provision is to provide equitable relief in those circumstances: *Kanthasamy*, at paras 21-22, 30-33 and 45.

[32] Subsection 25(1) has been interpreted to require that the officer assess the hardship that the applicant(s) will experience upon leaving Canada. Although not used in the statute itself, appellate case law has confirmed that the words "unusual", "undeserved" and "disproportionate" describe the hardship contemplated by the provision that will give rise to an exemption. Those words to describe hardship are instructive but not determinative, allowing subsection 25(1) to respond flexibly to the equitable goals of the provision: *Kanthasamy*, at paras 33 and 45.

[33] The H&C assessment under subsection 25(1) is a global one, and all relevant considerations are to be weighed cumulatively as part of the determination of whether relief is justified in the circumstances: *Kanthasamy*, at paras 25, 27-28, 33; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paras 74-75.

B. *Was the H&C Decision unreasonable?*

[34] The applicants raised several issues, which I will address in turn.

(1) Best Interests of the Children

[35] In assessing applications on H&C grounds, an officer must always be alert, alive and sensitive to the best interests of the children. Those interests must be well identified and defined, and examined with a great deal of attention in light of all the evidence: *Kanthasamy*, at paras 35, 38-40. A decision under *IRPA* subsection 25(1) will be unreasonable if the interests of children affected by the decision are not sufficiently considered: *Kanthasamy*, at para 39. While the children's interests must be given substantial weight and be a significant factor in the H&C analysis, they are not necessarily determinative of an application under *IRPA* subsection 25(1): *Kanthasamy*, at para 41. See also Justice Kane's recent discussion of the principles in *Onifade*, at paras 74-80.

[36] The applicants challenged the H&C's assessment of the BIOC. The applicants submitted that the H&C unreasonably minimized the hardship the children would experience on a return to Nigeria, by unreasonably assessing the evidence related to the Canadian-born child's access to proper treatment for sickle cell anemia in Nigeria; by using an unfounded assumption about the children's age and adaptability instead of each specific child's circumstances; and by speculating that it would be in the children's best interests to be reunited with their father.

[37] In my view, the H&C decision reasonably assessed the BIOC based on the evidence before the officer.

[38] The assessment of the medical evidence relating to the third child's condition was open to the officer on the evidence filed in the application. The child was diagnosed at birth in 2018 with sickle cell anemia. The principal applicant testified about her fears about her child's condition. However, the medical evidence filed on the H&C application was limited to the original diagnosis and did not include any additional evidence as of June 2021, nor was it updated after filing. There was no evidence that the child had received any treatment for the disease after diagnosis or was receiving any continuing treatment that would be interrupted on a move from Canada to Nigeria. The applicants' evidence about health care in Nigeria generally, and treatment for the disease in Nigeria, was limited to excerpts from two reports prepared by the U.K. Home Office and a brief magazine article from March 2019 on sickle cell anemia in Nigeria. Having reviewed that evidence, in my view it was open to the officer in assessing that evidence to conclude that the child's diagnosis required little specific healthcare attention.

[39] Part of the officer's BIOC assessment found that the children were likely adaptable at their young age, and that the disruption of a relocation to Nigeria would be mitigated by the presence of their mother and their adaptability. I agree with the applicants that this kind of generalized finding on the adaptability of young children may raise real concerns about the reasonableness of a BIOC assessment in an H&C decision: see e.g., *Alabi v. Canada (Citizenship and Immigration)*, 2025 FC 827, at paras 16-18; *Nnadozie v. Canada (Citizenship and Immigration)*, 2025 FC 401, at para 33; *Louis v. Canada (Citizenship and Immigration)*, 2024 FC 1391, at paras 8-10.

[40] While undue reliance on children's adaptability, resilience or similar presumed characteristics during a BIOC assessment may well result in an unreasonable BIOC assessment, in my view, the impact of the error must be considered in the context of each specific H&C decision. The Court should consider whether and how the use of such characteristics affected the reasonableness of the BIOC assessment and the H&C decision as a whole: see, for examples, *Alabi*, at paras 16, 18 (error by focusing on adaptability rather than best interests); *Nnadozie*, at paras 33 (BIOC analysis distorted because it went beyond the children's best interests and speculated on their ability to cope with a situation not in their best interests); *Louis*, at para 9 (officer did not perform an individualized assessment and failed to consider whether a child's medical conditions affected his resiliency, and misapprehended evidence related to family support in country of origin); *Rocha Pereira v. Canada (Citizenship and Immigration)*, 2025 FC 1044, at paras 8-10, 17-22 (decision was reasonable, did not focus only on basic needs); *Trinidade de Jesus v. Canada (Citizenship and Immigration)*, 2025 FC 1022, at paras 23-26 (assessment erroneously focused on hardship rather than the BIOC).

[41] In the present case, the officer's consideration of the children's adaptability did not render the H&C decision unreasonable. It was one aspect of the officer's detailed consideration of the evidence and positions advanced by the applicants. The BIOC assessment properly focused on the children's best interests. Adaptability was not the basis of the BIOC assessment, nor did it shift the focus to hardship or cause the officer to engage in unwarranted speculation. In the overall BIOC and H&C assessments, adaptability was not a central feature that rendered the decision unreasonable: *Vavilov*, at para 100.

[42] In addition, I observe that there was little evidence presented on the H&C application concerning the individual characteristics of each child. The applicants' submissions to the Court did not refer to any such evidence to contradict the officer's assessment of their best interests (except as related to the third child's diagnosis with sickle cell anemia, which was reasonably assessed as discussed above).

[43] Finally, the BIOC assessment did not engage in unwarranted speculation that it would be in the children's best interests to be reunited with their father. The RPD's findings and the evidence on the H&C application led the officer not to accept the applicants' allegation that the father wanted to harm the children – to the contrary, the officer found that his presence in their lives would benefit them. This Court will not reweigh the evidence and come to its own conclusions. The applicant has not shown that, in making these findings, the decision fundamentally misapprehended or failed to account for any material evidence: *Vavilov*, at paras 125-126.

(2) Use of the RPD's Adverse Credibility Findings

[44] The applicants submitted that the H&C decision erred in law by considering the adverse credibility findings made by the RPD (citing *Sebbe v. Canada (Citizenship and Immigration)*, 2012 FC 813, at para 21) and by requiring the applicants to show an exceptional level of establishment.

[45] I am unable to agree. The decision thoroughly considered the evidence on the applicants' establishment, including the principal applicant's contributions as a health care worker during

the pandemic. The decision discounted the weight of the applicants' establishment owing to the RPD's finding that the principal applicant's refugee claim was manifestly unfounded due to fraud. On establishment overall, the H&C decision gave "modest positive weight" to their establishment.

[46] In some cases, the Court has set aside H&C decisions that continuously discount positive H&C factors related to establishment based on an applicant's non-compliance with the *IRPA*. Subsection 25(1) implicitly presupposes a failure to comply with one or more provisions of the *IRPA* and is designed to provide relief from that non-compliance. An H&C decision must "balance the need to respect Canada's immigration laws with the fact that H&C applications typically involve applicants who have failed to comply with the law": *Shah v. Canada (Immigration, Refugees and Citizenship)*, 2024 FC 398, at paras 44-46; *Toussaint v. Canada (Citizenship and Immigration)*, 2022 FC 1146, at paras 22-23.

[47] However, it is not wholly improper to consider the nature of an applicant's unauthorized stay in Canada when assessing establishment in an H&C application. A decision maker may take into account the circumstances giving rise to the establishment and conclude that the positive weight to be given to establishment ought to be mitigated or attenuated because of those circumstances: *Browne v. Canada (Citizenship and Immigration)*, 2022 FC 514, at para 28 (quoted with approval in *Caldeira v. Canada (Citizenship and Immigration)*, 2024 FC 493, at para 32); see also *Shah*, at paras 44-46; *Toussaint*, at paras 22-23; *Sinnette v. Canada (Citizenship and Immigration)*, 2022 FC 685, at para 16; *Osorio Diaz v. Canada (Citizenship and Immigration)*, 2015 FC 373, at para 21. Of course, the nature and duration of the non-compliance

with the *IRPA* can vary widely for the purposes of an exception under subsection 25(1), from simple presence in Canada when making the application for permanent residence (rather than applying from outside of the country), to lack of status due to misrepresentation, to remaining in Canada for an extended period despite an enforceable deportation order or the issuance of an arrest warrant, and many other circumstances.

[48] In the present case, the H&C decision reduced, but did not eliminate, the weight to be given to the applicants' establishment in Canada. The decision found that the weight to be given to the applicants' establishment was mitigated because their time in Canada was based on a refugee claim that was "clearly fraudulent" – the applicant provided fraudulent information to support it, its basis was an alleged relationship that was not real, the incident that allegedly caused her to leave Nigeria "never happened" and she knowingly withheld material facts in an attempt to mislead Canadian immigration officials when applying for a visa. In the circumstances, the H&C decision did not make a reviewable error when it reduced the weight of the applicants' establishment. In particular, the decision did not fail to give the applicants "credit for the initiatives they undertook" as the applicants submitted: *Sebbe*, at para 21.

[49] The applicants' submissions emphasized the principal applicant's contributions as a health care worker during the pandemic. The officer expressly recognized this contribution and gave it independent positive weight in the assessment. There was no reviewable error in this aspect of the H&C decision.

[50] The H&C decision did not, in substance, apply a standard of exceptionality when considering establishment in Canada. The applicants' position on exceptionality was essentially a request that the Court re-weigh the evidence, which is not the Court's role on this judicial review application.

[51] The applicants have not demonstrated that the H&C decision contained a reviewable error in its assessment of establishment.

(3) The applicants' remaining arguments

[52] The applicants submitted that the H&C decision erred in its assessment of the prevailing economic conditions in Nigeria, especially for the applicant as a woman who is not married. These submissions did not demonstrate a reviewable error. The H&C decision considered the principal applicant's own situation in the context of the country evidence. The Court's role on this application does not include conducting its own re-assessment of how country conditions may affect the principal applicant.

[53] Finally, there is no merit in the applicants' position that the H&C decision did not respect subsection 25(1.3) of the *IRPA*.

IV. Conclusion

[54] The application for judicial review is dismissed.

[55] Neither party raised a question to certify for appeal and none will be stated.

JUDGMENT IN IMM-12890-23

1. The application for judicial review is dismissed.

2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

David Tobis	FOR THE APPLICANTS
Neeta Logsetty	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis and Associates LLP Toronto, Ontario	FOR THE APPLICANTS
Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT