

Federal Court



Cour fédérale

Date: 20260205

Docket: IMM-16909-24

Citation: 2026 FC 161

Toronto, Ontario, February 5, 2026

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

**ILEEN SARAI AVILES CERDA
OLIVER MOISES BRITO AVILES**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, a mother and her 12-year-old son, challenge a negative decision of a Senior Immigration Officer [Officer] dated August 30, 2024, refusing their application for permanent residence based on humanitarian and compassionate [H&C] grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicants based their H&C

application on ties to Canada, best interests of the son, hardship of return and adverse country conditions.

[2] While the Applicants assert that the decision was unreasonable on a number of bases, I find that the Officer's flawed best interests of the child [BIOC] analysis is determinative.

[3] The applicable standard of review of an H&C decision is reasonableness [see *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44]. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[4] In *Kanhasamy*, the Supreme Court of Canada confirmed that in subsection 25(1) applications, "the decision-maker should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them" [see *Kanhasamy, supra* at para 38]. While the Court notes that this does not mean that this factor must always outweigh other considerations, or that an H&C claim will be successful, a decision under subsection 25(1) will be

unreasonable if the “well identified and defined” interests of children affected are not sufficiently examined “with a great deal of attention” [see *Kanhasamy, supra* at para 39]. Once that is done, it is up to the officer to determine what weight those interests should be given in the circumstances [see *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 12].

[5] I find that there are a number of flaws in the Officer’s decision. First, it must be recalled that in conducting an H&C analysis, an officer must determine whether to assign a positive, negative or neutral weight to each factor raised by an applicant. Where a positive or negative weight is assigned, the officer must also determine the amount of weight to assign, often expressed as “significant”, “some” or “little” weight. The officer must then conduct a global assessment, where all of the relevant considerations are to be weighed cumulatively, in order to determine if relief is justified given all of the circumstances.

[6] However, in this case, while the Officer has a section of their decision dedicated to addressing the BIOC analysis, the only reference to weight in the reasons relates to the Officer’s consideration of the son’s friendships at school. The Officer states that they have given this consideration “adequate” weight, but does not elaborate on what that means (i.e., a little? A lot?). The reasons are unintelligible in this regard. Moreover, and importantly, the Officer’s reasons are entirely silent as to what weight, if any, was ultimately assigned to the BIOC factor. This prevents the Court from knowing whether a proper global assessment was conducted. This error, on its own, is sufficient to render the Officer’s BIOC assessment unreasonable.

[7] In addition to the aforementioned error, I find that the Officer's determination as to what is in the son's best interests was flawed. The Officer was required to first make a determination as to what is in the son's best interests. The Officer was then required to determine whether it was in the son's best interests to go with his mother to Chile or to remain in Canada. Once that assessment was completed, the Officer was obligated to weigh this factor against the other positive and negative elements in the H&C application [see *Onifade v Canada (Citizenship and Immigration)*, 2025 FC 47 at para 79; *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 at para 16].

[8] Here, the Officer found that it was in the son's best interests to "remain with his parent(s)." While this is technically an expression of what is in the son's best interests, it is also a determination that would arguably apply to every child. In any event, the Officer never goes on to assess whether it is in the son's best interests to stay in Canada or to go with his mother to Chile. Rather, the Officer improperly focused their analysis on the absence of evidence they expected to see regarding the circumstances the son (who has been diagnosed with autism spectrum disorder, sensory integrative disorder and motor hyperactivity) would encounter if returned to Chile. The Officer failed to consider the degree to which the son's best interests would be compromised by one outcome over the other, which further renders the BIOC analysis unreasonable.

[9] Third, the Officer's reasons as they relate to the son's relationship with his father and the impact on this relationship if the Applicants return to Chile are unintelligible and fail to take into account the evidence that was before the Officer. The Officer noted that there was little evidence regarding the father's involvement in the son's upbringing. However, the father's relationship with his son was detailed in the Applicants' statutory declaration filed in support of the H&C

application. The Applicants' evidence is that, as a result of domestic abuse and violence by the father towards the son, the son has had a fractured relationship with his father. Ms. Aviles Cerda has sole custody of her son while the father has weekly visitation, supervised as mandated by a Court order. The Applicants' evidence is that the son is rebuilding his relationship with his father and they have daily phone calls. The father is currently in Canada on an open work permit that was set to expire in May 2024 with an employer interested in continuing to employ him. The Officer also noted "little evidence" regarding a number of considerations, which was illogical given the evidence before the Officer. This included noting that there was little evidence that the father is a permanent resident of Canada (the evidence is clear that he is not and is in Canada on a work permit), questioning whether the father is inadmissible to Chile (the evidence is that he is a citizen of Chile so there would be no basis to question his admissibility to Chile), noting little evidence that the father has severed ties with his son (the evidence is that he has not) and noting little evidence that the son will be unable to spend time with his father (which would certainly be the case if the Applicants were to return to Chile and the father remains in Canada).

[10] Finally, the Officer's reasons are replete with errors that misidentify the mother as "he" and the son as "she", rendering certain sentences unintelligible as it is not clear about whom the Officer is speaking. While these errors on their own are not sufficient to render the BIOC analysis unreasonable, they do call into question the attention given by the Officer to this matter.

[11] I find that the various errors made by the Officer in their BIOC analysis renders the decision unreasonable. Accordingly, the application for judicial review is allowed.

[12] The parties have proposed no question for certification and I agree that none arises.

JUDGMENT in IMM-16909-24

THIS COURT’S JUDGMENT is that:

1. The style of cause is hereby amended to add Oliver Moises Brito Aviles as an applicant.
2. The application for judicial review is granted. The H&C decision of the Officer dated August 30, 2024, is hereby set aside and the matter shall be remitted for redetermination by a different officer.
3. The parties proposed no question for certification and none arises.

“Mandy Aylen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16909-24

STYLE OF CAUSE: ILEEN SARAI AVILES CERDA, OLIVER MOISES
BRITO AVILES v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 4, 2026

JUDGMENT AND REASONS: AYLEN J.

DATED: FEBRUARY 5, 2026

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