

Federal Court



Cour fédérale

Date: 20260415

Docket: IMM-22011-24

Citation: 2026 FC 497

Toronto, Ontario, April 15, 2026

PRESENT: Mr. Justice Brouwer

BETWEEN:

INOCENCIA HERNANDEZ DELGADO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Inocencia Hernandez Delgado seeks judicial review of the decision by Immigration, Refugees and Citizenship Canada [IRCC] of November 8, 2024, refusing her application for permanent resident status on humanitarian and compassionate [H&C] grounds pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. As detailed below, I find that the decision was unreasonable and must be set aside.

I. Background

[2] The Applicant, Inocencia Hernandez Delgado, is a 65-year-old refugee from Cuba. She fled that country in a small boat with her son, who is gay, and several others in August 2010, arriving in Cancun, Mexico, two days later. From there, Ms. Hernandez Delgado and her son made their way across the border to the USA and north to Canada where Ms. Hernandez Delgado's daughter had already been accepted as a protected person. They arrived in Fort Erie on August 16, 2010, and were granted refugee protection by the Refugee Protection Division [RPD] less than a year later. Ms. Hernandez Delgado became a permanent resident of Canada on August 12, 2012.

[3] Ms. Hernandez Delgado has long experienced mental health challenges including depression and suicidal ideation. In January 2018, Ms. Hernandez Delgado travelled to Mexico to visit with friends. She travelled there on a Cuban passport that she had obtained three years earlier, unaware that doing so might affect her legal status in Canada. She also did not know that she could have obtained and travelled on a Canadian Protected Person Travel Document.

[4] In July 2018, having recently lost two brothers in Cuba, when she learned that a third brother was dying, she returned to Cuba to be with him in his final days. She returned to Canada shortly after he passed away in August of that year. Ms. Hernandez Delgado has remained in Canada ever since.

[5] On October 1, 2018, the Minister of Immigration, Refugees and Citizenship Canada [the Minister] applied to the RPD to cease her refugee protection pursuant to subsection 108(2) of the

IRPA, asserting that her return to Cuba on her recently procured Cuban passport constituted reavilment of the protection of her country of nationality under subsection 108(1)(a) of the *IRPA*. The Minister's application was granted by the RPD almost three years later, in August 2021, and as a result Ms. Hernandez Delgado became inadmissible to Canada pursuant to subsection 40.1 of the *IRPA* and lost her permanent resident status.

[6] She applied to regain permanent resident status on H&C grounds pursuant to subsection 25(1) of the *IRPA*. Her application, submitted on March 21, 2023, was based on her establishment in Canada, her family ties to her daughter and grandchildren here, the best interests of her Canadian grandchildren, and the hardship that she would face if returned to Cuba in light of her health conditions. In submissions her counsel also argued that the Officer should take into account that the state of the law on cessation had substantially changed soon after the RPD's decision in Ms. Hernandez Delgado's case with the release of *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50. Counsel asserted that under the new caselaw, Ms. Hernandez Delgado's lack of a subjective intent to reavail herself of the protection of the Cuban state would have resulted in a different cessation outcome.

[7] By decision dated November 8, 2024, a Senior Immigration Officer with IRCC rejected her application. The Officer accepted that Ms. Hernandez Delgado had some health issues that were being managed in Canada, but determined that they had been managed previously in Cuba, and that Cuba's "system ... is considered one of the best in the world."

[8] The Officer found that there was “insufficient evidence...to demonstrate that the applicant’s departure from Canada will negatively affect the best interests of her grandchildren,” noting that they would adjust and that their parents would remain in Canada. The Officer observed:

[W]hile this family may prefer the children to be cared for by their grandmother, this is not always possible. Many Canadian families are faced with alternative childcare arrangements when a family member is not available or able to care for their children due to employment and I do not find that this family’s situation differs from any other Canadian family with varying challenges.”

[9] The Officer placed some weight on the fact that Ms. Hernandez Delgado’s daughter had pledged to continue to support her if she was permitted to remain in Canada, and acknowledged that “[i]t is understandable that the applicant may not wish to return to Cuba after being in Canada on her extended visit [sic] as she is concerned about future care and support.” However, they found that Ms. Hernandez Delgado would have access to the same social systems as other Cubans upon her return.

[10] The Officer also rejected Ms. Hernandez Delgado’s request for relief from the consequences of the cessation decision, finding:

The applicant consciously made the decision to return to a country whom she was granted protection from. Being granted asylum in Canada was a privilege and her actions showed a lack of respect for Canadian law.

II. Issues

[11] Ms. Hernandez Delgado asserts that the Officer's decision is not based on the evidence and submissions, fails to reflect a reasonable assessment of the best interests of the child, and falls short of the requirement to adopt a compassionate approach.

[12] The role of this Court on judicial review is to determine whether the Officer's decision is reasonable. Reasonableness review entails an assessment of whether a decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law bearing upon it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). The hallmarks of reasonableness are justification, transparency and intelligibility (*Vavilov* at para 99). The reasons must reflect the stakes, which are clearly significant given the circumstances of Ms. Hernandez Delgado's case (*Vavilov* at para 133).

III. Analysis

[13] I agree with Ms. Hernandez Delgado that the decision is unreasonable. This is so for several reasons.

A. *Treatment of evidence regarding hardship/health system*

[14] Ms. Hernandez Delgado provided evidence to establish her physical and mental health challenges, as well as published reports from 2017 and 2023 on the declining state of the Cuban health care system. She argued that she would not have access to adequate health care for her health conditions in Cuba today.

[15] The Officer acknowledged that Ms. Hernandez Delgado “has some health issues that are currently medically managed” but determined that “her same medical conditions were being medically managed in Cuba before arriving in Canada” and that, based on a 2014 report, Cuba’s “integrated physical and mental health system...is considered one of the world’s best.” There are at least two problems with the Officer’s findings here.

[16] First, there was no evidence before the Officer to support a finding that Ms. Hernandez Delgado’s current health conditions were present when she was in her 40s and living in Cuba. Although she stated in her Affidavit that she was being treated for depression and insomnia while she was in Cuba, the medical notes from 2016-2024, i.e. since her arrival in Canada, show that Ms. Hernandez Delgado’s health had worsened; she developed diabetes and cholesterol-related issues, and experienced mental health-related symptoms including suicidal ideation and auditory hallucinations. The medical notes also indicated the treatments she had undergone here, the medication prescribed to her, and the need for ongoing medical supervision. The Officer’s finding does not account for these changes in Ms. Delgado’s health since leaving Cuba and is thus clearly unreasonable (*Vavilov* at para 126).

[17] Second, even if the record had supported a finding that Ms. Hernandez Delgado’s current health conditions were previously being managed effectively in Cuba, the determination that she would therefore have access to adequate treatment today fails to account for the evidence showing that the health care system in Cuba is no longer what it was when Ms. Hernandez Delgado left in 2010. The evidence before the Officer indicated that as of 2023 the Cuban health care system was in crisis, with “reduced ... access to health care...a deterioration in health

facilities and the quality of services, as well as a severe shortage of medicines” (Carmelo Mesa-Lago, *The Social Impact of the Economic Crisis in Cuba*, Cuban Research Institute, Florida International University, January 2023). Another article submitted to the Officer, “The Challenges of the Cuban Healthcare System” by Martina Guglielmonne, published in 2017, reported:

The health care system has deteriorated over the past several years; there is a huge lack of medicine, doctors (a huge group of them is either touring other countries or have simply fled our country) and resources in general, terrible sanitary conditions in hospitals (which are often infested with cockroaches and lack clean water and patient privacy), extremely poor organization widespread corruption...

[18] While I accept the Respondent’s submission that the Officer was not required “to cite to every piece of documentary evidence that could potentially lead to a contrary conclusion,” the issue here is not a question of weighing competing evidence. It is a failure to engage with the submissions and evidence on a central issue raised in the application, and an unreasonable reliance on outdated evidence to the exclusion of current evidence that was put before the Officer by Ms. Hernandez Delgado and that showed a change in conditions. This is plainly unreasonable (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (FC), 1998 CanLII 8667 at para 17; *Vavilov* at paras 127-128).

B. *BIOC analysis*

[19] The best interests of the child are to be “a singularly significant focus and perspective” (*Kanthisamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 40 [*Kanthisamy*]) in the consideration of H&C applications, and decision makers are required to show “attentiveness and sensitivity to the importance of the rights of children, to their best interests,

and to the hardship that may be caused to them by a negative decision...” (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 74). As the Supreme Court of Canada explained in *Kanhasamy*:

[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....

[20] In *Williams v Canada (Citizenship and Immigration)*, 2012 FC 166 [*Williams*], as cited in *Kanhasamy* at paragraph 59, Justice Russell (as he then was) explained:

[64] There is no basic needs minimum which if “met” satisfies the best interest test. Furthermore, there is no hardship threshold, such that if the circumstances of the child reach a certain point on that hardship scale only *then* will a child’s best interests be so significantly “negatively impacted” as to warrant positive consideration. The question is *not*: “is the child suffering enough that his “best interests” are not being “met”? The question at the initial stage of the assessment is: “what is in the child’s best interests?”

[21] Here, the submissions and extensive evidence before the Officer highlighted the role that Ms. Hernandez Delgado plays in the lives of her grandchildren, with whom she has lived for most or all of their lives, including assisting with caregiving, providing emotional support to the family, and particularly supporting the children in their exploration of their gender identities. Although the Officer purported to consider the grandchildren’s best interests, this consideration was limited to whether they were “financially or otherwise dependent” on Ms. Hernandez Delgado, which the Officer found was not the case. Since they would continue to have the care

and support of their parents, the Officer determined their best interests would not be affected by the refusal of the application.

[22] Ms. Hernandez Delgado argues that the Officer failed to undertake the analysis required by *Williams*, supra, and unreasonably minimized Ms. Hernandez Delgado's role in the lives of her grandchildren. She argues that the Officer unreasonably limited the analysis to the question of financial or other dependency and the continuing presence of the parents, ignoring the "emotional interconnectedness" between Ms. Hernandez Delgado and her grandchildren, and "the instability and painful consequences that a separation would bring into their lives."

[23] I agree. The Officer's reasoning is deficient and unreasonable. The Court has previously overturned H&C decisions that fail to recognize the role of grandparents when assessing the best interests of children (*Chang v Canada (Citizenship and Immigration)*, 2025 FC 1799 at paras 21-22, 26; *Osipova v Canada (Citizenship and Immigration)*, 2024 FC 1055 at para 12-13; *Chamas v Canada (Citizenship and Immigration)*, 2021 FC 1352 at para 38; *Motrichko v Canada (Citizenship and Immigration)*, 2017 FC 516 at para 27). I must do so again here. The Officer's treatment of the best interests of the children was unreasonable, as it is not justified in light of the legal and factual constraints that bear on the decision (*Vavilov* at paras 105-106).

C. *Failure of compassion*

[24] Although each of the findings set out above is in itself a sufficient basis upon which to quash the decision and remit the matter for redetermination, considered cumulatively these

findings signal a larger problem with the Officer's overall approach to the H&C analysis, a matter that needs to be addressed here so as to ensure it is not repeated on redetermination.

[25] In *Kanthasamy*, the Supreme Court of Canada explained:

[89]...Parliament recognized that cases could arise in which the strict application of the rules would not reflect Canada's policy goals, or would lead to an arbitrary or inhumane result. With this in mind, it empowered the Minister to grant some applicants special relief if they could convince the Minister that the relief sought was "justified by humanitarian and compassionate considerations" (IRPA, s. 25(1)).

[26] The Court explained further that the provision "is intended to offer equitable relief where there are "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'" (*Kanthasamy* at paras 13, 21, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338).

[27] Officers must apply compassion when reviewing H&C applications and must approach an applicant's circumstances with genuine empathy. This requires officers to engage with "the reality of life a person would face, in body and mind, if forced to leave Canada" (*Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 at para 33, [*Damte*]). As Justice Douglas R. Campell explained in *Damte*:

[34] Applying compassion requires an empathetic approach. This approach is achieved by a decision-maker stepping into the shoes of an applicant and asking the question: how would I feel if I were her or him? In coming to the answer, the decision-maker's heart, as well as analytical mind, must be engaged.

[28] What it boils down to is that “H&C applications are an exercise in empathy” (*Fernandez v Canada (Citizenship and Immigration)*, 2025 FC 752 at para 9).

[29] The decision under review fails entirely to reflect this approach. The Officer’s dismissive approach to the hardship that Ms. Hernandez Delgado will face in Cuba given her health status and to the impact of her removal on her grandchildren are in themselves problematic. Even more concerning, however, are two other findings by the Officer.

[30] The first, most glaring indicator of the Officer’s dismissive approach to the application is the finding that “It is understandable that the applicant may not wish to return to Cuba after being in Canada on her extended visit” (emphasis added).

[31] Ms. Hernandez Delgado came to Canada 16 years ago as a refugee and lived here as a claimant, a protected person and then a permanent resident for more than a decade before losing her status as a result of a visit to her brother who was on his deathbed. She is not here on an “extended visit,” she was and is part of the Canadian community, who requested humanitarian and compassionate consideration of her circumstances to permit her to remain with this community. The Officer’s dismissal of her life in Canada for the last decade and a half as an “extended visit” is not merely unempathetic, it is demeaning, perverse and capricious.

[32] The second glaring example of the Officer’s failure to apply the required analysis is the determination that “Being granted asylum in Canada was a privilege and her actions showed a lack of respect for Canadian law.”

[33] To begin with, being granted asylum is not a privilege, it is a right (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 106-108; *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at para 49; *Németh v Canada (Minister of Justice)*, 2010 SCC 56 at para 19; *Singh v Minister of Employment and Immigration*, 1985 CanLII 65 (SCC) at para 74). The Officer’s characterization of asylum (or more properly in Canadian law, “refugee protection”) as a privilege suggests a fundamental misunderstanding of the relevant legal background of Ms. Hernandez Delgado’s application. Further, however, the Officer’s finding that Ms. Hernandez Delgado’s return to Cuba to be at her brother’s deathbed, after recently having lost two other brothers, showed a “lack of respect for Canadian law” fails entirely to reflect the evidence about the reasons for Ms. Hernandez Delgado’s return and her uncontradicted evidence that she was unaware of the legal implications of doing so. There is simply no basis for the Officer’s seemingly moralistic assertion that Ms. Hernandez Delgado “lacks respect” for Canadian law.

[34] These two specific passages in the Officer’s decision are fundamentally at odds with the compassionate approach mandated by the legislation, and, whether considered on their own or alongside the Officer’s assessment of hardship and the best interests of the child, demonstrate an unreasonable decision that does not reflect the factual and legal constraints that bear upon it. The decision must be set aside.

[35] The parties have not proposed a serious of general importance for certification and I agree that none arises.

JUDGMENT in IMM-22011-24

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. The matter is remitted to a different officer for redetermination in accordance with these reasons. The Applicant shall be provided with a reasonable opportunity to update the record and submissions.
3. No question is certified.

"Andrew J. Brouwer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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