Federal Court  Cour fédérale

Date: 20200225

Docket: IMM-2203-19

Citation: 2020 FC 300

Ottawa, Ontario, February 25, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

JOSE GUADALUPE GARCIA GARCIA AND HERMINIA CELSA JIMENEZ ROSALES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Applicants, Jose Guadalupe Garcia Garcia, and his wife, Herminia Celsa Jimenez Rosales, are citizens of Mexico. The Applicants seek judicial review of the decision of the immigration officer [the Officer] refusing their application for permanent residency on humanitarian and compassionate [H&C] grounds.

[2] For the reasons that follow, the application for judicial review is dismissed; the Applicants failed to establish a reviewable error.

II. Facts

[3] On July 19, 2007, the Applicants entered Canada and made a claim for refugee protection three months later. The Applicants alleged that they feared their daughter's former common-law partner.

[4] On May 6, 2010, the Refugee Protection Division [RPD] determined that the Applicants were neither Convention refugees nor persons in need of protection. The RPD found that the Applicants had failed to rebut the presumption that adequate state protection would be available to them in Mexico. The Applicants filed an application for leave to apply for judicial review and the application for leave was denied on October 18, 2010.

[5] The Applicants then submitted a pre-removal risk assessment [PRRA] application. This application was denied on February 24, 2011.

[6] In spite of the negative PRRA decision, the Applicants failed to report for removal, which was set up for April 6, 2011. The Applicants decided to stay in Canada because they felt that they would be at risk if they returned to Mexico and because their children are in Canada.

[7] Warrants were issued for the arrest of the Applicants.

[8] Some six years later, the Applicants submitted an application for permanent residency on H&C grounds on June 13, 2017. The Applicants' H&C grounds were based on their establishment in Canada, their family ties, the best interests of their children, the extent of violence in Mexico, and their fear of discrimination upon their return to Mexico.

III. Decision Under Review

[9] The Officer rejected the H&C application on March 11, 2019. The Officer was not satisfied that the H&C grounds justified an exemption from the in-Canada criteria under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In essence, the Officer found that there was insufficient evidence to support the H&C grounds raised by the Applicants.

IV. Preliminary Issue

[10] The Respondent submits, and I agree, that the proper respondent to this application should be the Minister of Citizenship and Immigration. The style of cause will be amended accordingly.

V. Issues

[11] This matter raises four issues:

1. Did the Officer commit a reviewable error in his/her analysis of the Applicants' permanent residency application by relying heavily on the findings of the RPD and by confusing the analysis of H&C grounds with the analysis of the factors under section 96 and subsection 97(1) of the IRPA?

2. Did the Officer commit a reviewable error in his/her analysis of the validity of the Applicants' permanent residency application by not considering all of the H&C grounds raised by the Applicants?

3. Did the Officer commit a reviewable error in his/her analysis of the best interests of the children involved?

4. Did the Officer commit a reviewable error in his/her assessment of how non-compliance with immigration regulations weighs on the Applicants' chances to acquire permanent residency on H&C grounds?

VI. Standard of Review

[12] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court elucidated a revised framework for determining the applicable standard of review for administrative decisions. Under this framework, the starting point is a presumption that a standard of reasonableness applies (*Vavilov* at para 23). This presumption can be rebutted in two types of situations: where there is a statutory appeal mechanism or where the rule of law requires correctness review (*Vavilov* at para 17).

[13] The parties agree that the standard of reasonableness applies. In any event, there is nothing on the record to convince me that I should overturn the presumption of reasonableness review. As a result, the Officer's decision is reviewable on a standard of reasonableness (*Vavilov* at paras 73-142).

VII. Analysis

1. Did the Officer commit a reviewable error in his/her analysis of the Applicants' permanent residency application by relying heavily on the findings of the RPD and by confusing the analysis of H&C grounds with the analysis of the factors under section 96 and subsection 97(1) of the IRPA?

[14] The Applicants submit that the Officer erred in placing undue weight on the RPD's findings. In addition, while the Officer acknowledged that he/she was "not bound by the findings

of the RPD," the Applicants argue that the Officer committed a reviewable error in placing an undue burden on the Applicants to address the RPD's finding on the sufficiency of state protection in Mexico.

[15] The Applicants are not saying that it was not open to the Officer to consider the RPD findings. They are simply saying that the approach taken by the Officer to assess their claim only on sections 96 and 97 factors is contrary to subsection 25(1.3) of the IRPA, which excludes the consideration of factors pertaining to sections 96 and 97 of the IRPA from the H&C examination (citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 at para 24 [*Kanthasamy*]).

[16] Rather, according to the Applicants, the Officer should have conducted a global assessment of the H&C factors pertaining to the Applicants' hardship in the event they were to be returned to Mexico.

[17] Subsection 25(1.3) of the IRPA states the following:

Non-application of certain factors	**Non-application de certains facteurs**
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to	(1.3) Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte,

the hardships that affect the foreign national.	toutefois, des difficultés auxquelles l'étranger fait face.

[18] The Officer stated the following in his/her decision:

> [The RPD] determined on, May 20th, 2010 [*sic*] that the applicants were not Convention refugees or persons in need of protection. While I am not bound by the findings of the RPD, the RPD is a decision-making body who are experts in the determination of protection claims. I therefore give considerable weight to the findings of the Board. The RPD considered the allegations of the applicants with regards to harm feared at the hands of their daughter, (name of daughter), ex-common law partner, (name of common law partner). The RPD found that the applicants failed to rebut the presumption of state protection with clear and convincing evidence and that the [applicants] did not take all reasonable steps in the circumstances to avail themselves of that protection before making claims for refugee protection. The RPD panel concluded that the state of Mexico would not [*sic*] be reasonably forthcoming with state protection, should the [applicants] seek it.
>
> I acknowledge that there is an important distinction between the assessment of risk by the Board, and the assessment of a humanitarian and compassionate application; the former is a restricted assessment under specific legislative parameters of persecution, torture, risk to life, and cruel and unusual treatment or punishment, whereas the latter is a global assessment of factors and whether they amount to hardships. Nevertheless, the findings of the Board are relevant to the assessment of hardship in a humanitarian and compassionate application where the applicants present materially the same evidence in their application that was presented before the Board.
>
> In the case before me, I find that the applicants have failed to satisfactorily address the findings of the Board. While I am mindful that I am not bound by the panel's findings, I note the RPD panel had the opportunity to examine the applicants and their claims in detail and determine the facts of this case. As such, I assign significant weight to the factual findings made regarding the issues in relation to the various allegations on account of their fear of return to Mexico. Specifically, it's [*sic*] finding that Mexico would provide state protection to the applicants should the need arise.
>
> [Emphasis added.]

[19] On the issue of hardship, the Applicants argued before the Officer that they would be subject to age discrimination and, for the Female Applicant, gender discrimination as well as widespread violence in Mexico but did not put emphasis on their fear of violence in respect of their daughter's previous common-law partner in their H&C application, even though they had done so in their refugee claim and PRRA application.

[20] The Applicants argue that in the Officer's decision, the Officer noted that the PRRA officer found that state protection would be available to the Applicants in respect of their fear of violence because the evidence before the PRRA officer did not rebut "the findings of the RPD with respect to state protection."

[21] The Applicants say that with this in mind, and because the Officer stated that the Applicants "have failed to satisfactorily address the findings of the" RPD, it is clear that the Officer imported the test relevant to the sections 96 and 97 factors in his/her determination rather than assess the factors of hardship.

[22] According to the Applicants, the Officer considered factors which should not have been considered in an H&C application, and as such, rendered the decision unreasonable.

[23] I do not agree. I believe the Applicants are confusing the issue of the application of the correct test with the issue of the consideration of evidentiary factors. When the Officer mentioned that the Applicants "have failed to satisfactorily address the findings of the" RPD, he/she was not outlining a new test, nor was he/she importing the test under sections 96 and 97.

[24] In fact, the Applicants did raise their fear of their daughter's ex-common-law partner in their submissions in support of their application for permanent residency on H&C grounds, in particular, the fact that he was released from jail; they raised their fear of their daughter's ex-common-law partner as one of the reasons they did not leave Canada after the rejection of their claim for refugee protection.

[25] To the extent that these findings were relevant in the context of assessing hardship, the Officer simply determined that the RPD was in a better position to assess those factors under the circumstances. That is not to say that the Officer applied the wrong test or that he/she did not consider the other factors relevant to hardship, such as discrimination. In fact, the Officer addressed those issues later in his/her decision.

[26] I accept that when risk is cited as a factor in an H&C application, the risk is assessed in the context of an applicant's degree of hardship. Here, when referring to the findings of the RPD, the Officer was focused on the concerns regarding the risk of violence, whether emanating from the daughter's ex-common-law partner or the widespread violence in Mexico.

[27] The way I read the decision, the Officer was simply saying that the RPD had found that the Applicants failed to rebut the presumption of state protection in relation to their concerns over the risks of returning to Mexico and that the Applicants had not brought before the Officer any new evidence to have him/her believe that the finding would be any different in the analysis of H&C considerations.

[28] I do not believe that the Officer imported the tests from sections 96 and 97 into the analysis of the Applicants' H&C grounds. Rather, the Officer simply gave weight to the RPD's determinations (which are within its specialized mandate) and made a proper determination on the availability of state protection in Mexico.

[29] In my opinion, the Applicants' argument relies on a misinterpretation of the Supreme Court's reasoning in *Kanthasamy*.

[30] In that case, the Court found that subsection 25(1.3) "does not prevent the admission into evidence of facts adduced in proceedings under ss. 96 and 97" (*Kanthasamy* at para 51). In other words, subsection 25(1.3) does nothing to affect an immigration officer's ability to "take the underlying facts" of a determination made under sections 96 and 97 "into account in determining whether the applicant's circumstances warrant humanitarian and compassionate relief" (*Kanthasamy* at para 51; see also *D'Aguiar-Juman v Canada (Citizenship and Immigration)*, 2016 FC 6 at para 12; *Abdullah v Canada (Citizenship and Immigration)*, 2019 FC 954 at para 16).

[31] That said, the Supreme Court's interpretation in *Kanthasamy* does not grant a "carte blanche" to adopt wholesale the RPD's factual determinations. In making their own determinations, officers must be cognizant of the inherent differences between the RPD's analysis under sections 96 and 97, and the H&C analysis under subsection 25(1). This interpretation of subsection 25(1.3) is consistent with the provision's role in delineating between the RPD's analysis under sections 96 and 97, and the H&C officer's analysis under

subsection 25(1) (*Atkins v Canada (Citizenship and Immigration)*, 2012 FC 982 at para 14; *Devadawson v Canada (Citizenship and Immigration)*, 2015 FC 80 at para 51; *Ye v Canada (Citizenship and Immigration)*, 2012 FC 1072 at para 10; *Baco v Canada (Citizenship and Immigration)*, 2017 FC 694 at para 21; *Laidlow v Canada (Citizenship and Immigration)*, 2012 FC 144 at paras 24-25; *Joseph v Canada (Citizenship and Immigration)*, 2015 FC 661 at paras 60-61; see also *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 SCR 84 at paras 63-64).

[32] In the Officer's decision, he/she was careful to delineate the scope of the analysis as an inquiry that is distinct from the RPD decision. In the Officer's decision, he/she reiterated this distinction and explained that the RPD decision provides important context for the assessment of hardship in an H&C application where the applicants rely on similar facts.

[33] After noting that the PRRA officer had determined that the Applicants had failed to rebut the findings of the RPD as regards the availability of state protection, the Officer determined that Mexico offers an adequate level of state protection:

> The applicants fear violence and human rights violations in their country. I have read and carefully considered the U.S. Department of State Report and it indicates that Mexico has a functioning police force and judicial system committed to protecting its citizens from violence. If the applicants encounter difficulties, they can seek the assistance of the police or the judicial system in their country.
>
> [Footnote omitted.]

[34] On my reading of the decision, it is evident that the Officer was cognizant of the inherent differences between the RPD's assessment of risk and his/her analysis of hardship. Because of

the factual overlap between these two inquiries, I see nothing unreasonable in an immigration officer referring to the RPD's relevant factual determinations in making his/her determination as to hardship (*Saidoun v Canada (Citizenship and Immigration)*, 2019 FC 1110 at para 19; *Prasla v Canada (Citizenship and Immigration)*, 2019 FC 56 at para 17; *Newman v Canada (Citizenship and Immigration)*, 2014 FC 803 at para 48; *Chaudhary v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 128 at paras 41-42; *Vuktilaj v Canada (Citizenship and Immigration)*, 2014 FC 188 at para 38).

2. Did the Officer commit a reviewable error in his/her analysis of the validity of the Applicants' permanent residency application by not considering all of the H&C grounds raised by the Applicants?

[35] In a similar vein, the Applicants submit that the Officer confused the analysis of H&C grounds with the analysis of section 96 and subsection 97(1) factors and failed to consider the H&C grounds and factors of hardship raised by them.

[36] In particular, the Applicants allege that the Officer failed to consider the Female Applicant's medical conditions (osteoporosis, idiopathic thrombocytopenic purpura, and hypoglycemia), the Applicants' ties to Canada, the effects of age discrimination on the Applicants' employability, and the adverse country conditions under the rubric of hardship. The Applicants did not specify which adverse country condition evidence the Officer failed to consider.

[37] I disagree and find that the Officer considered all of these issues.

[38] The evidence submitted as regards the Female Applicant's medical conditions is limited to a one-page report from a nurse practitioner (who was simply covering for the Female Applicant's primary care provider, who was on maternity leave) outlining the Female Applicant's medical ailments in a single paragraph, as well as some Google articles addressing the ailments from which the Female Applicant suffers.

[39] The Applicants argued strongly that the Officer failed to consider hardship factors such as the Female Applicant's medical conditions.

[40] I must admit, however, that given how much emphasis the Applicants placed on this argument, I am surprised by the paucity of evidence on the medical ailments of the Female Applicant, her medical care requirements going forward, and the cost and availability of such care should she be returned to Mexico.

[41] There is no evidence that the Female Applicant would be denied medical treatment in Mexico and other than a speculative statement by a medical professional who is not typically responsible for the primary care of the Female Applicant to the effect that the Female Applicant "would be unable to shoulder the financial burden of these medical tests, specialist consultations and medications", there is no further evidence on the type, availability or cost of medical care in Mexico; it is not clear how the nurse practitioner came to this conclusion.

[42] In the Officer's decision, he/she made a point of noting the lack of evidence on the availability of treatment for the Female Applicant's medical conditions:

> I acknowledge that the applicants submit that the female applicant is under medical treatment in Canada and they will be unable to afford it in Mexico; however, I have insufficient evidence before me that she would be unable or would be denied medical care in Mexico. I also note that different standards of living exist between countries. Many countries are not as fortunate to have the same social, including financial and medical supports as can be found in Canada. However, Parliament did not intend for the purpose of section 25 of the *Immigration and Refugee Protection Act* (IRPA) to make up for the difference in standard of living between Canada and other countries. Rather, the purpose of section 25 of the Act is to give the Minister the flexibility to deal with situations which are unforeseen by IRPA where humanitarian and compassionate grounds compel the Minister to act.
>
> [Emphasis added.]

[43] The Applicants argue that it was wrong for the Officer to have simply stated that there was insufficient evidence on this issue and that the Officer should have indicated why the evidence tendered was insufficient.

[44] I disagree. The issue is not what the Female Applicant is suffering from. What ails her is not being questioned, and consequently the Officer is not challenging the essence of the nurse practitioner's letter. The issue, rather, is whether there is evidence to suggest that the Female Applicant will be denied the treatment that she needs if she is to return to Mexico. There is simply no credible evidence on this issue.

[45] The burden is on the Applicants in these situations. In addition, it seems reasonable to me that the degree to which the Officer engages with and addresses the evidence is a function of the amount of evidence adduced by the Applicants. I can certainly understand that the Officer would not have much more to say than he/she did in respect of the lack of evidence submitted on this issue by the Applicants.

[46] The Applicants argue that the evidence supports the proposition that if the Applicants are returned to Mexico, they would have trouble finding employment in a country marred by violence, human rights violations, poverty and uncertainty, and would have low salaries (estimated at $290.18), which would not be enough to pay the Female Applicant's medical expenses for the same care as she is now getting in Canada.

[47] However, I must agree with the Officer that there is no substantial evidence to support those arguments as they relate to the Applicants. Although there are articles submitted which do speak to the issues of poverty and the challenges of providing universal social and medical benefits, how they would affect the Female Applicant in this case is admittedly not clear.

[48] The Applicants also make the point that although there is evidence that they have family members in Mexico (a mother and siblings), they have cut ties with the people who may know them in Mexico on account of the violence in that country, which thus further complicates the issue of access to medical care, housing, employment and social benefits for the Applicants.

[49] The Officer found that the fact that the family members are in Mexico is sufficient grounds to believe that they have ties to Mexico as there is no significant evidence to believe that the contrary is true. The simple statement by the Applicants that they have cut ties with "people who may know [them]" is not a definitive statement that they have had no communication or dealings with their own family since leaving Mexico.

[50] Consequently, I see nothing unreasonable in the manner in which the Officer addressed the issue of the medical conditions of the Female Applicant or in his/her findings on the issues addressed by the Applicants.

[51] On the issue of the risk of age discrimination, the Officer made a determination on the effects of age discrimination on the Applicants' employability in Mexico:

> The applicants allege that they will not be able to secure employment in Mexico because of age discrimination; however, I have been provided insufficient objective evidence to support this allegation. I note that the applicants are industrious individuals who travelled thousands of miles to Canada where they secured employment, a home and made new friends. In Canada, the male applicant is currently employed as framer and he was employed in demolition. The female applicant was employed as a machine operator and a cleaner. In Mexico, the male applicant was employed as a taxi, a driver and was self-employed. The female applicant was also self-employed in Mexico. The applicants have provided insufficient evidence to satisfy me that they could not reasonably seek or obtain employment in their country given their skills and work experience acquired in Mexico and in Canada. I find the above factors would reasonably enhance the applicants' employability profile and by extension their employment prospects.
>
> While I note the applicant has been outside Mexico for a prolonged period of time, I do not have sufficient objective evidence that they will be unable to find employment in Mexico. I find that their employment skills obtained in Canada are transferrable and they have provided insufficient evidence to satisfy me that they could not return to Mexico and use their existing skills and knowledge to obtain employment. The simple fact that the applicants were employed in Canada is not sufficient to demonstrate integration in Canadian society so as to warrant granting an exemption under subsection 25(1) of the IRPA. In consideration of all of the evidence before me, I find that I have been presented with insufficient evidence to satisfy me that the applicants' establishment justifies granting an exemption under humanitarian and compassionate considerations.
>
> [Emphasis added.]

[52] The Applicants cite *Kanthasamy* for the proposition that a series of discriminatory events that do not, in themselves, give rise to persecution must be considered cumulatively (*Kanthasamy* at para 53). They argue that the Officer did not consider the evidence related to both age discrimination as well as, for the Female Applicant, gender discrimination, as factors that would lead to her finding it difficult to find employment.

[53] There is evidence (a 2016 article in the *Gerontologist* entitled "Aging in Mexico: Population Trends and Emerging Issues") which speaks to the conditions of poverty, in particular as regards older adults in Mexico. The Applicants argue that the Officer simply did not engage with that evidence.

[54] Again, the Officer found that the evidence was insufficient for him/her to conclude that the Applicants would not be able to find employment and have a sustainable income in Mexico given their employment profiles in Canada. As was the case with the evidence regarding the Female Applicant's medical conditions, there is only so much analysis that one can expect when there is a paucity of evidence on a particular issue.

[55] Under the circumstances, I cannot say that the Officer's assessment on this issue is unreasonable.

[56] I have already cited in paragraph 33 above the statement by the Officer as regards the country conditions in Mexico. In each one of these cases, the Officer considered the evidence on

record and determined that there was insufficient evidence to support the Applicants' H&C allegations. I fail to see how this is unreasonable.

3. Did the Officer commit a reviewable error in his/her analysis of the best interests of the children involved?

[57] Citing *Munar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1180, the Applicants submit that the Officer failed to conduct a "full-fledged analysis" of the immediate and future best interests of the Applicants' children and grandchildren.

[58] Although these types of decisions are always difficult, the Officer did consider the fact that the Applicants have ten grandchildren in Canada and actually live with two of them. It was certainly open to the Officer to find that the best interests of the grandchildren did not warrant exceptional relief. The Officer considered the best interests of the Applicants' grandchildren in the event of relocation to Mexico:

> I have considered the best interest of the children. I am satisfied that the applicants' have ten grandchildren. I acknowledge that the applicants state that the female applicant is the primary caregiver for the grandchildren. However, I am not satisfied that other arrangements could not be made to take care of these Canadian children. Many families are faced with these child care arrangements in Canada. Should the children be upset about this separation, their parents can assist them. Many Canadian children have grandparents overseas. While it may be difficult for the grandchildren to be separated from the grandparents, the grandchildren will continue to have the care and support of their parents. Whatever adjustments the grandchildren will have to make to their lives in Canada, they will do so with the support of their parents. In terms of the best interests of the children, I am satisfied that the best interests of the children would be met if they continued to benefit from the personal care and support of their parents. As stated above, relationships are not bound by geographical locations and while being physically separated from their grandchildren in Canada will cause some dislocation, it does

> not mean that they will be unable to contact one another. Mexico is easily reachable by telephone and the cost of telephonic communications should accordingly not be too expensive. If it proves to be expensive, communications can be continued by letters, or various social media outlets. While I am not suggesting that either of these types of communications will be entirely satisfactory substitutes for the applicants' personal presence, this may be the only alternative short of actual visits to Mexico. Furthermore, insufficient evidence has been submitted to indicate that there are barriers to the parents or the grandchildren visiting the applicants in Mexico should the family so desire.
>
> [Emphasis added.]

[59] The decision in *Kanthasamy* outlines a number of factors that should be considered in relation to the best interests of the child analysis. However, it is important to keep in mind that the situation in this case is not one where the children are at risk of being removed from the only environment they have known. It is not their parents who are applying to remain in Canada, but rather their grandparents. That is not to say that the connection and dependency that the children have with and on the Applicants is not to be taken into consideration, but rather, the factors going into that analysis are different from those in a situation where the children themselves are at risk of being removed from their environment.

[60] The Applicants cite *Benyk v Canada (Citizenship and Immigration)*, 2009 FC 950 [*Benyk*], a decision involving facts somewhat similar to, but also somewhat different from, those in the case before me: a mother coming to Canada to take care of her ailing daughter in the middle of a messy divorce and, after her daughter's health improved, she remained in Canada without status to become the primary caregiver of her two grandchildren while her daughter, a single mom, worked nights and often had to go out of town for work to support the family.

[61] Mr. Justice Harrington found that the visa officer in that case did not address a number of factors, in particular, whether the daughter would even be able to find another job that would not have her work nights or remain out of town, and found that the officer's reasoning was oftentimes jumbled.

[62] I agree with the decision in *Benyk* in light of the circumstances of that case. However, those circumstances are not the same as those in this case.

[63] I accept that here, as in *Benyk*, the relationship between the grandparents and the grandchildren is not just biological; they are actually living together and supporting each other in their own way. The difference in this case is, however, that the Officer did consider this interdependence between the grandparents and the children in rendering his/her decision.

[64] Here, there does not seem to be the need for the same level of support from the grandparents as there was in *Benyk* given that one daughter living with the Applicants is married, another one of the Applicants' daughters lives in the same house, and the other grandchildren who do not live with the Applicants have independent parental support close by in Toronto. There is a strong family unit in Canada for these grandchildren, independent of the support they receive from their grandparents.

[65] The Applicants further argue that some of the Applicants' children (the parents of the grandchildren) do not have proper status in Canada and that although they are now moving to regularize their status, they remain at risk of removal at any time. I believe the best way to

address this argument is to say that, should that situation arise, it would be open to the parents to make the necessary arguments to avoid removal based upon the best interests of their children. The argument available to them would not be lost on account of the grandparents having returned to Mexico.

[66] I have no doubt that other officers may have exercised their discretion differently than the Officer. In fact, I myself may not have made the same decision as the Officer on this issue. However, that is not the point. The issue is whether the Officer considered all the factors, weighed them as required, and came up with a decision that is consistent with the analysis and process followed.

[67] It was incumbent on the Officer to be "alert, alive and sensitive" to the best interests of the child factor (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 (SCC) at para 75; *Kanthasamy* at para 38). The Officer considered the relationship between the Applicants and their grandchildren and set out the reasons why he/she was of the opinion that the relationship would survive if the Applicants returned to Mexico, although it would admittedly be different and not as fulfilling.

[68] I have read the decision several times and, although it may be harsh, I am unable to find any justifiable reason to say that the Officer erred in some way in the analysis or in the process that was followed.

[69] The Applicants also cite *Taghiyeva v Canada (Citizenship and Immigration)*, 2019 FC 1160, in support of the proposition that financial autonomy is a relevant consideration in assessing an applicant's establishment in Canada. I cannot see how that case supports the Applicants' argument that, on the one hand, the Officer made conclusions as to the grandchildren's ability to travel to Mexico to visit their grandparents yet, on the other hand, the evidence showed that the Applicants' children and grandchildren did not have the financial means to travel. However, the evidence of possible financial hardship in Mexico relates to the grandparents, not to the parents' ability to vacation in Mexico to visit the Applicants with the grandchildren.

[70] In any event, what the Officer did state on this issue, which was in line with his/her consideration of the competing factors, was reproduced above at paragraph 59. Thus, I cannot say that the Officer's determination on this issue is unreasonable.

4. Did the Officer commit a reviewable error in his/her assessment of how non-compliance with immigration regulations weighs on the Applicants' chances to acquire permanent residency on H&C grounds?

[71] The Applicants submit that the Officer failed to conduct a balancing exercise between the elements of hardship faced by the Applicants and the factors relating to the Applicants' non-compliance with immigration regulations (citing *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14; *El Sayed v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 802).

[72] The Respondent submits that this argument is without merit. The Respondent argues that the Applicants' cited jurisprudence is irrelevant to the case at bar because it merely pertains to how this Court determines whether to entertain judicial review applications where the applicants do not have clean hands. Moreover, the Respondent argues that the Officer conducted the type of balancing exercise suggested by the Applicants.

[73] I agree with the Respondent. On my reading of the Officer's decision, it is clear that the Officer did not refuse the Applicants' application on the basis of the unclean hands doctrine. It is also evident that the Officer conducted the type of balancing exercise suggested by the Applicants.

[74] In the decision, the Officer noted the Applicants' failure to comply with immigration regulations and orders and determined that this history militates against granting the Applicants' H&C application:

> The applicants were notified of the negative PRRA decision on March 23rd, 2011. The applicants failed to report for removal on April 6th, 2011 and warrants were issued for their removal the same date. The applicants submitted an H&C application on June 13th, 2017 […]
>
> The applicants have lived in Canada for more than eleven years. The male applicant is currently employed as a framer for Environment Company and the female applicant was employed as a cleaner. I note that the applicants have worked without authorization as they have been status since April 6th, 2011 when warrants for their arrest were issued. I also note that these warrants were issued because the applicants failed to report for removal on April 6th, 2011 and have not reported to Immigration to date and these warrants continue to remain outstanding. While it is commendable that the applicants are self-supporting, I find that their deliberate non-compliance of immigration regulations weighs negatively in this assessment.

[75] Following these notes and findings, the Officer considered a host of factors that would militate in favour of the Applicants' H&C application (e.g., the Applicants' friendships, the Applicants' community involvement, the Applicants' family ties, the best interests of their children and grandchildren, and the Applicants' employment prospects in Mexico), and proceeded with rendering the decision.

[76] As a result, I fail to see a reason to intervene.

VIII. Conclusion

[77] Accordingly, I dismiss the application for judicial review.

JUDGMENT in IMM-2203-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2203-19
STYLE OF CAUSE:	JOSE GUADALUPE GARCIA GARCIA AND HERMINIA CELSA JIMENEZ ROSALES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 16, 2020
JUDGMENT AND REASONS:	PAMEL J.
DATED:	FEBRUARY 25, 2020

APPEARANCES:

Cemone Morlese	FOR THE APPLICANTS
Amy King	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Grice and Associates Barristers & Solicitors North York, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT