Federal Court  Cour fédérale

**Date: 20220303**

**Docket: IMM-1650-21**

**Citation: 2022 FC 298**

**Ottawa, Ontario, March 3, 2022**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**MARIA ELIZABETH MORA MANRIQUEZ**
**ANTONIO DE JESUS SEGOVIA NERI**
**GABRIEL SANTIAGO SEGOVIA MORA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The Applicants seek review of the decision of an Immigration Officer, dated January 27, 2021, refusing their application for permanent residence status on humanitarian and compassionate (H&C) grounds. For the reasons that follow, I am granting this judicial review as I have concluded that the Officer's assessment of the best interests of the child (BIOC) was unreasonable.

## I. Background

[2] The Applicants – Maria Elizabeth Mora Manriquez, her spouse Antonio de Jesus Segovia Neri, and their minor son Gabriel Santiago Segovia Mora – are citizens of Mexico. The adult Applicants also have two Canadian-born children: Joshua, born in 2014, and a child born during the processing of their H&C application and who is, therefore, not referenced in the H&C application.

[3] The family arrived in Canada in 2008 on a 6-month authorization. Their son, Gabriel, was 5 months old when they arrived in Canada. He is now 13 years old.

## II. Decision Under Review

[4] In considering the Applicants' establishment in Canada, the Officer considered letters from family, friends, coworkers, their involvement in Church, and attendance at English second-language programs. However, the Officer stated their establishment was "not unusual compared to others who have been here for a similar amount of time and therefore does not merit exceptional discretion".

[5] The Officer went on to state:

> …It is noted that in addition to not abiding by conditions of the visitor status which was granted to them, their evidence does not support that they attempted to maintain or restore their authorization and instead chose to remain in Canada for over twelve years after its expiry in Mar 2009.

[6] The Officer cited *Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904 where Justice Brown wrote, "Those who disrespect and refuse to follow Canadian laws cannot by their misconduct become better placed than those who respect Canadian immigration laws and processes." (at para 29). The Officer further highlighted that Maria's family members had legally immigrated to the country, and reasoned they would have been aware of Canada's immigration system. The Officer concluded:

> …It would be inappropriate for the applicants to benefit from the years which they lived and worked in Canada illegally, as doing so would incentivise others similarly seeking H&C relief to remain unlawfully in Canada. As a result, a negative inference is made towards the applicants' disregard for Canada's immigration laws.

[7] With respect to the BIOC analysis, the Officer had evidence that Gabriel is not fluent in Spanish. The Applicants provided a report from Maria Cuervo, an Associate Professor in Spanish and Linguistics at the University of Toronto, who assessed Gabriel as having general test score of 42.5% or "above average low proficiency". The Officer noted that this assessment did not comment on Gabriel's ability to learn the language. The Officer conducted independent research and relied on an article summarizing a study performed by Massachusetts Institute of Technology (MIT), which concluded that "children remain very skilled at learning the grammar of a new language much longer than expected – up to the age of 17 or 18". The Officer concluded that both Gabriel and Joshua (the Applicants' Canadian-born son) would be able to learn Spanish as a result of having been exposed to Spanish from birth. The Officer referenced Gabriel's report card, which demonstrates he succeeds in school both generally, and specifically in learning Italian. The Officer states "[t]his corroborates the MIT study's findings and support Gabriel's proficiency at learning languages". Further, the Officer noted that because Gabriel and

Joshua are fluent in English, and English is a compulsory subject in Mexican schools, this would be a benefit to them in Mexico.

[8] The Officer considered the evidence of adverse country conditions in Mexico. He noted the lack of evidence that the adult Applicants had been exposed to violence, had lower standards of education, or lack of access to health care during their upbringing. The Officer also stated that "[n]o country, including Canada can guarantee that crime, poverty or other negative factors will not occur during a child's upbringing".

## III. Issues and Standard of Review

[9] Although the Applicants raise a number of issues with the Officer's decision, the reasonableness of the Officer's treatment of the BIOC is determinative of this judicial review.

[10] On the standard of review, the parties agree that the reasonableness standard as articulated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 is applicable.

## IV. Analysis

[11] H&C applications are considered pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 which states:

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| **Humanitarian and compassionate considerations — request of foreign national** | **Séjour pour motif d'ordre humanitaire à la demande de l'étranger** |

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| **25 (1)** Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected. | **25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché. |

[12] In *Kanthasamy v Canada (Citizenship and Immigration),* 2015 SCC 61 [*Kanthasamy*], the Supreme Court of Canada confirmed that in s 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" (*Kanthasamy* 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 s 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" (at para 39).

[13] There are two main aspects of the Officer's BIOC analysis that Applicants challenge: the failure to properly consider the risk of violence in Mexico; and, the failure to properly consider the education impediments on removal to Mexico.

A. *Violence*

[14] On the risk of violence in Mexico, the Applicants highlight the evidence that was before the Officer demonstrating that Mexico has a homicide rate 12 times higher than Canada and that 5 of the 6 most violent cities in the world are in Mexico. The evidence also describes the impact of the drug trade on children, and indicates that children are often recruited by drug traffickers, go missing, or are murdered.

[15] The Officer dismisses this risk of violence for the children ostensibly on the grounds that since their parents did not report having experienced violence when they were young, nor would their children if they were to return to Mexico. This is an illogical conclusion. It fails to appreciate that decades have passed, and it fails to acknowledge the evidence that the situation in Mexico has worsened significantly. In particular, the homicide rate has doubled since the Applicants left. The Officer's conclusion that "[n]o country, including Canada can guarantee that crime, poverty or other negative factors will not occur during a child's upbringing" is gratuitous and demonstrates a failure to engage with the evidence.

[16] A similar finding was made in *Aguirre v Canada (Citizenship and Immigration)*, 2014 FC 274 [*Aguirre*] where Justice Zinn notes:

> [22] The officer found that it is in the best interests of the child to get an education, and that Mexico provides free public education for 11 years. Further, the officer noted that "[n]o country, including Canada ... can provide a guarantee that poverty and hurtful incidents of a criminal or prejudicial nature will not occur in a child's lifetime."
>
> [23] The decision neglects to mention the grizzly violence, the use of children for narcotics trafficking, and how such an environment would affect the Canadian child on moving to Mexico and partaking in the country's educational system.
>
> [24] The officer is required to conduct a more thorough analysis. The officer should have examined the options for the child, either by remaining in Canada without his or her parents or by returning to Mexico to enter a school and education system which appears over-run with corruption, extortion, and violence. Merely stating that it is in the best interests of children to be educated does not explain why the child would or would not face hardship on return to Mexico. The decision is not justified, transparent and intelligible; I have no way of knowing whether it is a possible acceptable outcome. As such, it is unreasonable.

[17] Similar to *Aguirre*, the Officer here failed to engage with the evidence and "explain why the child would or would not face hardship on return to Mexico" (*Aguirre* at para 24). As a result, this part of the BIOC analysis is unreasonable.

B. *Education*

[18] With respect to the impact of returning to Mexico on Gabriel's education, the Applicants provided a language assessment report that states that "his level of language and metalanguage in Spanish doesn't make it possible for [him] to be integrated into the educational system of any Spanish-speaking country or territory."

[19] Despite this, the Officer concludes that the evidence does not establish Gabriel could not pursue an education in Mexico as he could learn Spanish. In support of this, the Officer relied upon his own research to support his conclusion that Gabriel could learn Spanish, and reasoned that since he has been exposed to "the Mexican language, customs and culture" at home; this does not pose a barrier to his continued education.

[20] A similar conclusion in *Ali v Canada (Citizenship and Immigration)*, 2014 FC 469 was held to be unreasonable, with Justice Zinn's finding:

> [15] … the officer completely neglects the impact of the evidence that these boys know only a few words of Urdu and would have to learn the language before they could expect to enter the education system or make friends in the community. The officer, contrary to the evidence, makes an incorrect assumption when he writes that "it is reasonable to expect that the boys will have been exposed to Pakistani culture and the Urdu language by their families while in North America." The officer never addresses the question of the impact on these boys of interrupting their education by having to learn a foreign language and the harm that will inevitably occur if that happens. The officer simply assumes that their exposure to the culture will negate any potential hardship.

[21] In this case, the evidence was that Gabriel would not be able to successfully attend school due to his lack of knowledge of Spanish. The Officer disregards this evidence in favour of his own research, which is a news article about a scientific study (rather than the academic article itself) providing general findings on language acquisition. The Officer heavily relies on this article as a basis to conclude that Gabriel would be able to learn Spanish, and states that his success in his Italian class "corroborates the MIT study's findings". In my view, it was unreasonable for the Officer to rely on this general news article and disregard the direct evidence provided by the Applicants.

[22] Overall, the Officer's reasons fail to actually assess what is in Gabriel's best interests. The Officer's assessment appears to be limited to whether Gabriel's basic needs can be met in Mexico. This is not a proper BIOC analysis (*De Oliveira Borges v Canada (Citizenship and Immigration)*, 2021 FC 193 at para 9; *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 at para 16). Gabriel has been in Canada since he was 5 months old, and was 12 years old at the time of the H&C application. Life in Canada is the only life he has known. The Officer was required to explain why, given these circumstances, removal to Mexico was in Gabriel's best interests.

[23] For the reasons above, this judicial review is granted and the matter is remitted for redetermination by a different officer.

[24] Neither party proposed a certified question and no question is certified.

**JUDGMENT IN IMM-1650-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted. The decision of the Immigration Officer is set aside and the matter is remitted for redetermination by a different decision-maker.

"Ann Marie McDonald"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1650-21 |
| **STYLE OF CAUSE:** | MANRIQUEZ ET AL v MCI |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | JANUARY 17, 2022 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | MCDONALD J. |
| **DATED:** | MARCH 3, 2022 |

**APPEARANCES:**

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| Judy Michaely | FOR THE RESPONDENT |

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