Federal Court  Cour fédérale

**Date: 20220906**

**Dockets: IMM-1136-21**
**IMM-6201-20**

**Citation: 2022 FC 1260**

**Ottawa, Ontario, September 6, 2022**

**PRESENT: The Honourable Mr. Justice Favel**

**Docket: IMM-1136-21**

**BETWEEN:**

**ANNA FRIESEN HARDER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**Docket: IMM-6201-20**

**AND BETWEEN:**

**ABRAM FRIESEN HAMM**
**MARGARETHA HARDER GIESBRECHT**
**MARIA FRIESEN HARDER**
**PETER FRIESEN HARDER**
**MARGARETHA FRIESEN HARDER BY HER LITIGATION GUARDIAN ABRAM FRIESEN HAMM**
**HEINRICH FRIESEN HARDER BY HIS LITIGATION GUARDIAN ABRAM FRIESEN HAMM**
**JACOBO FRIESEN HARDER BY HIS LITIGATION GUARDIAN ABRAM FRIESEN HAMM SUSANA FRIESEN HARDER BY HER LITIGATION GUARDIAN ABRAM FRIESEN HAMM EVA FRIESEN HARDER BY HER LITIGATION GUARDIAN ABRAM FRIESEN HAMM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Defendant**

## JUDGMENT AND REASONS

### I. Nature of the Matter

[1] Abram Friesen Hamm [Principal Applicant or PA] is a citizen of Mexico and the father of nine children. The PA, his wife, and his seven youngest children are the applicants in IMM-6201-20. The PA's eldest daughter, Anna Friesen Hamm [Ms. Hamm], who is also a citizen of Mexico, was originally included as a dependent in IMM-6201-20. As she is no longer a dependent, she is the applicant in IMM-1136-21 [collectively, Applicants]. In August 2019, the Applicants jointly submitted an application for permanent residence on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. On September 1, 2020, a senior immigration officer [Officer] denied both applications, concluding that there were insufficient H&C grounds to warrant an exemption from the normal permanent residency requirements [Decisions]. The Applicants seek judicial review of the Decisions.

[2] For the reasons that follow, the applications for judicial review are dismissed.

## II. Background

[3] The Applicants arrived in Canada on July 19, 2013 as visitors. Their visitor status expired in November 2013, and have since remained in Canada without status.

[4] The PA's grandparents and sister are Canadian citizens. The PA filed for proof of Canadian citizenship after they arrived in Canada, which was subsequently denied on June 8, 2016. The PA's father passed away before the PA could obtain his citizenship when he was younger.

[5] Prior to coming to Canada, the Applicants lived in a Mennonite colony in Zacatecus, Mexico. In their affidavits, the PA and Ms. Hamm stated that the Applicants left Mexico because they feared "gangs, guns, kidnappings and violence." They explained that they have witnessed crime in Mexico, and that on more than one occasion one of the Applicants have been held at gunpoint. The Applicants often went hungry in Mexico, and if returned, they will likely experience homelessness.

[6] In Canada, the minor children are enrolled in a private Christian school. The PA states that if returned to Mexico, he and his wife will only be able to afford to send two of their children to school.

[7] The Applicants jointly filed a Pre-Removal Risk Assessment [PRRA] on July 18, 2019. Shortly thereafter, on August 6, 2019, the Applicants jointly filed their H&C application. The

same Officer considered and denied both applications. The Applicants have not challenged the PRRA decision.

[8] The Applicants' H&C application focused on their establishment in Canada, the best interests of the children, and the hardship they would face if returned to Mexico. In support of their H&C application, the Applicants submitted numerous handwritten letters. The Officer issued two separate H&C decisions, both of which contain identical reasons.

## III. The Decisions

[9] First, the Officer considered the Applicants' establishment in Canada. The Officer found that there was little information about the Applicants' employment history or how the PA supports his family. The Officer also noted that the Applicants did not get work permits until November 14, 2019. The Officer assigned very little weight to work done on the farm from 2019 onward.

[10] The Officer acknowledged that the PA's wife, Margaretha, is a homemaker, volunteers, and sews for the less fortunate in her free time. The Officer assigned Margaretha's volunteer activities and the Applicants' friendships a small amount of positive weight. The Officer also assigned some positive weight to the fact that the five youngest Applicants are in school and have created ties to Canada.

[11] The Officer noted that the Applicants do not have criminal records, but failed to renew their status in Canada. As a result, the Officer removed a moderate amount of weight from the Applicants' establishment.

[12] The Officer then considered the Applicants' risk and the adverse country conditions in Mexico. There was little evidence regarding the Applicants' finances and assets, and the Applicants did not establish that they would be unable to afford temporary accommodation while searching for employment and a permanent home.

[13] Next, the Officer analyzed the Applicants' allegation of psychological hardship due to crime and violence in Mexico. The Officer accepted that the Applicants may have been robbed in 2013, but they were not pursued in Mexico prior to their departure. The Officer concluded that there was insufficient evidence that the Applicants would be victims of crime in the future. The Officer noted that there was little information about the role of the police or that their response was inappropriate. Accordingly, the Officer found that the Applicants would only experience a small amount of hardship due to their fear of crime.

[14] The Officer also considered the Applicants' allegation that they will become homeless if returned to Mexico, but found that there was little evidence regarding their finances. The Officer concluded that there was insufficient evidence to establish that the Applicants cannot afford temporary accommodations in Mexico. Furthermore, the Officer noted that the Applicants have lived in Mennonite colonies while in Canada and Mexico. As such, there was no indication that the Applicants could not rely on the Mexico-based Mennonite colony or extended family for

resources, housing, or support. The Officer also remarked that the Applicants did not establish that they sold their previous property in Mexico.

[15] Finally, the Officer considered the best interests of the five minor children. The Officer noted that they are all attending private school and that they had created ties in Canada. Although there was little detail about their experiences or relationships in Canada, the Officer found it likely that the children have friends and family, and engage in school and community activities. The Officer concluded that the children would experience a small amount of hardship if separated from colleagues and extracurricular activities.

[16] The Officer considered the Applicants' assertion that only two of the children would be able to continue school in Mexico due to school fees. Upon conducting a public search of Mexico's education system, the Officer found that in 2012, the Mexican government implemented a law that made secondary education compulsory for all students. The Officer acknowledged that there was evidence that this policy was applied unevenly, particularly in rural regions. The Officer further acknowledged that given their Mennonite profile and likely return to a rural area, the older children might face limited educational opportunities. However, the Officer found that there was limited information that the older children were denied access to education while in Mexico, nor was there any indication that the older children are presently studying in Canada. The Officer concluded that Mexico's education system would not negatively affect the children's best interests by more than a small amount.

[17] The Officer recognized the parents' concerns surrounding the safety of their children and that the general country conditions in Mexico are poor for some. However, the Officer found that the Applicants did not establish a link between the generalized evidence and their personal situation, and that there was little evidence that they suffered from poverty, gender-based inequality, or crime. The Officer found little to suggest that their past experiences with Mexico's education or health care systems were inadequate, particularly given that they previously resided in a Mennonite colony.

[18] Overall, the Officer concluded that the Applicants demonstrated a small amount of establishment. Additionally, the best interests of the child [BIOC] were insufficient to grant an exemption because there was insufficient evidence that their well-being or development would be negatively affected if they left Canada. The Officer considered country conditions, but found that the Applicants would not suffer exceptional difficulty given: the PA's employment history did not indicate a drastic change in circumstances if they were to return to Mexico; the Applicants did not established they could not return to the Mennonite colony in Mexico; and the Applicants did not establish that they would fit the profile of those at increased danger compared to the general population. The Officer noted that there was insufficient evidence regarding their finances, and found that their work or living arrangements were unlikely to significantly change if they were to reside in Canada or Mexico. For these reasons, the Officer concluded that there were insufficient H&C factors to grant an exemption under subsection 25(1) of *IRPA.*

## IV. Issues and Standard of Review

[19] Based on the parties' submissions, the only issue is whether the Decisions are reasonable. The sub-issues are best characterized as:

1. Did the Officer reasonably assess the hardship the Applicants will face if returned to Mexico?
2. Did the Officer reasonably assess the best interests of the children?
3. Did the Officer reasonably assess the Applicants' establishment in Canada?

[20] I agree with the parties that the appropriate standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 42-44 [*Kanthasamy*]).

[21] H&C decisions are "exceptional and highly discretionary; thus deserving of considerable deference by the Court" and resulting in a "wider scope of possible reasonable outcomes" (*Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at paras 17-18, citing *Qureshi v Canada (Citizenship and Immigration)*, 2012 FC 335 at para 30 and *Inneh v Canada (Citizenship and Immigration)*, 2009 FC 108 at para 13). The Respondent states that a decision-maker should not be held to a standard of perfection. A reviewing court must assess whether the decision falls within a range of reasonable outcomes, not whether it would have come to the same conclusion (*Vavilov* at paras 83, 86-87, 99, 145).

## V. Analysis

### A. *Did the Officer reasonably assess the hardship the Applicants will face if returned to Mexico?*

#### (1) Applicants' Position

[22] The Officer failed to apply the correct legal test under subsection 25(1) of *IRPA*. Consideration of H&C grounds is not intended to be a substitute for, or a repetition of, an assessment of risk under sections 96 or 97 of *IRPA*. Subsection 25(1) does not require proof of individualized risk relative to the general population (*Shah v Canada (Citizenship and Immigration)*, 2011 FC 1269 at para 73 [*Shah*]; *Diabate v Canada (Citizenship and Immigration)*, 2013 FC 129 at para 32 [*Diabate*]; *Aboubacar v Canada (Citizenship and Immigration*), 2014 FC 714 at para 4). Applicants need only show that they will likely be affected by adverse conditions (*Kanthasamy* at paras 53-56; *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at paras 29-31 [*Damian*]).

[23] The Officer required the Applicants to present direct evidence that they would personally experience specific hardship such as inadequate education, discrimination, and risk. Similarly, while the Officer accepted that the Applicants had been victims of criminal acts, the Officer improperly required the Applicants to identify the assailant, establish a motive, and demonstrate that they fit the profile of someone at increased risk in comparison to the general population. The Applicants provided evidence that they would likely suffer hardship due to poor country conditions.

(2) Respondent's Position

[24] There will inevitably be some hardship associated with removal from Canada. The H&C process is not intended to be an alternative immigration scheme (*Kanthasamy* at paras 23, 25). In the circumstances, the Officer reasonably weighed all the relevant H&C factors and concluded that the Applicants were not entitled to relief under subsection 25(1) of *IRPA*.

[25] The Officer's hardship analysis was reasonable. Decisions post-*Kanthasamy* permit an H&C officer analyzing hardship to consider how general country conditions may affect particular applicants. While it is impermissible to ask whether an applicant "will suffer a greater degree of discrimination than others," an officer may consider the extent and nature of their hardship and how it relates to the broader country conditions (*Arsu v Canada (Citizenship and Immigration)*, 2020 FC 617 at paras 16-17).

[26] The Decisions were responsive to the Applicants' submissions, indicating that the Officer applied the appropriate test and conducted a "forward-looking assessment" (*Caleb v Canada (Citizenship and Immigration)*, 2020 FC 1018 at para 23). The Officer accounted for the robbery that occurred in 2013, but ultimately concluded that there was insufficient evidence to establish they would be targeted in the future. The Officer also accounted for the Applicants' specific history, noting that they previously resided in a Mennonite colony in Mexico. The Officer reasonably concluded that the Applicants had not shown that they were unable to rely on the Mennonite colony or extended family for support.

(3) Conclusion

[27] I find the Officer's hardship analysis is reasonable. When the Decisions are read as a whole, the Officer applied the proper test, that is, whether the Applicants would likely be affected by adverse country conditions if returned to Mexico (*Kanthasamy* at para 56).

[28] First, I disagree with the Applicants that the Officer erred by requiring personalized evidence. An H&C applicant does not have to present direct evidence that they have or will be affected by adverse country conditions (*Kanthasamy* at paras 54-56). However, in order to demonstrate that applicants are likely to be affected by adverse country conditions, they must establish a link between the general evidence and their personal circumstances (*Gutierrez v Canada (Citizenship and Immigration)*, 2021 FC 1111 at para 18 [*Gutierrez*]). In the present matter, the Officer reasonably required the Applicants to show that they are likely to personally experience hardships such as inadequate education, discrimination, and risk.

[29] Second, I also disagree with the Applicants that the Officer required them to demonstrate a greater risk of hardship in comparison to others in Mexico. I acknowledge that the language used by the Officer is similar to the language used in cases cited by the Applicants (*Diabate* at para 32; *Shah* at para 70; *Damian* at para 29; *Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73 at para 29 [*Miyir*]). In all of these cases, H&C officers unreasonably required the applicants to show that they would face circumstances not generally faced by others in their home country. The Officer in the present case concluded "the [A]pplicants [have] not established that they would fit the profile of someone that is at increased danger of being robbed when compared to the general population."

[30] I agree with the Applicants that, on its face, this statement appears to import principles that are only relevant under section 97 of the *IRPA*. However, judicial review should not be a "line-by-line treasure hunt for errors" and decisions need not be perfect (*Vavilov* at paras 91, 102, 104). The relevant question for the Court to ask is whether, in substance, the Officer ignored or minimized the hardship the Applicants may face in Mexico because others face the same or greater hardship (*Arsu* at para 17; *Damian* at para 31; *Obodoruku v Canada (Citizenship and Immigration)*, 2022 FC 224 at para 27 [*Obodoruku*]).

[31] In *Damian*, this Court found that the officer clearly rejected Ms. Damian's fears of violence in Columbia because the impact would be the same as that felt by others in Colombia (at para 31). Likewise, in *Miyir*, the Officer completely failed to engage with the applicant's submissions that she would experience hardship, instead noting that most women in Djibouti face discrimination (at paras 29, 32). The present case is unlike *Damian* or *Miyir* because in the present matter the Officer did consider the hardship the Applicants would face, taking into account their unique circumstances.

[32] Rather, this case is similar to *Obodoruku*, where the applicants took issue with the officer's statement that "there was insufficient information to suggest that the applicants <u>were more likely to be targeted than other females in their region</u>" (at para 26) [Emphasis added.]. Justice Little considered the substance of the entire decision and concluded that, despite this statement, the officer did not raise "the legal standard" or minimize the hardship the applicants would face "because other women also suffer the same circumstances" (at para 27).

[33] Likewise, in this case, the bulk of the Officer's hardship analysis properly considered the Applicants' circumstances and whether they are likely to be affected by adverse country conditions. The substance of the Officer's hardship analysis does not focus on the hardships people generally experience in Mexico, nor does the Officer discount the hardship the Applicants may face on this basis. I agree with the Respondent that the Officer reasonably considered the Applicants' particular circumstances and how they "relate to the broader country condition evidence" (*Arsu* at para 16).

[34] The Officer's hardship analysis "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Vavilov* at para 86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

B. *Did the Officer reasonably assess the best interests of the children?*

(1) Applicants' Position

[35] The Officer failed to identify the BIOC and failed to contemplate whether the interests of the children lie in remaining in Canada with their parents. The Officer erred in limiting the BIOC analysis to hardship thresholds, asking whether the children would be adversely affected by residing in Mexico rather than what is in the children's best interests. This renders the Decisions unreasonable (*Osun v Canada (Citizenship and Immigration)*, 2020 FC 295 at para 21; *Patousia v Canada (Citizenship and Immigration)*, 2017 FC 876 at paras 53-56).

[36] In addition, the Officer erroneously faulted the Applicants for a lack of evidence demonstrating that the children previously suffered from poverty, were unable to access educational and medical care, or were victims of gender-based inequality or crime. An officer must assess generic country conditions as they apply to children in order to be alert, alive, and sensitive to the BIOC (*Elenes Gaona v Canada (Citizenship and Immigration)*, 2011 FC 1083 at para 10 [*Gaona*]; *Blas v Canada (Citizenship and Immigration)*, 2014 FC 629 at paras 59, 62 [*Blas*]). The Officer's failure to properly address this portion of the BIOC analysis makes it unclear whether the children's best interests could have been given even more weight, or whether it was properly weighed against the other factors present in this H&C application.

(2) Respondent's Position

[37] The Officer reasonably assessed the BIOC, and consistent with *Kanthasamy*, considered the BIOC in light of the country condition evidence (at paras 33-41). There is no "magic formula" when conducting a BIOC analysis. An officer is required to be "alert, alive, and sensitive" to the interests of a child, but once that is done, it is up to the officer to determine the weight of those interests (*Kanguatjivi v Canada (Citizenship and Immigration)*, 2018 FC 327 at para 56; *Canada (Minister of Citizenship and Immigration v Hawthorne*, 2002 FCA 475 at paras 5-7).

[38] Here, the Officer acknowledged that the minor children had some ties in Canada and that some hardship would result from their removal. Having considered the overall circumstances, the Officer reasonably found the weight of the BIOC was insufficient to justify an exemption**.**

(3) Conclusion

[39] I agree with the Respondent that there is no magic formula when conducting a BIOC analysis. As noted by Justice Diner in *Zlotosz v Canada (Citizenship and Immigration)*, 2017 FC 724 [*Zlotosz*], the "framework for BIOC analysis remains largely unchanged since *Baker v Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817, in that the legal test is whether the officer was alert, alive and sensitive to child's best interests…" (at para 24).

[40] In this case, the Officer's BIOC analysis began by noting that the Applicants tendered insufficient evidence to demonstrate "a negative impact on the children's well-being or development if the [A]pplicants leave Canada." The Officer also stated that there was "not much detail" regarding the children's "experiences or depth/breadth of their relationships with Canadian residents." Likewise, the Officer noted that there was little to no information about the children's past educational experiences in Mexico.

[41] The burden is on the Applicants to provide the Officer with "sufficient" evidence to support their case for H&C relief (*Daniels v Canada (Citizenship and Immigration)*, 2018 FC 463 at para 32). While the BIOC must be "'well identified and defined' and examined 'with a great deal of attention'", a decision-maker is still constrained by the evidence presented (*Kanthasamy* at para 39).

[42] The Applicants submit that the Officer applied a hardship lens to the BIOC analysis. This Court addressed the same argument in *Zlotosz*, where the applicants similarly tendered little

evidence. In rejecting this argument, Justice Diner held that hardship can form part of a BIOC analysis, and that addressing it does not mean that an officer is looking at best interests through a hardship lens (at paras 21-22).

[43] Indeed, an Officer cannot be faulted for considering hardship within a BIOC analysis when applicants argue that the children will face hardship (*Vitorio v Canada (Citizenship and Immigration)*, 2022 FC 177 at paras 18-19). The Applicants argue that the following evidence was before the Officer, which demonstrates that the children's best interest is to stay in Canada:

- The family having been witness of and victims of multiple criminal incidents;
- Mexico's high rates of kidnapping, violence and crime;
- The lack of effective law enforcement structures in Mexico to provide protection;
- The family's financial struggle in Mexico;
- The children's attachment and desire to remain in Canada;
- Some of the children having nightmares, with the youngest having severe stomach aches and headaches as a result of their fear of returning to Mexico;
- The children's attendance and progress in their studies and Sunday School; and
- Limited educational opportunities for their children in Mexico.

[44] In my view, most of these points focus on the hardship the children may experience if returned to Mexico. Accordingly, by considering hardship, the Officer was merely being responsive to the Applicants' submissions.

[45] The Applicants also submit that the Officer failed to consider the general country condition evidence as it applies to the children. I disagree. Unlike the officers in *Gaona* (at para 10) and *Blas* (at para 65), the Officer expressly referred to the general country condition evidence regarding BIOC, again emphasizing insufficiency of evidence:

> I have reviewed the general country condition documents with respect to BIOC. I acknowledge that the parents worry about the safety of their children and that, generally, country conditions for some in Mexico are poor. For instance, there are reports of child abuse, and sexual exploitation of minors. Nevertheless, in an H&C application, it is the applicants' burden to establish a link between the generalized evidence and their personal situation or that of their children. There is little evidence before me to suggest that either parent, or their families, suffered from poverty, or were victims of gender-based inequality and/or crime. Moreover, I have little to suggest that their experiences in education or within the health services were inadequate while in Mexico, given the context of the Mennonite community that they previously resided in.

[46] It was open to the Officer to conclude that there was insufficient evidence and that the Applicants failed to establish a link between their personal circumstances and the general country conditions (*Gutierrez* at para 18). I do not find the Officer's BIOC analysis unreasonable.

C. *Did the Officer reasonably assess the Applicants' establishment in Canada?*

(1) Applicants' Position

[47] The Officer did not apply the principles set out in *Kanthasamy*, specifically the approach encapsulated in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 [*Chirwa*], which focuses on empathy and compassion. The Officer unreasonably relied on the fact that the Applicants lack status, worked without authorization, and delayed in submitting

their H&C application. In doing so, the Officer minimized the positive factors in the Applicants' H&C application. The whole purpose of section 25 of the *IRPA* is address people who do not have status (*Benyk v Canada (Citizenship and Immigration),* 2009 FC 950 at paras 14-15). The Officer was required to assess the nature of non-compliance and its relevance before assigning it weight (*Garcia Balarezo v Canada (Citizenship and Immigration)*, 2020 FC 841 at para 47 [*Balarezo*]).

[48] The Officer also erred in assessing the Applicants' establishment in Canada by assigning, without an explanation, certain evidence little weight. For instance, the Officer was aware that the PA's grandparents were Canadian citizens and his sister obtained Canadian citizenship through family lineage. There was also evidence that Margaretha sews for the less fortunate. In addition, the children wrote letters expressing their desire to stay in Canada and there was evidence of their academic development at school. Lastly, the Applicants provided evidence of several friendships they had formed in Canada.

[49] The Officer's mere statement of a conclusion does not satisfy the *Chirwa* approach nor meet the requirements of justification, transparency and intelligibility. It is inappropriate for a reviewing court to fashion reasons to address fundamental gaps in an officer's decision (*Vavilov* at para 96). It is not enough for a decision to be justifiable. Rather, the reasons must show that the decision is also justified (*Vavilov* at paras 86-87). In light of the consequences the Applicants will face if returned to Mexico, it was incumbent on the Officer to provide clear reasons for assigning little weight to the evidence.

(2) Respondent's Position

[50] The Officer's assessment of the Applicants' establishment was reasonable and in line with *Chirwa*. It is an officer's role to consider and weigh all the factors, including establishment, which is what the Officer did. The Officer expressly dealt with and gave positive consideration to the H&C factors advanced by the Applicants, including the work done on the farm, friendships, and positive ties to Canada. However, the Officer also found that there was little evidence about employment history, vague information about community activities, and that the Applicants had willfully disregarded Canada's immigration laws.

[51] H&C applicants must demonstrate "misfortunes or other circumstances that are exceptional, relative to other applicants who apply for permanent residence from within or outside Canada" (*Huang v Canada (Citizenship and Immigration),* 2019 FC 265 at paras 18-21). The Applicants' H&C application was primarily based on their hope to stay in Canada because of better social and economic opportunities. If this were enough to grant an H&C exemption, virtually all H&C applications would be allowed, creating an alternative immigration route.

(3) Conclusion

[52] I disagree with the Applicants that the Officer unduly focused on the fact that the Applicants lack status, worked without authorization, or delayed in submitting their H&C application. While the purpose of section 25 of *IRPA* is to provide relief for those without proper immigration status (*Benyk* at para 14), the Officer's comments were not central to, nor the exclusive focus of, the officer's analysis (*Diabate* at para 31; *Balarezo* at para 47). Rather, the Officer weighed these negative factors against the Applicants' farm work, while also noting the

vague evidence related to the family's employment history and finances. Accordingly, the Officer reasonably concluded that little weight should be assigned to the Applicants' farm work.

[53] I also disagree with the Applicants that the Officer's reasons lack a compassionate and empathetic approach. In *Kanthasamy*, the Supreme Court of Canada adopted the *Chirwa* approach, which requires H&C officers to consider "whether there are facts in the case which would excite in a reasonable person in a civilized community a desire to relieve the misfortune of another so long as those misfortunes warrant special relief" (*Kolade v Canada (Citizenship and Immigration)*, 2019 FC 1513 at para 8). The Officer explicitly recognized all of the positive factors weighing in favour of the Applicants' establishment. The Officer was sensitive to the Applicants' circumstances but simply concluded that the Applicants' "misfortunes" did not "warrant special relief."

[54] Finally, the Applicants state that the Decisions are unreasonable because the Officer assigned positive establishment factors a "small amount of weight" without explaining why. In my opinion, the Applicants are asking this Court to reweigh the evidence, which is not the role of a reviewing court (*Vavilov* at para 125). Additionally, it is within the Officer's discretion to determine what weight should be assigned to the Applicants' establishment (*Chisholm v Canada (Citizenship and Immigration)*, 2022 FC 480 at paras 18-19). I do not agree that H&C officers are under an obligation to explain why certain evidence is afforded "little" or "moderate" weight as opposed to "significant" weight. This would place an undue burden on administrative decision-makers. The Officer was responsive to the Applicants' submissions, considered the

relevant evidence lending to their establishment, and clearly assigned the evidence a certain amount of weight.

[55] I do not find that the Officer's approach lacks justification, transparency, or intelligibility (*Vavilov* at para 99).

## VI. Conclusion

[56] For all of these reasons, the applications for judicial review are dismissed. The parties have not proposed a question for certification and I agree that none arises.

**JUDGMENT in IMM-1136-21 and IMM-6201-20**

**THIS COURT'S JUDGMENT is that**:

1. The applications for judicial review are dismissed.

2. There are no questions of general importance for certification.

"Paul Favel"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1136-21 |
| **STYLE OF CAUSE:** | ANNA FRIESEN HARDER v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **AND DOCKET:** | IMM-6201-20 |
| **STYLE OF CAUSE:** | ABRAM FRIESEN HAMM, MARGARETHA HARDER GIESBRECHT MARIA FRIESEN HARDER, PETER FRIESEN HARDER, MARGARETHA FRIESEN HARDER BY HER LITIGATION GUARDIAN ABRAM FRIESEN HAMM HEINRICH FRIESEN HARDER BY HIS LITIGATION GUARDIAN ABRAM FRIESEN HAMM, JACOBO FRIESEN HARDER BY HIS LITIGATION GUARDIAN ABRAM FRIESEN HAMM SUSANA FRIESEN HARDER BY HER LITIGATION GUARDIAN ABRAM FRIESEN HAMM EVA FRIESEN HARDER BY HER LITIGATION GUARDIAN ABRAM FRIESEN HAMM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | APRIL 20, 2022 |
| **JUDGMENT AND REASONS:** | FAVEL J. |
| **DATED:** | SEPTEMBER 6, 2022 |

**APPEARANCES:**

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| Alex Kam | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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