Federal Court Cour fédérale

Date: 20250715

Docket: IMM-15812-23

Citation: 2025 FC 1255

Ottawa, Ontario, July 15, 2025

PRESENT: The Honourable Justice Darren R. Thorne

BETWEEN:

CHRISTIANAH MONISOLA OLANIPEKUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Christianah Monisola Olanipekun, seeks judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of an Immigration, Refugees and Citizenship Canada [IRCC] immigration officer's [Officer] decision denying her application for permanent resident status on humanitarian and compassionate [H&C] grounds.

[2] For the reasons that follow, I grant the Application.

II. Background

[3] The Applicant is a citizen of Nigeria. She first came to Canada in 2014 on a student visa, in relation to which she completed two post-graduate diplomas between August 2014 and December 2016. After this, she received a post-graduate work permit, valid until April 2020, and then subsequently another study permit, under which she completed a diploma as a continuing care assistant. The Applicant then worked in this field and applied for permanent residence under the temporary resident to permanent resident pathway, utilizing the international graduates' stream. However, her application was denied on the grounds that she did not satisfy the eligibility requirements. These required that applicants must have graduated after January 2017, from a program that was at least 16 months long. Since her continuing care program was under 16 months long, and she had graduated from her earlier diploma programs prior to January 2017, the Applicant was not eligible. Ironically, the Applicant had originally been scheduled to graduate from one of these earlier programs in April 2017, but as she was able to expedite the course, she graduated early, before January 2017. Her permanent resident application was later converted into an H&C application.

[4] The Applicant's spouse [Spouse] joined her in Canada in 2022. Since then, the couple have unsuccessfully been trying to conceive a child, as the Applicant suffers from a condition that impacts her fertility. In relation to this, she has been undergoing treatments for both the underlying condition, as well as for fertility treatment generally.

[5] In a decision dated November 17, 2023, the Officer refused the Applicant's H&C application, finding that the Applicant's level of establishment in Canada did not warrant an

exemption under section 25 or 25.1 of the IRPA, and holding that the Applicant would not face undue hardship if she returned to Nigeria [Decision].

[6] In particular, on the question of establishment, the Officer found that the Applicant has been in Canada for 9 years, and that over that time she has studied and been both employed and self-sufficient, made friends, volunteered and integrated into a faith-community, as well as served as a front-line worker during the pandemic. However the officer noted that she had primarily come to Canada in order to study, and had achieved that goal. The Officer also asserted that the reason the Applicant cannot leave Canada is not for reasons beyond her control. The Officer ultimately found that while the Applicant has achieved a level of establishment in Canada, this was not so deep as to warrant an H&C exemption. In this regard, the Officer specifically held that, upon consideration of the circumstances faced by the Applicant, "In all, while there are certainly positive elements to the applicant's establishment, I do not find that it is uncommon to have this level of establishment over the course of nine years."

[7] On the question of hardship, the Officer concluded that returning to Nigeria would not cause undue hardship to the Applicant. They noted the evidence submitted by the Applicant and accepted the fact that the Applicant was undergoing fertility medical treatments in Canada. The Officer also acknowledged that a negative social stigma surrounding childless married women exists in Nigeria. As a result, they asserted that they recognized that the Applicant "may experience some unfavorable comments from some members of society," and that the Officer gave this consideration some weight in terms of the question of hardship. However, the Officer underscored the lack of any indication of an end date for the Applicant's fertility treatments in Canada and stated that she could "potentially finish her treatment in Canada" before she was required to leave

the country. In addition, based on a google search, the Officer found that there were fertility clinics in Nigeria, holding that she could continue such treatments there, if need be.

[8] The Officer additionally found that a lack of family support also did not constitute undue hardship, as the Applicant and her Spouse were both well-educated, and further that, as her Spouse had only been in Canada for a year, he could assist with their re-integration into Nigerian society. The Officer also noted that the Applicant had spent most of her life in Nigeria, and thus was familiar with the local language and culture.

[9] Lastly, the Officer noted that while it was unfortunate that, given the timing of her studies, the Applicant did not meet the TR to PR pathway eligibility requirements, the H&C framework "is an exceptional measure and [can] not simply be another means of applying for permanent residence". The Officer rejected the H&C Application.

III. Legal Framework

[10] The authority to issue permanent resident status on H&C grounds stems from section 25 of the IRPA:

> **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, 35.1 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, 35.1 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.

[11] Relief under section 25 is exceptional, discretionary and does not constitute an alternative means to obtain permanent residency (*Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 15).

IV. Issues and Standard of Review

[12] The issue at play in this judicial review application is whether the Officer's decision was unreasonable.

A. *Standard of Review*

[13] The standard of review of the merits of a decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2018 SCC 65 at paras 10, 25 [*Vavilov*]). In undertaking reasonableness review, the Court must assess whether the decision bears the hallmarks of reasonableness, namely justification, transparency and intelligibility (*Vavilov* at para 99). In particular, when reviewing a decision on this standard, "a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). Further, an applicant bears the onus of demonstrating that the decision was unreasonable (*Vavilov* at para 100).

V. Analysis

A. *The Decision was unreasonable*

[14] The Applicant made a wide variety of submissions in attempting to argue that the Decision was both unreasonable and procedurally unfair. As I have found that the decision was not

reasonable for essentially two reasons, I confine my analysis to these issues, and need not address the remaining submissions – which largely lacked merit, in any event.

(1) Erroneous application of an ‘exceptionality’ threshold

[15] To begin with, I find the Officer committed a reviewable error by applying a high “exceptionality” threshold in assessing the test under subsection 25(1) of the IRPA.

[16] An officer reviewing an H&C application must assess whether an applicant’s circumstances “would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another” (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] paras 13, 21, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338 at p 350). The degree of an applicant’s establishment in Canada, and the resulting impact of disrupting that establishment are relevant factors in determining an application for H&C relief (*Vlasenko v Canada (Citizenship and Immigration)*, 2022 FC 1284 at para 10). However, it is important to note that the threshold is not whether an applicant’s level of establishment is somehow “unusual” or “exceptional” compared to others who have been in Canada for a similar amount of time – applying this standard is an error (*Galindo Caballero v Canada (Citizenship and Immigration)*, 2024 FC 642 at paras 8, 10). However, this is the exact standard the Officer employed in this matter, as is evident from their conclusion with respect to the Applicant’s establishment: after having considered all of the factors related to establishment, they ultimately declare that they “do not find that it is uncommon to have this level of establishment over the course of nine years” in Canada.

[17] In my view, the Officer's reasons, as illustrated by this conclusion on establishment, clearly reflect an expectation that an uncommon or exceptional level of establishment, relative to others, was required to warrant H&C relief, rather than a neutral accounting for the particular circumstances of the applicant that would make removal from Canada bear more heavily upon her: (*Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 at para 28). As has been noted by my colleague Madam Justice Janet Fuhrer, "[w]hat is required by an H&C officer is a consideration of whether an applicant's personal circumstances warrant humanitarian and compassionate relief, without needing to meet a threshold of being exceptional when compared to others" (*Francois v Canada (Citizenship and Immigration)*, 2025 FC 514 at para 11).

[18] In sum, in evidently requiring that the Applicant prove that her establishment or circumstances were somehow uncommon, this was, by different wording, demanding that she prove her circumstances were exceptional, in order to warrant an H&C finding. This is an error. An exception from the usual requirements of the IRPA under subsection 25(1) does not demand such aberrant circumstances. For this reason alone, the Officer's decision would be quashed.

(2) **The Applicant's alleged hardship due to social stigma**

[19] However, in addition, I agree with the Applicant that the Officer also unduly minimized her allegations of alleged hardship, by virtue of their conceptualization of her evidence of the social stigma experienced by childless aging women in Nigeria. In assessing hardship, the Officer gave weight to the "negative stigma attached to childless women in Nigeria", and specifically made reference to the evidence pertaining to this in an article referenced by the Applicant. In particular, the Decision states: "I accept that the PA wishes to have children and

that it is a cultural norm and expected in Nigerian society that women of a certain age have children; as a childless woman, she may experience some unfavorable comments from some members of society. I give this consideration some weight." The Decision also reproduces the following excerpt from the article in question:

> "Other women do look down on the childless women, most of the time believe that the childless women are the architect of their own condition. The unfavorable attitude exhibited against the childless women by other women include gossip, scornful laughter, downgrading looks…"

[20] However, while the article excerpt in question does say this, upon review of the record, it is clear that the article also discusses a number of other, more serious potential detrimental effects of such stigma, including maltreatment and ostracization by extended family as well as society in general, domestic violence and infidelity, dispossession of inheritance rights, loss of burial rights, custom based discrimination, and poverty. These considerations appear to be ignored by the Officer in the Decision, who, while giving weight to the hardship caused by being a childless woman, only does so in relation to the Applicant potentially experiencing "unfavourable comments from some members of society". By this conceptualization, the Decision essentially whittles down the cited deleterious aspects of the stigma, and seemingly focuses on only the most trivial consideration that had been identified, in assessing the hardship that this may engender.

[21] As the Supreme Court has made clear, a decision-maker's failure to meaningfully grapple with key issues or central arguments may vitiate their decision (*Vavilov* at para 128). In addition, though a decision-maker's reasons need not be perfect, the "reasonableness of a decision may be jeopardized where the decision maker has […] failed to account for the evidence before it"

(*Vavilov* at paras 91, 126). Further, as the purpose of subsection 25(1) is to provide relief from the inflexible application of the IRPA, the Supreme Court of Canada in *Kanthasamy* held that "*all* relevant humanitarian and compassionate considerations" [emphasis in original] must be "weighed cumulatively as part of the determination of whether relief is justified in the circumstances" (*Kanthasamy* at paras 28, 33).

[22] In this case, this was simply not done. While I note that the Officer might well have decided that they were unmoved by evidence presented by the Applicant with respect to the alleged societal stigma, the Decision's minimizing conceptualization of the potential hardship posed by it, and the Decision's wholesale failure to grapple with the identified dimensions of this issue, constitute another reviewable error.

VI. Conclusion

[23] For these reasons, this application for judicial review is granted. The noted errors undermine the justifiability and intelligibility of the Decision, which is set aside. The matter is returned for redetermination by a different IRCC Officer.

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

JUDGMENT IN IMM-15812-23

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted.
2. The decision of the Officer dated November 17, 2023, is set aside and the matter is returned for redetermination by a different immigration officer.
3. No question of general importance is certified.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-15812-23
STYLE OF CAUSE:	CHRISTIANAH MONISOLA OLANIPEKUN v. MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 4, 2025
REASONS AND JUDGMENT:	THORNE J.
DATED:	JULY 15, 2025

APPEARANCES:

Tosin Falaiye	FOR THE APPLICANT
Alethea Song	FOR THE RESPONDENT

SOLICITORS OF RECORD:

JBLaw Professional Corporation Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT