

CANADA / JUDGMENT

Bethune v. Canada (Citizenship and Immigration)

2025 FC 1996

COURT

Federal Court

DECIDED

18 December 2025

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Bethune v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions
Date 2025-12-18 Neutral citation 2025 FC 1996 File numbers IMM-22833-24 Decision Content Date:
20251218 Docket: IMM-22833-24 Citation: 2025 FC 1996 Toronto, Ontario, December 18, 2025
PRESENT: The Honourable Mr. Justice A. Grant BETWEEN: BRIAN BETHUNE Applicant and THE
MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I.
OVERVIEW [1] The Applicant, Mr. Brian Bethune, seeks judicial review of a senior immigration
officer's decision to reject his application for permanent residence on humanitarian and
compassionate [H&C] grounds.

- [2] For the reasons that follow, I will grant this application. II. BACKGROUND A. Facts (1) Initial
Entry into Canada, Criminal Conviction, and Removal [3] Mr. Bethune is a 61-year-old citizen
of Guyana. He left Guyana for the first time at the age of 26, when he travelled to the United
States [U.S.] and became a permanent resident there. His mother, stepfather, and two
siblings are all U.S. citizens and reside in the U.S.
- [4] The Applicant first visited Canada in 1989 to see his girlfriend, Marcia Lewis. He and Lewis
became common-law partners in 1991, and he began splitting his time between Canada and
the U.S.
- [5] In February 1995, the Applicant entered Canada on a visitor visa to see Ms. Lewis, who was
by then his fiancée. On this occasion, the Applicant remained in Canada after his visa
expired.
- [6] In December 1998, the Applicant was convicted in Canada of importing approximately one
pound of cannabis resin contrary to subsection 6(1) of the Controlled Drugs and Substances
Act. The maximum sentence for this offense is life imprisonment, but the Applicant was
only sentenced to 13 months. He served 9 months in Canada before being deported to the
U.S.
- [7] In November 1999, the Applicant was deported from the U.S. to Guyana at his own request,
because he did not want to engage in a prolonged fight to maintain his status in the U.S.

- [8] None of the Applicant's immediate family lived in Guyana by this time, and so he was initially homeless. He was eventually able to contact a cousin, who provided him with assistance. This cousin has since immigrated to the U.S.
- (2) Return to Canada [9] In 2000, the Applicant re-entered Canada on a fraudulent passport to assist Ms. Lewis with their daughter, Alicia, who was ill. He has since remained in the country without legal status, aside from a visit to Florida in 2002.
- [10] The Applicant and Ms. Lewis separated in or around 2011. In 2012, a friend introduced the Applicant to Donatella Gallo. They moved in together that year and were married in 2016.
- [11] The Applicant and Ms. Gallo made efforts to apply for permanent resident status for the Applicant through spousal sponsorship. These efforts were not successful due to Mr. Bethune's past criminal conviction, and administrative difficulties he experienced in applying for a pardon.
- [12] In November 2022, the Applicant's marriage broke down, and he and Ms. Gallo separated.
- (3) Arrest and Removal Order [13] In January 2023, Ms. Gallo made allegations to the police that resulted in the Applicant being arrested and charged with several offences. All of these charges have since been stayed or withdrawn.
- [14] As a result of his arrest, the Applicant became known to Canadian immigration authorities, and a removal order was issued against him.
- [15] The Applicant applied for a Pre-Removal Risk Assessment, which was refused in March 2023.
- (4) H&C Application [16] In March 2023, the Applicant applied for permanent residence on H&C grounds to overcome his criminal and medical inadmissibility and non-compliance with the Immigration and Refugee Protection Act [IRPA]. The H&C application was based on the best interests of his grandchildren, Ava and Simon; his significant establishment in Canada via family ties; and the hardship that he would face in Guyana due to his age, his health, the length of time he has spent abroad, and his status as a deportee with a criminal record. B. Decision Under Review [17] In rejecting Mr. Bethune's application, the immigration officer first found that his establishment in Canada was minimal, aside from "mere physical presence."
- [18] With respect to the best interests of the Applicant's grandchildren, the officer found that they would not be negatively impacted "to the extent that it warrants an exemption" because the children "are not financially or otherwise dependent on the Applicant" [emphasis in original].

- [19] The officer further found that the Applicant can maintain his relationships with his family in Canada and the U.S. from Guyana, and while it is understandable that he does not want to return to Guyana, he has a clear history of disregarding Canadian immigration law, and his situation is the result of his own choices.
- [20] On the question of the Applicant's health, the officer acknowledged the Applicant's diagnoses, including asthma, but noted that the Applicant is a smoker, and that it is unclear how he is presently paying for treatment and any medications.
- [21] Finally, the officer found that country conditions in Guyana do not warrant H&C relief. While acknowledging the articles provided by the Applicant on the situation in Guyana, the officer found that the Applicant had not clearly articulated how the situation in Guyana would impact him personally. The purpose of invoking subsection 25(1) of the IRPA, the officer concluded, "is not to compensate for the difference in a standard of living, but rather to allow for an exceptional response to a particular set of circumstances which are unforeseen by the IRPA and where humanitarian and compassionate grounds justify the granting of relief." III. ISSUES [22] The only issue raised by this matter is whether the officer's decision was reasonable. IV. STANDARD OF REVIEW [23] The parties do not dispute that the standard of review for the substance of the officer's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [Vavilov]. In conducting a reasonableness review, 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). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (Vavilov at para 13). V. ANALYSIS [24] Several aspects of the officer's decision were reasonable. It was certainly appropriate for the officer to comment on the Applicant's criminal conviction, his long history of non-compliance with immigration law, his relative lack of establishment in Canada, and the limited evidence on the hardship he may experience in Guyana. To paraphrase language commonly used in the H&C context, there were elements of Mr. Bethune's background that would likely not excite in most people a desire to relieve his misfortunes, which were largely self-inflicted: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 13[Kanthasamy].
- [25] However, in my view, the officer's assessment of the best interests of the Applicant's grandchildren, and how those interests would be affected by the Applicant's removal, was clearly unreasonable. It is on this basis that I will grant this application.
- [26] The best interests of a child [BIOC] affected by an immigration decision are not (at least necessarily) determinative of that decision: *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 75. There may be situations in which a child's interests will point to a positive determination, but other negative factors will outweigh those interests: *Lovo v Canada (Citizenship and Immigration)*, 2018 FC 329 at paras 24-28. However, to reasonably come to this conclusion, the interests of those children must be

“well identified and defined” and examined “with a great deal of attention” in light of all the evidence: *Kanthasamy* at para 39, citing *Legault v Canada* (Minister of Citizenship and Immigration), 2002 FCA 125 (CanLII) at paras 12 and 31; *Kolosovs v Canada* (Minister of Citizenship and Immigration), 2008 FC 165 (CanLII) at paras 9-12.

- [27] In this case, the entirety of the officer’s assessment of the best interests of the Applicant’s grandchildren is as follows: I have considered the best interests of the applicant’s grandchildren in Canada and I am not satisfied that there would be a negative impact on their best interests if the applicant returns to Guyana to the extent that it warrants an exemption, as the evidence before me shows that the grandchildren are not financially or otherwise dependent on the applicant. Contact and communication can be maintained through various means and his grandchildren may look forward to another visit by his grandfather in the future as the applicant has the option of applying for an ARC to return to Canada. Thus, while I give the best interests of his grandchildren weight in this assessment, I do not find that documentary evidence before me supports that the best interests of the children would be negatively affected if the applicant had to return to Guyana to apply for Permanent Residence.
- [28] As can be seen by the above, the officer appears to have considered the children’s financial or other dependence on the Applicant as being a decisive factor in concluding that their interests did not warrant H&C relief. There are two principal problems with this finding; the first is a legal problem, the second is an evidentiary one. The legal problem is that there does not appear to be any source or authority for the proposition that a BIOC analysis may be reduced to a simple question of financial or other dependency.
- [29] While financial or other forms of dependence may certainly be relevant factors in a BIOC analysis, there is simply no basis on which to conclude that they are either threshold issues, or are determinative of the BIOC assessment: see, for instance: *Motrichko v Canada* (Citizenship and Immigration), 2017 FC 516, *Chamas v Canada* (Citizenship and Immigration), 2021 FC 1352. Therefore, a finding related to a child’s dependence on an individual subject to removal is not, on its own, a complete BIOC assessment. It does not represent a “singularly significant focus” on a child’s best interests, and nor does it amount to a “well identified and defined” assessment of those interests: *Kanthasamy* at paras 39 and 40. Of note, the Supreme Court in *Kanthasamy* went on to cite various factors from the IRCC H&C Manual applicable at the time, only one of which directly related to the issue of dependency: *Kanthasamy* at para 40.
- [30] Given the above, the finding that the best interests of the children would not be negatively affected if the Applicant returned to Guyana is precisely the kind of “peremptory conclusion” that the Supreme Court of Canada warned against in *Vavilov*. Such conclusions, the Court noted, are of little assistance in understanding the rationale underlying the administrative decision: *Vavilov* at para 102.

- [31] The evidentiary problem with the officer's assessment is that the finding that Ava and Simon are not dependent on the Applicant was flatly contradicted by the factual record. The evidence before the officer was that Mr. Bethune now lives with his daughter and grandchildren, and plays an important, primary caregiving role for his grandchildren. More specifically, the evidence is that Mr. Bethune gets the children ready for school every day, packs their lunches, prepares their dinner, and gets them ready for bed. He provides emotional support to them and is a consistent presence in their lives. In a letter in support of her grandfather's application, 8-year-old Ava articulated the role that he plays in her and her brother's life (spelling in original): ...we don't want to live whit out our grampy. it will make us very sad if you take our grampy away from us. He play with us and he makes us so happy. Please dot take him away from us. He cooks for us and he makes soup for us. He is funny and he make us laff. He take care of us when mom has to go to school. Grampy prays with us every nite and mornin. If you take our grampy away from us you dot care about us.
- [32] In addition to the above, the evidence before the officer was that Mr. Bethune's caregiving role with his grandchildren has permitted his daughter Alicia to work and pursue post-secondary studies. Given the information in the record, it is plainly obvious that the officer's summary statement that Ava and Simon are not financially or otherwise dependent on the Applicant is not sustainable.
- [33] At a minimum, the officer was required to provide an accurate summary of the above evidence, and to then grapple with it in determining: a) the best interests of the children; and b) how this BIOC assessment factors into the larger H&C analysis.
- [34] The nature of grandparent-grandchild relationships can vary considerably, but the evidence here—including many photographs, the Applicant's affidavit, the detailed letter from Alicia, and the letters from Ava and Simon—shows that the Applicant's relationship with his grandchildren is particularly close and meaningful. There is nothing in the decision suggesting that the officer turned their mind to this evidence, let alone gave it "a great deal of attention."
- [35] Additionally, while the children may not be directly financially dependent on the Applicant, the evidence suggested that Mr. Bethune currently has a critical role in the financial stability of his family, which goes completely unaddressed in the officer's decision. This evidence was that Mr. Bethune's daughter Alicia is a single mother, working full-time while pursuing an undergraduate degree with a view to securing a better future for her children. This arrangement is, according to the evidence, entirely dependent on the Applicant being able to provide childcare for the children while Alicia is working and in class. Once again, there is no indication that the officer was aware of, let alone grappled with, this element of the H&C application. VI. CONCLUSION [36] As a result of the above, I have concluded that the officer's BIOC assessment was unreasonable. This finding provides a sufficient basis on which to grant this application for judicial review. As such, I will not comment on the other aspects of the officer's decision that the Applicant suggests are also unreasonable. Nothing in these reasons should be read as either an endorsement or an indictment of these other

reasons. JUDGMENT in IMM-22833-24 THIS COURT'S JUDGMENT is that: The application for judicial review is allowed. The decision under review is set aside and the matter is remitted for redetermination by a different officer. There is no question of general importance for certification. "Angus G. Grant" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-22833-24 STYLE OF CAUSE: BRIAN BETHUNE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: Ottawa, Ontario DATE OF HEARING: December 8, 2025 JUDGMENT AND REASONS: GRANT J. DATED: December 18, 2025 APPEARANCES: Courtney Shields For The Applicant Zahraa Chahrour For The Respondent SOLICITORS OF RECORD: Kumararatne Law Barrister and Solicitor Ottawa, Ontario For The Applicant Attorney General of Canada Ottawa, Ontario For The Respondent

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Prepared on 28 October 2026 · Esheria