

CANADA / JUDGMENT

Erhun v. Canada (Citizenship and Immigration)

2026 FC 364

COURT

Federal Court

DECIDED

18 March 2026

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Decision Content

Date: 20260318

Docket: IMM-3990-25

Citation: 2026 FC 364

Ottawa, Ontario, March 18, 2026

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

ESOHE ERHUN

EFE IGBINOBA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] This is an application for judicial review of a decision dated February 6, 2025 by an officer of Immigration, Refugees and Citizenship Canada (“IRCC”) (the “Officer”) that denied the Applicants’ application for permanent residence from within Canada on Humanitarian and Compassionate Grounds (“H&C”) (the “Decision”).

- [2] The Applicants argue that the Decision was tainted with procedural irregularities, that the tribunal did not have jurisdiction, and that the Decision is unreasonable.
- [3] The Respondent argues that the Decision is reasonable. The Respondent argues that the Applicants’ arguments seek the Court’s intervention to re-weigh evidence already considered by the Officer.
- [4] For the reasons that follow, this application is granted in part.

II. Background [5] The Principal Applicant (“PA”), Ms. Erhun, is a citizen of Nigeria and arrived in Canada in June 2006.

- [6] The Associate Applicant (“AA”), Ms. Igbinoba, is the daughter of the Principal Applicant. She was born in the United States on November 26, 2005. The AA was brought to Canada in July 2006 by her father and left in the care of her mother, the PA. At the time of her arrival in Canada, the AA was approximately seven months old.
- [7] The PA has a long and somewhat complicated immigration history, commencing with her arrival in the United States (“US”) on July 31, 1993, on a visitor visa. On April 9, 1996, the PA was convicted of credit card fraud and unauthorised use of an access devise under the identity of Edith Vitali in the US.
- [8] Following their arrival in Canada, on August 22, 2006, the PA submitted a refugee claim for herself and the AA.
- [9] On February 23, 2007, the PA was granted a work permit that was valid until February 22, 2009. In addition, the PA was granted study permits, the most recent was valid until July 30, 2009. A subsequent work permit was issued to the PA, on October 7, 2009, and was valid for one year.
- [10] On September 25, 2008, the Applicants’ refugee claim was accepted. On September 2, 2010, the Applicants’ application for permanent residence was approved.

- [11] On August 14, 2012, the Minister made an application pursuant to section 109 of the Immigration and Refugee Protection Act, SC 2001, c 27 (“IRPA”) to vacate the Applicants’ refugee status. The basis of the Minister’s application to vacate their status was: the PA’s failure to disclose her residence in the US; her criminal conviction in the US; aliases used by the PA in the US including Edith Vitali, Edith Ehigiator, and Edith E Esohe; and that the AA was born in the US.
- [12] On October 1, 2015, an in-Canada Spousal Sponsorship application submitted by the PA was refused.
- [13] On August 6, 2019, the Minister’s application to vacate the Applicants’ refugee status was approved.
- [14] On November 26, 2019, a section 44(1) IRPA report was prepared in respect of the Applicants’ inadmissibility. A removal order was issued the same day.
- [15] On June 30, 2020, the PA submitted the application for permanent residence from within Canada for H&C reasons.
- [16] On August 26, 2020, a Pre-Removal Risk Assessment (“PRRA”) submitted by the PA was refused.
- [17] On October 27, 2023, the PA’s application for criminal rehabilitation was refused.
- [18] The PA is an LGBTQ female and has been in a same-sex relationship since 2014 with her current partner and spouse, Ms. Lou Tina Marcel Tra. They were married on November 16, 2019. The PA’s spouse is a Canadian citizen.

III. Issues and Standard of Review [19] The parties submit, and I agree, that the standard of review applicable to the Decision in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 25, 86).

- [20] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (Vavilov at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the Vavilov framework, a reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (Vavilov at para 85).
- [21] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (Vavilov at para 100).
- [22] The sole issue in this application is whether the Officer’s decision was reasonable.

IV. Analysis [23] The Applicants argue that the Officer incorrectly assessed their H&C application using a hardship lens; the Officer erred in their analysis of the Best Interests of the Child (“BIOC”) in respect of the AA; and the Officer breached procedural fairness.

- [24] The Respondent submits that H&C exemptions pursuant to section 25 of the IRPA are exceptional and discretionary. This is not meant to be an alternative means to apply for permanent residence from within Canada. The flexibility afforded under this provision of the IRPA is reserved for the most deserving cases and is not to be used as a “back door” when other avenues have been exhausted and or denied in accordance with the law.
- [25] The Respondent argued that the Applicants are only in Canada because of their duplicity, abuse of, and disregard for Canadian immigration law. In addition, the Respondent argues that a review of the Decision supports that the Officer considered a variety of factors, including the PA’s non-compliance with Canadian immigration laws and all H&C factors submitted by the Applicants.
- [26] Subsection 25(1) of the IRPA grants the Minister discretion to exempt foreign nationals from the ordinary requirements set out in the statute to grant permanent resident status, if the Minister is of the opinion that such exceptional relief is justified by humanitarian and compassionate considerations. This is an equitable provision meant to counter the rigidity in the law in appropriate cases.
- [27] Humanitarian and compassionate considerations are, “facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of an other”; *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338, [Chirwa] at page 350, cited in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [Kanthasamy] at paragraphs 13 and 21; and *Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 [Rainholz] at paragraphs 13 – 18.
- [28] This requires an officer to assess the hardship and individualized experiences if an applicant is removed from Canada. A non-exhaustive list of factors considered by an officer include health issues; consequences of separation from family members; and the best interests of a child (“BIOC”). An H&C assessment is a global one, where relevant factors are weighed cumulatively to determine if extra-ordinary equitable relief is justified in the circumstances of a particular application; *Kanthasamy* at paragraphs 27 and 28.
- [29] An officer must demonstrate that the discretion afforded pursuant to subsection 25(1) of the IRPA was exercised in a reasonable manner, having regard to all the facts and evidence before them; *Kanthasamy* at paragraphs 25 and 33.
- [30] This Court has consistently held that the onus to establish whether an H&C exemption is warranted lies with the applicant. An applicant’s failure to adduce sufficient, relevant information in support of their application will be fatal to their claim; *Rainholz* at paragraph 18.

A. Applicants' level of establishment in Canada [31] The Applicants argue that the Officer unreasonably discounted evidence that illustrated significant and positive establishment. In particular, the Applicants' lengthy residence in Canada; the PA's evidence of home ownership; the PA's relationship with her spouse; the Applicants' affiliation with various community organizations and their degree of social establishment in the community; the PA's education; and the PA's employment history. The Applicants argue that the Officer's reasons were unreasonable and unresponsive to the evidence submitted in support of their application.

[32] The Applicants argue that the Officer improperly assessed the evidence through an application of the hardship lens, rather than through an application of the legal framework set out by the Supreme Court of Canada in *Chirwa*, which led the Officer to discount or ignore evidence of establishment.

[33] The Respondent argued that the Decision is reasonable and was based on the Officer's assessment of the totality of evidence submitted by the Applicants.

[34] The Respondent notes that the Officer found that:

The PA had been working without authorization in Canada since 2019. She works in with vulnerable communities, it is unclear if her history had been fully disclosed to her employer;

The Applicants did not demonstrate strong ties to Canada outside of school and work, the evidence of their affiliations with community organizations largely demonstrated ties developed after the revocation of their refugee status;

The PA misrepresented material facts and submitted fraudulent documents to support the Applicant's refugee claim. The full scope of the PA's misrepresentations was not known until she applied for Criminal rehabilitation in 2023, that was ultimately refused. This evidenced a pattern of disrespect for Canadian immigration laws and processes;

There was limited evidence of the PA's relationship with her spouse, the evidence was superficial and inconsistent;

[35] The Respondent argues that the reasons for the Decision are clear, that the Applicants did not demonstrate a sufficient level of establishment in Canada, considering the time that they have resided in Canada, that warranted the granting of the extraordinary relief sought in the H&C application.

[36] As this Court has noted, ordinary levels of establishment in Canada are not sufficient nor would that excite in a reasonable person a desire to relieve the misfortunes of others; *De Sousa v Canada (Citizenship and Immigration)*, 2019 FC 818 at paragraph 28.

[37] A review of the Decision illustrates that the Officer considered the Applicants' arguments concerning their level of establishment and family ties. The Officer notes:

I accept that the Applicants have become accustomed to living in Canada, particularly given the length of time they have spent in the country. I therefore acknowledge some level of difficulty would likely be associated with them being required to depart Canada. Although I acknowledge the Applicants have spent a number of years in Canada, the information and evidence before me does not lead me to find that this duration of time in and of itself warrants significant positive consideration. In coming to this conclusion, I note the limited evidence of establishment before me, as well as the fact that a number of aspects advanced for consideration concerning establishment are relatively recent and were developed after the Applicants lost their status, such as the Principal Applicant's November 2019 marriage or involvement with the Metropolitan Community Church since 2020. I have also considered the Applicants established themselves in the country as a result of misrepresentation, and more recently non-compliance on the part of the Principal Applicant. Overall, having balanced the positive aspects of the Applicants' time in Canada, based on the evidence before me, against those aspects warranting negative inference, balance of positive weight remaining is not significant. As such, I have assigned a consideration of the Applicants' establishment and family time in Canada some, however not significant weight for the reasons discussed.

[38] The Officer's reasons are transparent, justified and intelligible. Ultimately, the Applicants have an obligation to establish exceptional circumstances that warrants a section 25(1) IRPA exception. The Officer did not give full weight to the PA's evidence of employment, because she was working without proper authorization. The Officer found that other evidence of establishment was not extra-ordinary or exceptional, but rather a normal level that would be expected considering their length of stay in Canada. Further, the Officer noted that much of the evidence related to relationships and community ties developed after the revocation of their status in Canada. Finally, the evidence in respect of the PA's marriage did not demonstrate a significant level of interdependence and given that the marriage took place after the revocation of her status, removal was a reasonably foreseeable outcome.

[39] The Applicants have not pointed to a reviewable error that would warrant this Court's intervention. I am persuaded by the Respondent that the Applicants are asking this Court to re-weigh the evidence to reach a different conclusion, which is not the proper role for a Court on judicial review.

B. Best interests of the child [40] The Applicants argued that the Officer failed to conduct a proper BIOC assessment. The Applicants note that while the AA is a citizen of the US by virtue of her place of birth, she has no ties to the US. Her father brought her to reside with the PA in July 2006 after receiving a diagnosis that he was terminally ill. He passed away in the US on August 28, 2011. In other words, the AA has no one in the US and has lived in Canada since she was seven months old; she is now 20 years old. She is currently a nursing student in her second year of studies at York University. The Applicants argued that the Officer failed to consider the BIOC in respect of her age, impacts on her education and the impacts of removal from the only home she has known.

- [41] The Respondent argued that the Applicants were asking the Court to reweigh the evidence and usurp the role of the Officer. With respect, I do not agree.
- [42] The Officer notes that the AA was 19 years old; however, acknowledges that at the time of the application she was under 18 years old. Therefore, the Officer finds that the BIOC principle applies.
- [43] The Decision indicates that the Officer considered the AA's age, level of dependency and impacts on her education. The Officer goes on to note that, considering the AA's current age, she was "now in a very transitional period of her life, marked by increased independence and self sufficiency." The Officer goes on to note that many individuals of this age group leave home, transitioning from the family home for work or study. Finally, the Officer notes that because the AA is a citizen of the US, she could choose to return there and have a similar quality of life, or she could go to Nigeria and with the assistance of the PA adapt to life there.
- [44] The Officer's reasons do not clearly address the totality of the evidence. In particular, the Officer's reasons fail to grapple with the impacts of removal on the AA's education. There was evidence that the AA is currently in her second year of studies at York University for nursing. Removal, to Nigeria or the US, would no doubt cause a significant disruption to her studies and ability to complete her education. Yet the Officer's reasons are silent on this point.
- [45] The Officer acknowledges that the AA, "has spent a consideration (sic) amount of her life residing in Canada" and that she was accustomed to life in Canada. In my view, the Decision is not reasonable or aligned with the evidence. The record indicates, save for seven months as an infant, the AA has spent her entire life in Canada. The Officer notes removal may, "present some difficulty and challenges"; however, the Officer fails to grapple with the evidence of the AA's level of establishment. The Officer's reasons address the PA's level of establishment but did not grapple with the evidence concerning the AA's ties to the community, friends, and educators; the impacts that leaving the only home she has ever known will have on her; and the impact of removal to countries she does not know, with little or no support.
- [46] I note that the Officer placed significant weight on the fact that the AA is a US citizen by birth. However, I note that the Officer does not examine the current country conditions in the US and in particular birthright citizenship.
- [47] As noted by Justice de Montigny (as he then was) in *Jama v Canada* (Citizenship and Immigration), 2014 FC 668 at paragraphs 18-21, officers have a duty to consult recent and publicly available reports on country conditions, even where an applicant did not submit such evidence. Further, it is incumbent upon officers to consider risk grounds that are apparent from the record, again even where an applicant does not specifically raise those issues. Additionally, where an applicant is self-represented, it is incumbent upon officers to fully explore all issues and consider the most up to date country condition evidence; *Jenkel v*

Canada (Citizenship and Immigration), 2025 FC 1178 at paragraphs 9 – 15.

- [48] As noted above, the Applicants' refugee protection status was vacated on August 6, 2019. The determinative issue was that the PA "purposefully misrepresented details" including her residency in the US; aliases used in the US; criminal convictions in the US; the PA and AA's route to Canada; AA's place of birth; the PA's reliance on fraudulent documentation; and the PA's failure to candidly disclose information concerning the alleged agent of persecution.
- [49] The Officer found the Applicants' inadmissibility for misrepresentation to be a "strong negative factor." There was no dispute that the misrepresentation noted above relates to the actions of the PA not the AA; nonetheless the Officer notes that, "the Dependent is also inadmissible under s.40(1)(c)."
- [50] The Applicants argued that, like this Court's decision in *Damian v Canada* (Citizenship and Immigration), 2019 FC 1158, it is unreasonable to fault a minor for the actions and disregard of immigration law of their parents.
- [51] A review of the record does not highlight any evidence to demonstrate that the AA wilfully disregarded Canadian immigration laws. In my view, it strains logic to suggest that an infant would have been complicit in the misrepresentation in support of the Applicants' refugee application in August of 2006. Following the revocation of their status, the PA made an application for H&C relief on their behalf in 2019. At the time of that application, the AA was 15 years old. There is no evidence that she was aware of the full scope of the PA's misrepresentation. However, even if she were, in my view, it is not reasonable to expect a minor child to disclose information to authorities that would impugn their parent. There is no evidence that AA disregarded Canadian immigration laws.
- [52] In my view, the Officer unreasonably considered the inadmissibility of the AA which tainted their analysis of the AA's BIOC and level of establishment in Canada. As noted by the Supreme Court of Canada in *Kanthasamy* subsection 25(1) of the IRPA provides discretion "to mitigate the rigidity of the law in appropriate cases"; at paragraphs 12 – 21 and 28-33.
- [53] Accordingly, I find the Officer's BIOC analysis was flawed and unreasonable. The Officer failed to meaningfully grapple with the evidence that addressed the AA's level of establishment in Canada and the impacts removal would have on her education. In addition, the Officer appears to place much weight on the fact that the AA was a US citizen by birth but fails to consider recent country condition evidence concerning the issue of birthright citizenship.
- [54] The Officer places significant weight on the inadmissibility but virtually no weight on the fact that the AA has grown up in Canada, is currently engaged in post-secondary studies, presented evidence of her strong ties in Canada, and that there was no evidence to support the conclusion that she was an active participant in the misrepresentation.

[55] Finally, I note that the Applicants' H&C application was considered jointly, at a time when the AA was a minor child. However, Rule 106 of the Federal Courts Rules, SOR/98-106 states:

Where the hearing of two or more claims or parties in a single proceeding would cause undue complication or delay, or would prejudice a party, the Court may order that:

- a) Claims against one or more parties be pursued separately;
- b) One or more claims be pursued separately;
- c) A party be compensated for, or relieved from, attending any part of the proceeding in which the party does not have an interest; or
- d) The proceeding against a party be stayed on condition that the party is bound by any findings against another party.

[56] In addition, I note section 4(1) of the Federal Courts Citizenship, Immigration and Refugee Protection Rules, SOR/93-22 clarifies that the Federal Courts Rules apply to applications for judicial review.

[57] In supplemental submissions to the Court, the Respondent agreed that the Officer could have granted H&C relief to the AA and not the PA.

[58] Accordingly, for the reasons noted above, in my view, the Decision in respect of the AA was unreasonable.

C. Inadmissibility of the Principal Applicant [59] The Respondent noted that the PA's misrepresentations in respect of the initial refugee claim were deliberate and determinative. She lied about her use of aliases, her criminal history in the US and her residence in the US. The PA continued to evade and misrepresent her history to immigration authorities, and in the 2019 vacation proceedings, she lied about her residence in the US. The Respondent argued that a global assessment of the evidence illustrates that notwithstanding some evidence to support establishment in Canada, the reasons for their inadmissibility has not tipped the balance in their favour. The PA is inadmissible pursuant to sections 36(1)(b) and 40(1)(c) of the IRPA.

[60] I am not persuaded that the Officer's conclusions in respect of the inadmissibility of the PA were unreasonable. A review of the Decision illustrates that the Officer provided transparent, justified and intelligible reasons for finding that the PA's misrepresentation dated back to her entry into Canada in 2006 and continued up to her application for Criminal Rehabilitation in 2023. The Officer notes that while the Applicant has not engaged in criminal activities since her arrival in Canada, she acquired refugee status based on a misrepresentation and the use of fraudulent documentation. There was also evidence that in 2019, the PA continued to misrepresent facts concerning her residency in the US. The Officer noted that "The Principal Applicant has not sufficiently demonstrated acknowledgement of the gravity and seriousness of her criminal inadmissibility. Her engagement in misrepresentation and production of fraudulent documents to Canadian immigration officials over the years are aggravating factors, displaying a continuation of

deceptive behavior.” I agree.

[61] The PA has not pointed to any reviewable error in respect of the Officer’s conclusion that would warrant this Court’s intervention.

V. Conclusion [62] For the reasons set out above, in my view, the PA and AA’s claims for section 25 relief ought to be considered separately. The Decision in respect of the AA considering the BIOC and the level of establishment in Canada is not reasonable. However, the PA has not persuaded me that the Decision contains any reviewable error that would warrant this Court’s intervention in relation to her circumstances.

[63] I note that the Applicants suggested in their memorandum of fact and law that there was a procedural fairness issue and a jurisdictional issue; however, these issues were not clearly articulated in their written submissions or oral argument.

[64] In addition, the Applicants argued that the Officer failed to consider the implications of removal on the PA in consideration of her status as an LGBTQ individual and the conditions in Nigeria. I am persuaded by the Respondent’s argument that the Applicants did not raise this as an issue in their H&C application for the consideration of the Officer. They did not make an argument as to why this Court ought to entertain these new arguments that could have and should have been raised in their application for H&C relief.

[65] The parties did not propose questions for certification and I agree that there are none.

JUDGMENT in IMM-3990-25

THIS COURT’S JUDGMENT is that:

The application for judicial review is granted in part.

The Principal Applicant and Associate Applicant’s claims for permanent residence pursuant to section 25(1) of the Immigration and Refugee Protection Act, Humanitarian and Compassionate relief shall be considered separately, pursuant to section 106 of the Federal Courts Rules and section 4(1) of the Federal Courts Citizenship, Immigration and Refugee Protection Rules.

The Associate Applicant, Efe Igdinoba’s application pursuant to section 25 of the Immigration and Refugee Protection Act shall be sent back for redetermination by a different officer of Immigration, Refugees and Citizenship Canada.

The Principal Applicant, Esohe Erhun’s application for judicial review is dismissed.

No question is certified.

"Julie Blackhawk"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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BLACKHAWK J.

DATED:

MARCH 18, 2026

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