

CANADA / JUDGMENT

Mai v. Canada (Citizenship and Immigration)

2026 FC 363

COURT

Federal Court

DECIDED

18 March 2026

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Court (s) Database

Federal Court Decisions

Date

2026-03-18

Neutral citation

2026 FC 363

File numbers

IMM-3296-25

Decision Content

Date: 20260318

Docket: IMM-3296-25

Citation: 2026 FC 363

Toronto, Ontario, March 18, 2026

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

JIANFEN MAI

Applicant

and

Minister of Citizenship and Immigration

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Applicant, Jianfen Mai, brings an application for judicial review against a decision dated January 27, 2024 [Decision], made by an Officer of Immigration, Refugee and Citizenship Canada [IRCC], rejecting her application for permanent residence from within Canada based on humanitarian and compassionate [H&C] grounds pursuant to section 25 of the Immigration and Refugee Protection Act, SC 2001 c 27 [IRPA].

[2] According to Ms. May, the Decision is unreasonable as it relates to the assessment of the Best Interests Of the Child [BIOC], her establishment in Canada specifically her “extensive familial and emotional ties” in Canada, her lack of viable alternatives abroad, and her immigration history specifically because the Officer would have “placed disproportionate weight” on her lack of status, ignoring this Court’s jurisprudence regarding “technical breaches”. She alleges that overall, “[t]he decision reflects a failure to individually weigh each relevant compassionate factor before assessing them cumulatively and compassionately” as required by the jurisprudence of this Court.

[3] In response, the Attorney General of Canada [AGC or Respondent] submits that:

With regards to the BIOC, “[c]ontrary to what the Applicant argues, the Officer was alert, alive, and sensitive to the best interests of [her son]”. They considered all the evidence and ultimately gave BIOC some positive weight. This factor is not necessarily determinative, and it is not the Court’s role to give it more positive weight;

The Officer did not place undue negative weight on the Applicant’s overstay; they were entitled to draw a negative inference from the fact that she remained in Canada without authorization for nearly sixteen years. This matter is not simply a case of technical breach.

ii. With regards to the Applicant’s establishment in Canada, “unless the establishment is exceptional and not of the applicant’s own choosing, this will not normally be a factor that weights in favour of the applicant”. Here again, the Officer gave it some positive weight, and the Applicant is improperly asking the Court to give it more weight;

[4] For the reasons that follow, the application will be dismissed. The Decision is reasonable. The Officer’s detailed reasons show responsiveness to all the evidence and arguments submitted by the Applicant. It was open to the Officer to conclude that although some of the facts established by the Applicant weighed in her favor, neither the Applicant’s establishment in Canada nor her son’s best interests demonstrated the sort of exceptional circumstances required for granting the relief sought. Ms. Mai is essentially asking this Court to reweigh the evidence that the specialized administrative decision maker considered, in the exercise of his highly discretionary power. This is not the role of the Court in a judicial review.

II. Brief Summary of the Facts [5] The Applicant was born in China. She lived in Guangzhou, China until her marriage to Mr. Qiu Zhimin on March 31, 2000. They immigrated to Sydney, Australia, in September 2000. Ms. Mai became a naturalized citizen of Australia, where she lived in close proximity to her husband's extended family. She worked as a beautician from 2000 to 2007 after completing additional training. Ms. Mai submits that over time, she experienced escalating control and emotional abuse from her mother-in-law, with no intervention in her favor from her husband or other family members.

- [6] The Applicant explains that she left Australia while pregnant and came to Canada in June 2008, "to seek support from her relatives, citing concerns for her mental well-being and a desire to raise her child in a healthier environment". Her son was born approximately 8 weeks later. He is currently 16 years old and is a Canadian citizen.
- [7] Although the Applicant's last visa ended in September 2009, she remained in Canada without status. In April 2023, she applied for permanent residence based on humanitarian and compassionate grounds [H&C Application].

III. Decision under review [8] The decision maker's reasons for the Decision show meaningful engagement with the Applicant's submissions. They make multiple references to the words used by the Applicant in her personal statement and to her legal counsel's written representations. They further address all the key exhibits she submitted.

- [9] In summary, the decision maker based its conclusion regarding the Applicant's establishment in Canada on the following factors; (1) although Ms. Mai has strong bonds with her Canadian family, they "are not interdependent" but instead "maintain separate lives"; (2) despite having remained in the country for over sixteen years, the Applicant shows no involvement in her community, "she has not used her time to formally work, volunteer, study, or participate in community activities or groups"; (3) the evidence provided regarding her financial resources is insufficient to prove "that she has the long term ability to support herself or that she continues to receive financial support from her family". Given the aforementioned, minimal positive weight was given to her establishment. The decision maker also explicitly drew a negative inference from the fact that Ms. Mai has remained in the country for sixteen years without authorization, in contravention of Canada's immigration law.
- [10] With respect to the best interest of her child, the decision maker did give it "some positive weight" although it was determined that this factor had insufficient weight to justify an H&C exemption on its own. The decision maker noted that while the Applicant's son has deep bonds with his mother as well as with Canadian family members and fellow students, if his mother were required to leave the country, he could either (a) relocate to Australia with her, or (b) stay with his great-aunt who has already been appointed as his legal guardian in Canada. They also highlighted that (1) the evidence in support of the Applicant's allegation that her son's father is "uninterested" in him is insufficient; and (2) her son could claim Australian citizenship and enjoy all the rights associated with this status if he decided to

follow his mother.

- [11] When it comes to country conditions in Australia, the decision maker concluded that the Applicant did not demonstrate that she would face “hardship and significant psychological and emotional suffering” if returned to that country. They noted that the Applicant had not provided sufficient evidence to establish that her husband and his family are still in the country, and that, if she ever faced domestic abuse or violence in the future, Australia would afford her adequate protection.

IV. Analysis A. Standard of Review [12] Both parties submit, and I agree, that the applicable standard of review is reasonableness. Reasonableness is the presumptive standard of review for the merits of all administrative decisions (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov] at para 16; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7), and none of the circumstances warranting a departure from that presumption arise in the case at bar (*Vavilov* at paras 17, 53; *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67 at para 27; *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30 at paras 26-28; *Hyder v. Canada (Citizenship and Immigration)*, 2024 FC 1687 at para 4 [Hyder]).

- [13] As Justice Gascon explained in *Mohammed v. Canada (Citizenship and Immigration)*, 2025 FC 1933:
- [14] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Pepa* at para 46; *Mason* at para 64; *Vavilov* at para 85). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99, citing notably *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74).
- [15] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention,” seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Pepa* at paras 46–47; *Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13).
- [16] The standard of reasonableness is rooted in the principle of judicial restraint and deference, and it requires reviewing courts to show respect for the distinct role that the legislature has chosen to give to administrative decision makers, more particularly on findings of fact and the weighing of evidence (*Mason* at para 57; *Vavilov* at paras 13, 24, 46, 75). Absent exceptional circumstances, a reviewing court will not interfere with the factual findings of

an administrative decision maker (Vavilov at paras 125–126, citing Canada (Canadian Human Rights Commission) v Canada (Attorney General), 2018 SCC 31 at para 55; Doyle v Canada (Attorney General), 2021 FCA 237 at para 3).

[17] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (Vavilov at para 100).

[14] As the Respondent highlights, decisions that dispose of H&C applications attract considerable deference for indeed their highly discretionary nature means that there exists a “wider scope of possible reasonable outcomes” (Monsalve v. Canada (Citizenship and Immigration), 2022 FC 1253 at para 21 citing Qureshi v. Canada (Citizenship and Immigration), 2012 FC 335 at para 30; Hyder at para 6; Shackleford v. Canada (Citizenship and Immigration), 2019 FC 1313 [Shackleford] at para 16).

B. The law on H&C applications [15] As stated above, humanitarian and compassionate exemptions are an exceptional discretionary remedy meant to mitigate the rigidity of the law in appropriate cases (Kanthasamy v. Canada (Citizenship and Immigration), 2015 SCC 61 [Kanthasamy] at para 19; Gaffar v. Canada (Citizenship and Immigration), 2024 FC 1878 at para 15; Ndito v. Canada (Citizenship and Immigration), 2025 FC 1394 at para 14).

[16] As Justice Saint-Fleur noted in Canada (Public Safety and Emergency Preparedness) v. Brutus, 2025 FC 895 at para 37, it is “fundamental to reassert that H&C exemptions are exceptional and represent a discretionary remedy (citation omitted) and should therefore remain available for exceptional cases in order to avoid becoming an ‘alternative immigration stream or an appeal mechanism’” (citing notably Kanthasamy at para 90; see also Shackleford at para 16).

[17] Applicants bear the burden of proving that the strict application of the law would put them in circumstances which “would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another” (Kanthasamy at para 21; Shackleford at paras 15-16). In this context, since Kanthasamy, it is clear that decision makers must consider all relevant factors and not only the hardships that removal would cause; no specific checklist is to be followed (Salde v. Canada (Citizenship and Immigration), 2019 FC 386 at paras 23-24 cited in Dayal v. Canada (Citizenship and Immigration), 2019 FC 1188 at para 31). In fact, the Federal Court has followed the Supreme Court’s guidance in rejecting the preexisting “hardship-centric analysis” (Marshall v. Canada (Citizenship and Immigration), 2017 FC 72 [Marshall] at paras 29-38).

[18] To meet this burden of proof, applicants must put their best foot forward at the earliest opportunity (Danyluk v. Ainsworth Technologies Inc, 2001 SCC 44 at para 18) and any lack or deficiency in their submissions is made at their peril (Khair v Canada (Citizenship and Immigration), 2021 FC 160 at para 26).

- [19] In *Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 at paras 20-25, then Chief Justice Crampton wrote a complete and nuanced summary of the applicable law that bears repeating here:
- [20] Put differently, applicants for H&C relief must “establish exceptional reasons as to why they should be allowed to remain in Canada” or allowed to obtain H&C relief from abroad: *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, at para 90. This is simply another way of saying that applicants for such relief must demonstrate the existence of misfortunes or other circumstances that are exceptional, relative to other applicants who apply for permanent residence from within Canada or abroad: *Jesuthasan, v Canada (Citizenship and Immigration)*, 2018 FC 142, at paras 49 and 57; *Kanguatjivi v Canada (Citizenship and Immigration)*, 2018 FC 327, at para 67.
- [21] I recognize that in *Apura v Canada (Citizenship and Immigration)*, 2018 FC 762, at para 23, this Court suggested that it would be an error to deny an H&C application based on the absence of “exceptional” or “extraordinary” circumstances. To the extent that this statement is inconsistent or in tension with the principles quoted in paragraphs 19 and 20 above, and with other jurisprudence that can be fairly read as having adopted a similar approach, I consider that it does not accurately reflect the existing state of the law: see, e.g., *Li v Canada (Citizenship and Immigration)*, 2018 FC 187 at paras 25-26; *L. E. v Canada (Citizenship and Immigration)*, 2018 FC 930, at paras 37-38; *Yu v Canada (Citizenship and Immigration)*, 2018 FC 1281, at para 31; *Brambilla v Canada (Citizenship and Immigration)*, 2018 FC 1137, at paras 14-15; *Sibanda v Canada (Citizenship and Immigration)*, 2018 FC 806, at paras 19-20; *Jani v Canada (Citizenship and Immigration)*, 2018 FC 1229, at para 25; *Ngyuen v Canada (Citizenship and Immigration)*, 2017 FC 27 at para 29.
- [22] In the absence of any requirement to demonstrate the existence or likely existence of misfortunes or other H&C considerations that are greater or more significant in nature than those typically faced by persons who apply for permanent resident status in this country, s. 25 would risk becoming the alternative immigration scheme that the Supreme Court of Canada explicitly sought to avoid: *Kanthasamy*, above, at para 23. To the extent that this would also increase both the degree of subjectivity in the application of s. 25 and the divergence across decision-makers, it could also be expected to reduce certainty, predictability, and eventually public confidence in the IRPA.
- [23] In assessing whether an applicant has established sufficient H&C considerations to warrant a favourable exercise of discretion under s. 25 of the IRPA, all of the relevant facts and factors advanced by the applicant must be considered and weighed: *Kanthasamy*, above, at para 25. In this regard, the words “unusual and undeserved or disproportionate hardship” should be seen as instructive, but not determinative: *Kanthasamy*, above, at para 33.
- [24] However, “since ‘children will rarely, if ever, be deserving of any hardship,’ the concept of ‘unusual and undeserved hardship’ is presumptively inapplicable to the assessment of the hardship invoked by a child to support his or her application for [H&C] relief”: *Kanthasamy*,

above, at para 41, quoting *Hawthorne v Canada (Citizenship and Immigration)*, 2002 FCA 475, at para 9 [Hawthorne]. Instead, the assessment of the best interests of such an applicant, and of other directly affected children, must be highly contextual and must be responsive to each child's particular age, capacity, needs and maturity. While a child's best interests must be "well identified" and given "substantial weight," they are not necessarily determinative, and can therefore be outweighed by other considerations: *Kanthasamy*, above, at paras 35, and 38-39.

[25] In determining their best interests, the views of the child should be "given due weight in accordance with the age and maturity of the child": *Hawthorne*, above, at para 48; *Convention on the Rights of the Child*, 20 November 1989, Can TS 1992 No 3 (entered into force 2 September 1990, ratified by Canada 13 December 1991), at Article 12.

[20] The Respondent also points us to Justice Kane's summary of the key teachings of this Court's jurisprudence on the burden of proof that H&C applicants face since the landmark Supreme Court decision in *Kanthasamy* found in *Buitrago Rey v Canada (Citizenship and Immigration)*, 2021 FC 852 at paragraph 86, which reads as follows:

An H&C exemption is discretionary and exceptional relief;

Reviewing courts must not substitute their discretion for that of the Officer;

While undue, undeserved and disproportionate hardship is not required, hardship can be considered;

Some hardship is the normal consequence of removal and, on its own, does not support the exemption;

Applicants must demonstrate with sufficient evidence that the misfortunes or hardships they will face are relatively greater than those typically faced by others seeking permanent residence in Canada;

The BIOC [Best Interest of Children] is an important consideration but is not necessarily determinative of an H&C application; and

All relevant factors must be considered and weighed.

[21] As Justice Roy noted in *Shackleford* (at para 16), more than a sympathetic case is required.

C. The Decision is reasonable [22] As previously mentioned, the Applicant submits that the Decision is unreasonable in its assessment of the BIOC, her establishment in Canada, the lack of viable alternatives abroad, and her immigration history. The Applicant also submits that the Decision "reflects a failure to individually weigh each relevant compassionate factor before assessing them cumulatively and compassionately" (citing *Suthakar v Canada (Citizenship and Immigration)*, 2024 FC 1285 [Suthakar]).

- (1) Best interest of the child (BIOC) [23] The Applicant first submits that the Officer found that the BIOC “would not be significantly impacted by relocation, despite support letters from the child and others emphasizing the hardship he would face leaving Canada at such a critical stage in his life”. The Applicant also cites Kanthasamy and the jurisprudence cited by the Supreme Court therein for the idea that “a failure to remain alert, alive and sensitive to the best interests of the child and a failure to examine these interests ‘with a great deal of attention’ in light of all the evidence can render a decision unreasonable”.
- [24] The Applicant alleges that the case at bar is comparable with *Ogunniyi v Canada* (Immigration, Refugees and Citizenship), 2021 FC 1425 [Ogunniyi], in that:
- the Officer failed to properly account for the disruption caused by relocation at a pivotal stage in the child’s life. IRCC’s own H&C guidelines explicitly require consideration of factors such as the child’s age, level of dependency, and educational impact—none of which were meaningfully weighed. The decision treats the child’s well-being as a secondary concern and focuses disproportionately on logistical alternatives, such as extended family care, rather than the child’s holistic welfare.
- [25] Counsel also proposes that “the Officer’s reasoning that the child could remain in Canada or relocate to Australia without demonstrating “permanent psychological harm” sets an inappropriately high threshold and shows that they ignored the impact of Ms. Mai’s removal on the child’s well-being and suggests that the family’s letters of support were overlooked.”
- [26] The Applicant also suggests that the Officer failed to heed the teachings of this Court when they did not take into account how each of the three possible scenarios (non-removal of the parent, removal of the parent but not the child, removal of both) would impact the best interests of the Applicant’s son (citing *Williams v Canada* (Citizenship and Immigration), 2012 FC 166 [Williams] at para 63; *Baig v Canada* (Citizenship and Immigration), 2025 FC 1769 [Baig] at para 36; *Mangmeesri v Canada* (Citizenship and Immigration), 2026 FC 68 [Mangmeesri] at paras 29-31). She argues that instead, the decision maker only considered the impacts of a joint departure of mother and son and an alternative scenario in which she would leave Canada while he would remain here but never put their mind to what would happen if the Applicant were not required to leave Canada.
- [27] The Applicant further proposes that the Officer could not “assume that because Matthew has a guardian listed that is not the Applicant”, his best interests would continue to be served if he stayed in Canada without his mother because this would “disregards the child’s lived experience of being raised solely by the Applicant”. The Applicant’s counsel emphasizes that the evidence on file explains that his great-aunt was designated as his legal guardian only because the school required that someone be designated as such, whereas Ms. Mai’s lack of legal status meant she could not be identified as her son’s legal guardian.

- [28] Lastly for her son's best interests, Ms. Mai submits that, when the Officer concluded that the evidence regarding his father's lack of involvement in the Applicant's son life was insufficient, they "ignored" the statement that the son made on this point in his letter. Worse, "the officer appears to make an inference of a lack of evidence altogether, which continues to detract from the importance of having the Applicant in the child's life".
- [29] In response, the Respondent essentially alleges that the officer assessed the Applicant's son best interests properly, including when they looked at what would happen if he were to remain in Canada (which is the son's expressed preference), after his mother's departure. The Respondent stresses that the Officer's assessment of the impact on the Applicant's son, caused by either having to move to a different country or to stay in Canada even if his mother had to leave, was reasonable. It was open to the officer to find that in the context of the present matter, this factor was not sufficient to justify granting the H&C application, including because a certain degree of upheaval is unavoidable when one has to relocate or see their parent depart (citing *Esahak-Shammas v Canada (Citizenship and Immigration)*, 2018 FC 461 at para 40). They also allege that the Officer's conclusion that there was insufficient evidence adduced to establish the absence of any relationship between the Applicant's son and his father was reasonable because there was no "objective evidence", but that in any event, it was not determinative.
- [30] The Court finds unconvincing the Applicant's argument that the Decision "treats the child's well-being as a secondary concern and focuses disproportionately on logistical alternatives, such as extended family care, rather than the child's holistic welfare". On the contrary, the decision maker's reasons as concerns BIOC are detailed, coherent, intelligible and transparent. The Officer notably cited the Applicant's son's letter and his report cards alongside the allegations to the effect that he has many friends and plays several instruments. Regarding the psycho-social effects that uprooting an adolescent can have, they also directly cited the excerpts of the report from the registered psychologist submitted by the Applicant. Ultimately, the Officer concluded "I acknowledge that an international move to Australia would impact Matthew. I further acknowledge that he would have to spend time adapting to a new environment, including adjusting to a new school and making new friends."
- [31] It is true that, as in *Ogunniyi*, the decision maker emphasized that the Applicant's son would have a solid legal status if he followed his parent to Australia. But the case can otherwise be distinguished, not only because of Ms. Mai's continuous violation of Canadian immigration law, but also as concerns the BIOC specifically. In *Ogunniyi*, the sixteen years old child was a co-applicant for she was not born in Canada (at para 16). Therefore, the dismissal of the H&C application necessarily meant that she would have to leave the country, causing a rupture in her educational journey, and uprooting her from her social circles. This is not the case here. The Applicant's son has a choice. He has already stated his preference for staying in Canada. If he chooses to do so, he will be able to continue his studies here and preserve his friendships and other relationships. To the extent that the decision maker delved into the

status and possibilities that would be available to him in the event he decides to follow his mother in Australia, this was warranted for it stemmed from the - utterly reasonable - recognition that it will always be in the best interest of any child to remain with the parent who has always been their primary caregiver. Further, the decision maker did not improperly focus on hypothetical scenarios, as was the case in *Ogunniyi*.

- [32] With respect to the decision maker's conclusion that the Applicant's son could, if he were to remain in Canada, rely on his great-aunt, who is his legal guardian, it suffers no fatal flaw. It is true that the Applicant and her aunt both explain that the latter was appointed to be his legal guardian for purely administrative reasons. While the decision maker does not repeat the specific explanation given in their reasons, decision makers are presumed to have considered all of the evidence that was before them (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 14-17 cited in *Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161 at para 123; *Ahmad v Canada (Citizenship and Immigration)*, 2017 FC 923 at para 27). This presumption is not contradicted here. On the contrary, the Decision mentions both the Applicant's personal statement, and the letters submitted by her family. On the facts of this case, the decision maker could still consider that the great-aunt's appointment was relevant, several of the letters and the Applicant's personal statement all stress that her aunt and uncle helped her greatly in the past. To hold otherwise would be to measure the Decision against a standard of perfection, demanding that it address every detail of the evidentiary record even when they do not directly contradict one of their findings. This is not the standard (*Vavilov* at para 91).
- [33] Regarding the alleged obligation to address the impacts of all possible scenarios on the Applicant's son, including non-removal of the parent, the Applicant refers to paragraph 63 of *Williams* which reads as follows: "When assessing a child's best interests an Officer must establish first what is in the child's best interest, second the degree to which the child's interests are compromised by one potential decision over another, and then finally, in light of the foregoing assessment determine the weight that this factor should play in the ultimate balancing of positive and negative factors assessed in the application" [Underlining in the original]. Furthermore, she refers to paragraph 36 of *Baig* which states: "a BIOC analysis requires an assessment of the benefit to the child of the non-removal of the parent from Canada, in conjunction with an assessment of the hardship the child would face if their parent was removed or if the child was to accompany the removed parent".
- [34] Still, the Federal Court has repeatedly stated that *Williams* does not impose a formal test or formula to assess the BIOC (*Semana v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1082 [Semana] at paras 23-25; *Garraway v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 286 at para 32; *De Faria Peniche v Canada (Citizenship and Immigration)*, 2022 FC 854 [De Faria Peniche] at para 32; *Dhaliwal v Canada (Citizenship and Immigration)*, 2023 FC 95 at para 14). As Justice Gascon noted in *Semana*:

- [26] I pause to underline that, in *Kanthasamy*, the Supreme Court did refer to certain passages of *Williams*, but refrained from adopting the three-step approach laid out in that decision (*Kanthasamy* SCC at paras 39 and 59). The Supreme Court did not even cite the specific paragraph of *Williams* (i.e., para 63) setting out the three-pronged method advocated in that decision.
- [27] Ultimately, the correct legal test is whether the IAD was “alert, alive and sensitive” to the best interests of the child in conducting a BIOC analysis (*Baker* at para 75; *Hawthorne* at para 10; *Kolosovs v Canada* (Minister of Citizenship and Immigration), 2008 FC 165 at para 8). In order to demonstrate that the IAD is alert, alive, and sensitive to the BIOC, it is of course necessary for its analysis to address the “unique and personal consequences” that removal from Canada would have for the children affected by the decision (*Tisson v Canada* (Minister of Citizenship and Immigration), 2015 FC 944 at para 19; *Ali v Canada* (Minister of Citizenship and Immigration), 2014 FC 469 at para 16).
- [28] The law is also settled that a decision-maker conducting an H&C analysis must properly identify and define the BIOC factor and then balance it against the countervailing factors that might mitigate the adverse consequences of removal (*Legault* at para 12; *Kisana* at para 24; *Hawthorne* at para 5). The BIOC factor does not necessarily trump other factors for consideration in an H&C application. However, in order to fall within the range of reasonableness, the decision-maker must consider the children’s best interests as “an important factor, give them substantial weight and be alert, alive and sensitive to them” (*Baker* at para 75). Stated differently, the presence of children does not call for a certain result (*Legault* at para 12; *Kisana* at para 72). The BIOC is but one factor to be weighed along with the others in assessing the merits of H&C exemptions.
- [35] At the hearing, the Applicant proposed that decisions such as *Semana* may no longer be good law because it dates back to 2016, whereas *Baig* is a 2025 decision. Counsel argued that the jurisprudence might have changed, so that decision makers must again consider all three possible scenarios (non-removal, the departure of the parent alone, and a departure of both parent and child) as under the *Williams* framework (*Baig* at para 36). *Baig* refers neither to *Williams* nor to *Semana*. The Court does not read *Baig* as standing for such a proposal. There is no reason to believe that *Baig* sought to set aside the jurisprudence cited above, especially because Justice Gascon conclusions relied on decisions of the Federal Court of Appeal (*Hawthorne v Canada* (Minister of Citizenship & Immigration), 2002 FCA 475) and the Supreme Court of Canada (*Kanthasamy*). Under the doctrine of *stare decisis*, these decisions cannot have been implicitly overturned by the Federal Court’s pronouncement in *Williams*.
- [36] In any event, when the reasons provided in the Decision are read holistically, it is unambiguously clear that the decision maker recognized and considered that the child’s best interests might be to stay in Canada with his mother. They explicitly wrote that “it would likely be in Matthew’s best interests to remain in the care of his mother”. This shows the consideration required by *Baig*. They also spoke to the psychological and social impacts that

a move to Australia or a separation from his mother would have on the Applicant's son but concluded, in accordance with Canadian jurisprudence, that "the principle of the best interests of the child does not mean that the interests of the child outweigh all other factors in a case" (Kanthasamy at para 38 citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 75; *Buitrago Rey* at para 86). Following *Kanthasamy*, the officer demonstrated that they were "alert, alive and sensitive" to the BIOC.

[37] As for the officer's conclusion that there was insufficient evidence to establish that the Applicant son's father is not interested in his life and does not offer support, I agree with the Applicant that suggesting she could have adduced "custody documentation" or an affidavit from him is perplexing, if not erroneous. In the context of spouses who have been estranged for many years and when all the evidence on file is to the effect that the Applicant has had no contact with her husband since she left Australia, this was improper. I also fail to see what kind of "objective evidence" could be adduced to prove a person's lack of interest in their child's journey or well-being. This however does not constitute a fatal flaw and is insufficient to render the Decision unreasonable. The reasons still reveal a line of analysis "that could reasonably lead the [officer] from the evidence before [them] to the conclusion at which it arrived" (*Vavilov* at para 102), and the Decision is still compatible with the factual and legal constraints applicable.

[38] Lastly, the Applicant's argument regarding the improperly heightened threshold of "permanent psychological harm" is doomed to fail. Although the Applicant uses quotation marks, as if this phrase was found in the reasons for the Decision, the decision maker did not use these words. Reading the reasons entirely, I do not see anything that would indicate that the Officer implicitly relied on such a high threshold.

(2) Establishment in Canada [39] Regarding the Applicant's establishment in Canada, she essentially submits that the Decision is unreasonable because:

the Officer "failed to appreciate that the central thrust of the Applicant's request for relief was to avoid separation from her only meaningful family support system in Canada" (citing *Tuyebekova v Canada (Citizenship and Immigration)*, 2022 FC 1677 [*Tuyebekova*] at para 18);

the Officer relied on "a narrow and overly rigid view of what constitutes interdependence".

ii. the Officer failed to acknowledge "(1) the fact that the Applicant moved from her country of birth, China, ultimately relinquishing her citizenship in that country and hindering her ability to return (citing *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080); (2) moved to Australia where the only family she had was her husband (who she has been separated from for over a decade), and his immediate family"; and

[40] She also cites *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 for the idea that decision makers need to be responsive to the factual record (at para 17).

- [41] The Respondent instead stresses that “unless the establishment is exceptional and not of the applicant’s own choosing, this will not normally be a factor that weighs in favour of the applicant” and the reviewing court will not intervene (citing *Ntsima v Canada* (Citizenship and Immigration), 2021 FC 1254 at para 11; *Robinson v Canada* (Citizenship and Immigration), 2021 FC 1416 at para 34). Further, here, the decision maker gave this factor some positive weight even though the Applicant did not formally work, volunteer or get involved in her community.
- [42] In the Decision, although the Officer treated the impact of separation from family under the establishment factor, the decision maker mentioned the letters of support from the Applicant’s Canadian family members and engaged meaningfully with their contents. It was open to the decision maker to conclude that, given that they live separately, the Applicant and her family are not “interdependent”. The Applicant submitted no authority that would warrant adopting a broader definition of the notion of interdependence. The meaning the officer gave it is not unreasonable. The Officer did not ignore the evidence of the Applicant’s deep emotional bonds with her relatives who live in Canada either, they analyzed them and gave these family ties some positive weight. In the end, however, they concluded that this was not sufficient to warrant an H&C consideration.
- [43] Contrary to the Applicant’s submission that the officer failed to grapple with her Canadian family’s “continued” financial support, the decision maker specifically noted that none of the various support letters contain a promise of future financial support. On the facts as they appear in the record, the Officer did not err.
- [44] I agree with the Respondent’s submission that the Applicant is merely asking this Court to give her family ties more weight than the decision maker did, which is not this Court’s role (*Vavilov* at para 125).
- [45] As the Respondent correctly stresses, the fact that the Officer noted that the Applicant could keep in touch with her family through modern means of communications even if she moved back to Australia is not a reviewable error (*Kassem v Canada* (Citizenship and Immigration), 2023 FC 99 at para 23).
- [46] The Applicant affirms that “[c]onsidering that her time here has now spanned over 16 years, it is not difficult to imagine how deeply established she is here” and that the Officer put too much emphasis on the Applicant’s inability to produce proof of community involvement, such as volunteering. However, this Court has repeatedly stated that a lengthy stay in Canada is not in and of itself grounds for an H&C exemption, or even a positive factor, especially when the person remained in the country illegally (*Bruce v Canada* (Citizenship and Immigration), 2015 FC 1049 at para 14; *Lada v Canada* (Citizenship and Immigration), 2020 FC 270 at para 30).
- [47] As the Court stated in *Serda v Canada* (Minister of Citizenship and Immigration), 2006 FC 356:

[21] It would obviously defeat the purpose of the Act if the longer an applicant was to live illegally in Canada, the better his or her chances were to be allowed to stay permanently, even though he or she would not otherwise qualify as a refugee or permanent resident. This circular argument was indeed considered by the H & C officer, but not accepted; it doesn't strike me as being an unreasonable conclusion.

(cited approvingly in *Dan Shallow v Canada (Citizenship and Immigration)*, 2012 FC 749 at para 7; *Herrera v Canada (Citizenship and Immigration)*, 2015 FC 261 at para 22. See also *Campbell-Service v Canada (Citizenship and Immigration)*, 2022 FC 1050 at para 16; *Na v Canada (Citizenship and Immigration)*, 2023 FC 850 at para 20).

(3) Relocation in Australia or China [48] The Applicant also submits that the Officer failed to consider her “lack of status and support abroad”, and that they “unreasonably concluded that the Applicant could return to China or Australia, failing to address that she has no legal status or support in China and minimal ties to Australia beyond an estranged husband.” She also mentions the fact that her son could not secure Chinese citizenship, and that her remaining family there could not support her. With respect to Australia, the Applicant suggests that the decision maker focused on the hardships that she could face as a result of her husband’s family’s possible attempts to locate her but did not address the social vacuum (the absence of any support network) she would face. However, the record shows that the Applicant herself did not put any emphasis on the social vacuum she would face. Instead, she centered her submissions on the “emotionally abusive environment” that her husband’s family would create. Therefore, the Officer did not fail to “meaningfully grapple with key issues or central arguments raised by the parties” (*Vavilov* at para 128).

[49] Furthermore, it was not unreasonable for the Officer not to entertain a potential return to China given that the Applicant would be removed to Australia. The scenario of a return to China is entirely hypothetical. In this context, her son’s inability to secure status in China did not have to be addressed either. Again, to hold that the Officer had to address this possibility would be to measure the Decision against a standard of comprehensiveness and perfection (*Vavilov* at para 91).

(4) The impact of the Applicant’s continuous lack of status [50] The Applicant submits that the Officer “placed disproportionate weight on the Applicant’s lack of immigration status, ignoring case law such as *Alzaher v Canada (Citizenship and Immigration)*, 2022 FC 1099 [Alzaher] that warns against drawing strong negative inferences from technical breaches”, specifically referring to paragraph 12:

This Court has held that a decision attaching significant negative consideration to relatively minor breaches of Canadian immigration law may render the decision unreasonable (see e.g. *Fidel Baeza v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 362 and *Trach v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 282, both cases involving applicants who worked in Canada for brief periods without a work permit).

- [51] The Applicant further mentions that the Officer “failed to consider mitigating circumstances such as [her] past efforts to regularize her status”.
- [52] I agree with the Respondent’s submission that the Applicant’s breach cannot be compared with the one at play in *Alzahr*. Furthermore, the AGC is correct in stating that it was open to the decision maker to draw a negative inference from the Applicant’s sixteen years of illegal presence in Canada (*Campbell-Service v Canada (Citizenship and Immigration)*, 2022 FC 1050 at paras 14-18). This continuous illegality cannot be described as a “technical breach” or “relatively minor transgressions”.
- [53] While it is true that officers must “balance the need to respect Canada’s immigration laws with the fact that H&C applications typically involve applicants who have failed to comply with the law” by looking at countervailing factors, such as proof of establishment; this was clearly done here (*Toussaint v Canada (Citizenship and Immigration)*, 2022 FC 1146 [Toussaint] at paras 22-23; *Shah v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 398 [Shah] at para 44).
- [54] As for the Applicant’s one-line argument that she attempted to regularize her status in Canada, given the absence of any evidence to support this claim and the little emphasis given to this argument, the decision maker could reasonably ignore it. Administrative decision makers have to “meaningfully grapple with key issues or central arguments raised by the parties” (*Vavilov* at para 128) [Emphasis added]. However, “[r]eviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (*Newfoundland Nurses*, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (*Newfoundland Nurses* at para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice.” (*Vavilov* at para 128).
- [55] Further, as the AGC correctly highlights, Ms. Mai had the obligation of attempting to regularize her status if she wished to remain in Canada. She did not adduce evidence to prove that she did so. By staying in the shadows for years, she is partly responsible for making her eventual removal more painful (*Lin v Canada (Citizenship and Immigration)*, 2011 FC 316 at para 3; *Luzati v Canada (Citizenship and Immigration)*, 2011 FC 1179).
- (5) Cumulative and compassionate global approach [56] The Applicant cites this Court’s decision in *Suthakar* (specifically at para 24) to assert that “[i]n failing to weigh the Applicant’s lack of status and support abroad, her meaningful emotional and familial ties in Canada, and the best interests of her Canadian-born son as distinct yet interconnected factors, the Officer did not engage in the kind of compassionate cumulative assessment required.” This argument is not convincing.
- [57] Unlike in *Suthakar* (at paras 25-32), the decision maker did not take a “segmented, checklist approach”. While it is true that the Officer looked at each factor one after the other, it does not logically follow that each was approached in silo. The decision maker explicitly stated

that they “weighed the elements presented by the applicant both individually and globally”. The Decision also clearly states that “[c]umulatively, I am not satisfied that the applicant’s circumstances warrant an exemption.” Read in context, those assertions are not mere pretexts. The decision maker’s approach of explaining how much weight each factor should, in their understanding, be given, before balancing them all out is in accordance with this Court’s guidance. To cite paragraph 24 of Suthakar, they “weigh[ed] all relevant compassionate factors separately” and then “balance[d] the positive considerations against the negative ones cumulatively but, foremost, compassionately”.

[58] As Justice Brown wrote in Marshall, “the reviewing courts should have some reason to believe that the Officers have done their job, that is, that H&C Officers have considered not just hardship but humanitarian and compassionate factors in the broader sense.” (at para 33). The Court believes this is the case here. The decision maker addressed all the factors that the Applicant presented with her personal statement, and her counsel’s letter, separately, and then cumulatively.

[59] Ultimately, the Applicant merely seeks to have this Court reweigh each factor. Again, to do so would be to infringe upon the role of the specialized decision maker to whom Parliament delegated the authority to dispose of H&C application, with considerable discretion (Vavilov at para 125).

V. Conclusion [60] While this Court has much empathy for the Applicant and the impact that the Decision will have on her and her son, the Court finds that the Decision is transparent, justified and intelligible. The Applicant failed to identify any fatal flaw warranting quashing. The application for judicial review is dismissed.

JUDGMENT in IMM-6822-24

THIS COURT’S JUDGMENT is that:

The application for judicial review is dismissed.

No question of general importance is certified.

“Danielle Ferron”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

IMM-3296-25

STYLE OF CAUSE:

JIANFEN MAI v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING:

Montréal, Quebec

DATE OF HEARING:

MARCH 5, 2026

REASONS FOR JUDGMENT AND JUDGMENT:

FERRON J.

DATED:

march 18, 2026

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Prepared on 28 October 2026 · Esheria