

CANADA / JUDGMENT

Uba v. Canada (Citizenship and Immigration)

2025 FC 1959

COURT

Federal Court

DECIDED

11 December 2025

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Uba v. Canada (Citizenship and Immigration)

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IMM-4476-24

Decision Content

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Date: 20251211

Docket: IMM-4476-24

Citation: 2025 FC 1959

Ottawa, Ontario, December 11, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

JOSPHINE UBA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] Ms. Josephine Uba Applicant) was sponsored by her son, Chinedu Ubah (Sponsor), in Canada for permanent residence. She seeks judicial review of a visa officer's (Officer) decision (Decision) granting her permanent residence status but removing another son, that son's wife, and their child (jointly, Proposed Dependents) as dependents from her application. The Applicant's son, Uchechukwu Uba, (Mr. Uba) whom she declared as a dependent child, was over 40 years old and married at the time of her application.

[2] With the parties' consent and in accordance with the Guideline, I decided this matter in writing, without an oral hearing (Amended Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings, June 20, 2025, ss 65–70 [Guidelines]). I gave the Applicant the opportunity to file a reply memorandum, and I decided this matter when the deadline for reply expired, and after receiving the Applicant's Reply.

[3] For the following reasons, I dismiss the application.

II. Summary of relevant facts [4] I acknowledge that this case may be devastating for the Applicant and her family. However, it is my role to review whether the Officer's decision was reasonable. I will therefore limit my summary of the facts to those that are legally relevant.

[5] This case's facts are undisputed. The Applicant applied for permanent residence January 20, 2021, under the Parent, Grandparent (PGP) Program, sponsored by her son in Canada. In her application she included her other son Mr. Uba, his wife, Ifeoma Uba (Ms. Uba), and their son Chisom Righteousness Uba (the Applicant's grandson) as dependents. At the lock-in date, the dependent son was over 40 years old (born 1979/06/12) and married (on 2012/01/06) since approximately age 33.

[6] On January 27, 2022, the Respondent provided the Applicant a procedural fairness letter (PFL) noting two concerns. The first concern was that the Sponsor did not appear to meet the Minimum Necessary Income (MNI). The second concern was that the application appeared to include family members who may not be eligible dependents. The letter requested further information about the Proposed Dependents. This is the relevant part of the letter, expressing that the Application includes family members who may not be eligible dependents:

[7] I find that the PFL clearly communicated the Officer's concern whether the Proposed Dependents met the definition of dependent children. The Applicant responded to this letter on February 18, 2022. In this response, the Sponsor claimed that his parents, and since his father's death, his mother (the Applicant), have been supporting his brother, Mr. Uba, since

birth. The letter primarily alleged that the Sponsor has the minimum income to support Mr. Uba to address the first concern. The letter pointed to no physical or mental condition, nor did it contain any evidence to substantiate the allegation that the Proposed Dependents had a physical or mental condition, or any other reason for which Mr. Uba and Ms. Uba have needed financial support. The letter did not provide reasons why the Proposed Dependents should be considered dependents under the statute.

- [8] The application was refused by letter dated September 20, 2022, because it was determined that the Sponsor failed to meet MNI. The Global Case Management System [GCMS] Entry dated September 20, 2022 indicates that the son and his family were removed from the application, as Mr. Uba failed to meet the definition of dependent child, as he was over the age of 22, was married and had a child. The Officer also noted that the minor grandchild held a student visa and lived in Canada with his sponsoring uncle and the Applicant's grandmother, that the Sponsor did not meet the MNI, and that the best interest of the grandchild did not justify a waiver.
- [9] The Sponsor appealed the negative decision to the Immigration Appeal Division [IAD] of the Immigration and Refugee Board, which allowed the appeal on November 22, 2022. With the Minister's consent, the IAD sent the matter back to the visa post for further processing, primarily because the Sponsor appeared to meet the MNI. Also, the hearing officer who consented to the IAD appeal opined that there was a "strong family connection in this case between the appellant [i.e. the Sponsor] and the applicant [singular]. The applicant [singular] has also visited the appellant in North America for significant periods of time". The hearing officer also noted the benefits to the Sponsor and his children of having the Applicant in Canada. At no time did the hearing officer expressly or impliedly consent to Mr. Uba and his family's return as well.
- [10] On November 2, 2023, the visa post approved only the Applicant's permanent residence application, removing Mr. Uba and his family. On December 19, 2023, and again on February 21, 2024, the Applicant requested that the visa post reconsider the decision to remove the Proposed Dependents from her application. On March 12, 2024, she filed this judicial review.

III. The Issues and Standard of Review [11] The Applicant raises four issues before this Court. The Applicant raises a preliminary issue concerning Certified Tribunal Record (CTR) redactions. The Applicant then asks whether the Officer's decision to remove the son, his spouse and their child from the application was reasonable and whether the decision was reached in a procedurally fair manner. Finally, the Applicant proposes a question for certification.

- [12] The standard of review for the Officer's decision is reasonableness. Reasonableness review is a deferential standard that requires evaluating the outcome of an administrative decision in light of its rationale to determine whether the decision is transparent, intelligible, and justified (*Vavilov v Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 at paras 12–15, 95 [Vavilov]). The reasons are the primary mechanism by which administrative decision-makers show that their reasons are reasonable (*Vavilov* at para 81). Under *Vavilov*,

a reasonable decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law” (Vavilov at para 85).

- [13] The party challenging the decision must prove that it is unreasonable. For a reviewing court to overturn an administrative decision, the Applicant must establish that there are “sufficiently serious shortcomings” such that it “cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency” (Vavilov at para 100).
- [14] The standard of review for procedural fairness is a non-deferential standard. The reviewing court must ask whether a fair and just process was followed “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual” (Canadian Pacific Railway Company v Canada (Attorney General), 2018 FCA 69 at para 54 [CPR]).
- [15] Consequently, the question that must be answered is not necessarily whether the decision was “correct.” Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the administrative decision-maker’s process was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (CPR at para 56; *Inneh v Canada (Citizenship and Immigration)*, 2025 FC 953 at para 10).

A. Preliminary Issue (1) Was the CTR Redacted Without Court Authorization? [16] The Applicant argues that the Respondent has redacted the CTR without Court authorization pursuant to section 87 of the Immigration and Refugee Protection Act, SC 2001 c 27 [IRPA]. However, I agree with the Respondent that this is an inaccurate assertion, that there is no reason to believe that the CTR is redacted. Also, there is no material evidence that the Applicant argues she had filed with the visa post but was not considered by the Officer.

- [17] Further, the Applicant bases her argument not over a factual dispute but on their understanding of how the law would define the Proposed Dependents as dependent children. The Applicant does not point to redactions that would determine their legal argument. Nor has the Applicant submitted any evidence that should have been in the CTR but was not.

- [18] I am satisfied that the CTR is not redacted and that it contains all material evidence.

IV. Legislative Framework [19] Section 12 of IRPA sets out the framework for family reunification:

Family reunification

12 (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

Regroupement familial

12 (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

[20] The following is the definition of a “dependent child” under the Immigration and Refugee Protection Regulations, SOR/2002-227 [Regulations].

dependent child, in respect of a parent, means a child who

- (a) has one of the following relationships with the parent, namely,
 - (i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or
 - (ii) is the adopted child of the parent; and
- (b) is in one of the following situations of dependency, namely,
 - (i) is less than 22 years of age and is not a spouse or common-law partner, or
 - (ii) is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition. (enfant à charge)

enfant à charge L'enfant qui :

- a) d'une part, par rapport à l'un de ses parents : (i) soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,
- (ii) soit en est l'enfant adoptif; b) d'autre part, remplit l'une des conditions suivantes :
 - (i) il est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait, (ii) il est âgé de vingt-deux ans ou plus et n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents depuis le moment où il a atteint l'âge de vingt-deux ans, et ne peut subvenir à ses besoins du fait de son état physique ou mental. (dependent child)

[21] The Applicant submits that the Officer had already accepted that they would consider humanitarian and compassionate considerations requested by the Applicant under section 25 of IRPA:

Humanitarian and compassionate considerations — request of foreign national

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.

Séjour pour motif d'ordre humanitaire à la demande de l'étranger

25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35, 35.1 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

V. Analysis A. Did the Officer's Reasonably Consider the Definition of Dependent Under the Regulations? [22] There is no dispute that Mr. Uba and Ms. Uba were older than 22 at the time of the application. Under the Regulations, they needed to establish with sufficient reliable and credible evidence that they had depended substantially on the Applicant's financial support due to a physical or mental condition.

[23] The Applicant had not filed evidence of Mr. Uba and Ms. Uba's physical or mental condition or of his financial reliance on her since before he was 22, other than the Sponsor's statement in his February 18, 2022 letter in response to the PFL. In fact, on the form Schedule A/ Background information, in answer to the question 4 (k) "Have you, or, if you are the principal applicant, any of your family members listed in your application for permanent resident in Canada ever had any serious disease or physical or mental disorder", she answered "No". The Proposed Dependents also answered "no" to the same question. In their reply, the Applicant argues that the Respondent is adding to the Officer's reasons, but the Respondent's concerned submissions largely address the evidence before the Officer at the time.

[24] The Applicant does not explain how the Officer's reasons are unreasonable or procedurally unfair. The Applicant's response never meaningfully dealt with the Officer's concerns on whether Mr. Uba and Ms. Uba were dependent children, which were clearly communicated in the PFL. The Applicant's and the Proposed Dependents' answers on the application form contradicted a legal requirement necessary for the Proposed Dependents to be dependents under the Regulations.

[25] Recently in *In, Justice Macdonald* summarized the case law which confirms the definition and the evidentiary requirement of continuous unbroken financial support since before the age of 22, (*In v Canada (Citizenship and Immigration)*, 2025 FC 251 at para 22 [In]):

- [22] The relevant case law on this issue interprets the definition of “dependent child” as requiring continuous and unbroken financial support (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 1620 at paras 30-34 citing *Gilani v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1522 at para 11). A break in dependency will result in the exclusion of the individual from the family class.
- [26] I agree with Justice McDonald’s finding. The Applicant has not pointed me to any case on point that would contradict this conclusion. In fact, the Applicant did not explain how Mr. Uba and Ms. Uba were unable to be self-supporting due to a “physical or mental condition”, and would therefore be dependent children under the Regulations. The Officer’s decision to remove the Proposed Dependents is based on this failure. The Applicant’s arguments do not explain how the Officer’s conclusion is not rationally connected to the evidence before the Officer. The decision was reasonable.

B. Is the Decision Unreasonable because the Officer Failed to Consider H&C Grounds? [27] The Applicant also argues that the Respondent had agreed to consider humanitarian and compassionate (H&C) grounds. Their only submission on this point was the Sponsor’s response to the PFL, where he stated: “To be best of my knowledge that is my understanding of the regulations after speaking with a call centre agent, but if that is not correct, and they are still not eligible, they can be removed or considered under humanitarian and compassionate grounds. It is unclear to me if the fact that he is married makes them ineligible, the regulation was not clear on that.”

- [28] Under section 25 of IRPA, the Minister may, “on request of a foreign national outside Canada” “examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption” from any provision or requirement of IRPA. The scheme’s purpose is to allow for equitable relief where 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 at para 21).
- [29] In this case, the Applicant does not argue before this Court that evidence of H&C grounds was not considered by the Officer. The Applicant also filed no evidence before the Officer that would support granting H&C for the Proposed Dependents. Furthermore, H&C grounds are a highly discretionary exemption, and it is open to the decision-maker not to provide H&C to the Applicant (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15; *Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4). In rendering their decision, the Officer was not bound to the Minister’s consent to consider H&C grounds before the IAD.

- [30] Other than mentioning H&C, the Applicant had neither made submissions on how H&C factors applied to this case, and nor had she submitted any evidence relevant to it. Having done so, she cannot argue that the Officer had a duty to imagine how H&C considerations applied to the case. The Applicant cannot fault the Officer for failing to engage with matters that were never articulated when she raised H&C considerations only in the abstract, and without identifying or substantiating any such factors specific to the family's circumstances.
- [31] The fact of having raised H&C only in the abstract is particularly significant when the overall evidence before the Officer did not clearly point to H&C considerations. While the Applicant notes that her grandson resided with the Sponsor and the Applicant (his uncle and grandmother) in Canada, his parents remained in Nigeria. In the absence of submissions and evidence addressing the specifics of the family context, it was not self-evident that the grandchild's best interest would be served by an outcome that could result in separation from his parents, or why sufficient H&C factors existed to overcome the otherwise clear rejection of all three based on their ineligibility. In effect, the Applicant is asking this Court to find unreasonable the Officer's failure to speculate as to whether, or how H&C considerations applied in this case.
- [32] In fact, the Officer was alive and alert to the H&C considerations in the limited context that they were raised in the abstract. In their GCMS notes, the Officer wrote: "Although I am very sensitive to the best interest of the children... the Applicant did not demonstrate that there are strong enough grounds that could justify the granting of the requested waiver". This conclusion is consistent and responsive to what was before them.

C. Was the Officer's reason reached in a procedurally unfair manner? [33] I find that the Officer reached their decision in a procedurally fair manner. In the PFL, the Officer clearly communicated their concern that the Proposed Dependents did not meet the definition of dependent children. While the Applicant provided arguments on the Officer's concerns regarding MNI, they did not lead evidence to establish the child's dependency. The Applicant had full opportunity to respond to the Officer's concern and chose not to. It was fair for a subsequent officer to find that they had not met the definition of a dependent child, when there is no factual dispute that they had not established it.

D. Can the Applicant's proposed question be certified? [34] The Applicant proposes the following certified question: "Is an immigration officer different from the Minister (Respondent) and does the officer has jurisdiction to ignore or disagree with Ministerial relief/positive H/C assessment made by the Minister under s. 25(1) of the IRPA?" The Respondent opposes the application and submits that the Applicant's question is not dispositive. I ultimately agree.

- [35] For a question to be certified, it must (i) be dispositive of the appeal; (ii) transcend the interests of the immediate parties to the litigation; and (iii) must raise an issue of broad significance or general importance (*Zhang v Canada* (Citizenship and Immigration), 2013 FCA 168 at para 9; *Lunyamila v Canada* (Public Safety and Emergency Preparedness), 2018 FCA 22 at para 46; *Lewis v Canada* (Public Safety and Emergency Preparedness), 2017 FCA

130 at para 36; *Mudrak v Canada* (Citizenship and Immigration), 2016 FCA 178 at paras 15–16).

- [36] The Applicant argues that the Minister made a finding that H&C grounds applied in their case, and that the Officer would have been bound by the Minister’s submissions. I disagree. In preparing submissions to the IAD, the Minister was represented by a hearing officer who only acknowledged that there may be a “strong family connection” and “a cultural benefit” to reunification between the appellant (the Sponsor) and the applicant (also the Applicant here). The hearing officer never used “applicants” in a way that could reasonably include Mr. Uba and his family. In any event, the hearing officer’s reasons and opinions consenting to the IAD appeal was not binding on the visa officer ultimately deciding the case. The hearing officer did not, and could not, fetter the discretion of a subsequent administrative decision-maker in charge of deciding the sponsorship application. The ultimate decision to consider all relevant factors, as the case was presented to them, rested with the Officer.
- [37] It is uncontroversial that the Minister delegates its power to different officers who have different roles in different stages of a file and before different administrative bodies. The reasons for one delegate to consent to a case before the IAD was based on the evidence filed with them and their assessment of the relevant factors. The consent was limited to sending back the case of the Applicant to the Officer to ultimately decide based on what was before them. The Applicant’s reliance on the principles of *stare decisis* is misguided as different officers discharging their duties on different matters are not in an authoritative or binding position vis-à-vis each other. The hearing officer never implied that Mr. Uba and his family would be included in their consent before the IAD.
- [38] Further, I find that answering the question would not dispose of the appeal, and thus I refuse to certify the Applicant’s proposed question. The Officer determined that the Applicant’s dependents did not meet the definition of a dependent child under section 2 of the Regulations. Answering the question would not affect the reasonableness of the Officer’s decision. The Officer similarly exercised their discretion, on redetermination, not to consider H&C considerations for the Applicant’s three removed dependents. Merely answering the question regarding whether the Officer and the Minister are two different entities would not dispose of the proceeding. Moreover, the Applicant’s evidence that the Minister agreed to consider 25(1) was the Sponsor’s recollection of a call with a call centre agent in their response to the PFL. The call centre’s alleged representation was not established in evidence, and therefore the Applicant cannot rely on it as a fact such that it would dispose of the proceeding.
- [39] I do not certify the proposed question.
- VI. Conclusion [40] The Application for Judicial Review is dismissed.
- [41] There is no question to be certified.

JUDGMENT IN IMM-4476-24

THIS COURT'S JUDGMENT is that:

The application for Judicial Review is dismissed.

There is no question for certification.

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"Negar Azmudeh"

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Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

IMM-4476-24

STYLE OF CAUSE:

JOSPHINE UVA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

REASONS FOR JUDGMENT:

AZMUDEH J.

DATED:

DECEMBER 11, 2025

APPEARANCES:

Josphine Uba

For The Applicant

(ON HER OWN BEHALF)

Maria Green

For The Respondent

SOLICITOR OF RECORD:

Department of Justice Canada

For The Respondent

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