

Federal Court



Cour fédérale

**Date: 20180911**

**Docket: IMM-2569-17**

**Citation: 2018 FC 906**

**Toronto, Ontario, September 11, 2018**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**IMELDA MUNETON GUTIERREZ  
OCTAVIO FLORES RODRIGUEZ  
ALFONSO FLORES MUNETON  
RAUL FLORES MUNETON  
MARIA FERNANDA FLORES MUNETON  
OCTAVIO FLORES MUNETON**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Imelda Muneton Gutierrez (the “Principal Applicant”), her husband Octavio Flores Rodriguez and their children Alfonso Flores Muneton, Raul Flores Muneton, Maria Fernanda Flores Muneton and Octavio Flores Muneton (collectively “the Applicants”) seek judicial review of the decision of an Officer (the “Officer”) dismissing their application for permanent residence

in Canada on Humanitarian and Compassionate (“H&C”) grounds, pursuant to section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). The decision under review is dated May 25, 2017.

[2] The Applicants entered Canada in 2009 and resided here for some 8 years prior to the submission of their H&C application. By the time the negative decision was rendered, the eldest son Alfonso had attained the age of 19 years of age and was considered to be an adult, for the purpose of the assessment of the best interests of the children.

[3] The Officer, in refusing the Applicants’ application, noted that in spite of their 8 year period of residence in Canada, the father and eldest son had shown disregard for Canadian laws by failing to file income tax returns or to pay taxes. The Officer noted that the Applicants had shown disregard for Canadian laws by failing to report for removal or to otherwise co-operate with the Canada Border Service Agency.

[4] The decision of the Officer is a discretionary one, reviewable on the standard of reasonableness; see the decision in *Kisana v. Canada (Minister of Citizenship and Immigration)*, [2010] 1 F.C.R. 360 (F.C.A.).

[5] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the reasonableness standard requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes which is defensible in respect of the facts and the law.

[6] Upon considering the evidence contained in the Certified Tribunal Record (the “CTR”), as well as the written and oral submissions of Counsel, I am not satisfied that the decision meets the applicable standard of review.

[7] I agree with the Applicants that the Officer unreasonably focused upon the issue of unauthorized employment in assessing the H&C application.

[8] As well, I am not satisfied that the Officer reasonably addressed the issue of generalized hardship. I refer to the decision in *Gonzalez v. Canada (Citizenship and Immigration)*, [2015] 4 F.C.R. 535 (F.C.), where the Court said at paragraph 55 that “...an H&C applicant may raise hardship that is also faced by others in the country of removal”.

[9] In my opinion, the decision does not meet the standard of reasonableness as described above.

[10] Accordingly, the application for judicial review is granted. The decision of the Officer is set aside and the matter is remitted to a different Officer for redetermination. There is no question for certification arising.

**JUDGMENT in IMM-2569-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted.

The decision of the Officer is set aside and the matter is remitted to a different Officer for redetermination. There is no question for certification arising.

“E. Heneghan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2569-17

**STYLE OF CAUSE:** IMELDA MUNETON GUTIERREZ , OCTAVIO FLORES RODRIGUEZ, ALFONSO FLORES MUNETON,RAUL FLORES MUNETON, MARIA FERNANDA FLORES MUNETON, OCTAVIO FLORES MUNETON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 8, 2018

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** SEPTEMBER 11, 2018

**APPEARANCES:**

Adela Crossley FOR THE APPLICANTS

Catherine Vasilaros FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Law Office of Adela Crossley FOR THE APPLICANTS  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT