Federal Court  Cour fédérale

Date: 20200902

Docket: IMM-4006-19

Citation: 2020 FC 879

Ottawa, Ontario, September 2, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

ARTURO JARAMILLO ZARAGOZA,
GLORIA TZATZIL ARVIZU MILLAN,
ARTURO JARAMILLO ARVIZU AND
GLORIA ANDREA JARAMILLO ARVIZU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Arturo Jaramillo Zaragoza, his spouse Gloria Tzatzil Arvizu Millan, and their two children Arturo Jaramillo Arvizu and Gloria Andrea Jaramillo Arvizu [collectively the Applicants], seek judicial review of the decision of a Senior Immigration Officer [Officer], dated June 7, 2019 [Decision], refusing their application for permanent residence on humanitarian and

compassionate [H&C] grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] For the reasons that follow, I allow their application for judicial review.

II. Preliminary Issue

[3] The Respondent is asking that the style of cause be amended to name the Minister of Citizenship and Immigration as the proper Respondent (*Ofori v Canada (Citizenship and Immigration)*, 2019 FC 212 at para 9). There being no objection on the part of the Applicants, I will so order.

III. Facts and Proceedings

[4] The Applicants are citizens of Mexico. They have been in Canada for over 13 years, having arrived on July 23, 2007; Arturo Jr. and Gloria Andrea were 11 and 10 years old respectively at the time.

[5] The Applicants applied for refugee protection on September 7, 2007; however, their application was denied by the Refugee Protection Division of the Immigration and Refugee Board of Canada on August 26, 2008. Leave to apply for judicial review was denied by this Court on January 31, 2009.

[6] On February 7, 2009, warrants were issued for their removal. Since then, the Applicants have remained in Canada without status.

[7] On April 18, 2018, over nine years later, the Applicants sought to perfect their status by applying for permanent residence from within Canada on H&C grounds. Their H&C application was based primarily on the following considerations:

a) best interests of the children – Arturo Jr. and Gloria Andrea;

b) the degree of the Applicants' establishment in Canada;

c) health condition of both the mother and daughter; and

d) country conditions in Mexico.

[8] On June 7, 2019, the Officer rendered his Decision denying the Applicants' H&C application; he stated that, having considered cumulatively the factors put forth by the Applicants, he was "not of the opinion that granting the exemption under subsection 25(1) of the Act was warranted".

[9] Judicial review is now being sought in respect of that Decision. The only issue is whether the Decision is reasonable.

IV. Standard of Review

[10] The parties agree, as do I, that H&C decisions of this nature should be reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, [2015] 3 SCR 909, 2015 SCC 61 at para 44 [*Kanthasamy*]; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18; *Taylor v Canada (Citizenship and Immigration)*, 2016 FC 21 at para 16; *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

[11] Subsection 25(1) of the Act reads as follows:

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 or does not meet the requirements of this Act, and may, on request of a foreign national outside Canada 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.	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, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada 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.
[Emphasis added.]	[Je souligne.]

A. *Best interests of the child*

[12] In his Decision, the Officer dispensed quickly with the "best interests of the child" analysis as neither Arturo Jr. nor Gloria Andrea were under the age of 18 at the time of the filing of their H&C application. Consequently, the Officer found that this factor was not applicable; no issue was raised before me in respect thereof by the Applicants.

B. *Degree of establishment in Canada*

[13] What is important in reviewing decisions on H&C applications is not so much the language used by an officer in rendering his/her decision, but whether the reasons are reflective of the approach set out in *Kanthasamy* (*Perez Fernandez v Canada (Citizenship and Immigration)*, 2019 FC 628; *Thiyagarasa v Canada (Citizenship and Immigration)*, 2019 FC 111; *Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 at para 29).

[14] By all accounts, Mr. Jaramillo is an industrious and hard working individual, and a good family man. Since arriving in Canada, he has often held down two jobs simultaneously in order to support his family, primarily in the construction, maintenance and renovation business. He has regularly paid his taxes, registered his own home renovation company, and has more recently been assisted by his son Arturo Jr. in developing his business.

[15] The Officer recognized the accomplishments of Mr. Jaramillo and his family since coming to Canada, not only in terms of their sound financial management, self-sufficiency and economic productivity, but also in respect to their community involvement. There is no suggestion of any criminal activity, the children have been diligently pursuing their studies, and the parents have been pursuing continuing education sessions for their own personal betterment.

[16] Their file is also replete with letters of support and character references from various church and community members who have come to know the Applicants over the years.

[17] The Officer further also recognized that the Applicants have integrated into the community over an extended period of time through employment, schooling, volunteer activities and religious practice, however in the end, the Officer found that the exemption they sought was not warranted.

[18] After setting out the elements of the Applicants' degree of establishment, the Officer concluded as follows:

> It is noted that the applicants have received due process through the Canadian refugee determination system and therefore, it would not be considered unusual for some degree of establishment to take place over this time. The applicants have integrated into the community over an extended period of time through employment, schooling, volunteer activities, and religious practice. The applicants' positive steps in establishing themselves in Canada are commendable. However, I note that these endeavours are not uncharacteristic activities undertaken by newcomers to a country. Rather, the applicants have demonstrated a typical level of establishment for a persons (*sic*) in similar circumstances.
>
> The applicants have continued to accumulate time in Canada by their own volition without having the legal right to do so. The applicants have been the subject of enforceable removal orders after the refusal of their refugee claims and continued to assume their establishment efforts being fully cognizant that their immigration status was uncertain and that removal from Canada could become an eventuality. In this light, it cannot be said that the applicants remained in Canada due to circumstances beyond their control.
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> [Emphasis added.]

[19] As to their first point, the Applicants argue that the Officer was dismissive in respect of the degree of their establishment in Canada, and that words such as "not unusual" or "typical" was indicative of the Officer seeking to minimize the degree of the Applicants' establishment in Canada.

[20] Moreover, the Applicants cite *Angelica Henson v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1218 [*Henson*], for the proposition that it is unreasonable for an immigration officer to find that an applicant's degree of establishment fell below what would be considered as "exceptional", without also defining the standard that is to be met and explaining what would be considered exceptional or extraordinary establishment (see also *Chandidas v Canada (Citizenship and Immigration)*, 2013 FC 258 [*Chandidas*]).

[21] I do not accept that argument.

[22] I do not read the words chosen by the Officer as suggesting an attempt to denigrate or trivialize the degree of the Applicants' establishment in Canada. Rather, I read the Officer's comments as comparative and descriptive, i.e., simply recognizing that the degree to which the Applicants have established themselves in Canada is consistent with that of most new Canadians who arrive in this country either fleeing persecution or simply seeking a better life for themselves and their families (*Thiyagarasa v Canada (Citizenship and Immigration)*, 2019 FC 111 at para 31; *Boukhanfra v Canada (Minister of Citizenship and Immigration)*, 2019 FC 4, [2019] FCJ No 6 at para 15 [*Boukhanfra*]).

[23] In addition, and although I would agree with the conclusions in both *Henson* and *Chandidas*, I do not find these cases to be of assistance to the Applicants.

[24] Unlike *Henson* and *Chandidas*, here the Officer did in fact define his standard for assessing the degree of establishment of the Applicants. He may not have used the word

"exceptional" as was the case in *Henson* and *Chandidas*, however, the Officer did explain his reference point, *to wit*, that degree of establishment that is typical of other newcomers to Canada (see also *Diaz v Canada (Citizenship and Immigration)*, 2015 FC 373 at para 17 [*Diaz*]).

[25] In any event, as stated by Mr. Justice Diner in *Regalado v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 540:

> [7] The Applicant argues that it was unreasonable for the Officer not to explain what "level of establishment he requires to warrant the exercise of the discretion provided under section 25 of IRPA," because the Officer noted that her degree of establishment is what "one would expect to accomplish in her circumstances."
>
> [8] This argument is misguided; the Officer cannot be expected to arbitrarily set the degree of establishment required under section 25, as that analysis will necessarily vary depending on the facts of each case. Likewise, it is not the role of an officer to speculate as to what additional facts or circumstances would have triggered a section 25 exception. Rather, it is the Applicant's role to demonstrate exceptional circumstances, including establishment, rather than simply expected (*Baquero Rincon v Canada (Minister of Citizenship and Immigration)*, 2014 FC 194 at para 1).

[26] As to their second point, the Applicants argue that focusing on how the degree of the Applicants' establishment compares to others in similar circumstances is indicative, on the part of the Officer, of a "hardship centric approach and a failure to consider a more expansive range of grounds for H&C relief".

[27] On this point, I agree with the Applicants. Although the Officer was correct to consider hardship, there is no indication in the Decision of the Officer having made any effort to consider the broader grounds of H&C relief consistent with *Kanthasamy*.

[28] In *Kanthasamy*, the Supreme Court of Canada explained that the words "unusual and undeserved or disproportionate hardship" as set out in the Immigration, Refugees and Citizenship Canada guidelines *"IP 5: Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds"* should be treated descriptively. The Court went on to adopt an approach to subsection 25(1) of the Act that is grounded in its equitable underlying purpose.

[29] Referring to those guidelines, the Supreme Court stated that an officer should consider and give weight to all considerations and not view unusual and undeserved or disproportionate hardship as establishing three distinct thresholds. The Court held at paragraph 26:

> According to the Guidelines, applicants must demonstrate either "unusual and undeserved" or "disproportionate" hardship for relief under s. 25(1) to be granted. "Unusual and undeserved hardship" is defined as hardship that is "not anticipated or addressed" by the Immigration and Refugee Protection Act or its regulations, and is "beyond the person's control". "Disproportionate hardship" is defined as "an unreasonable impact on the applicant due to their personal circumstances".

[30] In discussing *Kanthasamy*, Mr. Justice Norris stated in *Reducto v Canada (Citizenship and Immigration)*, 2020 FC 511 at paragraphs 44 to 46:

> [44] […] Writing for the majority, Justice Abella approved of the approach taken in *Chirwa v Canada (Minister of Manpower & Immigration)* (1970), 4 IAC 338, where it was held that H&C considerations refer to "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another – so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the Immigration Act" (*Kanthasamy* at para 13). Section 25(1) should therefore be interpreted by decision makers to allow it "to respond flexibly to the equitable goals of the provision" (*Kanthasamy* at para 33). At the same time, it is not intended to be an alternative immigration scheme (*Kanthasamy* at para 23).

> [45] Ministerial Guidelines for processing requests for H&C relief had directed immigration officers to consider whether an applicant had demonstrated either "unusual and undeserved" or "disproportionate" hardship. Justice Abella held for the majority in *Kanthasamy* that, while these words could be helpful in assessing when relief should be granted in a given case, they were not the only possible formulation of when there were H&C grounds justifying the exercise of discretion under section 25(1). Instead, she endorsed the following approach (at para 33):
>
> > The words "unusual and undeserved or disproportionate hardship" should therefore be treated as descriptive, not as creating three new thresholds for relief separate and apart from the humanitarian purpose of s. 25(1). As a result, what officers should not do, is look at s. 25(1) through the lens of the three adjectives as discrete and high thresholds, and use the language of "unusual and undeserved or disproportionate hardship" in a way that limits their ability to consider and give weight to all relevant humanitarian and compassionate considerations in a particular case. The three adjectives should be seen as instructive but not determinative, allowing s. 25(1) to respond flexibly to the equitable goals of the provision.
>
> [46] With this holding, *Kanthasamy* is often described as having widened the lens through which H&C applications must be viewed compared to what was set out in the Ministerial Guidelines (cf. *Mursalim v Canada (Citizenship and Immigration)*, 2018 FC 596 at para 28 and the cases cited therein). At the same time, it is not an error for an officer to focus on hardship when this is responsive to submissions that are framed in those terms (*Jani* at para 46).
>
> [Emphasis added.]

[31] In short, while the Ministerial Guidelines are useful in assessing a claim for H&C relief, they are not intended to be either exhaustive or restrictive, and, as set out in *Kanthasamy*, immigration officers should not fetter their discretion by treating them as if they were mandatory requirements that limit the equitable H&C discretion anticipated by subsection 25(1) of the Act.

[32] In this case, the Officer recognized the "commendable" efforts and results of establishment of the Applicants, but limited his findings to concluding that the degree of establishment was not atypical of newcomers to Canada, that such degree of establishment was rooted in the length of time that the Applicants spent in Canada, that the Applicants had no legal right to be in Canada for such a length of time, and that remaining in Canada without right was of their own volition.

[33] The Respondent argues that the nature of the Officer's discretionary finding has been upheld by this Court (see *Diaz* at para 17 and *Mikhno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 386 at para 39 [*Mikhno*]). However, *Diaz* and *Mikhno* are both prior to *Kanthasany*, and as such, it may well be that some of the analysis in those cases should now be reexamined in the light of the Supreme Court decision.

[34] Here, the Officer never actually addressed the evidence; he failed to examine whether the disruption of that establishment "weighs in favour of granting an exemption" (*Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 at para 21 [*Sebbe*]).

[35] I accept that the degree of establishment factor is not in itself determinative, and that immigration officers often assess degree of establishment as a function of the length of time that an applicant has been in Canada. As was stated by Mr. Justice Shore in *Lupsa v Canada (Citizenship and Immigration)*, 2009 FC 1054 [*Lupsa*], "it is well established in the case law that the degree of establishment is an important, but not determinative, factor in an H&C application" (*Lupsa* at para 73; *Stuurman v Canada (Citizenship and Immigration)*, 2018 FC 194). He went

on to quote Mr. Justice Blais in *Lee v Canada (Minister of Citizenship and Immigration)*, 2005 FC 413 at paragraph 9: "it would encourage gambling on refugee claims in the belief that if someone can stay in Canada long enough to demonstrate that they are the kind of persons Canada wants, they will be allowed to stay".

[36] Factored into that assessment, however, is whether the reasons for an applicant being in Canada involve circumstances beyond his/her control. This Court has held that where an applicant has no legal right to remain in Canada, and has done so absent of circumstances beyond his/her control, he/she should not be rewarded for accumulating time in Canada (*Mann v Canada (Minister of Citizenship and Immigration)*, 2009 FC 126; *Sabharwal v Canada (Citizenship and Immigration)*, 2008 FC 1128, [2008] FCJ No 1412 (QL)).

[37] Where an applicant has remained in Canada for reasons not within his/her control, the Ministerial Guidelines provide as follows:

> 5.14 Establishment in Canada
>
> Positive H&C consideration may be warranted when the period of inability to leave Canada due to circumstances beyond the applicant's control is of considerable duration and where there is evidence of a significant degree of establishment in Canada such that it would cause the applicant unusual or disproportionate hardship to apply from outside Canada.

[38] However, it seems to me that the failure to leave Canada whether or not for reasons beyond one's control, although a factor to be considered, cannot be conclusive as regards the assessment of the degree of establishment. While the Ministerial Guidelines highlight the prospects of a positive degree of establishment assessment where such is developed over a

prolonged stay in Canada beyond an applicant's control, it does not automatically follow that where the prolonged stay without legal right was not beyond an applicant's control, that the factor of degree of establishment must necessarily be assessed otherwise.

[39] In *Sebbe*, Mr. Justice Zinn stated:

> [21] The second area that I find troublesome has to do with comments the officer made when analyzing establishment. The officer writes: "I acknowledge that the applicant has taken positive steps in establishing himself in Canada, however, I note that he has received due process through the refugee programs and was accordingly afforded the tools and opportunity to obtain a degree of establishment into Canadian society." Frankly, I fail to see how it can be said that the due process Canada offers claimants provides them with the "tools and opportunity" to establish themselves in Canada. I suspect that what the Officer means is that because the process has taken some time, the applicants had time to establish themselves to some degree. That is a statement with which one can agree. However, what is required is an analysis and assessment of the degree of establishment of these applicants and how it weighs in favour of granting an exemption. The Officer must not merely discount what they have done by crediting the Canadian immigration and refugee system for having given them the time to do these things without giving credit for the initiatives they undertook. The Officer must also examine whether the disruption of that establishment weighs in favour of granting the exemption.
>
> [Emphasis added.]

[40] Indeed, it should be kept in mind that in *Sebbe*, the Court made it clear that "the only serious issue in this application is whether the Officer's analysis of the best interests of [the child] was reasonable". That said, Mr. Justice Zinn rightly cautioned against systematically discounting the assessment of degree of establishment in the granting of the exemption under subsection 25(1) of the Act for the simple reason that an applicant has, legally or otherwise,

spent a significant amount of time in Canada (see also *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 777; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1142).

[41] In a case similar to the present one, Mr. Justice Diner stated that "[w]hile the mere use of the language of exceptionality does not itself render a decision unreasonable, in that the officer may simply mean that the applicant has not shown ties that are strong enough to justify an H&C exemption […] the combined references to the Applicants receiving "due process," and their situation not being "uncommon" or "exceptional", undermine the establishment analysis in this case" (*Osun v Canada (Citizenship and Immigration)*, 2020 FC 295 at para 17).

[42] The Applicants assert that what is missing from the Officer's analysis is any consideration for equity, compassion, or of the misfortune that the Applicants may have suffered or will suffer if they must relocate, and no indication in the Decision that H&C factors in a broader sense were considered not only in respect of the parents, but in particular as regards the children who did not come to Canada "of their own volition". I agree.

[43] In *Ranji v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 521, [2008] FCJ No 675 (QL), Justice Zinn held that, in assessing an H&C application, the officer is required to examine the unique circumstances of a particular applicant; that was not done in this case.

[44] I accept that H&C relief is a highly discretionary measure (*Legault* at para 15; *Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4), and that an officer's determination is entitled to deference on the part of a reviewing court unless the party

challenging it can establish that it is unreasonable (*Baker v Canada (Minister of Citizenship and Immigration)* (1999), 174 DLR (4th) 193 at para 62. However, one of the underlying goals of the *Vavilov* framework is to "affirm the need to develop and strengthen a culture of justification in administrative decision-making" (*Vavilov* at paras 2, 79-81).

[45] This is not a case where the Applicants failed to "demonstrate the existence of misfortunes or other circumstances that are exceptional relative to other applicants who apply for permanent residence within Canada or abroad" as was the case in *Huang v Canada (Citizenship and Immigration)*, 2019 FC 265. Here, the Applicants have convinced me that the Officer's analysis of the degree of establishment in Canada lacked the necessary level of scrutiny of, or engagement with, the evidence in relation to broader H&C factors as required by the Supreme Court in *Kanthasamy*, and that those flaws "are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[46] For that reason, I am persuaded that the Officer's reasons in respect of the degree of establishment factor were unreasonable.

C. *Health condition of both the mother and daughter*

[47] The daughter, Gloria Andrea, has been diagnosed with schizophrenia in 2016 and is currently taking daily medication. The letter from her mental health nurse, a registered psychotherapist, states that at the age of 19, Gloria Andrea suffered a psychotic break and was hospitalized twice. She required multiple Electro-Convulsive Therapy treatments and psychotropic medication. The psychotherapist opined that removal to Mexico would be

destabilizing for Gloria Andrea, and that it was her opinion that removal would cause Gloria Andrea to decompensate. Her letter stated:

> I think that if Andrea's family was sent back to Mexico it would be detrimental to her health and she would decompensate. Decompensation is the psychological term for deterioration of daily functioning usually brought on by stress levels higher than a person's ability to cope or a person with schizophrenia going off their medication. It would be destabilizing for Andrea to move back to Mexico.

[48] In support for the present application, Mr. Jaramillo also provided a statement whereby he went on at length as to the establishment of Gloria Andrea in Toronto, and the impact that extracting her from that environment would have on her. The point was also made by the Applicants' previous counsel in his written submissions in support of the Applicants' application for permanent residence.

[49] In referring to the psychotherapist's statement above, and after setting out Gloria Andrea's condition, the Officer stated:

> [The psychotherapist] opines that if she was sent back to Mexico, it would be detrimental to her health and she would decompensate; a term used to describe deterioration of daily functioning usually brought on by a person with schizophrenia going off their medication.

[50] The Officer then went on to describe the situation regarding the available treatment or medication for Gloria Andrea in Mexico, however, in paraphrasing the psychotherapist's opinion, the Officer omitted that part of the letter regarding the impact of stress levels becoming higher than a person's ability to cope in the light of a destabilizing event such as being extracted from her customary environment.

[51] The Applicants take no issue with the manner in which the Officer addressed the issue of the availability of medication for Gloria Andrea's condition in Mexico. However, they assert that, in his decision, the Officer exclusively focused on the availability of treatment and medication, and seems to have sidestepped the issue of the impact of the removal to Mexico upon her.

[52] The Officer acknowledged the medical issues of Gloria Andrea, however, his decision in respect of Gloria Andrea's schizophrenia diagnosis focused on her condition as it was in Canada, and the issue of whether treatment and follow-up for her condition would be available in Mexico if she was to return.

[53] The medical report, however, dealt specifically with the destabilizing effect the removal itself would have on Gloria Andrea. What the Officer failed to consider is the impact that the return to Mexico would have on her mental health, quite apart from any available treatment for her condition in Mexico; would her forced return to Mexico aggravate her condition in any way, and, if so, what would be the result?

[54] As was the situation in *Kanthasamy*, I find that the officer had an "exclusive focus on whether treatment was available" in the country of removal, and "ignored what the effect of removal from Canada would be on his mental health": *Kanthasamy* at paragraph 48. The Court in *Kanthasamy* concluded that the possible deterioration of mental health is a relevant consideration regardless of whether treatment is available in the country of removal: *Kanthasamy* at paragraph 48.

[55] Madam Justice Strickland underscored the need to consider psychological reports when they speak to the effect of removal from Canada on an applicant's mental health in *Esahak-Shammas v Canada (Citizenship and Immigration)*, 2018 FC 461 at paragraph 26:

> This Court has held that when psychological reports are available and indicate that the mental health of applicants would worsen if they were to be removed from Canada, then an officer must analyze the hardship that applicants would face if they were to return to their country of origin. In that circumstance, an officer cannot limit the analysis to a determination of whether mental health care is available in the country of removal.

[56] As concluded by Mr. Justice McHaffie in *Mebrahtom v Canada (Citizenship and Immigration)*, 2020 FC 821, "it is not unreasonable to consider the availability of mental health counselling services in the country of removal, provided it does not become an exclusive or undue focus of the analysis." Here, it did, to the detriment of any consideration of the impact the removal would have on Gloria Andrea's mental health.

[57] It seems to me that the possible impact of Gloria Andrea's return to Mexico should have been an issue addressed within the framework of a broader H&C assessment in line with the principles set out in *Kanthasamy*. This was a determinative failure on the part of the Officer.

[58] Given my decision on the factors of establishment and Gloria Andrea's medical condition, and the importance of these two factors to the overall assess by the Officer, I do not think it necessary to discuss the other two issues raised by the Applicant, *to wit*, the medical condition of the mother, or the country of origin factors.

VI. Conclusion

[59] I would allow this application for judicial review. Neither party raised a question for certification.

JUDGMENT in IMM-4006-19

THIS COURT'S JUDGMENT is as follows:

1. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper respondent.

2. The application for judicial review is allowed.

3. There is no question for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4006-19
STYLE OF CAUSE:	ARTURO JARAMILLO ZARAGOZA, GLORIA TZATZIL ARVIZU MILLAN, ARTURO JARAMILLO ARVIZU, GLORIA ANDREA JARAMILLO ARVIZU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFENCE BETWEEN MONTREAL, QUEBEC AND TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 11, 2020
JUDGMENT AND REASONS:	PAMEL J.
DATED:	SEPTEMBER 2, 2020

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