

Federal Court



Cour fédérale

**Date: 20221101**

**Docket: IMM-6351-21**

**Citation: 2022 FC 1491**

**Ottawa, Ontario, November 1, 2022**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**AMANDA OYENMWEN EFIONAYI  
UYI BRUCE OSA (A MINOR)  
TIFFANY OSHIORIAMHE AZONOBO (A  
MINOR)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision made by a Senior Immigration Officer [Officer] on July 27, 2021 denying the Applicants' application for permanent residence based on humanitarian and compassionate (H&C) grounds.

[2] The Principal Applicant (PA) is a citizen of Nigeria. She had three minor children aged 14, 6, and 2 at the time the H&C application was decided. The youngest child is a naturalized Canadian citizen who is not included in the application.

[3] For the reasons that follow, the Decision must be set aside. The Officer's analysis of the best interests of the children (BIOC) was unreasonable and it is not clear how it affected the Officer's global assessment.

## II. **Background Facts**

[4] The PA arrived in Canada in January 2018 with her children (two of them at the time) seeking refugee protection.

[5] The Refugee Protection Division (RPD) dismissed the Applicants' claim in November 2018.

[6] In February 2020, after a failed appeal to the RAD, the PA submitted an H&C application. The PA raised the best interests of her three children, the hardship they would face if returned to Nigeria, and that their establishment in Canada warranted relief on H&C grounds.

## III. **Decision**

[7] In refusing the application, the Officer found the degree of the Applicants' establishment in Canada was "modest and unremarkable", giving that factor significant weight in the overall assessment of the application. The Officer also found that although the PA has a few strong

relationships in Canada, stronger familial ties would exist in Nigeria. The Officer was referring to the Applicant's mother, despite the PA's submission that she has little contact with her and she is unable to assist them with relocation.

[8] With respect to BIOC, the Officer found the two younger children would not be adversely affected by returning to Nigeria because "children between the ages of 2 and 6 should be able to adapt to the change in country conditions with relative ease if they are accompanied by their primary caregiver who accounts for the majority of their socialization".

[9] The Officer also found that "any difficulty that the children encounter in readapting to life in Nigeria would be mitigated by the presence of their grandmother."

[10] The Officer acknowledged that Bruce, the 14 year-old child "would experience some negative outcomes" which would be mitigated by family ties in Nigeria.

#### IV. Issue

[11] The PA submits the only issue is whether the Officer's findings were reasonable in light of all the evidence.

[12] The determinative issue in this matter is the Officer's treatment of the BIOC.

V. **Standard of Review**

[13] The standard of review presumptively is reasonableness: *Canada (Minister of Citizenship & Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While there are certain exceptions to this presumption, they are not present in this application.

[14] The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

[15] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Vavilov* at para 86.

[16] The Decision as a whole is to be considered when assessing reasonableness. Any shortcoming in the Decision must be serious; it must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

VI. **Analysis**

[17] There is no factual basis in the underlying record to support the Officer's BIOC findings, which also impact the establishment and hardship findings.

[18] The PA's submissions to the Officer stated, "Ms. Efonayi's only remaining tie to Nigeria is her mother, who she has little contact with and cannot rely upon for any assistance to relocate and re-establish herself with three children."

[19] In the psychological report that was before the Officer, it was stated that the PA's mother, had remarried and moved to another city. She would not be able to offer the PA's children shelter and protection. The PA's father, whom she stated had been her primary source of support – emotionally and financially – was deceased.

[20] In addition, the PA's application forms list the PA's mother as her only living immediate relative in Nigeria.

[21] Notwithstanding the foregoing, and without reference to any of it, the Officer found:

The primary applicant has her mother in Nigeria. I note that she would be a grandmother to the dependent applicants as well as her youngest child. While the applicants have made some friendships in Canada, I find that these relationships would not compare to having an additional relative who can also provide some care to the children when the primary applicant is unavailable. As the primary applicant has few strong relationships in Canada, I find that she would have stronger family ties in Nigeria. I give this factor some weight.

[22] The Officer's conclusion appears to be based solely on the fact that the PA has a mother who is alive in Nigeria. The Officer does not explain the reason for concluding that the grandmother would be able to provide some care to the children when the primary applicant is unavailable.

[23] The fact that the PA submits her mother cannot be relied upon for any assistance is not addressed in the Decision. To the contrary, the Officer found that “any difficulty that the children encounter in readapting to life in Nigeria would be mitigated by the presence of their grandmother.”

[24] Nor does the Officer consider whether the mother’s new spouse would welcome a step-daughter and three young children becoming some part of their life.

[25] The PA’s written submissions stated, “the percentage of the population of Nigeria living in extreme poverty is 46.7% and an unemployment rate of 23% and if forced to return to Nigeria as a single mother with three children, (the PA) will undoubtedly become a part of these statistics. The fathers of her children play no role in their lives and (the PA) has expressed that she will have no help or support in Nigeria.”

[26] The Officer however found that “the applicant has not provided a reason why she would not be able to live in the same household as her mother. Based on the information before me, I find that the applicants are unlikely to experience a prolonged period of unemployment or extreme poverty if they were returned.”

## VII. **Conclusion**

[27] The Officer was provided with several reasons why the PA and her mother could not live in the same household. The Officer did not refer to what the PA said in her H&C submissions about her mother or what the psychological report noted about the relationship between the PA and her mother. Having reviewed the underlying record, I can only conclude that the Officer

overlooked or ignored those critical submissions and made findings that were contrary to the evidence.

[28] The Officer's conclusions concerning the PA's mother were repeatedly relied upon to support the BIOC, establishment and, to some extent, the hardship findings made by the Officer.

[29] It is not possible to determine whether the Decision would have been the same had the Officer not erred.

[30] I conclude the Officer fundamentally misapprehended or failed to account for the evidence before them and in so doing, the reasonableness of the Decision was jeopardized: *Vavilov* at para 126.

[31] This application is granted. The matter is to be referred to a different Officer for redetermination.

[32] No question was posed for certification nor do I find one exists on these facts.

[33] No costs are awarded.

**JUDGMENT in IMM-6351-21**

**THIS COURT'S JUDGMENT is that:**

1. This application is granted. The matter is to be referred to a different Officer for redetermination.
2. No question was posed for certification nor do I find one exists on these facts.
3. No costs are awarded.

"E. Susan Elliott"

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Judge



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

**DOCKET:** IMM-6351-21

**STYLE OF CAUSE:** AMANDA OYENMWEN EFIONAYI, UYI BRUCE  
OSA (A MINOR), TIFFANY OSHIORIAMHE  
AZONOBO (A MINOR) v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 27, 2022

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** NOVEMBER 1, 2022

**APPEARANCES:**

Kingsley I. Jesuorobo FOR THE APPLICANTS

Asha Gafar FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Kingsley I. Jesuorobo FOR THE APPLICANTS

Barrister and Solicitor

Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT

Toronto, Ontario