

Federal Court



Cour fédérale

**Date: 20220802**

**Docket: IMM-867-21**

**Citation: 2022 FC 1158**

**Ottawa, Ontario, August 2, 2022**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**ALEJANDRA NUNEZ GUILLEN**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Alejandra Nunez Guillen is a citizen of Mexico. She seeks judicial review of a decision by a senior immigration officer [Officer] to refuse her request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] The Officer did not address Ms. Nunez Guillen's personal history or her reasons for coming to Canada, and failed to meaningfully grapple with the key issues and central arguments she raised in support of her request for H&C relief. The application for judicial review is therefore allowed.

## II. Background

[3] Ms. Nunez Guillen is 58 years old. When she was 31, her husband died of stomach cancer and she became a single mother to her five year old daughter.

[4] Ms. Nunez Guillen came to Canada on a visitor visa in November 2008. She overstayed her visa, and has been living and working in Canada without status ever since.

[5] Ms. Nunez Guillen has worked primarily as a housekeeper. She has also provided childcare. She sent regular remittances to her daughter in Mexico, who was able complete her education and become a doctor. In August 2020, her daughter became a permanent resident of Canada following a successful spousal sponsorship.

[6] Ms. Nunez Guillen's sister, brother-in-law, niece, and their families are all permanent residents of Canada. She has cared for her sister's and her niece's children, and has also formed a bond with her employer's daughter.

[7] The Officer assigned considerable weight to Ms. Nunez Guillen's establishment in Canada and moderate weight to the hardship associated with returning to Mexico. However, the Officer attributed significant negative weight to Ms. Nunez Guillen's decision to live and work in Canada without status for more than a decade.

[8] The Officer accepted that Ms. Nunez Guillen has developed a relationship with the children and her presence is a positive force in their lives. However, the evidence did not indicate that the children are dependent on her. The Officer concluded that their best interests would not be compromised if she returned to Mexico.

[9] Ms. Nunez Guillen's H&C application was refused on January 7, 2021, and she was informed of the decision on January 25, 2021.

### III. Issue

[10] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

### IV. Analysis

[11] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "there are sufficiently serious

shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[12] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[13] Ms. Nunez Guillen challenges the Officer’s decision on several grounds. One of these is determinative. The application for judicial review must be allowed because the Officer failed to meaningfully grapple with the key issues and central arguments raised by Ms. Nunez Guillen in support of her request for H&C relief (*Vavilov* at para 128).

[14] Ms. Nunez Guillen’s submissions to the Officer included the following background:

Alejandra Nunez Guillen faced great difficulty while she lived in Mexico. At the age of 31, her husband died of stomach cancer; this left Alejandra in a precarious position as a widowed mother of a 5 year old child. She had to “take on several roles including that of a mother, father, worker, and housewife.” This posed serious economic challenges to Alejandra, she was “living in a terrible economic situation ... didn't have a stable job and it was difficult to find decent work because [she] was considered too old for jobs.” She continued to struggle for years, in the attempt to fulfill the promise she had made to her late husband; she had promised that she “would do everything in [her] power to ensure she [daughter] grows up to be an educated woman with strong values.” With this promise in her heart, and the prospect of creating a better life for her daughter, Alejandra arrived in Canada as a visitor, but overstayed her permitted travel period. She is apologetic of using this means, but she felt that it was necessary in pursuit of her aspiration. Alejandra wanted to work hard, prosper, and

send money back to Mexico so that her daughter could pursue her dream of attending medical school to become a doctor.

This dream drove her to dedicate herself to long hours of physical labour through her time as a housekeeper, to which numerous community members can attest. This enabled her to see her vision come true. Her daughter, Alejandra Uscanga Nunez, has become a doctor, an opportunity only achieved by the Claimant's selflessness. This selflessness, and dedication, however, were not expressed only to Alejandra's daughter, they are traits central to her character that she has brought, and actively used towards the betterment of her community, as well as Canadian society more broadly.

[15] The Officer's summary of Ms. Nunez Guillen's history began with her arrival in Canada in 2008. No mention was made of her reasons for coming to Canada, or her role in furthering her daughter's education. The remarkable achievement of Ms. Nunez Guillen, a single mother of modest means, of raising a daughter to become a medical doctor, is absent from the Officer's analysis. Nor does the Officer acknowledge the cruel irony of separating Ms. Nunez Guillen from her daughter just as she has become a permanent resident of Canada.

[16] Subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] presupposes that an applicant has failed to comply with one or more provisions of the statute. An officer must therefore assess the nature of the non-compliance and its relevance and weight against the other H&C factors (*Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 [*Mitchell*] at para 23). An officer must assess an applicant's history and evidence with empathy, while bearing in mind the equitable foundation of s 25(1) (*Mitchell* at para 24).

[17] As Justice Sandra Simpson held in *Samuel v Canada (Citizenship and Immigration)*, 2019 FC 227 [*Samuel*], an officer is entitled to take an H&C applicant's lack of status into

account. However, the officer must balance the need to respect Canada's immigration laws with the fact that s 25 of the IRPA will frequently involve applicants who are without status. It is contrary to this need for balancing, and therefore unreasonable, to repeatedly discount positive H&C factors because of non-status (*Samuel* at para 17).

[18] The Officer did not address Ms. Nunez Guillen's personal history or her reasons for coming to Canada. The Officer failed to meaningfully grapple with the key issues or central arguments raised by Ms. Nunez Guillen in her request for H&C relief, calling into question whether the decision maker was actually alert and sensitive to the matter under consideration (*Vavilov* at para 128).

V. Conclusion

[19] The application for judicial review is allowed, and the matter is remitted to a different immigration officer for reconsideration.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed,  
and the matter is remitted to a different immigration officer for reconsideration.

“Simon Fothergill”

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Judge

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

**DOCKET:** IMM-867-21

**STYLE OF CAUSE:** ALEJANDRA NUNEZ GUILLEN v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE BETWEEN TORONTO  
AND OTTAWA, ONTARIO

**DATE OF HEARING:** JULY 20, 2022

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** AUGUST 2, 2022

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