

Federal Court



Cour fédérale

**Date: 20180911**

**Docket: IMM-809-18**

**Citation: 2018 FC 908**

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

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**OCTAVIO FUENTES BAEZA  
MONICA JEANETHE CANAS VILLA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Octavio Fuentes Baeza (the “Principal Applicant”) and his common-law spouse Ms. Monica Jeanethe Canas Villa (collectively “the Applicants”) seek judicial review of the decision of an Officer (the “Officer”), refusing 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”).

[2] The Applicants are citizens of Mexico. The Principal Applicant entered Canada in 2006 and his common-law spouse arrived in 2012. They are the parents of two Canadian born children, aged four years old and 12 months. The Principal Applicant is the father of two other children who live in Mexico.

[3] The Officer refused the application on the basis that the negative factors, including the failure of the Applicants to comply with Canadian immigration law, outweighed the elements in their favour, including their integration into the community and financial independence while in Canada.

[4] The Officer's decision is 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, that standard requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that is defensible on the law and the facts.

[6] In my opinion, the decision does not meet that standard.

[7] The Officer unreasonably failed to consider the best interests of the Applicants' Canadian born children in light of the evidence presented about the prevalence of crime and child kidnappings in Mexico. That evidence relates to the issue of hardship which is a necessary part of assessing an H&C application.

[8] In consequence, the application for judicial review will be allowed, the decision is set aside and the matter remitted to another Officer for redetermination. There is no question for certification arising.

**JUDGMENT in IMM-809-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision is set aside and the matter remitted to another Officer for redetermination. There is no question for certification arising.

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-809-18

**STYLE OF CAUSE:** OCTAVIO FUENTES BAEZA, MONICA JEANETHE  
CANAS VILLA v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 10, 2018

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** SEPTEMBER 11, 2018

**APPEARANCES:**

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Nicole Rahaman FOR THE RESPONDENT

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