

Federal Court



Cour fédérale

**Date: 20170127**

**Docket: IMM-2342-16**

**Citation: 2017 FC 109**

**Ottawa, Ontario, January 27, 2017**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**V.S.**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant sought permanent resident status in Canada on humanitarian and compassionate [H&C] grounds, pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. This is an application for judicial review, under subsection 72(1) of the IRPA, of the Applicant's second unsuccessful H&C application. The Applicant is a citizen of Cameroon. She entered Canada in 2009 and claimed refugee protection on the basis of fear of a forced marriage to her brother in law and the fear of being forced to

undergo Female Genital Mutilation [FGM]. Her refugee claim did not proceed, as she misrepresented her travel history. Before being required to leave Canada, the Applicant applied for a Pre-Removal Risk Assessment [PRRA] based on her sexual orientation. Her PRRA was denied.

[2] In her H&C claim, the Applicant claims she is at risk in returning to Cameroon because of her sexual orientation. She also fears that her Canadian born daughter, conceived in 2014 through *in vitro*-fertilization [IVF], may be subjected to FGM. Additionally, she argues that the quality of the health care in Cameroon puts her young daughter at risk. The Officer was not convinced that there was reliable evidence on the risks identified by the Applicant. Further, the Officer found that the Applicant was not credible with respect to her sexual orientation claim. Her H&C application was denied.

[3] On this judicial review, the Applicant argues that the Officer failed to properly consider the evidence. She also claims that her procedural fairness rights were breached. For the reasons that follow, I conclude that the H&C decision is reasonable, and there were no breaches of procedural fairness. This judicial review is dismissed.

I. H&C Decision under review

[4] The Officer considered the risks of forced marriage and forced FGM on the Applicant by her late husband's family. These risks were previously raised by the Applicant in her refugee claim. However, the Officer notes that the H&C application was silent on these issues. Therefore, the Officer concluded that these risks had diminished.

[5] With respect to the Applicant's sexual orientation, and her fear of adverse treatment in Cameroon, the Officer was concerned that "sexual orientation" was not raised by the Applicant in her original refugee claim. The Officer concluded that the Applicant's explanations for failing to do so were not reasonable, especially considering her level of education and sophistication. The Officer also did not accept her explanations for the discrepancies on the relationships she claims to have had with women in Cameroon. He further questioned the reliability of her evidence on her sexual orientation when she could not recall the name of the website where she found her first Canadian girlfriend. Overall, the Officer found that there was insufficient credible evidence to support her claim to be a lesbian.

[6] With respect to her current same sex relationship, the Officer was concerned with the dates of some of the evidence presented to substantiate the relationship, as it was dated shortly after the denial of her PRRA application. Additionally, the failure of her partner to play a significant role in her decision to undergo IVF caused the Officer to question the credibility of her claim to be in a common law same sex relationship. The Officer expected that her partner would be involved in such an important decision.

[7] On the best interests of the child [BIOC] analysis, the Officer found that the evidence demonstrated that the Applicant was the child's primary caregiver and sole legal parent. He did acknowledge that her partner shared some of the parenting responsibilities. However, the Officer concluded that whatever assistance her partner was providing could be undertaken by family in Cameroon. On the risk of FGM, the Officer found that there was no threat from anyone to subject the child to this procedure and that it was unlikely to happen if the child went to

Cameroon with her mother. While the Officer did acknowledge the inferior quality of healthcare in Cameroon, there was no indication that the child had an ongoing medical condition requiring care. On a balance of probabilities, the Officer concluded that this risk was not established.

[8] In denying the H&C application, although the Officer noted that the Applicant was somewhat established in Canada, this was outweighed by the negative factors, including “misrepresenting her travel history in her refugee protection application”. Further, the Officer found the Applicant “to be flexible in the truth in order to fortify the adverse conditions she would face in Cameroon”.

## II. Issues

[9] The following issues were raised by the Applicant:

- A. Are the findings with respect to the Applicant’s sexual orientation reasonable?
- B. Is the BIOC analysis reasonable?
- C. Was there a breach of procedural fairness?

[10] The standard of review for an H&C application is reasonableness (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18).

[11] Procedural fairness questions are assessed on a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

III. Analysis

A. *Are the findings with respect to the Applicant's sexual orientation reasonable?*

[12] The Applicant argues that the Officer failed to consider the totality of the evidence with respect to her sexual orientation. She argues that her current relationship started in 2011 and that they started living together in 2015. She argues that while they were not living together at the time she underwent IVF, her partner was supportive of the Applicant's decision to have a child.

[13] The Officer could not reconcile the failure of the Applicant to disclose her sexual orientation at the time of her refugee claim against the fact that the Applicant is well educated. Additionally, the Officer found inconsistencies in the Applicant's evidence regarding her past sexual relationships. Furthermore, the Officer found the Applicant lacked credibility when discussing her previous relationships with women in Cameroon. There were inconsistencies in her evidence and the Officer found her explanations improbable. This finding of the Officer is entitled to deference (*N'Kuly v Canada (Citizenship and Immigration)*, 2016 FC 1121 at para 20).

[14] It is not this Court's role to reweigh the evidence or substitute its own view of a preferable outcome (*Galamb v Canada (Citizenship and Immigration)*, 2016 FC 1230 at para 52.)

[15] Here, the Officer concluded that the Applicant failed to submit sufficient evidence to support her claim for special relief on H&C grounds. This is a reasonable conclusion.

B. *Is the BIOC analysis reasonable?*

[16] The Applicant argues that the Officer erred in the BIOC analysis. She argues that her daughter is at risk of FGM in Cameroon because of her (the Applicant's) sexual orientation.

[17] The Officer considered this risk and concluded that since the Applicant did not establish with credible evidence that she is a lesbian, he was not convinced that there was a heightened risk of FGM to her daughter on this factor alone. Furthermore, the Officer noted that no threat of subjecting her daughter to FGM had been made and the Officer was satisfied that the Applicant could adequately protect her daughter from any such threat.

[18] The Officer considered the other H&C factors in his BIOC analysis. He found the evidence of hardship to be lacking. The Officer did not set "unusual and undeserved or disproportionate hardship" as a threshold. The Officer considered each factor and then considered all the factors cumulatively and was alive, alert and sensitive to the Applicant's daughter's best interests.

[19] With respect to the issue of medical care for the Applicant's daughter, the Officer noted that while the health care may be inferior to the quality of health care offered in Canada, there was no evidence that the child had special medical needs which could not be met in Cameroon.

[20] The Officer acknowledged that the separation from her Mother's partner may cause hardship for the Applicant's child; however, the Officer noted that given her young age, she is adaptable and would have the benefit of family relations in Cameroon.

[21] The Supreme Court of Canada in *Kanthisamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 noted that hardship is inevitable with being required to leave Canada. However, hardship alone is not sufficient to establish H&C grounds (see para 23).

[22] Here, the Officer did not ignore any evidence, and the Officer explained why the evidence was insufficient. The Officer did not err in the BIOC analysis.

C. *Was there a breach of procedural fairness?*

[23] The Applicant submits that the Officer committed a breach of procedural fairness by making a negative credibility finding regarding her common-law relationship, without having had the benefit of hearing evidence from her partner. Her partner did not testify at the H&C hearing. The Applicant argues that the Officer was advised that her partner was in attendance at the hearing (held by videoconference) and available to be interviewed.

[24] The failure to allow a witness to testify or discouraging a witness from testifying could constitute a breach of procedural fairness (*Kamtasingh v Canada (Citizenship and Immigration)*, 2010 FC 45).

[25] Here however, there is no evidence that the Applicant requested that her partner give evidence, nor is there any evidence that the Officer refused to hear evidence from the Applicant's partner. The onus was on the Applicant to present her case and put forward the witnesses she felt were necessary. The Officer is not required to ask for evidence from a witness who has not been put forward by the Applicant. (See *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5; *Mendiratta v Canada (Minister of Citizenship and Immigration)*, 2005 FC 293 at para 7; and *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 16.)

[26] Therefore there is no evidence that the Applicant's partner was either prohibited or discouraged from testifying by the Officer. Therefore, there is no breach of procedural fairness.

#### IV. Conclusion

[27] The Officer's decision is reasonable. The Officer did not ignore evidence; the Officer assessed evidence and explained why it was insufficient. The decision is justified, transparent and intelligible. The decision is therefore entitled to deference.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review of the H&C Officer's decision is dismissed.
  
2. No serious question of general importance is certified.

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-2342-16

**STYLE OF CAUSE:** V.S. v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 12, 2016

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** JANUARY 27, 2017

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