Federal Court Cour fédérale

Date: 20170220

Docket: IMM-2884-16

Citation: 2017 FC 203

Toronto, Ontario, February 20, 2017

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

DEBBIE ANN ORBIZO

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of an officer of Immigration, Refugees and Citizenship Canada ("Officer"), dated June 27, 2016, refusing the Applicant's application for permanent residence status from within Canada on humanitarian and compassionate ("H&C") grounds, made pursuant to s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA"), in order to overcome her medical inadmissibility.

[2] For the reasons that follow, this application for judicial review is granted.

Background

[3] The Applicant is a citizen of the Philippines. She applied for a live-in-caregiver work permit visa which was granted by the Hong King visa office on March 2, 2009. On March 9, 2009, the Applicant came to Canada and validated her work permit at the port of entry.

[4] On May 12, 2009, and shortly after commencing her employment as a live-in-caregiver ("caregiver") in Toronto, Ontario, the Applicant was admitted to hospital with hemoptysis and multiple medical issues. She was found to have pulmonary renal syndrome. Subsequently, the Applicant was diagnosed with end stage kidney disease, which requires kidney dialysis three times a week. She is a potential candidate for a kidney transplant. A doctor's note dated August 5, 2015 also indicates that the Applicant requires a parathyroidectomy surgery in connection with her condition.

[5] On August 4, 2009, the Applicant applied for a visitor record as she was no longer able to work as a caregiver because of her medical condition. The visitor record was granted and was valid until November 30, 2011. On December 2, 2011, the Applicant applied for permanent residence on the basis of H&C considerations and requested a waiver of her presumed medical inadmissibility. On December 23, 2011, the Applicant applied for a second visitor record which was granted and valid until August 4, 2014. On May 31, 2012, the Applicant was found to be medically inadmissible and, on September 9, 2013, her application for permanent residency on H&C grounds was denied. On December 27, 2013, the Applicant filed an application for leave

and judicial review of that decision. On October 24, 2014, she applied for a new visitor record which was granted and was valid until February 22, 2016.

[6] On December 18, 2014, leave was granted with respect to the application for judicial review, however, on February 20, 2015, the application was discontinued as the Minister agreed to have the matter re-determined by a new decision-maker. It is that re-determination decision which is the subject of the current application.

Decision Under Review

[7] The Officer set out the Applicant's immigration history, the medical inadmissibility finding, as well as the concerns the Officer had raised with the Applicant's counsel regarding the Applicant's entry into Canada and whether the Applicant came in bad faith. On that point the Officer concluded that the Applicant may have obtained her work visa in good faith, expecting to be able to work as a caregiver, but that ultimately she was only able to work for a matter of weeks before her medical condition deteriorated to the point of requiring hospitalization.

[8] The Officer then noted portions of the submissions made by the Applicant's counsel on March 23, 2015, including that the Applicant is financially supported in Canada with respect to her medical bills and other living expenses by her family, her church community and her friends; that she has remained in Canada so that she can receive life-saving dialysis treatment which is unavailable to her in the Philippines; that she is unable to work due to her medical condition but has found ways to contribute meaningfully to society through volunteer work at her church and teaching music classes; that she is a candidate for a kidney transplant and has been on a waiting

list since 2010 but is not eligible because she cannot pay privately and is not covered by the Ontario Health Insurance Program; and, that she would not have the same kind of essential community support in the Philippines.

[9] In her analysis of the H&C factors, the Officer considered the Applicant's family and friends in Canada noting that she appears to have an extensive network of friends, mostly through her church. The Officer cited portions of a letter from the Applicant's aunt who resides in Canada as well as excerpts of other letters of support. The Officer stated that, to her credit, the Applicant had worked very hard to construct a network of supportive friends on which she relies for all of her financial needs. Volunteering and interacting with congregation members at her church appeared to be her main activity while she has been in Canada. The Officer also noted the Applicant's father, possibly her mother, her brother and husband reside in the Philippines.

[10] With respect to the availability of health services in the Philippines, the Officer noted the Applicant's affidavit evidence and submissions made by the Applicant's former counsel in which he explained there is a health insurance program in the Philippines, known as PhilHealth, but that it had a benefits ceiling, does not include drug coverage and would provide an inadequate number of dialysis sessions. The Officer noted that counsel acknowledged that the Applicant may be able to access health care through a sponsored program ("Sponsored Program") providing coverage for indigent persons, although it may fall short of dialysis three times a week that the Applicant requires and that she would have to pay out of pocket for the additional treatments and any medications that were not covered. The Officer also noted that kidney transplant is available in the Philippines. The Officer calculated and compared the cost of

treatment for end-stage renal disease in Canada and in the Philippines noting that the cost is significantly lower in the Philippines.

[11] After considering these factors, the Officer then rendered her decision. She first stated that the usual H&C factors to be considered are family in Canada, whether the applicant is established in the community and economically and what difficulties the applicant or their family members might face if returned to their country of origin. However, that this application was a little different as its main driver appeared to be access to the Canadian health care system and organ transplant list. The Officer noted that for the last seven years the Applicant has not worked and has not been entitled to provincial or federal health care. The Officer found that the Applicant has not established herself economically and that most of her family, including her husband, are in the Philippines.

[12] The Officer also found that the Applicant has built an extensive and supportive church network which pays for her living expenses and costly medical treatments. The support letters demonstrated that the Applicant's relationships with her friends and her aunt are very strong and have spanned continents in the past. The Officer stated that it would be surprising if this tight knit group would not continue to assist the Applicant should she return to the Philippines. Further, that the evidence demonstrated that the Applicant would be required to pay for at least some of the dialysis treatments in the Philippines, but perhaps not all. However, even if the state did not cover any of the costs, the Applicant, her church friends in Canada and/or in combination with family support in the Philippines, would be asked to pay less than is currently being paid to support the Applicant's medical care in Canada.

[13] The Officer noted that the Applicant's situation is unfortunate; however, given that treatment for her illness is available in the Philippines, there was no need for her to remain in Canada. Further, that taken cumulatively, the Applicant's ties to Canada versus the Philippines; the fact that treatment is available in the Philippines; and, that the refusal of her application for permanent residence would not result in the cutting off of access to a subsidized medical scheme which she has become accustomed to, the Officer was not satisfied that there were sufficient H&C considerations to warrant an exemption to the Applicant's medical inadmissibility.

[14] The Officer also declined to grant a temporary resident permit but that decision is not the subject of this judicial review.

Issues and Standard of Review

[15] In my view, the issues raised by the Applicant all fall within the question of whether the Officer rendered a reasonable decision. The standard of review applicable to the decision of an H&C officer has previously been determined to be reasonableness (*Basaki v Canada (Citizenship and Immigration)*, 2015 FC 166 at para 18 ("*Basaki*"); *Richard v Canada (Citizenship and Immigration)*, 2016 FC 1420 at para 14).

Applicant's Position

[16] The Applicant submits that the Officer misunderstood the evidence with respect to the health care system in the Philippines. The Philippines has a contribution based health care system, the Philippine Health Insurance Corporation or "PhilHealth". Access to benefits is

restricted to those who have paid contributions and there is also an annual ceiling on benefits. The Applicant originally submitted that the benefit ceiling for hemodialysis is 45 days per year, meaning that PhilHealth will cover only 45 treatments per year. However, in her submissions to the Officer and when appearing before this Court, she also acknowledged that PhilHealth's ceiling has risen to 90 days or treatments. PhilHealth has also created a Sponsored Program which allows individuals identified as indigent to receive medical coverage regardless of lack of contribution to the program. Once enrolled in the Sponsored Program, such persons are able to access the same coverage as regular contributing members. The Applicant would most likely fall into this category given her inability to work and pay into PhilHealth.

[17] The Applicant submits that a reading of the Officer's reasons suggests that the Officer was under the impression that being in the Sponsored Program would mean getting a subsidy providing benefits over and above that which would be provided by the usual PhilHealth coverage. However, that this is incorrect. In support of this position, the Applicant submits that the Officer misunderstood an article that spoke about a P250,000 annual benefit available to members. According to the Applicant, the Officer understood this statement to mean that members will receive this amount over and above the 45 day dialysis limit, whereas that amount only reflected the monetary value of the 45 day dialysis limit provided by PhilHealth.

[18] The Applicant also submits that the Officer's conclusion as to the adequacy of PhilHealth to meet the Applicant's needs ignored her evidence that she is now also in need of parathyroidectomy surgery. The Officer failed to take into account the cost of this surgery or, in the alternative, the cost of the medical care that the Applicant will need if she is unable to get the

surgery. Nor did the Officer assess whether the Applicant would be able to access the surgery through PhilHealth considering that her dialysis treatments alone will exceed her annual benefits entitlement.

[19] The Applicant also submits that even if the Officer correctly found that she will only need $12,300 annually to cover her dialysis needs, the Officer fails to take into account the Applicant's evidence that she has no capacity to work due to her medical condition and that her family members do not have the means to support her.

[20] The Applicant submits that there is no evidentiary basis for the Officer's assumption that the Applicant's community in Canada will pay for her medical care in the Philippines. The Officer uses this speculative assumption to support the finding that the Applicant could pay for her treatments in the Philippines. Further, that the evidence indicates that the financial support she is receiving is not sufficient to cover her required surgery.

[21] The Applicant submits that the Officer's conclusion that "Cumulatively, taking into account…the fact that a refusal of her application for permanent residence would not result in cutting-off access to a subsidized medical scheme which she has become accustomed to" flies in the face of how H&C applications must be considered. It is perverse to suggest that an applicant would face minimal hardship or less hardship simply because they are already "accustomed" to such hardship. Pursuant to the Supreme Court of Canada's ruling in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*"), an H&C application should adopt the approach set out in *Chirwa v Canada (Minister of Manpower and Immigration)* (1970), 4

IAC 338 (Imm App Bd) (“*Chirwa*”) in which compassionate discretion is defined as “…those facts, established by the evidence, which would excite in a reasonable man [*sic*] in a civilized community a desire to relieve the misfortunes of another…” (*Kanthasamy* at paras 13 and 21; *Chirwa* at p 350).

Respondent’s Position

[22] The Respondent submits that the granting of an exemption under s 25 is highly discretionary and the Applicant has the onus of providing the documentation on which the determination will be based (*Bichari v Canada (Citizenship and Immigration)*, 2010 FC 127 at para 26 (“*Bichari*”); *Gomes v Canada (Citizenship and Immigration)*, 2009 FC 98 at paras 10-13).

[23] Further, the very fact that one is medically inadmissible cannot constitute the H&C grounds for granting an exemption (*Gonzalo v Canada (Citizenship and Immigration)*, 2015 FC 526 at paras 27-28 and 30 (“*Gonzalo*”)). And, where the issue is excessive demand on health services in Canada, this Court has determined that lack of access to free medical treatment in one’s country of origin is insufficient to require an exemption from the inadmissibility (*Bichari* at para 28). This Court also previously upheld a refusal to grant an H&C exemption for medical inadmissibility in similar circumstances involving an applicant with kidney disease from the Philippines and, while the treatment that that applicant required was different, it is significant that this decision was rendered prior to PhilHealth coverage being expanded to the indigent (*Voluntad v Canada (Citizenship and Immigration)*, 2008 FC 1361 at paras 19-20 (“*Voluntad*”)).

[24] The Respondent submits that, based on the evidence in the record before her, the Officer reasonably determined that the Applicant has access to subsidized treatment in the Philippines by way of the National Health Insurance Program, in combination with other government health programs. Further, that several pieces of evidence in the record speak to access to affordable hemodialysis and that PhilHealth recently implemented a “catastrophic” benefits package for members for kidney transplantation. The benefit, in the amount of P600,000, covers a variety of costs for low risk kidney transplant patients. The Respondent further notes that another article indicates that dialysis coverage under PhilHealth has been extended from 45 to 90 sessions per year.

[25] The Respondent disagrees with the Applicant’s contention that the Officer misinterpreted the Sponsored Program as additional coverage over and above the usual PhilHealth benefit and says that this is not borne out by the decision. The decision clearly acknowledges that the coverage available to the Applicant in the Philippines seems to fall short of the frequency of treatment she requires and that she would need to pay out of pocket for any “additional treatments and medication”.

[26] As to the cost of the parathyroidectomy surgery, the Respondent submits that no evidence was adduced with respect to the cost or whether it would be covered by PhilHealth. Further, there was no indication as to the urgency of the surgery. Given the Applicant’s bare assertion that PhilHealth does not cover the surgery and that the onus is on her to support her application, the Officer did not need to address the submission.

[27] The Respondent also submits that the Officer did not err in concluding that the short fall in health coverage in the Philippines could be paid by the Applicant's family and her church friends. The Applicant has not worked in Canada since 2009, has received no government funding for her treatment in Canada which costs approximately $83,000 per year, but has nevertheless been able to receive the treatment for many years. Her submission is that she "is supported financially for her medical bills and other living expenses by her family, her church community and her friends". No other evidence, including who is paying for these expenses, was provided. Nor did the letters of support suggest that the Applicant would not have the financial support of her community of friends and family if she left Canada. The Officer determined that the cost to the Applicant for her treatment in the Philippines would be approximately one sixth of the cost in Canada.

[28] The Respondent also points out that the Applicant's sworn evidence in 2011 was that her family income was insufficient to absorb the cost of treatment in the Philippines. However, that evidence must be viewed in context based on when the evidence was sworn, the coverage available at the time and the fact that the Applicant continues to suggest, even now, that she is not eligible for coverage at all. As such, the Officer did not err in finding that the network of financial support that enables her to access treatment in Canada would not be available to assist her with her access to subsidized and less costly treatment in the Philippines.

Analysis

[29] Subsection 25(1) of the IRPA is an exceptional remedy. It affords foreign nationals who apply for permanent residence from within Canada, but who are inadmissible, to have their circumstances examined and permanent residence, or an exemption from any applicable criteria or obligation of the IRPA, granted if the Minister is of the opinion that it is justified on H&C grounds. This relieves such a person, on the basis of hardship, from having to leave Canada to apply for permanent residence through the normal channels (*Shrestha v Canada (Citizenship and Immigratio*n), 2016 FC 1370 at para 11; *Rocha v Canada (Citizenship and Immigration)*, 2015 FC 1070 at para 16; *Basaki* at para 20). In this matter the Applicant seeks an exemption from s 38(1) of the IRPA, being that a foreign national is inadmissible on health grounds if their health condition might reasonably be expected to cause excessive demand on health or social services.

[30] Her inadmissibility was described in the Medical Notification:

> This 30 year-old applicant developed end-stage renal failure and needs dialysis three times a week. She is eligible for transplant. As per Dr. Tobe, nephrologist's medical report dated May 01, 2012.
>
> This health condition is such that he [*sic*] requires ongoing assessment and management by a specialist in the treatment of kidney disease. She requires dialysis in order to sustain life and eventually be a candidate for renal transplantation. These services are expensive and some are in high demand. Based upon my review of the results of this medical examination and all the reports I have received with respect to the applicant's health condition, I conclude that she has a health condition that might reasonably be expected to cause excessive demand on health services. Specifically, this health condition might reasonably be expected to require health services, the costs of which would likely exceed the average Canadian per capita costs over five years and would add to existing waiting lists and delay or deny the provision of these services to those in Canada who need and are entitled to them. She

> is therefore inadmissible under Section 38(1)(c) of the Immigration and Refugee Protection Act.

[31] As stated by the Supreme Court of Canada in *Kanthasamy*, there will inevitably be some hardship associated with being required to leave Canada, however, this alone will generally not be sufficient to warrant relief on H&C grounds (at para 23). What will warrant relief under s 25(1) will vary depending on the facts and context of each case and officers making such decisions must substantively consider and weigh all of the relevant facts and factors before them (*Kanthasamy* at paras 25 and 33; *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 33 ("*Marshall*")). Further, when assessing if relief should be granted, the term "unusual and undeserved, or disproportionate hardship" as found in the Guidelines (Citizenship and Immigration Canada, *Inland Processing*, "IP 5: Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds") is to be read holistically and as instructive and descriptive, not as limiting the officer's ability to consider and give weight to all relevant H&C considerations in the case before them (*Kanthasamy* at paras 23, 25, 31, and 33; *Horvath v Canada (Citizenship and Immigration)*, 2016 FC 1261 at paras 33-35; *Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at paras 27-28). The Supreme Court of Canada also noted that the *Chirwa* approach should be considered as co-extensive with the Guidelines (*Kanthasamy* at paras 30-31; *Marshall* at para 27).

[32] The onus is on the Applicant to provide the documentation on which this determination will be based (*Bichari* at para 26; *Bruce v Canada (Citizenship and Immigration),* 2015 FC 1049 at para 11 ("*Bruce*"); *Basaki* at para 20). The decision is highly discretionary and this Court has

held that the range of acceptable and defensible outcomes available to an officer will necessarily be quite broad (*Gonzalo* at para 11; *Bruce* at para 10).

[33] With respect to the assessment of evidence on access to medical treatment in the Philippines, there is no merit to the Applicant's submission that a review of the Officer's reasons suggests that she is under the mistaken impression that those who are eligible under the Sponsored Program will receive benefits over and above the annual PhilHealth ceiling of P250,000.

[34] The Officer's reference to the P250,000 annual ceiling arises in the context of her computation of the cost of treatment to the Applicant in the Philippines as compared to in Canada. In that regard, the Officer cites an article from the SunStar dated June 20, 2011. The Officer specifically and accurately quotes the article's description of the monthly cost of treatment for those who have end-stage kidney failure and are undergoing dialysis being that:

> Experts in kidney diseases on Monday said each patient with end-stage kidney failure who are undergoing dialysis must have at least P57,600 per month in order to survive…each dialysis session would cost from P1,800 to P3,500 and the patient must undergo that process trice [*sic*] a week…be coupled with an injectable medication that regularly costs P1,000 to P1,500 per shot, as well as the tablets that would usually cost at least P200 to P500 per day.

The Officer converted the monthly projection of P57,600 to $1600 Canadian dollars based on the Bank of Canada's conversion rate on May 16, 2016, suggesting a conversion rate of P36 for every dollar. She then noted that dialysis in Canada costs a patient approximately $83,000 per year, or $6916 per month, concluding that the cost of treating end-stage renal disease in the Philippines appears to be significantly less than in Canada.

[35] The Officer then noted, as discussed earlier in her reasons, that the Applicant may be able to qualify for subsidized care. The Officer again accurately quotes the same article as stating "each patient who is a member of PhilHealth, can avail of P250,000 per year that will be distributed in a quarterly basis". The Officer states that with this subsidy, the Applicant's annual dialysis costs in the Philippines would be reduced from P691,200 (reflecting P57,600 multiplied by 12 months) to P331,200 (reflecting P691,200 less P250,000, however as noted by the Respondent, this is a typographical error, as this amount should actually have been P441,200). The Officer then states that this would roughly be $12,300. This figures confirms the typographical error as, utilizing the accurate out-of-pocket expense of P441,200 divided by P36 results in $12,300. The reasons contain nothing that would indicate that the Officer was suggesting that the 45 dialysis sessions are over and above the P250,000 annual ceiling. Nowhere does the Officer even raise the 45 dialysis sessions in this computation and it is evident that the Officer engaged in this numerical exercise in order to establish what the actual cost would be to the Applicant, with or without insurance. I see no basis for the Applicant's allegation of a misunderstanding.

[36] The Applicant also submits that the Officer erred by ignoring her evidence that she is in need of parathyroidectomy surgery, as described in a letter from Dr. Naimark dated August 5, 2015. That letter states that the Applicant is suffering from a common complication of end-stage renal disease, hyperparathyroidism. This condition may be suppressed with medication but, if this fails, patients are sent for parathyroidectomy surgery. Dr. Naimark states that the Applicant is at the point where surgery is required. However, because she does not have health insurance she cannot have the surgery. The purpose of his letter is stated to be to advise

that the delay in obtaining her landed status also delays the obtaining of health benefits and that this is having a significant impact on the Applicant's health. Dr. Naimark does not specify what these impacts are but notes that without parathyroidectomy the Applicant is at risk for debilitating bone fractures and vascular complications such as stroke, myocardial infarction and peripheral vascular disease. Accordingly, he requests that her case be resolved without delay.

[37] Given this evidence, I am not persuaded by the Respondent's submission that there was no indication as to the urgency of the surgery. In my view, Dr. Naimark's remark that the Applicant is past the point where medication can address the condition implies a degree of urgency. However, the Respondent does correctly point out that the Applicant did not provide any evidence to substantiate that this surgery is not available in the Philippines, through PhilHealth or otherwise. In that regard, a PhilHealth advisory dated 2011 entitled "No Balance Billing (NBB) Policy is for Sponsored Program Members Admitted in Government Hospitals", indicates that a sponsored member would be covered for the cost of a "Thyroidectomy" in the amount of P31,000 which suggests that the procedure is available and its cost would at least be partially covered by PhilHealth.

[38] Further, in her reasons the Officer did reference the Applicant's counsel's submission as to the potential additional cost of parathyroidectomy. This was limited, however, to the statement that the expansion of dialysis from 45 sessions to 90 sessions per year would "not cover the cost of additional treatments that Ms. Orbizo requires, including parathyroidectomy".

[39] In my view, as the Applicant did not establish that her medical needs cannot be met in the Philippines, the Officer did not err in her conclusion in that regard. The Applicant's real concern is the cost of obtaining those services, which she asserts will result in hardship because she does not have the means to afford them. Specifically, that the maximum available annual benefit of P250,000, which may be available to her by way of the Sponsored Program, will be wholly exhausted by twice weekly dialysis sessions. Therefore, the cost of the additional dialysis, parathyroidectomy or any other medical services she may require above this amount will be at her own expense.

[40] The Officer recognized that, even with PhilHealth, the Applicant would be exposed to out-of-pocket expenses for her medical care in the Philippines, but found that these would be significantly lower than in Canada. I would note that it has previously been held by this Court that, even if an applicant were required to pay a subsidized price for medication, this would not be a basis on which an H&C decision would be found to be unreasonable. This is because the standard on an H&C application "cannot be whether the applicants will get better or more affordable treatment in Canada, because if this were the case, virtually all medically inadmissible persons would be entitled to stay" (*Bichari* at para 28).

[41] However, when addressing the Applicant's lack of means to address this shortfall, the Officer found that it would be surprising if the Applicant's church community in Canada would not continue to help her if she returned to the Philippines, particularly as her annual medical costs would be significantly less there. The Applicant submits that there was no evidentiary basis for this assumption. This is true. What is known is that this kind and devoted group has,

for more than 7 years, found it in their hearts and pockets to provide for some or all of the Applicant's expenses. In my view, the Officer drew an unfounded and speculative inference that the Applicant's Canadian church group would continue to financially support her if she were to return to the Philippines (*Nicayenzi v Canada (Citizenship and Immigration)*, 2014 FC 595 at paras 34-35; *Lopez Arteaga v Canada (Citizenship and Immigration)*, 2013 FC 778 at para 28; *Ukleina v Canada (Citizenship and Immigration)*, 2009 FC 1292 at para 8). The record contains no evidence that the church group in Canada, or for that matter any other individual or entity, would continue to pay for the Applicant's medical expenses, which the Officer found would be $12,300 annually at a minimum, should she return to the Philippines. In my view, the Officer's unreasonable inference in this regard also suggests that the Officer may not have been considering the H&C grounds that were raised in a broader sense, as she was required to (*Marshall* at para 33).

[42] In her affidavits of May 20, 2011 and May 12, 2013, the Applicant states that her family has little money and that their income in the Philippines would not be adequate to pay for her dialysis. In her affidavit of March 17, 2015 she states that neither she nor anyone in her family could afford to pay for her dialysis and that her husband is barely able to support himself as a rickshaw driver.

[43] Given that the Officer acknowledged that there would be a shortfall of available subsidized medical care, the Applicant's evidence on the record that she and her family do not have the means to meet that shortfall, and, the potential consequence to the Applicant's health which could arise from the unreasonable inference that this cost would be paid by the

Applicant's Canadian church group, presumably for an indefinite period of time, the matter must be returned for reconsideration.

[44] I would also note that the Officer found, based on the written submissions of the Applicant's counsel, that the Applicant's Canadian church group, friends and family have been paying her living and medical expenses (dialysis alone being $83,000 annually). However, the exact cost of her medical expenses and by whom and in what proportion they were paid is not discernable from the record. This is an area that may require further delineation upon reconsideration.

[45] Given my finding above, I need not address the submissions concerning the Officer's assessment of the Applicant's establishment in Canada, but find that it was reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted and the matter is remitted back for re-determination by a different H&C officer;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Swathi Visalakshi Sekhar	FOR THE APPLICANT
Bernard Assan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Swathi Visalakshi Sekhar Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT