Federal Court  Cour fédérale

Date: 20180430

Docket: IMM-3556-17

Citation: 2018 FC 461

Ottawa, Ontario, April 30, 2018

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

JOMANA ESAHAK-SHAMMAS
DANIEL SHAMMAS
MARK SHAMMAS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are Jomana Esahak-Shammas ("Principal Applicant") and her twin four year old sons, Daniel and Mark Shammas ("Minor Applicants"). The Principal Applicant is a dual citizen of Syria and Grenada and her sons are citizens of Grenada with citizenship rights in Syria. In 2006 the Principal Applicant entered into an arranged marriage in Syria with Edward Shammas. Following the marriage, she moved to Grenada where her husband resided.

Their sons were born in 2013. On August 23, 2015, the Applicants entered Canada and on October 29, 2015, they sought refugee protection. The Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") rejected the Applicants' claim on February 17, 2016. The Applicants appealed the RPD's decision to the Refugee Appeal Division ("RAD") of the IRB, which dismissed the appeal on July 5, 2016. As requested by and with the consent of the parties on November 15, 2016, this Court granted judicial review of and quashed the RAD's decision. The appeal of the RPD decision was dismissed by a different RAD panel on May 3, 2017. On October 14, 2016, the Applicants submitted a humanitarian and compassionate ("H&C") application for permanent residence. The Officer denied the Applicants' H&C application in a letter dated August 10, 2017, which decision is the subject of this judicial review.

Decision Under Review

[2] The Officer referenced the findings of the RPD and the initial RAD decision of July 5, 2016 and noted that the RPD had determined that the Applicants were not Convention refugees or persons in need of protection and its finding that, even if the RPD had believed all of the evidence submitted by the Applicants, which was not the case, they had failed to establish that state protection would not be available to them and they had not sought to avail themselves of such protection. Further, the RAD dismissed the Applicants' appeal, finding that there was adequate state protection in Grenada and that there was insufficient evidence that the Principal Applicant's husband, from whom she was separated, would seek her out and harm her or the children should they return to Grenada. The Officer did not refer to the RAD's

redetermination of May 3, 2017, a copy of which is not found in the certified tribunal record ("CTR").

[3] The Officer stated that regardless of the RPD and RAD findings, he or she had reviewed the current documentary evidence on country conditions in Grenada and referenced the Grenada 2016 Human Rights Report, Country Reports on Human Rights Practices for 2016, United States Department of State ("US DoS Report"), which described the laws in Grenada that prohibit domestic violence and stated that police and judicial authorities usually acted promptly in such cases. Further, a shelter for battered and abused women and their children operated in the northern part of the country and was staffed by medical and psychological counselling personnel. The Officer concluded that the documentary evidence established that while domestic violence is a serious concern in Grenada, as it is in many countries, the Applicants could seek the assistance of the police, the judicial system or the shelter, should the need arise.

[4] Regarding establishment, the Officer noted that the degree of establishment demonstrated by the Applicant's evidence was not significant given the length of time they resided in Canada. Further, there was insufficient evidence that the Principal Applicant would be denied employment or treated unfairly based on her gender or that she would be unable to reasonably seek or obtain employment in Grenada.

[5] The Officer also considered a psychiatric report from Dr. Parul Agarwal, which diagnosed the Principal Applicant with severe chronic post-traumatic stress disorder ("PTSD"), severe chronic major depressive disorder, and battered women's syndrome. Dr. Agarwal's

clinical assessment found the Principal Applicant required treatment in the form of anti-depressant medication and individual therapy. Based on the documentary evidence indicating that a shelter for battered women in Grenada was staffed with medical and psychological counselling personnel, the Officer found there was insufficient evidence that the Principal Applicant would be unable to access or would be denied psychological assistance in Grenada should she require it. Nor did differences in living standards between Canada and other countries provide grounds for H&C relief under s 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

[6] As to the best interests of the children, the Officer noted the Minor Applicants are 4 years old, and therefore it was reasonable that they lack awareness to distinguish and/or decipher their surroundings whether they are in Canada or Grenada. Further, because of their young age, they are more resilient and adaptable to changing situations as they have not yet started in the school system or established friendships that, if severed, would be contrary to their best interests. While leaving Canada would be difficult, they would do so with their mother and their best interests would be met if they continued to benefit from the personal care and support of their mother. As such, returning to Grenada would not have a significant negative impact on the best interests of the children.

[7] The Officer was not satisfied that the Applicants had established that a positive exemption was warranted on H&C grounds. The Officer did not assess risk of return to Syria as he or she had concluded that the Applicants were able to return to Grenada.

Issues and Standard of Review

[8] In my view, the issues can be framed as follows:

1. As a preliminary matter, is the affidavit of Dr. Agarwal, sworn on February 5, 2018, ("Agarwal Affidavit") and the transcript of cross-examination on that affidavit, admissible?
2. Did the Officer err in his or her treatment of the psychiatric report?
3. Did the Officer err in his or her analysis of the best interests of the children?

[9] It is well-established that the reasonableness standard of review applies to an officer's H&C decision as this raises questions of mixed fact and law. Under that standard, the Court is concerned with the existence of justification, transparency, and intelligibility within the decision-making process and also with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 ("*Dunsmuir*")).

Issue 1: Is the Agarwal Affidavit and the transcript of cross-examination on that affidavit, admissible?

[10] By way of background, the Applicants filed the Agarwal Affidavit on February 8, 2018, in support of this application for judicial review. In response, the counsel for the Respondent advised that he intended to cross-examine Dr. Agarwal on her affidavit. Subsequently, counsel for the Applicants advised that she did not intend to rely on the affidavit, having realized that it was irrelevant. Regardless, counsel for the Respondent proceeded with the cross-examination. At the outset of the cross-examination, counsel for the Applicants stated her continued objection to proceeding with the cross-examination on the basis that as the matters contained in the

Agarwal Affidavit are irrelevant as they were not before the Officer when he made the H&C decision.

[11] In this application for judicial review, the Applicants submit that the Agarwal Affidavit and subsequent cross-examination should be struck from the record because only material that was before the decision-maker should be considered, unless the evidence supports arguments addressing procedural fairness or general background information (*Ochapowace First Nation v Canada (Attorney General)*, 2008 FCA 920 at paras 9-10; *Abbott Laboratories Ltd v Canada (Attorney General)*, 2008 FCA 354 at para 37).

[12] The Respondent submits that the Applicants did not indicate they wished to withdraw the Agarwal Affidavit. Rather, counsel for the Applicants stated that she had decided not to rely on the affidavit. The Respondent submits that this is qualitatively different from withdrawing an affidavit and if the Applicants intended to withdraw the Agarwal Affidavit they should have obtained an order from this Court permitting them to do so. The Respondent takes the position that the Agarwal Affidavit and cross-examination are admissible as they provide background context to the "immigration mental health assessment" (*Pinto v Canada (Minister of Citizenship and Immigration)*, 2013 FC 349).

[13] This is a very unusual circumstance in which the Applicants seek to strike out a supplemental affidavit which they filed, subsequent to leave being granted, and the Respondent opposes that position. In my view, the question is simply whether the supplemental affidavit – and therefore, the cross-examination – is admissible?

[14] The jurisprudence is clear and consistent in dealing with new evidence on judicial review. As stated by Justice Stratas in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 11 ("*Assn of Universities and Colleges*"), as a general rule, the evidentiary record before a reviewing court on judicial review is restricted to the evidentiary record that was before the decision-maker. Evidence that was not before the decision-maker and that goes to the merits of the matter is, with certain limited exceptions, not admissible. Justice Stratas listed three such exceptions and noted that the list may not be closed. The exceptions are an affidavit that: provides general background in circumstances where that information might assist the court in understanding the issues relevant to the judicial review; brings to the attention of the reviewing court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, so that the judicial review court can fulfil its role of reviewing for procedural unfairness; or, highlights the complete absence of evidence before the administrative decision-maker when it made a particular finding (*Assn of Universities and Colleges* at paras 19-20).

[15] Justice Stratas revisited the general rule in *Bernard v Canada (Revenue Agency)*, 2015 FCA 263, referencing the Federal Court of Appeal's prior decisions in *Assn of Universities and Colleges*, *Connolly v Canada (Attorney General)*, 2014 FCA 294, and *Delios v Canada (Attorney General)*, 2015 FCA 117, and elaborated on the three recognized exceptions. As to the background information exception, the background information placed in an affidavit is not new information going to the merits. Rather, it is just a summary of the evidence relevant to the merits that was before the administrative decision-maker. Further, the purpose of the

background information exception is to assist the Court's task of reviewing the administrative decision by identifying, summarizing and highlighting the evidence most relevant to that task.

[16] Here, because the Agarwal Affidavit was not before the Officer, it is not admissible on that basis. While the Agarwal Affidavit is brief, 8 paragraphs, it does contain new information concerning the psychiatric report, such as an explanation as to why Dr. Agarwal was unable to prescribe medication or provide ongoing therapy, and other matters which were not before the Officer. As the affidavit is not admissible, the cross-examination of Dr. Agarwal arising from that affidavit is also inadmissible. And, contrary to the Respondent's submissions, the Agarwal Affidavit, and even more so the cross-examination, do not fall within the background information exception. Rather, the evidence provided and elicited included new information going to the merits of the Applicants' claim that the mental health of the Principal Applicant warranted an H&C exception, as supported by the psychiatric report. It also added information as to Dr. Agarwal's professional background, practice, and her instructions. The affidavit was not a summary of the evidence relevant to the merits that was before the Officer. And while some information in the affidavit, such as Dr. Agarwal's educational and professional history, could be viewed as background information, this was not necessary to the Court's understanding of the issues.

[17] In fact, the Agarwal Affidavit appears to be aimed at addressing arguments raised by the Respondent. In particular, although Dr. Agarwal diagnosed the Principal Applicant with PTSD, major depressive disorder, and battered women's syndrome, and stated that she needed treatment in the form of anti-depressant medication and individual therapy in order to begin the process of

healing from her abusive experiences, the report did not indicate that the Principal Applicant had been prescribed medication or scheduled for therapy. The Respondent's written submissions included the position that Dr. Agarwal's inaction in this regard strongly suggested that the Principal Applicant's mental health was not as compromised as her report indicated. However, this was not a concern raised by the Officer in his or her reasons. Accordingly, I also agree with the Applicants that the Agarwal Affidavit is not relevant as it largely responds to positions put forward in argument by the Respondent but which are not raised, explicitly or implicitly, in the Officer's reasons.

Issue 2: Did the Officer err in his or her treatment of the psychiatric report of Dr. Agarwal?

Applicants' Position

[18] The Applicants submit the Officer failed to properly consider and made no finding on the impact that removal from Canada would have on the Principal Applicant's mental health. The psychiatric report included the above diagnosis, the required treatment and stated that the Principal Applicant needs to feel safe and stable in order to benefit from treatment and that the threat of being returned to Grenada, where she believes her abusive husband will have easy access to her and her children, is re-traumatizing her. Further, that forcing her to leave Canada will disrupt her tenuous sense of safety and stability and is not in her or her children's best interests. The Applicants submit that the Officer erred by limiting his or her hardship analysis to whether treatment is available in Grenada, as he or she was also required to consider the effect of removal on the Principal Applicant's mental health. Given that the Officer's reasons are

completely silent on this critical issue, the Court cannot "connect the dots" and provide the reasons that were not given.

[19] In reply submissions the Applicants state, amongst other things, that the Respondent's submissions did not address this issue, but instead attack the psychiatric report itself in an attempt to buttress the Officer's reasons, which raised no such concerns. Further, while the Respondent attempts to undermine the psychiatric report because it relies on self-reported symptoms, the Supreme Court of Canada has recognized that psychological reports will necessarily rely on some degree of hearsay (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 49 ("*Kanthasamy*")).

Respondent's Position

[20] The Respondent submits there are two fundamental weaknesses in the psychiatric report. First, it was based solely on the Principal Applicant's account of domestic violence, resulting in a diagnosis of battered women's syndrome. Yet the RPD found the Principal Applicant embellished her assertions about being subjected to ongoing domestic violence and no evidence has been provided to undermine that finding. If the Principal Applicant's allegation of experiencing ongoing domestic violence has a tenuous evidentiary basis, then the psychiatric report diagnosing conditions on these facts cannot be accepted as accurate. Second, the psychiatric report does not indicate whether the Principal Applicant was prescribed any medications or scheduled for individual therapy of any type. The Respondent submits that Dr. Agarwal's inaction in the aftermath of the report strongly suggests the Principal Applicant's mental health is not as compromised as the report indicated because, if it were, the

Principal Applicant would have received some type of treatment. Based on these points, the Respondent argues it was reasonable for the Officer to be unpersuaded that the Principal Applicant would necessarily suffer deleterious effects if removed to Grenada. Nor can medical reports serve as a cure-all for deficiencies in a claimant's testimony (*Egbesola v Canada (Citizenship and Immigration)*, 2016 FC 204 at para 12).

[21] Further, the psychiatric report is vague and contains no clear statement that the Principal Applicant's mental health would deteriorate if she was deported, which distinguishes it from *Kanthasamy*. This, together with the Applicants' failure to provide sufficient evidence to demonstrate that the Principal Applicant could not be treated in Grenada, led the Officer to refuse the application.

[22] The Respondent also submits that it is arguable that an officer who does not positively weigh an applicant's diagnosed mental health illness, that would deteriorate if the applicant were returned to their country of origin, is not necessarily questioning the diagnosis. Instead, depending on the circumstances, the officer may be questioning whether the applicant wants to recover from their illness. That is, by taking no steps to obtain readily available treatment in Canada, the Respondent queries if an applicant should be able to use the fact of their diagnosed disease as a basis to receive a positive H&C, which is what the Applicants are seeking the Court to sanction in this case. The Respondent also submits that it was not unreasonable for the Officer not to weigh the Principal Applicant's diagnosed "but intentionally untreated" mental illness as a positive factor when deciding whether to grant her an exemption from applying for permanent residence from within Canada. This was not a surreptitious way of undermining the diagnosis.

[23] Alternatively, should the Court find that Dr. Agarwal's report implicitly stated that the Principal Applicant's mental health would deteriorate if she were returned to Grenada, then the language of the report and Dr. Agarwal's subsequent inaction in assisting the Principal Applicant was reasonably interpreted by the Officer as meaning that while the Principal Applicant's mental health might not be able to improve from its present state, regardless of whether she received treatment or not, it would not necessarily deteriorate. Thus, she could be removed.

[24] The Respondent also submits Dr. Agarwal's report drifts from expert opinion into immigration advocacy on behalf of the Principal Applicant which this Court has warned against.

Analysis

[25] Although a great deal has been said about this issue, it is clear from the Officer's reasons that he or she did not explicitly address the issue of the impact removal would have on the Principal Applicant's mental health. The Officer acknowledged the stated diagnosis and the required treatment. The Officer also acknowledged the submission by counsel for the Applicants that there is very little information on the availability of mental health care in Grenada and that the existing information suggested that it was extremely limited. The Officer's analysis was that the documentary evidence indicated that a shelter for battered women and their children operated in the northern part of Grenada and was staffed by medical and psychological counselling personnel. As such, there was insufficient evidence before the Officer that the Principal Applicant would be unable to access or would be denied psychological assistance in Grenada, should she require it.

[26] Thus, the Officer acknowledged the psychiatric report without taking issue with its diagnosis, content, finding of required treatment or otherwise. Accordingly, and as the Applicants submit, if the Officer accepted the psychiatric report and if it spoke to the effect of removal from Canada on the Principal Applicant's mental health, then the Officer was obligated to consider this in his or her analysis (*Kanthasamy* at paras 47-48). This Court has held that when psychological reports are available and indicate that the mental health of applicants would worsen if they were to be removed from Canada, then an officer must analyze the hardship that applicants would face if they were to return to their country of origin. In that circumstance, an officer cannot limit the analysis to a determination of whether mental health care is available in the country of removal (*Sutherland v Canada (Citizenship and Immigration)*, 2016 FC 1212 at paras 21-22 ("*Sutherland*"), referencing *Kanthasamy* at para 48; *Davis v Canada (Citizenship and Immigration)*, 2011 FC 97 ("*Davis*") at para 19; *Jang v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 996 at para 32 ("*Jang*"); *Francis v Canada (Citizenship and Immigration)*, 2016 FC 1366 at paras 14-15 ("*Francis*"); *Cardona v Canada (Citizenship and Immigration)*, 2016 FC 1345 at paras 25-26 ("*Cardona*")).

[27] In *Sutherland*, Justice Gascon stated:

> [20] In the present case, the uncontradicted psychological evidence before the Officer showed that, similarly to the *Kanthasamy* case, returning Ms. Sutherland to Grenada or St. Vincent would exacerbate her mental health problems and that her mental health condition would suffer if she were removed from Canada. The reports expressly discussed why Ms. Sutherland's condition would deteriorate if she was to be removed, and the Officer acknowledged the two medical diagnoses. In such circumstances, it was not enough for the Officer to simply look at the availability of mental health care in Grenada or St. Vincent. The Officer needed to expressly take into consideration "the effect

> of removal from Canada would be [on her] mental health" (*Kanthasamy* at para 48).

[28] The difficulty here is that Dr. Agarwal's report does not explicitly state that the Principal Applicant's mental health would deteriorate if she were removed from Canada. It indicates a list of stressors, ranging from having grown up as a woman in a very patriarchal and conservative society to concern about removal from Canada. It also states that her uncertain status in Canada is the most significant maintaining factor for her symptoms of PTSD and major depressive disorder. Further, in addition to anti-depressants and therapy, the Principal Applicant needs to be able to feel safe, and stable, in order to benefit from treatment. The threat of being forced to return to Grenada, where she believes her ex-husband will have easy access to her and her children, and where all her traumatic memories lie, serves to re-traumatise her over and over. The report refers to unspecified trauma literature which suggests that sufferers of PTSD cannot begin the work of healing from their traumatic experiences unless the threat of being returned to the place where the index trauma happened is removed on a permanent basis. It concludes that forcing the Principal Applicant to leave Canada would disrupt the tenuous sense of safety and stability that she has achieved, which is not in her, or her children's, best interests.

[29] This is to be contrasted to *Kanthasamy* where the psychiatric report stated that events that evoke elements of past trauma could trigger the re-emergence of the applicant's conditions and due to "a realistic and imminent threat to his safety, it is most likely that [Mr. Kanthasamy's] condition [would] further deteriorate psychologically if [he] were to be deported" (*Kanthasamy* at para 76); to *Francis* where the psychologist's evidence was that "[i]f refused permission to stay in Canada, her condition will deteriorate (e.g. possible major depressive episode)" (*Francis*

at para 14); and, to *Davis* where the contradicted expert evidence was that the applicant would be at risk of a complete emotional breakdown if she were forced to return to St. Vincent, which could well result in her becoming suicidal (*Davis* at para 19). Similarly, it can be distinguished from *Jang* where the evidence of two psychiatrists both identified very serious concerns with respect to the impact that the applicant's removal would have on her mental health. There both doctors raised the concern that the stress of her removal to a country where the applicant believed her life to be at risk may cause her to become acutely suicidal (the Court went on to note that having discounted the probative value of the two psychiatric opinions, however, the officer in that case had never come to grips with this evidence (at para 31)). And, from *Cardona* where the officer acknowledged that if removed the female applicant's risk of suicide would increase (at para 25).

[30] While the Applicants urge that it is implicit from Dr. Agarwal's opinion that the Applicant's mental health will deteriorate if she is returned to Grenada, I am not convinced that this was implicit. I am also not convinced that it was the role of the Officer, or that it is the role of the Court, to attempt to interpret professional opinions so as to determine their implicit meaning. In my view, in the absence of a clear finding by the psychiatrist that return to Grenada would cause the Principal Applicant's mental health to deteriorate, the Officer did not err in failing to consider the impact on the Principal Applicant's mental health if she were removed from Canada.

[31] And, while the Respondent also disputes the probative value of Dr. Agarwal's opinion, I note that none of the arguments made by the Respondent were raised by the Officer in his or her

decision. The Officer referred to the RPD and initial RAD findings and then said, nonetheless, he or she had considered current country conditions in Grenada pertaining to domestic violence and how they apply to the Applicants and proceeded with the analysis. Thus, while the Respondent submits that Dr. Agarwal relied on erroneous facts in light of the RPD and RAD decisions, and that because there is no evidence that the Principal Applicant was prescribed medication or provided therapy this suggests that her mental state was not as portrayed and the psychiatric report is therefore inaccurate, these and other issues raised by the Respondent are simply not a part of the Officer's reasons, explicitly or implicitly.

[32] Further, although the Respondent argued in its written submissions that because there was no evidence that the Principal Applicant had been prescribed the required anti-depressant medication and had not undertaken therapy, this suggested that she had intentionally not sought this treatment to enhance her claim and, in effect, that Dr. Agarwal facilitated this by her inaction in not providing the treatment, not only did the Officer not make such suggestions, there was absolutely no evidence to support this surmise. And while the Agarwal Affidavit and cross-examination transcript are not admissible, I feel it is important to state that they do not support this conjecture.

[33] There are concerns that arise from the very prevalent practice of applicants providing reports of psychologists and psychiatrists generated on the basis of one brief meeting, often on the eve of an immigration proceeding, and in the absence of any prior documented history of mental health concerns. And, in this case, there may well have also been questions that could have been raised about the probative value of the psychiatric report given the RAD's decision.

However, the Officer did not raise such concerns as the basis of his or her decision and it is not open to the Respondent to supplement the reasons of the Officer (*Aria v Canada (Citizenship and Immigration)*, 2013 FC 324 at para 24; *Xiao v Canada (Minister of Citizenship and Immigration)*, 2009 FC 195 at para 35).

Issue 3: Did the Officer err in his or her analysis of the best interests of the children?

Applicants' Position

[34] The Applicants submit that by simply concluding the Minor Applicants were too young to understand whether they were in Canada or Grenada and would adjust to life in Grenada with their mother's support, the Officer failed to identify and analyze the children's best interests which warrant a singularly significant focus and perspective. The Officer failed to properly identify and assess the best interests of the children which required comparing the different outcomes should the Minor Applicants remain in Canada with their mother or return to Grenada. In all but rare cases, the best interests of the child will favour non-removal. Further, concluding that the best interests of the children would continue to be met if they remained in the care of their parent is an insufficient analysis. The Officer did not consider if the best interests of the children favoured non-removal from Canada or the hardship they would suffer if required to leave. The country conditions establish that Grenada is a small country with high rates of poverty and unemployment. Should the Minor Applicants be forced to return to Grenada, they will not enjoy access to education, health care, and social services comparable to Canada. Nor did the Officer consider the Applicants' evidence concerning their lack of connections and social supports in Grenada where they would be homeless if returned.

[35] The Officer also failed to adequately address Dr. Agarwal's psychiatric report and to assess how the deterioration of the Principal Applicant's mental health would affect the children's interests. According to the Applicants, Dr. Agarwal's report also directly contradicts the Officer's findings that at 4 years old the Minor Applicants lack the awareness to distinguish whether they are in Canada or Grenada and are more resilient and adaptable due to their young age.

Respondent's Position

[36] The Respondent submits the mere fact that a minor in Canada might be advantaged by having his illegally resident parents remain in Canada is not, in and of itself, sufficient to substantiate an H&C claim. Rather, the Officer must consider this and other factors and assign it appropriate weight. Nor can being better off in Canada in terms of general comfort and future opportunities be conclusive of the H&C decisions, which are intended to assess undue hardship. An objective view of the Officer's reasons indicates the Officer found that the best interests of the Minor Applicants were to be with their mother. The fact they would have access to more comprehensive social services in Canada than in Grenada is not a valid basis for a positive H&C assessment.

Analysis

[37] The Supreme Court of Canada revisited the analysis an officer must engage in when considering the best interests of a child in the context of an H&C application in *Kanthasamy*. When discussing s 25 of the IRPA generally, the Supreme Court of Canada stated that there will

inevitably be some hardship associated with being required to leave Canada but that this alone will generally not be sufficient to warrant relief on H&C grounds (*Kanthasamy* at para 23). What will warrant relief will vary depending on the facts and context of the case, but officers making H&C determinations must substantively consider and weigh all of the relevant facts and factors before them (*Kanthasamy* at para 25). As to the requirement under s 25(1) to take into account the best interests of a child directly affected, the Supreme Court of Canada stated that the best interests principle is highly contextual because of the multitude of factors that may impinge on the child's best interests. It must therefore be applied in a manner responsive to each child's particular age, capacity, needs, and maturity. The decision-maker should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them (*Kanthasamy* at para 38, referencing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74-75 ("*Baker*")). A decision under s 25(1) will be unreasonable if the interests of children affected by the decision are not sufficiently considered. This means that decision-makers must do more than simply state that the interests of a child have been taken into account, those interests must be well identified and defined, and examined with a great deal of attention in light of all the evidence. And where the legislation specifically directs that the best interests of a child who is directly affected be considered, those interests are a singularly significant focus and perspective (*Kanathsamy* at paras 23-25, 35, 38 and 39-41).

[38] However, and contrary to the Applicants' submissions, there is no specific formula, approach, or precise analytical method prescribed or required when conducting a best interests of the child analysis or to demonstrate that the officer has been alert, alive and sensitive to those

interests as required by *Baker* (*Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at paras 23-27; *Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at para 25; *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at para 7 ("*Hawthorne*")). Nor do I agree with the Applicants' suggestion that *Hawthorne* stands for the proposition that all best interests assessments must state that they start from the position that the best interests of the child favors remaining in Canada and that the outcome will almost always favour non-removal. Rather, as stated in *Chandidas v Canada (Citizenship and Immigration)*, 2013 FC 258, an officer is presumed to know that living in Canada would offer the child opportunities that they would not otherwise have and that to compare a better life in Canada to life in the child's home country cannot be determinative of a child's best interests as the outcome would almost always favor Canada (at para 64; *Garraway v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 286 at para 46 ("*Garraway*")). This means that in most cases officers need not conduct an explicit analysis of whether children's best interests favor remaining in Canada, as it is assumed that they would.

[39] In my view, the Officer reasonably identified and considered the best interests of the children in light of the Minor Applicants' very young age, limited establishment in Canada, and dependence on their mother. Although perhaps ill-stated, the Officer addressed the perspective of the Minor Applicants when assessing the best interests of the children, noting that they have not yet started school or established friendships that, if severed, would be contrary to their best interests. The Officer acknowledged that the Minor Applicants may experience difficulty leaving Canada, but found that they were at a very adaptable age and would be supported by their mother. Based on the evidence before him or her, the Officer was not satisfied that

returning to Grenada would have a negative impact on the children's best interests and that those interests would be best met if the children continued to benefit from the care of their mother in Grenada. In his or her overall analysis the Officer also considered, but rejected, the Principal Applicant's submission that she would be unable to find employment to support herself and the children.

[40] The Applicants' submissions as to school and education pertain to the Minor Applicants being afforded a higher standard of living in Canada in terms of general comfort and future opportunities and, as such, are not conclusive of the H&C decision (*Vasquez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 91 at paras 41-45; *Sanchez v Canada (Citizenship and Immigration)*, 2015 FC 1295 at para 18; *Garraway* at para 38). Further, relocating to another country will, in the normal course, create a degree of upheaval in the life of a child which is also not, in and of itself, determinative of an H&C decision (*Schleicher v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 482 at paras 53-54).

[41] As to Dr. Agarwal's psychiatric report, this was not directed at the mental health of the children. It makes the general statement that child development literature has established that children need a sense of stability, safety, and nurturance during their early years, in order to learn how to regulate their feelings and behaviours. These early years are also important in terms of laying down templates of future relationships. Instability and chaos in early life is a significant risk factor for the future development of mental health issues like depression, anxiety, substance abuse, and suicidality not only in adolescence but into adulthood. Dr. Agarwal states that it is evident from the Principal Applicant's history that her children have already experienced

significant chaos and instability in their lives. However, Dr. Agarwal does not suggest that this past chaos is having an actual impact on them now, or that removal to Grenada will result in or will worsen mental health concerns.

[42] In the following paragraph of her report, Dr. Agarwal speaks of the Principal Applicant and states that she needs to feel safe and stable not only for herself but for her children to benefit from the required treatment. She feels safe and supported, and "[f]orcing her to leave Canada, will disrupt this tenuous sense of safety and stability that Jomana has worked so hard to achieve, and this is not at all in her or her children's best interests". However, this would not appear to be a medical opinion as regards to the Minor Applicants and, as I noted above, the report does not address impact on the mental health of the Principal Applicant if removed from Canada.

[43] While the Officer's best interests of the child analysis was brief, given the limited evidence that was before him or her, I am satisfied that the Officer was alert, alive and sensitive to the best interests of the Minor Applicants and that the decision was reasonable.

[44] Before concluding, I note that when appearing before me and in the Applicants' written materials, counsel for the Applicants asserted that the RAD redetermination remained outstanding. Accordingly, the factual basis to the Applicants' claim, which the RPD and RAD had not accepted, could not be used to challenge the probative value of the psychiatric report. Subsequent to the hearing, counsel for the Applicants advised the Court that, in fact, the RAD redetermination had been issued on May 3, 2017. The RAD refused the appeal and upheld the RPD's decision. I note that the Officer, in his or her reasons, referenced only the July 5, 2016

RAD decision and that the subsequent redetermination was neither referenced nor found in the CTR. Given the Officer's reasons, the RAD redetermination does not affect my decision on judicial review.

[45] Viewed in whole, the decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and the law (*Dunsmuir* at para 47).

JUDGMENT IN IMM-3556-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3556-17
STYLE OF CAUSE:	JOMANA ESAHAK-SHAMMAS ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 27, 2018
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	APRIL 30, 2018

APPEARANCES:

Lorne Waldman Deborah Rachlis	FOR THE APPLICANTS
Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT