

Federal Court



Cour fédérale

**Date: 20200214**

**Docket: IMM-2430-19**

**Citation: 2020 FC 251**

**Ottawa, Ontario, February 14, 2020**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**JARVIS WALTERS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Jarvis Walters (the “Applicant”) seeks judicial review of the decision of an Officer (the “Officer”) not to reconsider his Pre Removal Risk Assessment (“PRRA”) application.

[2] The following details are taken from the Certified Tribunal Record (the “CTR”) and the Applicant’s affidavit filed in support of his application for judicial review.

[3] The Applicant was born in Jamaica on December 26, 1995. At the age of 15, he arrived in Canada on a visitor's visa to visit his father. When he was 16 years old, his father claimed Convention refugee status in Canada. The Applicant and his brother were included in that claim.

[4] In a decision dated January 20, 2015, the father's refugee claim was dismissed and a "no credible basis" finding was made.

[5] The Applicant, still a minor, remained in Canada with his father and brother. The Applicant was abused by his father. The physical abuse included burns resulting from the deliberate application of an iron.

[6] In 2016, the Applicant's father was deported to Jamaica. The Applicant remained in Canada without status, and a removal order was issued.

[7] In March 2018, Canada Border Services Agency arrested and detained the Applicant.

[8] On April 3, 2018, the Applicant, while in detention, submitted a PRRA application without assistance from counsel or an immigration consultant. He asserted a claim of risk in Jamaica based on his fear of abuse by his father.

[9] On May 3, 2018, the Officer refused the PRRA application on the grounds that there was insufficient evidence the Applicant would be at risk of harm by his father or face a serious possibility of persecution should he return to Jamaica.

[10] In June 2018, with the assistance of an immigration consultant, the Applicant submitted a request for reconsideration of his PRRA application.

[11] At the same time, the Applicant submitted an application on humanitarian and compassionate (“H and C”) grounds, which was rejected as it was filed via email and without fees. Important evidence for the PRRA reconsideration, consisting of photographs, was mistakenly filed with the H and C application.

[12] The Applicant was scheduled for removal on July 2, 2018. The night before his removal, he attempted suicide and was admitted to hospital.

[13] On January 29, 2019, Canada Border Services Agency arrested the Applicant a second time because he had failed to report for his removal in July 2018; he has remained in detention since that date.

[14] In a decision dated January 31, 2019, the Officer refused the Applicant’s reconsideration request, finding there was no evidence that he faced a risk of harm in Jamaica.

[15] On February 13, 2019, the Applicant, with new counsel, submitted a second request to reconsider the PRRA application.

[16] Dr. Larisa Eibisch examined the Applicant on February 11, 2019, and prepared a report. In her report, Dr. Eibisch concluded the Applicant had suffered extreme physical, mental and emotional abuse by his father, resulting in developmental delays.

[17] On February 15, 2019, a removal order against the Applicant was deferred pending reconsideration of the PRRA application. The Applicant was given the opportunity to update his PRRA application. He made two additional submissions, on March 13, 2019 and March 21, 2019.

[18] By letter dated March 26, 2019, the Officer refused the Applicant's second reconsideration request, on the grounds that the new evidence could have reasonably been available when he made his first reconsideration request, and that the new evidence related to risks previously assessed.

[19] The Applicant now submits that the decision was unreasonable because the Officer did not consider all of the evidence and the relevant circumstances.

[20] The Applicant further argues the Officer fettered his discretion when he found risk to the Applicant had previously been evaluated and that he erred in failing to assess compelling reasons pursuant to subsection 108(4) of the Act.

[21] The Minister of Citizenship and Immigration (the "Respondent") submits the Officer's decision was reasonable and made with regard to the evidence.

[22] The Respondent also argues that subsection 108(4) of the Act does not apply to the Applicant.

[23] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada said that presumptively, the standard of review of administrative decisions is reasonableness, with two exceptions: where legislative intent or the rule of law requires otherwise. Neither exception applies in this case.

[24] The Supreme Court of Canada confirmed the content of the standard of reasonableness, as set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[25] According to the decision in *Dunsmuir, supra*, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[26] In my opinion, the Officer's decision does not meet the standard of reasonableness. The Officer's decision does not show that he considered all the circumstances that are personal to the Applicant, including the impact of past physical abuse, the presence of the abuser in Jamaica and the evidence that the abuser blames the Applicant for his removal from Canada.

[27] It is not necessary for me to address the arguments about the application of subsection 108(4) of the Act.

[28] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination.

[29] There is no question for certification arising.

**JUDGMENT in IMM-2430-19**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination.

There is no question for certification arising.

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-2430-19

**STYLE OF CAUSE:** JARVIS WALTERS v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 26, 2019

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** FEBRUARY 14, 2020

**APPEARANCES:**

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FOR THE RESPONDENT

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