Federal Court  Cour fédérale

Date: 20210304

Dockets: IMM-2692-19
IMM-2693-19
IMM-2695-19
IMM-2697-19

Citation: 2021 FC 200

Ottawa, Ontario, March 4, 2021

PRESENT: Madam Justice Walker

Docket: IMM-2692-19

BETWEEN:

MICHIAS SHIFERAW SENAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2693-19

AND BETWEEN:

BROOK SHIFERAW SENAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2695-19

AND BETWEEN:

MICHIAS SHIFERAW SENAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2697-19

AND BETWEEN:

BROOK SHIFERAW SENAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This judgment addresses four applications for judicial review by two brothers, Michias and Brook Senay (Applicants), both born in Ethiopia and now living in Canada. Michias is the elder brother and is 21 and Brook is 20 years old. The Applicants seek the Court's review of four decisions (collectively, the Decisions) made by the same immigration officer (Officer): their

negative pre-removal risk assessment (PRRA) decisions (PRRA Decisions) and the refusals of their humanitarian and compassionate (H&C) decisions (H&C Decisions). The Decisions were made pursuant to section 112 and subsection 25(1), respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For ease of reference, the applications and my references to the underlying Decisions are:

1. IMM-2692-19: Michias Senay's PRRA Decision;
2. IMM-2693-19: Brook Senay's PRRA Decision;
3. IMM-2695-19: Michias Senay's H&C Decision; and
4. IMM-2697-19: Brook Senay's H&C Decision.

[3] On July 3, 2020, Chief Justice Crampton ordered that the brothers' requests for judicial review be heard concurrently on September 22, 2020 and the hearing was assigned to me. I will address the four applications in this judgment as they arise from virtually identical facts and evidence. A copy of the judgment will be placed on the Court file for each application.

[4] Briefly, neither the PRRA Decisions nor the H&C Decisions meet the standards required of a reasonable decision. The Decisions each lack adequate transparency and justification, and the applications for judicial review of the four Decisions will be allowed.

[5] The PRRA Decisions refer to the fact that Ethiopia is a democracy with improved laws protecting human rights and a functioning police and militia structure. On this basis, the Officer concluded it was reasonable to expect that state protection will be available to mitigate any exposure the Applicants may have to abuse by their father should they return to the country. She

omitted to consider the effectiveness of that protection. This omission, coupled with the Officer's ambiguous treatment of the brothers' failure to seek state protection as minors in Ethiopia, result in PRRA Decisions that lack clarity and suggest minimal engagement with the material risk at issue.

[6] The H&C Decisions do not respond to the Supreme Court's guidance regarding the exercise of the discretion contemplated by subsection 25(1) of the IRPA and, indeed, contain no reference to the *Chirwa* approach (discussed below) or the humanitarian considerations that are the *raison d'être* of the subsection.

I. Background

[7] Michias and Brook entered Canada with their mother on June 20, 2016 as minors. Their mother claimed refugee protection in Canada on her own behalf and on behalf of her sons, alleging she faced persecution as a member of the Blue Party/Semayawi Party in Ethiopia. The brothers did not assert an independent basis of persecution. The Refugee Protection Division and Refugee Appeal Division (RAD) refused the refugee claim in decisions dated November 3, 2016 and April 18, 2017. The family's application for leave and for judicial review of the RAD decision was dismissed.

[8] A removal order was issued and the Applicants' mother was removed from Canada on December 27, 2017. The brothers did not appear for their removal, also scheduled that day. In his affidavit filed in support of his PRRA application, Brook explained that they feared returning to their father in Ethiopia who is an alcoholic and subjected them to abuse prior to their departure.

[9] In October 2018, the Applicants submitted applications for permanent residence on H&C grounds on the basis of: establishment in Canada, best interests of the child (BIOC), risk of harm from their father, and adverse country conditions. The brothers stated that their mother has been missing since her removal and they would be homeless in Ethiopia because their father wanted nothing to do with them. In December 2018, the Applicants submitted PRRA applications based on the risk of serious harm in Ethiopia posed by their father.

[10] The Applicants received the negative PRRA and H&C Decisions on April 11, 2019 and filed the present applications.

[11] The brothers were scheduled for removal on July 6, 2019. They requested stays of removal based on their outstanding applications for review of the PRRA Decisions. My colleague, Justice Ahmed, granted the stay motions on July 3, 2019.

II. Issues and Standard of Review

[12] The Applicants submit that the Officer made: (1) two reviewable errors in her state protection assessment in the PRRA Decisions; and (2) a number of errors in her analysis of their establishment in Canada, the hardships they will face on any return to Ethiopia and her BIOC analysis in the H&C Decisions. The parties submits and I agree that the Applicants' submissions challenge the merits of the Decisions and must be reviewed for reasonableness, the presumptive standard of review of the merits of an administrative decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 (*Vavilov*)). None of the situations

identified by the Supreme Court in *Vavilov* for departing from the presumptive standard of review apply in these cases.

[13] A review of the Decisions for reasonableness is also consistent with the pre-*Vavilov* jurisprudence. In *Mernacaj v Canada (Citizenship and Immigration)*, 2018 FC 752 at paragraph 10, a review of a negative PRRA decision, the Court held that "[a] finding on state protection is a question of mixed fact and law and the applicable standard of review is reasonableness" (see, *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 20 at para 9). Five years prior to its decision in *Vavilov*, the Supreme Court considered at length the principles underpinning subsection 25(1) of the IRPA and confirmed that the Court's review of H&C decisions is to be undertaken against the standard of reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 (*Kanthasamy*).

[14] A reasonable decision is one that is internally coherent and logical and is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 31-32). It follows that reasonableness review begins with the decision made by the decision maker and considers whether the decision maker applied the relevant law to the facts of the case, and whether its chain of reasoning is internally coherent. The reasonableness standard requires respect and deference for the decision maker's role and findings of fact but remains a robust form of review. The person challenging the decision must satisfy the reviewing court "that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

III. Analysis

1. *PRRA Decisions*

[15] The Applicants based their PRRA applications on the risk of serious harm due to renewed abuse by their father who remains in Ethiopia. The Officer accepted the allegation as new because the brothers' 2016 refugee claim was based on their mother's claim which cited only a fear of political reprisals. The Applicants filed six letters in support of their allegation from relatives, family friends and a past live-in caregiver in Ethiopia, all of whom knew the family and spoke to the family's abusive dynamics during the pre-2016 period. The Applicants also filed a 2016 UNICEF report, *Understanding Children's Experiences of Violence in Ethiopia* (2016 UNICEF Report).

[16] The determinative issue in the Officer's assessment of the PRRA applications was the availability and effectiveness of state protection for the Applicants in Ethiopia. The brothers submit that the Officer made two errors in the PRRA Decisions: (1) by faulting them for not having sought police protection from their father's abuse when they were living in Ethiopia, even though they were then minors; and (2) by failing to reasonably consider the documentary evidence for Ethiopia, most notably the 2016 UNICEF Report.

[17] The Respondent submits that the Officer did not blame the Applicants for failing to request police assistance in Ethiopia. Rather, the Officer merely stated that they had not refuted the presumption that state protection would be available as they had not previously requested and been denied such protection. The Respondent also submits that the 2016 UNICEF Report had only limited application to the Applicants and their ability to establish a forward-looking risk of

violence from their father. They are no longer children and, in any event, stated in their PRRA applications that their father refused to have anything to do with them.

[18] The Officer's analysis of the availability and effectiveness of state protection in Ethiopia consists of a number of long citations from two documents in the National Documentation Package (NDP) for Ethiopia, a USDOS, *Country Reports on Human Rights Practices for 2017* (Ethiopia, 20 April 2018) and a Human Rights Watch, *Ethiopia, World Report 2019: Events of 2018* (January 2019). The citations describe the political structure and recent history of the country, the relationship between various levels of government and the police, military and local militias, and the government's commitment to legal reform to improve human rights protections.

[19] The Officer then sets out the Applicants' descriptions of their father's alcoholism and abuse and their fear that it would resume were they to return to Ethiopia. She identified a contradiction in the PRRA applications where the Applicants stated that they had not sought police assistance prior to their 2016 departure because nothing had happened to them at that time. The Officer expressed her concern regarding this contradiction but accepted that there may have been abuse by the father on the strength of the letters filed in support of the PRRA applications. She also acknowledged that violence against children exists in Ethiopia often at the hands of family members, referring to the 2016 UNICEF Report.

[20] The Officer cited the presumption that state protection is available in a democratic country absent complete breakdown (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 712). She referred to the Applicants' statement that they had not requested police protection in

Ethiopia and stated, “therefore, the presumption that state protection exists has not been refuted”. The Officer denied the PRRA applications, concluding it was reasonable to expect that the brothers would be able to engage state authorities prospectively should they require protection from their father.

[21] Applying the *Vavilov* framework to the PRRA Decisions, and considering the Applicants’ evidence and the relevant jurisprudence, I find that the Officer did not complete the chain of reasoning with respect to the effectiveness of state protection for the Applicants, nor are the reasons and conclusions in the PRRA Decisions transparent and intelligible. I arrive at these findings for two reasons.

[22] First, the Officer’s inclusion of excerpts from the NDP regarding the political structure of Ethiopia and the relationships between various police organizations does not constitute an analysis of the availability and effectiveness of state assistance for individuals subjected to domestic violence. I find that the Officer’s assumption that protection will be available and effective to combat abuse within the family is fatal to the Respondent’s defence of the PRRA Decisions.

[23] As stated by my colleague, Justice Diner, the mere fact that Ethiopia is a democracy is not sufficient to ensure protection, nor is it sufficient justification for the Officer to conclude that state protection will be provided (*Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at para 19 (*Lakatos*)):

> [19] There is a presumption that state protection is available in a claimant’s country of origin (*Ward* at 724-725), particularly where

> that state is democratic (*Sow v Canada (Citizenship and Immigration)*, 2011 FC 646 at paras 9-10 [*Sow*]). However, not all democracies are equal. Rather, they exist across a spectrum, and what is required to rebut the presumption of state protection varies with nature of the democracy in the state (*Bozik v Canada (Citizenship and Immigration)*, 2017 FC 961 at paras 28-29 [*Bozik*]; Sow at 10-11). In other words, a nation's status as a democracy does not lead inexorably to an ability to protect its citizens (for an excellent synopsis of the law summarizing this and related points, see Justice Grammond's recent decision in *AB v Canada (Citizenship and Immigration)*, 2018 FC 237 at para 22 [AB]).

[24] The decision in *Lakatos* and the cases referenced by Justice Diner predate *Vavilov*. In my view, the Supreme Court's subsequent insistence on logical reasoning and justification for an administrative decision reinforces the rationale of those cases. A statement that a country is democratic without reference to the relevant facts and laws does not demonstrate an assessment of whether state protection has been effectively implemented and will likely be available to the affected individual(s). In this case, the excerpts from the NDP included in the PRRA Decisions speak only to the structure of state authorities in Ethiopia and the government's commitment to improving human rights protections. They do not alone support a conclusion that effective police protection from abuse the brothers may suffer if forced to live with their father will likely be forthcoming.

[25] The Applicants argue that the Officer's failure to consider the 2016 UNICEF Report is a reviewable error but I do not agree. The Officer's reference to the Report is brief. However, she accepted UNICEF's central conclusion that violence against children in Ethiopia exists and is often perpetrated by those closest to them. Taking into account the Applicants' respective ages, the prospective nature of the Officer's PRRA review and the Report's focus on younger age

groups, the Officer reasonably addressed this element of the evidence. The 2016 UNICEF Report provides limited support for the brothers' forward-looking risk arguments.

[26] My second reason for finding the PRRA Decisions lack transparency is the Officer's treatment of the fact the Applicants did not attempt to obtain police protection from the alleged abuse by their father in Ethiopia. The Applicants do not dispute the Officer's statement that they did not engage with state or police authorities prior to leaving the country in 2016. They argue instead that the Officer erred in appearing to draw an adverse inference from that fact. The impugned statement in the PRRA Decision for Michias, mirrored in Brook's PRRA Decision, is:

> The applicant states that he did not seek protection from the Ethiopian Federal Police and therefore, the presumption that state protection exists has not been refuted. I find that it is reasonable to expect that the applicant has the option of engaging state authorities upon return to Ethiopia, if he feels the need to do so (e.g. seek protection from his father). […]

[27] The parties rely on opposing interpretations of the first sentence in the Officer's statement. The Applicants interpret the words used by the Officer as placing blame while the Respondent characterizes the statement as an observation. I find that both interpretations of this statement in the PRRA Decisions are possible and reasonable. The Officer's finding that the Applicants did not seek protection from the Ethiopian police and had not rebutted the presumption of state protection is ambiguous.

[28] The parties agree that a decision maker is not permitted to draw an adverse inference from a minor's failure to seek out state protection in their home country. The minor's status, the nature of the violence suffered and the identity of the perpetrator must be taken into account

(*Kandha v Canada (Citizenship and Immigration)*, 2016 FC 430 at para 21). Here, the Officer did not acknowledge the Applicants' ages when they left Ethiopia in her state protection analysis. It may be that the Officer did not do so because she did not intend to fault the Applicants. She was merely making an observation based on their admission that the Ethiopian police had not been contacted. It is equally feasible that the Officer relied on the Applicants' failure to take action as evidence that they did not fear the father. I find that this ambiguity in the PRRA Decisions rises to the level of a significant error that compromises the Officer's reasons for denying the PRRA applications (*Vavilov* at para 100).

[29] In summary, the PRRA Decisions do not meet the standards of transparency and intelligibility required in a reasonable decision. It follows that the Officer's analysis is not justified in light of the facts and law that constrain her authority and the applications for judicial review of the PRRA Decisions (IMM-2692-19 and IMM-2693-19) must be allowed.

2. *H&C Decisions*

[30] The H&C Decisions parallel each other in most respects, differing only in the BIOC analyses due to Brook's status as a minor. The Officer considered each of the factors the Applicants listed in their H&C applications: establishment in Canada; BIOC; fear of their father; and conditions in Ethiopia, including the fact they may not have a home to return to. The Officer concluded that the Applicants' circumstances did not justify an exemption on H&C considerations under subsection 25(1) of the IRPA.

[31] The Officer traced the Applicants' establishment in Canada since June 2016. She stated that Michias had completed his secondary education and had been offered two post-secondary placements. There was no evidence that he had accepted either of the placements. Michias had worked at a McDonald's restaurant but was not employed at the date of his H&C Decision. Brook was faring well in high school and there was evidence of his volunteer efforts and friendships in Canada. The Officer noted that no financial information had been filed with the H&C applications. She accepted that the brothers were doing well in Canada and had the support of the Semunegus family (two parents and three minor children) with whom they were residing. The Officer included in this part of the H&C Decisions a number of paragraphs relating to the issue of hardship and the conditions the Applicants would face in Ethiopia.

[32] In her BIOC analysis, the Officer accepted that Michias and Brook had close emotional ties with the three Semunegus children and that Michias is the godfather of the youngest child. She assigned this factor some positive weight but was unable to conclude that there would be a significant negative impact on the best interests of the children if the brothers left Canada because the children would remain with their parents. With respect to Brook, the Officer stated that Michias was his legal guardian but that Mr. Semunegus was likely his primary caregiver. Although it was in Brook's best interests to remain with Mr. Semunegus and continue his education in Canada, Brook had strong familial ties in Ethiopia, thereby lessening the impact of any return to Ethiopia. The Officer concluded by stating that Michias's permanent status in Canada could not be guaranteed and that this uncertainty played an important role in determining whether Brook's best interests would be negatively impacted by returning to Ethiopia.

[33] Finally, the Officer considered the Applicants' risk of serious harm by their father consistent with her analysis in the PRRA Decisions. She also acknowledged there would likely be some hardship to the brothers in returning to Ethiopia but found that they could expect help and shelter from family members. The Officer concluded that the fact conditions in Ethiopia may not compare favourably to those in Canada was not sufficient to demonstrate a significant negative impact on the Applicants if they were required to depart Canada.

[34] The H&C Decisions are flawed in two significant respects. First, the Officer's analysis proceeds by subject heading and includes no assessment of the H&C factors identified by the Applicants against the *Chirwa* test. In fact, the Officer makes no mention of the purpose or parameters of the relief contemplated by subsection 25(1). Second, the Officer's assessments of the Applicants' establishment in Canada and BIOC analysis lack coherence and justification.

A. The relief contemplated by subsection 25(1) of the IRPA

[35] The Supreme Court's adoption of the *Chirwa* test (*Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338) in *Kanthasamy* and the application of the majority's guidance regarding the circumstances that justify the exercise of discretion under subsection 25(1) of the IRPA have been considered many times by this Court. Often those cases centre on the appropriate formulation of hardship considerations in an officer's decision (*Mursalim v Canada (Citizenship and Immigration)*, 2018 FC 596 (*Mursalim*)).

[36] At the risk of repetition, subsection 25(1) of the IRPA permits the Minister to provide relief from the requirements of the statute to a foreign national in Canada who applies for permanent resident status if the Minister is satisfied that "it is justified by humanitarian and compassionate considerations relating to the foreign national". The Supreme Court's comprehensive guidance in *Kanthasamy* regarding the purpose of subsection 25(1) was summarized by my colleague, Justice Norris (*Mursalim* at para 25):

> [25] In *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61[*Kanthasamy*]), the Supreme Court of Canada endorsed an approach to s 25(1) that is grounded in its equitable underlying purpose. The humanitarian and compassionate discretion enacted in the provision is meant to provide flexibility to mitigate the effects of a rigid application of the law in appropriate cases (*Kanthasamy* at para 19). Justice Abella, writing for the majority, approved of the approach taken in *Chirwa v Canada (Minister of Citizenship and Immigration)*, (1970), 4 IAC 338, where it was held that humanitarian and compassionate considerations refer to "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another – so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the *Immigration Act*" (*Kanthasamy* at para 13).

[37] My review of the H&C Decisions is a review for reasonableness in accordance with the parameters established in *Vavilov*. Justice Abella considered the application of the

reasonableness standard to a decision made under subsection 25(1) and cautioned against a segmented assessment of the H&C factors at play in the particular matter (*Kanthasamy* at para 45):

> [45] Applying that standard, in my respectful view, the Officer failed to consider Jeyakannan Kanthasamy's circumstances as a whole, and took an unduly narrow approach to the assessment of the circumstances raised in the application. She failed to give sufficiently serious consideration to his youth, his mental health and the evidence that he would suffer discrimination if he were returned to Sri Lanka. Instead, she took a segmented approach, assessed each factor to see whether it represented hardship that was "unusual and undeserved or disproportionate", then appeared to discount each from her final conclusion because it failed to satisfy that threshold. Her literal obedience to those adjectives, which do not appear anywhere in s.25(1), rather than looking at his circumstances as a whole, led her to see each of them as a distinct legal test, rather than as words designed to help reify the equitable purpose of the provision. This had the effect of improperly restricting her discretion and rendering her decision unreasonable.

[38] Although the central issue before the Supreme Court in *Kanthasamy* was the H&C officer's characterization of hardship which is not in issue in this case, Justice Abella's insistence that a segmented approach is not a reasonable approach in an H&C decision is relevant.

[39] The Applicants do not dispute the Officer's findings of fact in the H&C Decisions. She accurately described their time in Canada as being of short duration, their living arrangements and their respective education and employment histories. The Officer discussed the Applicants' fears of abuse by their father in Ethiopia and the general living conditions in Ethiopia. It is the next steps in the analysis that are missing.

[40] There is no indication in the H&C Decisions that the Officer turned her mind to the equitable and humanitarian purposes of her review of the Applicants' H&C applications. Other than a reference to subsection 25(1) in the standard form letter denying the applications and a recitation of the subsection in her summary of the applications, it is not evident that the Officer was aware of the legal principles framing the exercise of her discretion.

[41] The H&C Decisions are a series of factual determinations set out under headings that reflect the Applicants' list of relevant H&C factors. The Officer analysed each of the listed factors in silos. Within those silos, she provided little information regarding her conclusion or weighing of the particular factor. Further, the H&C Decisions contain no overall consideration of the Applicants' circumstances and H&C factors. There is no balancing of the positive and negative.

[42] I find that the H&C Decisions do not contain an assessment of the Applicants' circumstances, by category or in cumulative form, against the humanitarian and compassionate purposes of subsection 25(1) and the parameters of the *Chirwa* test. The Officer failed to address the legal constraints that inform the exercise of her discretion (*Vavilov* at para 101). These omissions are determinative errors with the result that the H&C Decisions are untenable.

B. Establishment in Canada/BIOC analysis

[43] The Respondent defends the Officer's discussion of the Applicants' establishment in Canada in part because it is factually accurate. The Respondent is correct in this regard but the

accuracy of the facts recited does not answer the absence of analysis and weighing of those facts in the H&C Decisions.

[44] In this section of the H&C Decisions, the Officer recounted the following facts:

- the Applicants' educational and work history in Canada and their living arrangements with the Semunegus family;
- her conclusion that Michias was not in school or earning income and paying taxes in Canada, and her acknowledgement that Brook was attending high school;
- the absence of any financial information meant that she could not conclude the Applicants were able to financially support themselves in the long term in Canada;
- letters of support from teachers, family members and friends, particularly the letter of Mr. Semunegus regarding the brothers' lives with his family.

[45] The Officer then appears to leave her consideration of establishment in Canada to consider the possibility of hardship for the Applicants in Ethiopia. She states that any hardship would be mitigated by the Applicants' education and work experience in Canada and the assistance of family members who remain in Ethiopia.

[46] The Respondent argues that the brothers' establishment is no different from any teenager's normal progression in Canada. Whether the comparison to a teenager who may have lived in Canada from birth is appropriate, the Officer makes no such statement. She assesses the Applicants' establishment in Canada as if they were fully adult and not in the midst of attempting to pursue ongoing or further education. The Officer's references to the fact that Michias was not employed and the brothers' inability to support themselves financially ignore their individual situations and the ongoing support of the Semunegus family. There is no suggestion in the

evidence that Mr. Semunegus would withdraw that support if the Applicants become permanent residents. Finally, the Officer's review of potential hardship as part of this section, without explanation, is confusing.

[47] I note also that the Officer does not set out her conclusion regarding the Applicants' establishment in Canada either generally or as a humanitarian consideration. Consistent with my conclusion that the H&C Decisions are flawed when considered in their entirety, I find that the Officer's assessment of establishment suffers from a similar error because it omits an analysis of the legal principles that are the basis of an H&C decision.

[48] The BIOC analysis in each of the H&C Decisions differs with the addition of an addendum that considers Brook's status as a minor but both Decisions begin with an assessment of the effect of the brothers' departure on the minor Semunegus children. The Officer stated that the children would remain in Canada with their parents should the brothers return to Ethiopia and was unable to conclude that the departure would have a significant negative impact on the best interests of those children. I find no error in the Officer's analysis in this regard.

[49] The Officer also stated that Brook's best interests would be served by being in the care of a supportive and loving primary caregiver and continuing his education in a familiar environment. She concluded that Mr. Semunegus is more likely than not Brook's primary caregiver and assigned this aspect of Brook's continued presence in Canada some positive weight. The Officer considered the impact of returning to Ethiopia on Brook and found that he had ties to family in Ethiopia who would likely offer him support and accommodation. She

stated that Brook would be able to seek assistance from state authorities to locate his mother in Ethiopia, despite her disappearance 15 months prior to the H&C Decision.

[50] The Officer's material BIOC errors lie in her treatment of the brothers' uncertain status in Canada. There is no assessment in Michias's H&C Decision of the impact his return to Ethiopia would have on Brook if Brook remains in Canada. I acknowledge the Officer's finding that Michias is not Brook's primary caregiver but a separation from his brother would undoubtedly have a negative impact on Brook. The reason for the Officer's failure to consider Brook's best interests in Michias's H&C Decision may be her assumption that the brothers would return to Ethiopia together.

[51] This assumption becomes apparent in view of the BIOC analysis in Brook's H&C Decision. The Officer addressed Michias's status in Canada which she stated would have an important role in determining whether Brook's best interests would be negatively impacted by a return to Ethiopia. She concluded that Michias may be returned to Ethiopia at any time as he is without status in Canada and stated, "[b]ecause of this possibility, I find that Brook's return to Ethiopia would not have a direct negative impact on his best interests since it is possible that the brothers could then be reunited in their home country".

[52] I find that the BIOC analysis in each H&C Decision is circular. In Michias's H&C Decision, there is no mention of Brook's best interests, possibly assuming that Brook would return to Ethiopia with Michias. In Brook's H&C Decision, the Officer assumes Michias may

well be removed to Ethiopia and, therefore, Brook's return to Ethiopia would not have a negative impact on his best interests, even though his primary caregiver will remain in Canada.

[53] I acknowledge the Respondent's argument that the Officer was tasked with reviewing both brothers' H&C applications and that her analysis in the H&C Decisions would necessarily overlap. However, the error in the Officer's BIOC analysis is not that of overlapping reasons but of circular reasons. Without explanation, the Officer assumes, for each brother, that the other will be returned to Ethiopia.

[54] In summary, there is no indication in the H&C Decisions that the Officer applied the guidance set out in *Kanthasamy* and adopted the *Chirwa* approach to the exercise of her discretion. While the Officer accurately described the Applicants' evidence, this error permeates the Decisions. The applications for judicial review of the H&C Decisions (IMM-2695-19 and IMM-2697-19) will be allowed and the Applicants' H&C applications returned for reconsideration.

IV. Certification

[55] No question for certification was proposed by the parties and none arises in these applications.

JUDGMENT

IN IMM-2692-19, IMM-2693-19, IMM-2695-19 AND IMM-2697-19

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review of the decisions of the immigration officer in Court files IMM-2692-19 and IMM-2693-19, the PRRA Decisions, are allowed.

2. The applications for judicial review of the decisions of the immigration officer in Court files IMM-2695-19 and IMM-2697-19, the H&C Decisions, are allowed.

3. A copy of this Judgment and Reasons will be placed on each of the following Court files: IMM-2692-19, IMM-2693-19, IMM-2695-19, IMM-2697-19.

4. No question of general importance is certified in respect of the applications.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2692-19, IMM-2693-19, IMM-2695-19 AND IMM-2697-19
DOCKET:	IMM-2692-19
STYLE OF CAUSE:	MICHIAS SHIFERAW SENAY v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-2693-19
STYLE OF CAUSE:	BROOK SHIFERAW SENAY v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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AND DOCKET:	IMM-2697-19
STYLE OF CAUSE:	BROOK SHIFERAW SENAY v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO (THE COURT) AND TORONTO, ONTARIO (THE PARTIES)
DATE OF HEARING:	SEPTEMBER 22, 2020
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DATED:	MARCH 4, 2021

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