Federal Court  Cour fédérale

Date: 20210205

Docket: IMM-5451-19

Citation: 2021 FC 121

Toronto, Ontario, February 05, 2021

PRESENT: Mr. Justice Andrew D. Little

BETWEEN:

LEILIANE SALES RAINHOLZ,
DONIZETE FRANCISCO RODRIGUES,
GUSTAVO SALES RODRIGUES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants applied for an exemption on humanitarian and compassionate (H&C) grounds under subs. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "*IRPA*"). A senior immigration officer refused the application by decision dated August 9, 2019.

[2] In this judicial review application, the applicants ask the Court to set aside that decision and remit their H&C application back for another officer to decide.

[3] For the reasons below, the application is allowed.

I. Facts and Events Leading to this Application

[4] The applicants are a Brazilian family. All are citizens of Brazil. They left there in 2014. The parents are Ms Leiliane Rainholz and Mr Donizete Rodrigues. Their son, the minor applicant Gustavo, was born in Brazil in 2007. The family now includes a little girl, Amanda, who was born in Canada in 2018. She is a citizen of Canada.

[5] Ms Rainholz, Mr Rodrigues and Gustavo arrived in Canada on visitor visas in 2015. They renewed their visas once. When their status expired, they began to look for ways to stay in Canada.

[6] Although they were not permitted to work in Canada under the terms of their visitors' visas, Ms Rainholz has worked as a babysitter, and Mr Rodrigues as a bricklayer. They rent an apartment in Toronto. They have made good friends in Canada, one of whom is Amanda's godmother. They are people of modest means.

[7] Ms Rainholz made an initial H&C application in 2017. She and Mr Rodrigues were temporarily separated at the time, so he was not a party to that application. In it, she disclosed

that she had been the victim of sexual assault in Brazil but did not provide details or file psychological evidence. The first H&C application was rejected in early 2018.

[8] The present application for judicial review concerns a second H&C application filed by Ms Rainholz, Mr Rodrigues and Gustavo on September 26, 2018. Amanda was not an H&C applicant and is not an applicant before this Court. She was about six months old when the second H&C application was filed.

[9] Many of the material facts that ground the second H&C application are deeply disturbing. Ms Rainholz testified that she suffered sexual, psychological and physical abuse perpetrated by members of her family (an uncle and a cousin), her mother's then-boyfriend, and later another man who became her stepfather. Her parents had divorced and Ms Rainholz got little or no support or protection from her mother, who herself inflicted some of the psychological and physical harm. The first abuse occurred in Ms Rainholz's early childhood – about age 5. It occurred until her adolescence. In addition, Ms Rainholz testified that she believes that her son was also sexually abused, at age 4, by another man known and previously trusted by her family. Additional details about any of these events are unnecessary here. Ms Rainholz set them out at length in her affidavit to support the second H&C application. The officer on the H&C application accepted the facts as Ms Rainholz described them.

[10] Ms Rainholz left her mother's home at age 14, with the support of Mr Rodrigues, whom she had started dating. They eventually came to Canada with Gustavo to find a stable place to live. When they applied the second time for H&C relief, Ms Rainholz was in her late 20s.

[11] On the second H&C application, the applicants filed (i) a 54-paragraph affidavit sworn by Ms Rainholz on October 9, 2018; (ii) evidence related to her mental health, including clinical notes from psychiatrist Dr Jeremy Riva-Cambrin and a letter dated October 3, 3018 authored by Jasmine Li, a registered social worker and psychotherapist ("Ms Li's Letter"). Both individuals are associated with Access Alliance Multicultural Health and Community Services in Toronto, which "provides services and addresses system inequities to improve health outcomes for the most vulnerable immigrants, refugees, and their communities"; (iii) affidavits and letters of support from friends; (iv) written submissions from legal counsel; and (v) other documents including copies of passports and expired visitor visas, results of medical exams, criminal records checks, banking records, a residential tenancy agreement, and country condition documentation related to Brazil.

[12] Counsel's written submissions to the officer on the H&C application spanned 27 pages and included detailed references to H&C case law and to the supporting evidence. The submissions focused on the following topics:

- Overview and history of Ms Rainholz's early life;
- Legal principles applicable to H&C applications;
- Ms Rainholz's experiences of violence and abuse in Brazil and her resulting mental health concerns;
- The applicants' establishment in and ties to Canada;
- Best interests of the children ("BIOC"), Gustavo and Amanda, including applicable legal principles;
- Hardship and Conditions in Brazil; and

- Conclusion and request for H&C exemption.

II. H&C Applications: General Principles

[13] Subsection 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of that statute and grant permanent resident status in Canada, if the Minister is of the opinion that such relief is justified by humanitarian and compassionate considerations. Those considerations are to include the best interests of a child directly affected. The H&C discretion in subs. 25(1) is a flexible and responsive exception to the ordinary operation of the *IRPA*, to mitigate the rigidity of the law in an appropriate case.

[14] 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 [*IRPA*]": *Chirwa v. Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338, at p.350 as quoted in *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909, at paras 13 and 21. The purpose of the H&C provision is provide equitable relief in those circumstances: *Kanthasamy*, at paras 21-22, 30-33 and 45.

[15] Subsection 25(1) has been interpreted to require that the officer assess the hardship that the applicant(s) will experience on leaving Canada. Although not used in the statute itself, appellate case law has confirmed that the words "unusual", "undeserved" and "disproportionate" describe the hardship contemplated by the provision that will give rise to an exemption. Those

words to describe hardship are instructive but not determinative, allowing subs. 25(1) to respond flexibly to the equitable goals of the provision: *Kanthasamy*, at paras 33 and 45.

[16] An applicant may raise a wide variety of factors to show hardship on an application for H&C relief. Commonly raised factors include establishment in Canada; ties to Canada; health considerations; consequences of separation of relatives; and the BIOC. The H&C determination under sub. 25(1) is a global one, and relevant considerations are to be weighed cumulatively as part of the determination of whether relief is justified in the circumstances: *Kanthasamy*, at paras 27-28.

[17] The discretion in subs. 25(1) must be exercised reasonably. Officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, *per* L'Heureux-Dubé, J., at paras 74-75; *Kanthasamy*, at paras 25 and 33.

[18] The onus of establishing that an H&C exemption is warranted lies with the applicants: *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, at para 45. Lack of evidence or failure to adduce relevant information in support of an H&C application is at the peril of the applicant: *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 FCR 635, at paras 5 and 8.

III. Issues Raised by the Applicants

[19] The applicants' submissions before this Court raised three overall issues. First, they submitted that the senior officer's decision was unreasonable because the officer ignored the extensive material in the record about the psychological impact on Ms Rainholz of returning to Brazil.

[20] Second, the applicants submitted that the officer improperly gave little weight to the medical documentation filed in support of the H&C application and by concluding, that Ms Rainholz's mental health needs could be met through women's support or "reference" centres in Brazil.

[21] Third, the applicants submit that the officer failed to properly assess the BIOC, which should have been the "primary consideration" in the officer's decision.

[22] As will become apparent, the applicants' submissions on this application, and on the H&C application, do not fall into separate, watertight compartments. The issue of the impact of returning to Brazil on Ms Rainholz's mental health pervaded all of their submissions.

IV. Standard of Review

[23] The parties both submit that the standard of review is reasonableness. I agree. The Supreme Court of Canada affirmed and explained the reasonableness standard in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. Prior to *Vavilov*, it was well

established that H&C decisions are reviewed on the reasonableness standard: *Baker*, at paras 57-62; *Kanthasamy*, at para 44.

[24] In conducting a reasonableness review, a court considers the outcome of the administrative decision in light of its underlying rationale, in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15. The focus of reasonableness review is on the decision made by the decision maker, including both the reasoning process (i.e. the rationale) that led to the decision and the outcome: *Vavilov*, at paras 83, 86; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 SCR 6, at para 12.

[25] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision-maker: *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, at para 31; *Vavilov*, at paras 91-96, 97, 103. The reviewing court does not conduct a "line-by-line treasure hunt" for errors: *Vavilov*, at para 102.

[26] When reviewing for reasonableness, the court asks whether the decision bears the hallmarks of reasonableness (i.e., justification, transparency and intelligibility) and whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov*, at para 99. To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep". The problem must be

sufficiently central or significant to the outcome to render the decision unreasonable: *Vavilov*, at para 100.

[27] The reviewing court does not determine how it would have resolved an issue on the evidence, nor does it reassess or reweigh the evidence on the merits: *Vavilov*, at paras 75, 83 and 125-126; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at paras 59, 61 and 64; *Kanthasamy v. Canada (Citizenship and Immigration)*, 2014 FCA 113, [2015] 1 FCR 335, at para 99; *Owusu*, at para 12. The task of the reviewing court is to assess whether the decision maker reviewed and drew conclusions from the evidence and submissions in a manner that conforms to *Vavilov* principles.

[28] The onus to demonstrate that the decision is unreasonable is on the applicant: *Vavilov*, at paras 75 and 100.

V. Analysis

A. *The Psychological Evidence and the Impact on Ms Rainholz of a Return to Brazil*

[29] The applicants' first two submissions will be considered together, as the respondent's counsel did in their submissions.

[30] The applicants first submitted that the senior officer's decision is not only unreasonable but also "quite disturbing" because the officer ignored the extensive material in the record about the psychological impact on Ms Rainholz of returning to Brazil. The applicants submit that Ms Rainholz will be traumatized or re-traumatized if she returns to Brazil, where she suffered sexual

abuse for years. They contend that Brazil is the site of deep trauma and fear for Ms Rainholz, and that the officer failed to engage with counsel's lengthy submissions on the issue. They submit that the officer minimized Ms Rainholz's evidence by referring to her mental health "issues" or "needs" and her "wish" to remain in Canada, not understanding the true extent of the deep-rooted trauma she would experience if she returned to Brazil – a place where, in the applicant's submission, gender-based and sexual violence is an epidemic.

[31] Second, the applicants submitted that the officer improperly gave little weight to the medical documentation filed in support of the H&C application and erroneously concluded that Ms Rainholz's mental health needs could be met in Brazil. The applicants argue that the officer wrongly inferred that Ms Rainholz has no ongoing need to see the health professionals who had been treating her; the officer improperly focused on the role of Dr Riva-Cambrin in Ms Rainholz's therapy (with whom she met only once) to the exclusion of the rest of the multidisciplinary team at Alliance Access (including a comment from the applicants that there may be "some kind of bias" by the officer concerning the role of each professional); the officer failed to address the contents of Ms Li's Letter; and the officer ignored pertinent parts of the medical evidence. They challenge the officer's adverse finding that Ms Rainholz did not take any medication for her condition, as the evidence showed she did not do so because she was breastfeeding Amanda at the time.

[32] The applicants also challenge the officer's finding that women's reference centres could meet Ms Rainholz's requirements for support when she returns to Brazil, arguing that those

centres could not assist her due to the excessive demand for such services arising from the prevalence of violence in Brazil, a country of over 209 million people.

[33] The applicants further contended that the officer missed the main point in relation to the centres – that Ms Rainholz is "deathly afraid of returning to Brazil given her traumatic history there and given that the people who abused her still reside in Brazil and they may want to seek revenge on her for speaking out against them"**.**

[34] The respondent raised four points in response, while appropriately recognizing during oral argument the "appalling history" of abuse suffered by Ms Rainholz. The respondent submitted first that the applicants cannot rely on new evidence that was not before the officer but was instead adduced by affidavit filed in this Court. In this case, the applicants attempted to supplement and update the record with new evidence about Ms Rainholz's ongoing treatment at Access Alliance, and evidence in relation to the research done by the officer on the availability of psychological counselling for Ms Rainholz in Brazil. Second, the respondent submitted that a disagreement over how the officer weighed the evidence does not constitute a reviewable error on which this Court may intervene. Third, the respondent contended that the applicants' mention of "some kind of bias" in the officer's reasons has no basis in the evidence. Lastly, the respondent argued that the officer did not ignore evidence or minimize Ms Rainholz's past experiences and did consider the impact of return on Ms Rainholz, finding that mental health resources were available to her in Brazil.

The Initial Points Raised by the Respondent

[35] I agree with the respondent on several points. First, there are well-established limits on the admission of new evidence on a judicial review application in this Court. In general, the parties' submissions must be based on 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 not admissible: see *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, at paras 19-20; *Delios v. Canada (Attorney General)*, 2015 FCA 117, at para 42; *Love v. Canada (Privacy Commissioner)*, 2015 FCA 198, at para 17; *Brink's Canada Limitée v. Unifor*, 2020 FCA 56, at para 13; *British Columbia (Attorney General) v. Provincial Court Judges' Association of British Columbia*, 2020 SCC 20, at para 52.

[36] There are exceptions to the rule, described in *Association of Universities and Colleges of Canada*, at para 20. None of them was argued on this application. The applicants did not make any submissions on why the new evidence should be permitted. I will address this issue further when it arises, below.

[37] Second, I also agree with the respondent that this Court's role, as noted above, is not to re-weigh the evidence. With that said, however, the officer's decision must be justified by the facts and must be reasonable in light of those facts: *Vavilov*, at para 126. In addition, the officer's decision must be responsive to the submissions made by the applicants. A failure to engage or grapple meaningfully with key issues or central arguments made by the parties may call into

question whether the decision maker was actually alert and sensitive to the matter before him or her: *Vavilov*, at paras 127-28.

[38] Third, the respondent is correct about the absence of grounds for an allegation of legal bias in the officer's decision. While the respondent was sensible to raise the point and firmly reject it on the evidence, I do not read the applicants' submissions as an allegation of bias or a reasonable apprehension of bias, as addressed in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369 (cited by the respondent). Instead, the phrase "some kind of bias", when read with the rest of the paragraph in the applicants' submissions, appears to suggest that the officer was disposed to favour the evidence from the consulting psychiatrist over the evidence of others on the multidisciplinary team treating Ms Rainholz at Access Alliance. I will return to this point below.

[39] The core issue on this application, therefore, concerns the impact on Ms Rainholz's mental health of a return to Brazil. As mentioned, the applicants submitted that this issue was central and that the officer did not engage or grapple with the evidence or their submissions. On these arguments, I find that the applicants' position has merit.

Legal Principles Applicable to Mental Health Issues and H&C Applications

[40] The consideration of mental health issues in H&C applications has led to several important decisions in recent years, from both this Court and others. This trend is consistent with the growing recognition and acceptance that mental health issues are real, common (but often

ignored or misunderstood), and can pose significant challenges for both the people who suffer from them and others around them.

[41] In *Kanthasamy*, the Supreme Court considered issues arising in an H&C application concerning a psychological diagnosis of Post-Traumatic Stress Disorder ("PTSD"), the availability of mental health treatment in the applicant's home country of Sri Lanka and the impact of removal to that country on the applicant. A majority of the Court concluded, at paragraphs 46-49, that the officer had improperly restricted her discretion when discussing the effect of removal back to Sri Lanka on Mr Kanthasamy's mental health. A psychological report concluded that he suffered from PTSD and adjustment disorder with mixed anxiety and depressed mood resulting from his experiences in Sri Lanka, and that his condition would deteriorate if he was removed from Canada. The officer had accepted that evidence, but nevertheless found that Mr Kanthasamy would not suffer undue hardship if made to return to Sri Lanka.

[42] On the mental health issues raised in that appeal, the Court held:

- Despite the clear and uncontradicted evidence in the psychological report that Mr Kanthasamy suffered from psychological harm (related to his arrest, detention and beating by police and the resulting psychological scars), the officer discounted Mr Kanthasamy's mental health problems in her analysis (para 48; see also para 46);
- The officer had inexplicably discounted the psychological report (para 46);

- It was unclear why the officer required additional evidence about whether Mr Kanthasamy did or did not seek treatment in Canada, or what treatment was or was not available in Sri Lanka (para 47);
- Once the officer accepted the psychological diagnosis in the report, requiring further evidence of the availability of treatment, either in Canada or in Sri Lanka, "undermined the diagnosis" and problematically made it a "conditional rather than a significant factor" in the H&C assessment (para 47);
- By focusing exclusively on whether treatment was available in Sri Lanka, the officer had ignored the effect of removal from Canada itself on Mr Kanthasamy's mental health (para 48); and
- "the very fact that [Mr] Kanthasamy's mental health would likely worsen if he were to be removed to Sri Lanka is a relevant consideration that must be identified and weighed regardless of whether there is treatment available in Sri Lanka to help treat his condition" (para 48).

[43] I will now refer to a number of H&C decisions of this Court since *Kanthasamy* that have guided my conclusions in this application.

[44] In *Sutherland v. Canada (Citizenship and Immigration),* 2016 FC 1212 (Gascon J.), the Court concluded that an officer's decision, despite being "extensive and detailed", was unreasonable owing to the officer's assessment of the evidence relating to the applicant's mental health. Justice Gascon held that the officer had overlooked the fact that two psychological reports had expressly stated that the applicant needed mental health treatment and had warned

about the adverse effect of removal on her condition and on her children (at para 16). Justice Gascon stated, at para 17:

> When psychological reports are available, indicating that the mental health of applicants would worsen if they were to be removed from Canada, an officer must analyze the hardship that applicants would face if they were to return to their country of origin. An officer cannot limit the analysis to a determination of whether mental health care is available in the country of removal (*Kanthasamy* at para 48…)
>
> [Emphasis added.]

[45] After noting that the officer's approach squarely contradicted the teachings of *Kanthasamy*, Gascon J. continued, at para 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).

[46] To the same effect is *Sitnikova v Canada (MCI)*, 2017 FC 1081 (Mactavish J.), at paras 28-30 ("[t]he fact that Ms. Sitnikova's mental health would likely worsen if she were to be removed to Russia was clearly a relevant consideration that had to be addressed, regardless of whether treatment would be available to Ms. Sitnikova in Russia for her psychiatric conditions"); *Jang v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 996 (Mactavish J.) at paras 31-32; and *Febrillet Lorenzo v. Canada (MCI)*, 2019 FC 925 (Strickland J.), at para 22.

[47] Two other material points are found in *Sutherland*. First, the assessment of clinical reports and psychological opinions are reviewed on a standard of reasonableness (*Sutherland*, at para 12, which is consistent with *Vavilov*, at para 16 [concluding that reasonableness applies presumptively to all issues on judicial review]). Second, an officer does not need to agree with psychological reports submitted with an H&C application and can decide to give them little weight, so long as the officer provides clear and well-founded explanations for doing so: *Sutherland*, at para 24. The Chief Justice made the same point in *Jesuthasan v. Canada (Citizenship and Immigration)*, 2018 FC 142, at paras 43, 44 and 48.

[48] In *Jesuthasan*, Chief Justice Crampton held, at paragraph 42, that an officer erred in denying an H&C application by (i) appearing to reject a psychologist's report solely on the basis that Ms. Jesuthasan did not adduce any evidence to demonstrate that she had sought any follow-up treatment; and (ii) ignoring the psychologist's assessment that Ms. Jesuthasan's return to Sri Lanka "may further negatively impact her psychological well-being." The Chief Justice concluded that discounting the assessment in this manner was unreasonable (citing *Kanthasamy*, at para 60). The officer failed to identify and weigh the fact that the applicant's mental health "might worsen" if she were to be removed to Sri Lanka (at paras 44-45, with original underlining). The evidence could not be ignored (at para 46). Like Gascon J. in *Sutherland*, the Chief Justice concluded in *Jesuthasan* that the officer was not bound to accept the psychological assessments or accord them significant weight; however, "if they choose to give them little or no weight, they must explain why" (at para 48).

[49] In *Apura v. Canada (Citizenship and Immigration),* 2018 FC 762 (Ahmed J.), a psychiatrist's report diagnosed the applicant with PTSD. The officer noted that there was no evidence that the applicant was receiving treatment for her PTSD, and accorded the report "some weight" (*Apura*, at para 15). The officer provided no explanation as to why the psychological report was afforded "little weight": at para 28. Ahmed J. held that the officer "simply ha[d] not discharged the burden of explaining how he or she arrived at the conclusion to afford little weight to the report, rendering that conclusion unreasonable" (at para 28). He concluded at paragraph 29 that in any event, the officer

> should have considered the impact of return upon the Applicant's mental health. In my view, it is not unreasonable to expect that decision-makers draw reasoned inferences from a report that signals mental health issues. If the impact upon return is not specifically analyzed, an officer may draw his or her own reasonable conclusions based on the totality of the evidence. That is the approach that is taken with other medical issues: *Mings-Edwards v Canada (Citizenship and Immigration),* 2011 FC 90 at para. 12, and there is no principled basis upon which to distinguish mental health conditions from other medical conditions. In the case at bar, the Officer did not need the doctor to contemplate the impact of return to make the Applicant's PTSD a live issue. The report provides a clear diagnosis of the condition, its stressors and symptoms, and thus it was incumbent upon the Officer to consider the impact that removal would have in light of that evidence. His or her failure to do so was unreasonable.
>
> [Emphasis added.]

[50] The officer did consider the impact of removal from Canada on the applicant in *Uwase v. Canada (Citizenship and Immigration),* 2018 FC 515 (Shore J.). There, a psychologist's letter indicated that deportation of the applicant would re-expose her to "an unstable living environment, possibly causing her to have a depression relapse". Justice Shore found no error by the officer (at para 36-38).

[51] Similarly, in *Egwuonwu v. Canada (Citizenship and Immigration)*, 2020 FC 231, Kane J. found no error in an officer's assessment of two mental health reports. The officer provided five reasons for giving the reports low weight including that the reports were based on one visit with the professional and were premised on evidence that was held not to be credible (at para 75). Justice Kane found that the officer did not reject the diagnosis, but instead reasonably rejected the alleged cause of the symptoms reported to the doctors as the basis for the diagnosis (para 83). Justice Kane also noted that one-time assessments of PTSD based on a single visit with a professional should be scrutinized (at para 84).

[52] Finally, in *Osun v. Canada (Citizenship and Immigration)*, 2020 FC 295, Diner J. set aside a decision on several cumulative bases. On one issue in the BIOC analysis, he stated:

> [25] One further gap in the BIOC analysis – namely the failure to justify the Decision in light of the facts and the law – in this case is that a letter from a family therapist was submitted. It noted that (i) one of Ms. Osun's children was experiencing "trauma symptoms" triggered by her fear of being deported to Nigeria, (ii) the child requires access to mental health services, and (iii) returning to Nigeria would put her emotional, social and psychological well-being at risk.
>
> [26] The Officer's response to this letter was a statement that s/he gave it "careful consideration," with no further comment. There was no assessment of the contents of this evidence, nor any mention of the letter's commentary on how removal may impact the child's mental health, a factor of hardship in itself. Considering the importance of this evidence – i.e. the one letter speaking to the child's mental health – I find the lack of any assessment, such as an explanation regarding why it was insufficient, renders the Decision unreasonable (*Vavilov* at para 98). This aspect of the Decision also fails to implement *Kanthasamy*'s guidance that BIOC must be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence (at paras 35, 39).
>
> [Emphasis added.]

[53] With those decisions in mind, I turn to the present case.

The Applicants' H&C Submissions

[54] The applicants' written H&C submissions in the present case raised the impact of a return to Brazil on Ms Rainholz's mental health, front and centre. It was the first of counsel's substantive written H&C submissions to the officer. Its contents were repeated under subsequent headings and integrated into the arguments concerning establishment and the BIOC.

[55] The applicants' submissions emphasized that Ms Rainholz has Post-Traumatic Stress Disorder but could not take medication because she was breastfeeding Amanda and because antidepressant medication cannot be taken by people with possible Bipolar Disorder. In those submissions, the applicants also highlighted Ms Li's letter dated October 3, 2018, quoting the following passage:

> **With all of the above traumatic life experiences, Leiliane is struggling with chronic depressive/anxious mood, nightmares and flashbacks. She feels insecure in her relationship. She is constantly worrying about being deported back to Brazil. She reports she does not feel safe in Brazil where child abuse occurs everywhere. She often ends up in tears as expressing concerns about her children's safety, particularly about her daughter.** When [Ms Rainholz] was in Toronto, she took the courage to phone call her mother, telling her about history of being sexually abused by the uncle. She fears that her uncle or step father may come back to haunt harm her or her children as she disclosed to others about the abuse.
>
> With all her shortcomings in life, Leiliane is striving to be a good mother to take care of her two children. Her husband has been a good support on her. I acknowledge that Leiliane and her family are applying for immigration status with Compassionate and Humanity ground [*sic*]. **I am writing this letter to support her as I believe that it would be have a significant reverse impact on**

> **her well-being if she is deported back home where she had gone through extensive physical and sexual abuse.**
>
> [Emphasis added by counsel.]

[56] Counsel submitted in the H&C application that "Ms Li's and Dr Riva-Cambrin's reports both make it clear that her mental health is in a very precarious state, and that her access to relative security in Canada, and strong supports through her Psychiatrist, Psychotherapist, and extended interdisciplinary team, including Dietitian, Nurse Practitioners, and Health Coach are integral to her mental health care and recovery." Counsel further stated that "[a]s Ms. Li notes, removal to Brazil carries very serious and negative consequences for Leiliane's mental health as it will undo the progress she has made in Canada while returning her to the site of extensive trauma."

The Officer's Assessment of the Mental Health Evidence

[57] The officer's reasons set out a factual narrative summarizing Ms Rainholz's experiences of abuse and how the applicants arrived in Canada, and noted Ms Rainholz's evidence that she had no place to return to in Brazil. The officer then turned to the evidence related to Ms Rainholz's mental health.

[58] The officer noted that Ms Li's Letter dated October 3, 2018 confirmed 10 individual counselling sessions between Ms Rainholz and Ms Li between March and September 2018. While the officer referred here to Ms Li as "social worker Jasmine Li", Ms Li in fact was directly involved with Ms Rainholz as a counsellor. Ms Li signed her letter as a "Registered Social Worker / Psychotherapist". In addition, Dr Riva-Cambrin's clinical notes state that he and Ms

Rainholz adopted a "strategy of psychotherapy and behavioral activation" and that one part of the Plan for Ms Rainholz's treatment was "Psychotherapy – she is currently working with Jasmine at our agency on trauma-focused care."

[59] It is apparent that Ms Li was responsible for the psychotherapy or counselling aspects of Ms Rainholz's treatment. In her letter, Ms Li advised that she holds a masters degree in social work with a specialization in individual, family and group counselling and that her post-graduate education included trauma counselling, addiction and mental health counselling. At the time, she had provided therapy services at Access Alliance for almost 14 years.

[60] Returning to the officer's reasons: the officer stated that Ms Li "informs that [Ms Rainholz] has been diagnosed with possible depression (single episode), possible Bipolar II Disorder, and PTSD by the centre's consulting psychiatrist, Dr Riva-Cambrin". I pause again to note that, more precisely, Dr Riva-Cambrin's notes stated (amongst other things) that the status of Ms Rainholz's PTSD was "acute". He assessed her depression as "Moderate Major Depression (single episode)" and referred to post-partum disorder.

[61] The officer set out the following in considering the medical evidence:

> In considering this evidence, it appears that the PA [principal applicant, Ms Rainholz] attended 10 counselling sessions with Ms. Li in 2018 and that Dr Riva-Cambrin's assessment was essentially based on a single interview on 24 May 2018, rather than on an ongoing therapeutic relationship. The PA has not provided evidence to demonstrate that she continues to require or receive counselling in Canada. Dr Riva-Cambrin requests in his notes that he be contacted if further direction is required regarding initiation of medication for the PA. The evidence before me does not indicate that the PA has required medication to treat her mental

> health issues. The PA has not provided evidence to support whether her condition has improved or how it has impacted or interfered with her day-to-day functioning, which appears to be normal. While the PA may be struggling with some emotional and mental health challenges, there is no evidence that she has continued treatment since September 2018 to improve her condition or that her condition has prevented her from participating in a positive working and social life. As a result, I give little weight to this factor in the global assessment.

[62] As may be seen, in this passage, the officer doubted the psychiatric assessment of Dr Riva-Cambrin, doubted whether Ms Rainholz in fact required counselling, and even doubted the existence of Ms Rainholz's mental health challenges, suggesting that her daily functioning was "normal". On that basis, the officer gave "little weight" to "this factor" in the overall H&C assessment.

[63] The respondent accurately submitted that the officer's reasons recognized the applicants' submission that they would face hardship if forced to return to Brazil because of the past sexual and physical abuse suffered by Ms Rainholz, the past sexual abuse suffered by the minor applicant and the violence in Brazil.

[64] The critical questions are, however, whether the officer's decision was reasonable in light of the facts and whether the officer grappled meaningfully with the applicants' central or critical submissions. I have concluded that the officer did not.

[65] First, with due deference, I am unable to understand how the officer's reasoning leads to a conclusion that "little weight" should be given to the evidence in the record related to Ms Rainholz's mental health challenges caused by the sexual and other abuse she experienced for

years as a child and early adolescent. Ms Rainholz was assessed by a psychiatrist (i.e., a medical doctor with training and expertise in mental health issues) as having acute PTSD. The officer did not engage in any analysis of the diagnosis. As I have noted already, the officer did not question the underlying facts of Ms Rainholz's sexual and physical trauma as Ms Rainholz described them and made no adverse credibility findings. If the officer were to doubt the diagnosis of Dr Riva-Cambrin, a clear and coherent explanation was required: *Sutherland* at para 24; *Jesuthasan,* at paras 43-44 and 48; *Apura* at para 28; *Osun* at paras 25-26.

[66] It seems that the officer also drew a negative inference about the severity of Ms Rainholz's condition from the absence of medication prescribed to her, when both the applicants' submissions on their H&C application and Dr Riva-Cambrin's notes indicated that she could not take medication because she was breastfeeding Amanda and due to a possible other condition.

[67] The officer noted that Dr Riva-Cambrin saw Ms Rainholz only once. However, the officer did not find or consider that Dr Riva-Cambrin was a hired gun, or that he was engaged just to provide an opinion for the H&C application. Indeed, there was no evidence of that.

[68] The officer further stated that Ms Rainholz had "not provided evidence to demonstrate that she continues to require or receive counselling in Canada" and that "there is no evidence that she has continued treatment since September 2018 to improve her condition". Having not rejected the medical diagnosis, with a clear explanation, it was an error to hold the supposed absence of treatment against the applicants: *Kanthasamy,* at para 47*; Sitnikova,* at para 30*; Apura,* at para 28.

[69] The officer also did not explain, elaborate on, or refer to any additional evidence to support the statement that Ms Rainholz's daily life was, in effect, normal, i.e. that her daily functioning was not impacted by her mental health struggles. While there may be evidence to support that conclusion, the officer did not point to it and the conclusion appears to contradict Ms Rainholz's own evidence and Dr Riva-Cambrin and Ms Li's statements about Ms Rainholz's everyday ability to function.

[70] In their submissions on this application, the applicants noted that while the officer's reasons mentioned Ms Li's Letter, the officer made no reference to the passages from her letter quoted in their H&C submissions and specifically, the officer did not recognize or address Ms Li's conclusion about a "significant reverse impact" on Ms Rainholz's well-being if she returned to Brazil where she experienced the abuse. The respondent agreed that the officer did not address Ms Li's conclusion specifically but noted that the officer did consider the applicant's argument.

[71] I agree with the applicants' position. The officer's assessment made no reference to the observations or conclusion in Ms Li's Letter, and specifically about the adverse impact of a return to Brazil on Ms Rainholz's mental health. That letter expressly stated, in the passage quoted above, that Ms Rainholz was "struggling with chronic depressive/anxious mood, nightmares and flashbacks" as well as insecurity in her relationship with her husband. The statements in Ms Li's Letter about Ms Rainholz's condition and the negative effect on Ms Rainholz of returning to Brazil is consistent with Ms Rainholz's affidavit on the H&C application, in which she testified that her "health gets worse when I think about returning to Brazil because the memories of what was done to me is so overwhelming. I cannot imagine the

state I would be in if I was forced to return there. Even with [Mr Rodrigues] beside me, the hurt and pain of the past is too strong for me to feel comfortable and safe in Brazil for me and my children."

[72] From this discussion of the applicable law, the evidence and the officer's reasons, I draw the following conclusions.

[73] First, in my view, the officer's assessment of the medical evidence is materially tainted by a series of inferences and conclusions that cannot be reconciled with the evidence in the record, and two errors of law.

[74] Second, it was unreasonable for the officer not to engage with the contents of Ms Li's Letter, as quoted at length in counsel's submissions, given that Ms. Li was well placed to comment on how a return to Brazil would impact Ms Rainholz given her education, post-graduate studies and years of experience. I recognize that Ms Li is not a psychiatrist or a psychologist. However, she was clearly responsible, as recognized by Dr Riva-Cambrin's notes, for Ms Rainholz's psychotherapy at Access Alliance, in keeping with the mandate of that clinic to improve health outcomes for the most vulnerable immigrants, refugees and their communities. Individuals with Ms Li's training and experience often play a key role on the front lines of the identification and treatment of mental health issues, in this case as part of a broader multidisciplinary health team. Accordingly, given her knowledge, experience and time spent counselling Ms Rainholz, Ms Li's Letter deserved respectful attention and consideration in the

context of the H&C application. See also *Osun*, at para 25; *Apura*, at para 29; and *Febrillet Lorenzo*, at para 22.

[75] The officer's reasoning leading to the "little weight" conclusion was, therefore, demonstrably unsound and did not engage meaningfully with the issues and the evidence.

[76] Third, and critically, the officer did not in substance address the key issue of the impact of a return to Brazil on Ms Rainholz's mental health. As *Kanthasamy* clearly instructs, the officer could not limit his or her analysis to a determination of whether mental health care is available in Brazil. Particularly given the undisputed facts set out in Ms Rainholz's affidavit about her intense history of abuse in Brazil, the officer had to assess the impact of return to Brazil and the hardship it would cause, based on all the evidence in the record. In doing so in this case, the officer had to consider both Dr Riva-Cambrin's and Ms Li's comments as well as Ms Rainholz's evidence. The officer unreasonably failed to do so.

[77] I note that it is no answer to say, nor can *Kanthasamy* be distinguished on the grounds, that the officer did not accept the diagnosis of acute PTSD. The officer did not say that, and his or her reasoning does not support that position, having not questioned any of the evidence (or Ms Rainholz as its source) on which the assessment was based, and having not providing any convincing rationale for doubting or rejecting the diagnosis. Rather, to paraphrase Abella J. in *Kanthasamy*, the very fact that Ms Rainholz's mental health would likely worsen (or might worsen, as in *Jesuthasan*) if she were to be returned to Brazil is a relevant consideration that, on the evidence, had to be identified and weighed regardless of whether there is treatment available

in Brazil to help treat her condition: *Kanthasamy*, at para 48; *Jesuthasan*, at paras 44-45. I note that in *Jesuthasan*, there was no evidence that the applicant had sought treatment after being diagnosed.

[78] I emphasize that the officer was not required to accept Dr Riva-Cambrin's and Ms Li's views and did not have to find that a return to Brazil would have a serious negative impact on Ms Rainholz's mental health. But in the circumstances, the officer could not simply refer to process-oriented or unfounded little points about the medical evidence to undermine its weight and then go on to ignore the accepted factual evidence, discount the medical evidence, and not address the substance of the central issue that pervaded the H&C application. In the circumstances, the officer had to engage with the substantive issue raised by the evidence and the submissions concerning the impact of a return to Brazil on Ms Rainholz's mental health. The officer did not do so. *Kanthasamy* establishes clearly that an officer cannot ignore the effect of removal from Canada on an applicant's mental health (at para 48), and a number of cases from this Court have applied the same principle: see, e.g., *Sutherland* at paras 15–16; *Sitnikova*, at paras 28-30; *Jang* at para 32; *Febrillet Lorenzo*, at para 22; *Davis v. Canada (Citizenship and Immigration)*, 2011 FC 97 (Mactavish J.), at para 19; *Ashraf v. Canada (Citizenship and Immigration)*, 2013 FC 1160 (Campbell, J.), at para 5.

[79] I therefore conclude that the officer's decision was unreasonable in its treatment of the evidence and submissions concerning the impact on Ms Rainholz's mental health if she were to return to Brazil: *Vavilov*, at paras 125-129; *Kanthasamy*, at paras 46-49; *Sutherland*, at para 34.

Availability of Mental Health Counselling for Ms Rainholz in Brazil

[80] As mentioned, the applicants also challenged the officer's conclusion that Ms Rainholz could receive satisfactory treatment for her mental health needs through women's references centres in Brazil. The officer relied on his or her own research in concluding that the women's reference centres would provide the necessary support, including psychological counseling. The officer noted that in Sao Paulo there are 12 to 15 such centres, and state-run shelters refer women there to access the services.

[81] In response, the applicants filed an affidavit in this Court sworn by Ms Rainholz, explaining that she is from the state of Rondonia and lived in different cities there, all with small populations and all of which have few resources for women. Rondonia is a long way from Sao Paulo. The implication is that the services are not realistically accessible to Ms Rainholz, assuming she returns to live in Rondonia.

[82] The respondent objects to the admission of this evidence on this judicial review application. In the absence of any argument to support the admission of this evidence, I conclude that, while probative of whether Ms Rainholz could receive counseling in her home state, the new evidence is not admissible. I note, however, that in the record before the officer, Ms Rainholz's, Mr Rainholz's and Gustavo's passports, the parents' certificates related to criminal records, and Mr Rodrigues's education records all indicate they were born or resided in Rondonia. Any map of Brazil discloses that Rondonia is far from Sao Paulo.

[83] I also note that the evidence relied upon by the officer to draw conclusions about the availability of mental health services in Brazil indicated that there were 223 women's reference

centres in Brazil, relying on a 2014 report from the United States Department of State. The supporting evidence, however, is lean on what those centres actually do; indeed, the Court reviewed the 2014 report relied upon as a source in the IRB document used by the officer and found reference to women's reference centres in Sao Paulo and others operated by the Brazilian states and to the existence of 223 such centres but the report does not discuss their operations. It is interesting to note that the same report as updated annually from 2015 to 2019 make no mention of the number of reference centres.

[84] Given the conclusions reached above and below, I do not need to resolve the issues raised by the applicants about the officer's conclusions on the availability of mental health counselling in Brazil.

[85] For completeness, however, I note that the applicants filed new medical evidence on this application – a second letter from Ms Li dated October 17, 2019, a letter from nurse practitioner Amanda Verschuere at Access Alliance dated October 7, 2019 and a handwritten statement from Gustavo. While the contents of these documents likely do not fall within one of the exceptions to the general rule against admission of new evidence in *Association of Universities and Colleges* (at para 20), the point is ultimately of no moment. The evidence does not alter or affect the outcome of this application.

B. ***Best Interests of the Children, Gustavo and Amanda***

[86] The applicants submit that the officer failed to properly assess the BIOC, which should have been the "primary consideration" in the officer's decision. The applicants rely on the

likelihood that their children would be a victim of sexual abuse if they are returned to Brazil where, they submit, there is an epidemic of sexual violence against children. The applicants also submit that the officer wrongly used the existence of extended family in Brazil as a positive point for the children returning there – the officer observed that the children would have access to an extended family in Brazil to help the whole family reintegrate into Brazilian life, "if only emotionally". The applicants find this "[v]ery perplexing" given that Ms Rainholz was sexually and psychologically abused by members of her own family.

[87] The applicants further submitted in respect of the BIOC that the officer "completely ignore[d] the impact of return on Ms Rainholz, a pivotal point that was brought up throughout the H&C package, by Ms Rainholz herself, her medical professionals and through counsel's submissions". In the applicants' submission, a return to Brazil "could completely destabilize Ms Rainholz and this has a direct impact on how she can take care of her children."

[88] The officer correctly recognized that in assessing the BIOC, the officer must always be alert, alive and sensitive to the interests of the children: *Baker*, at para 75; *Kanthasamy*, at para 38; *Canada (Minister of Citizenship and Immigration) v. Hawthorne*, 2002 FCA 475, at para 10. The officer also noted that the children's interests must be given substantial weight, but are not necessarily determinative of the application.

[89] It is also clear from the officer's reasons that he or she read the evidence relating to Gustavo and Amanda. The officer referred to the evidence of Gustavo's friendship with another

boy his age, and understood that Amanda is a citizen of Canada. However, there were two fundamental problems with the officer's BIOC analysis.

[90] First, nowhere in the officer's reasons was there any express statement of what the children's best interests actually involve, apart the observation that they would benefit from continuing to be raised by their parents with "constant love and support as they journey through life", and enjoying the benefits of exposure to and support from their broader family members who are in Brazil. Both of those interests could apply to almost any child: see *Francois v. Canada (Citizenship and Immigration)*, 2019 FC 748 (Pentney J.) at paras 13 and 16. In addition to the children's interests not being expressly articulated, there also was additional evidence before the officer, for example about the children's ties to people in Canada (including Amanda's godmother), which the officer did not expressly consider.

[91] The second significant problem with the officer's consideration of the BIOC was that it involved no analysis at all of the children's interest in their mother's good mental health. The officer had to determine how the family's return to Brazil would affect Ms Rainholz's mental health and therefore, her ability to raise the children and provide them – to adopt the officer's words – with the constant love, support and guidance they need: see *Shin v. Canada (Citizenship and Immigration)*, 2018 FC 1274 (Southcott J.) at paras 21-24, 27-30; *Cardona v. MCI*, 2016 FC 1345 (McVeigh J.) at para 33; *Montalvo v. Canada (Citizenship and Immigration)*, 2018 FC 402 (McVeigh J.), at para 30; *Saidoun v. Canada (Citizenship and Immigration)*, 2019 FC 1110 (McVeigh J.) at paras 28-32; *Jeong v Canada (Citizenship and Immigration)*, 2019 FC 582, (Boswell J.) at paras 39 and 61.

[92] In this context, it must be noted that in assessing the BIOC, officers must abide by the guiding admonition that children will rarely, if ever, be deserving of any hardship: *Kanthasamy*, at para 59. Absent an express and considered assessment of the issue of their mother's mental health (including how it may be affected by a return to Brazil) and its impact on them specifically, the best interests of Gustavo and Amanda could not be properly addressed with the "singularly significant focus and perspective" prescribed in *Kanthasamy* (at para 40) and with reference to all of the evidence (at para 39). Of course, the officer must consider that Gustavo was himself an applicant and, as mentioned, that Amanda is a Canadian citizen.

[93] In my view, the two material omissions identified above rendered the officer's BIOC analysis unreasonable: see *Vavilov*, at paras 125-129; *Kanthasamy*, at paras 57-58; *Francois*, at paras 13 and 16; *Gomez Valenzuela v. Canada (Citizenship and Immigration)*, 2016 FC 603 (Diner J.), at para 24.

[94] As noted, the applicants took exception to certain comments in the officer's reasons about support being available for the children in Brazil from other family members. The officer suggested that the children would have better opportunities for exposure to cultural and family values in Brazil through their access to an "extended family" there. Shortly after that, the officer mentioned the children's ability to (re)-adapt to the Brazilian way of life and stated:

> Absent evidence to the contrary, it is also reasonable to expect that they have family in Brazil who would be willing to assist with their reintegration, if only emotionally.

[95] The applicants submitted that it was “very perplexing” that the officer would make that statement, given the history of abuse at the hands of Ms Rainholz’s extended family and her fear of returning because of their presence in Brazil.

[96] I agree with the applicants that this statement cannot be readily explained. Obviously, there was plenty of uncontradicted “evidence to the contrary” as to why certain of Ms Rainholz’s family members could and should not assist her children Gustavo and Amanda with their re-integration back into Brazilian life, emotionally or otherwise. Counsel for the respondent theorized that the officer was referring to Mr Rodrigues’s family in Brazil. However, there was no more than passing reference anywhere in the officer’s reasons to Mr Rodrigues’s family (the officer mentioned Mr Rodrigues’s ill father, whom Mr Rodrigues returned to Brazil to visit in 2017 and who has since passed away). I suspect the officer’s unfortunate statement was in fact common or boilerplate language used by this officer in preparing reasons in H&C applications. Regardless, it is hoped that such a comment is not repeated in a case involving sexual and other abuse perpetrated by members of the applicant’s own family.

C. ***Burden of Proof on an H&C Application***

[97] The applicants made submissions on the country condition evidence related to Brazil. The Court does not need to comment on those submissions in view of the conclusions above. I will leave the assessment of that evidence to the officer who will re-determine this H&C application.

[98] However, as this H&C application will be re-determined, I cannot leave this matter without a word on the burden in H&C applications. The following paragraph appears in the officer's reasons:

> The applicants' establishment efforts in Canada have been duly noted in this assessment; however, I do not find their degree of establishment to be exceptional in relation to similarly situated individuals who have been in Canada for a similar amount of time. The applicants have been in Canada for approximately four years and have disregarded Canada's immigration laws by overstaying the authorized period of their stay and working without the proper authorization. While I recognize that leaving Canada may be difficult, the applicants' evidence does not support that they would incur exceptional hardship by applying for permanent residence in Canada from abroad in the normal manner.
>
> [Emphasis added.]

[99] Although the point was not argued by either party, I do not wish to be taken as endorsing the underlined statements concerning exceptionality, either with respect to any individual H&C factor being assessed or overall in an H&C application. The adjectives associated with hardship on H&C applications include "unusual", "undeserved" and "disproportionate", but do not include "exceptional": see *Kanthasamy*, esp. at paras 33 and 45. Nothing in *IRPA* subs. 25(1) or

Abella J.'s opinion in *Kanthasamy* suggests an onus on an application to meet a legal standard of "exceptional hardship".

VI. Conclusion

[100] For these reasons, the officer's H&C decision does not meet the requirements of *Vavilov*. The application is allowed and the officer's decision is set aside. The applicants' H&C application will be remitted back for redetermination by a different officer.

JUDGMENT in IMM-5451-19

THIS COURT'S JUDGMENT is that:

1. The decision of the officer dated August 9, 2019 on the application under subs. 25(1) of the *Immigration and Refugee Protection Act* is set aside.
2. The application is remitted back for redetermination by a different officer.
3. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.
4. There is no order as to costs.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5451-19
STYLE OF CAUSE:	RAINHOLZ SALES RAINHOLZ, DONIZETE FRANCISCO RODRIGUES, GUSTAVO SALES RODRIGUES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 14, 2020
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	FEBRUARY 05, 2021

APPEARANCES:

Bahar Karbakhsh-Ravari	FOR THE APPLICANTS
Meva Motwani	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bahar Karbakhsh-Ravari Markham, Ontario	FOR THE APPLICANTS
Meva Motwani Attorney General of Canada	FOR THE RESPONDENT