Federal Court  Cour fédérale

Date: 20210630

Docket: IMM-996-20
(IMM-1425-20)

Citation: 2021 FC 600

Ottawa, Ontario, June 30, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

NIZAM SAIDA
AMAL KOUSA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants, Mr. Nizam Saida and Mrs. Amal Kousa, filed two Applications for judicial review [the Applications], each challenging a decision rendered by an International Migration Officer of the International Migration Section of the Embassy of Canada in Lebanon.

[2] More particularly, on February 10, 2020, the Applicants filed an application for judicial review of the decision an International Migration Officer [the Reviewing Officer] issued on December 13, 2019. The Reviewing Officer then informed the Applicants that they had completed the assessment of their request for humanitarian and compassionate consideration pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act* (SC 2001, c 27 [the Act]). After consideration of their application and the supporting information provided, the Reviewing Officer concluded that humanitarian and compassionate considerations did not justify granting the exemption from any applicable criterion or obligation of the Act.

[3] On February 27, 2020, the Applicants filed a second application for judicial review, challenging the decision the Reviewing Officer issued on February 26, 2020. The Reviewing Officer then informed the Applicants that they had examined the additional reasons submitted for requesting reconsideration, and declined to use their discretion to either re-open the file or grant an exemption from any applicable criterion or obligation under section 25 of the Act.

[4] On March 9, 2020, Madam Prothonotary Tabib ordered that the Applications be consolidated and that all future proceedings only be filed in Court file IMM-996-20.

[5] For the reasons set out below, the Applications for judicial review will be dismissed.

II. Context

[6] Mr. Nizam Saida, the principal applicant [PA], and Mrs. Amal Kousa, his accompanying dependant, are married. They are citizens of Syria, where they reside, and are both retired. Their

three children all now live in Canada as permanent residents with their own children, the Applicants' grandchildren.

[7] In 2016, the Applicants applied for Canadian permanent resident status as members of the "Convention refugees abroad" class or of the "Country of asylum" class.

[8] A member of the Convention refugees abroad class is defined at section 145 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227 [the Regulations]). Hence, a foreign national is a Convention refugee abroad, and a member of the Convention refugees abroad class, if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.

[9] In turn, a Convention refugee is defined at section 96 of the Act:

> A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
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> > (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or
> >
> > (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

[10] A member of the Country of asylum class is defined at section 147 of the Regulations:

> A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because
>
> > **(a)** they are outside all of their countries of nationality and habitual residence; and
> >
> > **(b)** they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

[11] On October 27, 2016, an employee of the Québec *Ministère de l'Immigration, de la Diversité et de l'Inclusion* confirmed the approval of the collective sponsorship filed by the *Église Evangélique Baptiste Arabe de Montréal* in favour of the Applicants. On November 7, 2016, Citizenship and Immigration Canada [CIC] confirmed receipt of the sponsorship approval.

[12] On same date, CIC also received the Applicants' Schedule 2 applications as refugees outside Canada, which the Applicants signed on August 15, 2016. The Applicants outlined therein that they are at risk of being killed or harmed in Syria because of falling bombs and rockets and hope to be accepted as refugees in Canada. They confirmed having left Syria for Beirut on December 3, 2015, although they indicated that they had to go back to the same critical situation in Syria because of their temporary residency in Lebanon, which can be cancelled or stopped any time.

[13] As per the notes registered in the Global Case Management System [GCMS], and included in the Certified Tribunal Record [CTR], on March 26, 2018, the Applicants were scheduled for an interview to take place on April 23, 2018.

[14] On April 23 2018, the Applicants were interviewed in Beirut by an officer of the International Migration Office, with the assistance of an interpreter. During the interview, the Applicants confirmed that they live in Syria and had just arrived in Lebanon, where they cannot stay. They outlined having been displaced within Syria more than 10 times. They indicated that they completed the application as refugees because they are emotionally tired and are afraid of the missiles. They added that people are dying and that they need their kids, having no one anymore in Syria. They confirmed they could not live in Lebanon because they need medical care, the country is too expensive, and the Lebanese would give them only a week or 5 days (presumably of visa duration), and added that they do not want to stay there illegally.

[15] The officer shared their concerns that the Applicants did not meet the definition of a member of the Convention refugees abroad class or a member of the Country of asylum class under the Act. The officer also indicated they had reasonable grounds to believe that the Applicants did not intend to be outside of their country of persecution, although they were outside of their country of persecution that day, given that the Applicants stated their intention to return to Syria in the following days. The officer also outlined that, were it not for the medical examination, form filing, and interview, in addition to a few visits while their daughter was still in Lebanon, the Applicants provided no evidence that they would have left their country of persecution. The officer added that the Applicants had testified to the fact that they currently resided in Syria, and that they had provided insufficient evidence to demonstrate that there are reasonable grounds to believe they have a well-founded fear of persecution or that they have been and continue to be seriously and personally affected by the armed conflict in Syria.

[16] The officer noted that they provided the Applicants the opportunity to alleviate the concerns, and, finally, the officer noted that the application was refused.

[17] On April 27, 2018, the officer informed the Applicants that their application for permanent residence in Canada as members of the Convention refugees abroad class or the humanitarian-protected persons abroad designated class (Country of asylum class) was refused. The officer indicated having determined that the PA did not meet the requirements for immigration to Canada.

[18] In particular, the officer was not satisfied that the PA met the definition of the Convention refugees abroad class (section 145 of the Regulations), given that (1) he is living in the country that is he seeking protection from, while section 96 of the Act requires a Convention refugee to be outside his country of nationality; and (2) the officer was not satisfied, based on of all the evidence, that there is a reasonable chance or good grounds that he has a well-founded fear of persecution.

[19] In addition, the officer was not satisfied that the PA met the definition of the Country of asylum class stated at section 147 of the Regulations, given that (1) the PA continues to reside in his country of residence (subsection 147(a) of the Regulations); and (2) the officer was not satisfied that there is a reasonable chance or good grounds that he continues to be seriously and personally affected as a result of armed conflict in Syria, considering that he is in his country of residence (subsection 147(b) of the Regulations).

[20] The officer cited paragraph 139(1) of the Regulations and subsections 11(1) and 2(2) of the Act, and concluded the PA did not meet the requirements of the Act and the Regulations.

[21] On June 29, 2018, the Applicants' newly appointed counsel sent a "Reconsideration Request" to the International Migration Office of the Canadian Embassy in Beirut, asking that the Applicants' application be reconsidered under section 25 of the Act. The request included some 345 pages of new evidence.

[22] The Reconsideration Request outlined that it was clear that the main focus of the interview was whether the Applicants are living in Syria, and the impact that this had on the requirement that they be "outside" of their country of nationality.

[23] The Applicants thus argued that it became apparent that it would be appropriate to seek a reconsideration, as they were unable to articulate a request for humanitarian exemption, even though they were trying to communicate to the decision-maker that they were living in Syria not as a choice, but because living in Lebanon was not an option. They stressed that living in Syria continues to put them at risk.

[24] The Applicants argued that courts have consistently recognised that administrative agencies have the power to reconsider a final decision, especially given the flexible and less formalistic nature of administrative decision-making, citing *Chandler v Alberta Association of Architects*, [1989] 2 SCR 848; *Nouranidoust v Canada (Citizenship and Immigration)* [2000] 1

FC 123; and *Kurrukal v Canada (Citizenship and Immigration)* 2009 FC 695 (confirmed on appeal in 2010 FCA 230).

[25] In their Reconsideration Request, the Applicants acknowledged that they were in Syria, but submitted that they continue to have a well-founded fear of persecution and to be seriously and personally affected as a result of armed conflict in Syria. Further, although they returned from Lebanon to Syria, the Applicants submitted that they do not have a reasonable prospect of a durable solution in a country other than Canada. They thus submitted there are very compelling factors that have driven them to return from Lebanon to Syria, despite the grave dangers and difficulties they continue to face.

[26] The Applicants therefore requested an exemption from any of the applicable requirements of the Convention refugees abroad and Country of asylum classes, including the requirements that they be outside their country of nationality. They indicated their request was submitted pursuant to section 25 of the Act, and that it was based on highly compelling humanitarian and compassionate grounds, including the best interests of the child. Section 25 states:

> 25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national **and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act** if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national,

> taking into account the best interests of a child directly affected [my emphasis].

[27] The Applicants submitted that three factors justified the issuance of an exemption on humanitarian and compassionate considerations.

[28] First, they raised the reasons why they cannot live in Lebanon, which should weigh in favour of the exercise of ministerial discretion under section 25 of the Act to grant a waiver of the requirement that the Applicants be "outside" their country of origin.

[29] Second, they raised the human rights situation in Syria as supporting the conclusion that there are significant objective risks to their lives and security, both due to the ongoing civil war and to their Christian faith, which, they argued, weighed heavily in favour of granting humanitarian relief.

[30] Third, they raised their strong ties to Canada, as their three children and seven grandchildren live in Canada. A waiver would be in the interests of numerous permanent residents directly affected by this decision, including children. They stressed that this factor therefore weighed heavily in favour of granting humanitarian relief.

[31] In their Reconsideration Request, the Applicants indicated that evidence was filed thereof. This evidence consisted of 4 annexes: Annex A: written statements from the Applicants, evidence of entry permits into Lebanon, letters from a doctor regarding the medical needs of the Applicants, evidence that the Applicants are Christians, photos of the Applicants and their family

members living in Canada; Annex B: letters from Applicants' children in Canada; and Annexes C and D: Reports on conditions in Lebanon.

[32] As we will see below, the documents of Annex A, containing some 27 pages, were not included in the Reconsideration Request package sent to the International Migration Office.

[33] On December 11, 2019, a Reviewing Officer examined the Reconsideration Request and registered notes in the system. The Reviewing Officer noted, *inter alia*:

> • "It would appear the counsel does not take issue with the decision itself [...] is now seeking that the case be re-opened and be reviewed pursuant to A25, humanitarian and compassionate considerations, including the best interests of the child."
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> • "Counsel submitted 345 pages to substantiate the request for H&C […] [but some documents are missing (Annex A)]. The onus is on the applicant/representative to submit all documentation they wish to have considered. Given the delay in reviewing this submission, Counsel has followed up several times for status updates on the reconsideration request but did not supply any additional evidence."
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> • "Despite requesting an exception from the need to meet the requirements of A96 or R147, counsel also stated that '...we submit that they continue to have a well-founded fear of persecution and to be seriously and personally affected as a result of the armed conflict in Syria.' As such, I had to turn my mind to these facts."
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> • Being satisfied the officer had complied with the principles of natural justice and procedural fairness and that there did not appear to be any errors in fact or in law.
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> • There was a distinct lack of evidence as to how the Applicants have a well-founded fear of persecution or how they are seriously and personally affected as a result of armed conflict. The Applicants relocated internally, never fled Syria, had no problem with the government since they

> retired, and crossed the border to visit their children in Lebanon.

[34] As such, the Reviewing Officer declined to use their discretion to reconsider the officer's initial decision in this regard.

[35] However, the Reviewing Officer did re-open the case in order to examine the humanitarian and compassionate considerations per subsection 25(1) of the Act, and noted:

> • Regarding the argument that the Applicants cannot live in Lebanon, the Reviewing Officer noted that (1) there is no requirement to live in Lebanon: the test is that they be outside their country of nationality; (2) despite the cost of living and residency issues, there are more than 918 000 Syrian refugees registered in Lebanon, and 74% do not have legal residence; (3) the Applicants visited Lebanon, but there is no evidence they sought assistance or support from the UNHCR: (4) there is no evidence they attempted to flee in another country but were prevented from doing so; (5) there is no evidence as to the Applicants' medical condition, while their medical results were M3 and showed diabetes and hypertension which are stable: (6) no evidence was provided that treatment could not be obtained in Lebanon, in Saudi Arabia, or any other country. Not enough evidence was supplied to justify an exemption from the need to be outside their country as required by section 96 of the Act and section 147 of the Regulations. Further, the Reviewing Officer did not find it reasonable that economic hardship would outweigh any well-founded fears of persecution or personal and serious harm.
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> • On the danger in Syria, from the perspective of human rights, the Reviewing Officer noted that the Applicants provided a number of reports and articles but did not detail any direct links to them. The Reviewing Officer found that there was not sufficient evidence to warrant an exemption to the requirement that the Applicants be outside their country of nationality. They did not find it reasonable that the Applicants would remain in a place where they feared human rights abuses when the alternative was economic hardship.

> • Lastly, regarding the Applicants' strong ties to Canada, the Reviewing Officer noted that (1) all children moved from Syria in 2010, 2012 and 2016, leaving their parents behind in Syria, so it is not a new situation; (2) counsel limited the information on the best interest of the children to the fact that the Applicants have seven grandchildren living with their children in Canada; and (3) there exist other programs, namely sponsorship and super visas, and travel to third countries.

[36] On balance, the Reviewing Officer found that insufficient evidence was supplied to satisfy him that there was a case to be made for an exemption under section 25 of the Act.

[37] On December 13, 2019, the International Migration Officer informed the Applicants that their request under section 25 of the Act was refused. The Reviewing Officer refused the request because (1) the PA is outside of his country of nationality or habitual residence and, on balance, has not provided sufficient evidence to satisfy him that there is a case to be made for an exemption from this requirement; and (2) the PA has not provided sufficient information to justify an exemption from any of the grounds for resettlement, under section 96 of the Act and section 147 of the Regulations, on the basis of humanitarian and compassionate considerations, including the best interests of the child.

[38] On February 6, 2020, counsel for the Applicants wrote to the embassy (Beirut (Migration) email) and, as he had omitted to include the documents contained in Annex A with his initial June 2018 Reconsideration Request, he included the documents in his message and asked the Reviewing Officer to reconsider their decision in light of these documents.

[39] The additional evidence, i.e. Annex A, that was initially omitted contains 27 pages, including some 25 photos.

[40] On February 26, 2020, the Reviewing Officer registered notes in the GCMS. They confirmed having reviewed the additional information. The Reviewing Officer also confirmed that they declined to use their discretion to re-open the file, and were unwilling to use their delegated authority to waive any of the requirements of the Act or Regulations pursuant to section 25 of the Act.

[41] The Reviewing Officer again noted that the Applicants remained in Syria and had left Syria and returned several times. The Reviewing Officer further noted that this was not in keeping with the Applicants asserted fear of persecution. In addition, the Reviewing Officer found that their assertions regarding living conditions in Lebanon essentially amounted to economic hardship, which could not reasonably outweigh their fear of persecution.

[42] Regarding the Applicants' health conditions, the Reviewing Officer noted that the Applicants had not provided evidence that they could not get appropriate treatment in Lebanon, in Saudi Arabia or in any other country, or that getting treatment prevented them from leaving Syria, and that they did not need to visit the doctor.

[43] Regarding the photos to support the family ties in Canada, the Reviewing Officer noted that the Applicants had not provided any additional information on the best interests of the children. They also found that the Applicants could gain status as a result of these family ties

through other programs (sponsorship and super visas) or travel to third countries, as they previously had.

[44] After reviewing the documents in light of the arguments raised in the June 2018 Reconsideration Request, the Reviewing Officer noted: “In a nutshell, as with the first submission, there is a distinct lack of evidence as to how the Applicants have a well founded fear of persecution or how they are seriously and personally affected as a result of armed conflict nor have they supplied sufficient evidence to satisfy me that there is a case to be made for an exemption under A25.”

[45] The same day, the Reviewing Officer email counsel for the Applicants to inform them of the decision.

[46] On February 27, 2020, the Applicants filed a second application for judicial review (Court File No IMM-1425-20), seeking judicial review of the February 26, 2020 decision (regarding their second reconsideration request).

III. Arguments raised by the Applicants

[47] The Applicants state that they do not challenge the decision that refused their permanent residency application as members of the Convention refugees abroad class or the Country of Asylum class, or the decision not to re-open this aspect of their case.

[48] The Applicants challenge the Reviewing Officer's decision not to exempt them of the requirement of the aforementioned classes under section 25 of the Act. Hence, before the Court, the Applicants submit that the Reviewing Officer :

> 1) Downplayed the hardship factors faced by Syrian refugees in Lebanon, thus failing to understand why the Applicants remain in Syria;
>
> 2) Failed to consider the evidence regarding the risks and hardships faced by the Applicants in Syria;
>
> 3) Minimised the hardship factor of the Applicants being separated from their children and grandchildren, based on unreasonable prospect for reunification.

IV. Section 25; Humanitarian and Compassionate Considerations

[49] As noted, section 25 of the Act allows the Minister to waive the application of a requirement or criterion under the Act or the Regulations which may prevent an applicant from obtaining permanent resident status in Canada.

[50] As Justice Walker indicated in *Dhillon v Canada* (Citizenship and Immigration), 2019 FC 391 (at para 12): "The starting point is subsection 25(1) of the IRPA which permits the Minister to grant exceptional and discretionary H&C relief from the requirements of the IRPA to an applicant who applies for permanent residence. If the request for relief is made from outside Canada, the request must be made as an application for a permanent resident visa pursuant to section 66 of the Immigration and Refugee Protection Regulations, SOR/2002-227 (IRPRs). Paragraph 10(2)(c) of the IRPRs requires that the application indicate the prescribed class for which the application is made. The prescribed classes are the family class, the economic class,

and the Convention refugees abroad and country of asylum class (subsection 70(2) of the IRPRs)".

[51] Justice Little recently indicated: "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 and the IRPR, to mitigate the rigidity of the law in an appropriate case: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 (Abella J.), at para 19" (*Diaz v Canada (MCI)* 2021 FC 321 [*Diaz*] at para 42).

[52] Justice Little goes on to state:

> [45] 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 (L'Heureux-Dubé J.), at paras 74-75; *Kanthasamy*, at paras 25 and 33.
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> [46] With respect to the interests of a child directly affected under subs. 25(1), an officer must always be alert, alive and sensitive to the child's best interests: Baker, at para 75; *Kanthasamy*, at para 38; *Canada (Minister of Citizenship and Immigration) v. Hawthorne*, 2002 FCA 475, at para 10. An officer must also abide by the guiding admonition that children will rarely, if ever, be deserving of any hardship: *Kanthasamy*, at para 59.
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> [47] The onus of establishing that an H&C exemption is warranted lies with the applicant: *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360 (Nadon JA), at paras 35, 45 and 61(*Diaz* [emphasis in original]).

V. Parties' Submissions and Analysis

A. *Standard of review*

[53] I agree with the parties that the presumptive standard of review is reasonableness, and nothing refutes the presumption in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). An officer's assessment of H&C grounds presented by an application involves questions of mixed fact and law and is reviewable on a standard of reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*].

[54] When the reasonableness standard of review is applied, the burden is "on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Court's focus must be "on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83) to determine whether the decision is "based on an internally coherent and rational chain of analysis and […] is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). It is not for the Court to substitute its preferred outcome (*Vavilov* at para 99).

[55] Regarding the standard of review, the Applicants add that the administrative decision-maker's reasons must reflect the fact that the evidence on record was considered and not misapprehended (*Vavilov* at para 47). They submit that the Reviewing Officer rendered a decision that conflicts with the record and ignores key issues they raised. They cite *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 CF 53 at para 17 ("the

more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact ‘without regard to the evidence”).

B. *Did the Reviewing Officer downplay the hardship factors faced by Syrian refugees in Lebanon, thus failing to understand why the Applicants remain in Syria?*

(1) Parties’ submissions

[56] The Applicants generally submit that the Reviewing Officer ignored most of the evidence relating to both country conditions in Lebanon and their personal circumstances, thus depriving himself of the ability to properly gauge why the Applicants remain in Syria.

[57] The Applicants particularly submit that the Reviewing Officer’s errors are three-fold, as they relate to (a) the hardships faced by Syrian refugees in Lebanon being greater than economic hardships; (b) hardship in accessing healthcare in Lebanon; and (c) difficulty in accessing housing in Lebanon.

[58] In regards to the hardships faced by Syrian refugees in Lebanon, the Applicants submit that a finding of “economic hardship” is dismissive and a misapprehension of what the record actually describes, and thus constitutes an error. The Applicants highlight the evidence on record regarding the considerable economic, legal, and social difficulties faced by Syrians in Lebanon, and that most Syrians live below the poverty line. They note that these conditions have pressured many Syrians to return to Syria despite its ongoing civil war. In addition to a country report, the Applicants submit that they supported their statements with personal evidence to show that they

take daily medicine, require trimonthly medical check-ups, and were only granted short-stay permits to enter Lebanon. They submit that these issues were essentially ignored by the Reviewing Officer.

[59] In regards to the hardship in accessing healthcare in Lebanon, the Applicants submit that the Reviewing Officer made no mention of the difficulties that Syrian refugees face in accessing healthcare in Lebanon and that these findings are unreasonable in light of the evidence. The Reviewing Officer stated that there was no evidence the Applicants could not obtain treatment in Lebanon or required treatment that prevented them from leaving Syria. The Applicants note that this was covered by the evidence mentioned above regarding the grim employment prospects and difficulty in accessing healthcare for Syrian refugees in Lebanon.

[60] In regards to the Reviewing Officer's conclusion on access to housing in Lebanon, the Applicants submit that the finding again lacks the requisite sensitivity to the evidentiary record. The Applicants add that the Reviewing Officer misapprehended the evidence by labelling it as a question of "comfort" and ignored evidence that contradicted their findings.

[61] The Minister responds that decision is reasonable and that the Applicants have not established that the Reviewing Officer's decision contains a capital error.

[62] The Minister adds that the burden of establishing the facts relevant to a humanitarian and compassionate grounds analysis lies with the Applicants (citing, *inter alia*, *Shahbazian v Canada (Citizenship and Immigration)*, 2020 FC 680). He adds that the Reviewing Officer cited section

25 of the Act; noted and described the evidence, the onus, and the Applicants' submissions; noted that the evidence was largely made up of general articles and reports, while evidence was lacking as to the Applicants' individual fear of persecution and civil war; and noted the Applicants' multiple movement in and out of Syria.

[63] Regarding country conditions in Lebanon, the Minister responds that the Reviewing Officer did consider the argument that they could not live in Lebanon, as well as the hardship the Applicants would face in Syria.

(2) Decision

[64] The Applicants have not convinced me that the Reviewing Officer fatally downplayed the hardship factors faced by Syrian refugees in Lebanon, and that he thus failed to understand why the Applicants remain in Syria. As the Minister notes, the Reviewing Officer reviewed and cited the relevant legal provisions as well as the evidence and noted that, under the Act and Regulations, the requirement was not to be in Lebanon, but to be outside their country of nationality, hence outside Syria.

[65] The Reviewing Officer noted that the Applicants enjoyed freedom of movement across the Syrian border, had travelled to Lebanon and Saudi Arabia without seeking refugee status, and that had not provided evidence that they sought or were unable to flee to another country. The Reviewing Officer also noted that more than 900,000 Syrian refugees are in Lebanon, most without legal status.

[66] I cannot conclude that the Reviewing Officer ignored or misapprehended the evidence. While the Applicants may disagree with the Reviewing Officer's conclusions, and while another decision-maker could reach different conclusions, the Reviewing Officer's conclusions are reasonable given the evidence adduced before them.

[67] The hardship the Applicants described they would suffer in Lebanon is indeed essentially economic, and the Applicants have not outlined how economic hardship, as acute as it may be, outweighs fear for one's life and explains why they remained in Syria. Furthermore, there is no requirement for the Applicants to live *in Lebanon*, and the Reviewing Officer's initial concern, as per the requirements of the Regulations, was that they were not outside their country of nationality. The Applicants have not addressed this concern in their initial application for permanent resident status, nor in their submissions for a reconsideration pursuant to section 25 of the Act.

[68] The Applicants have not convinced me that the Reviewing Officer failed to understand why the Applicants remained in Syria. The Applicants' submissions were exclusively concerned with the hardship they faced in Lebanon, and did not outline why they could not leave elsewhere.

C. *Did the Reviewing Officer fail to consider the evidence regarding the risks and hardships faced by the Applicants in Syria*

(1) Parties' submission

[69] The Applicants submit that the Reviewing Officer did not adequately study the risk factors they mentioned regarding Syria, more specifically the evidence regarding the risks and

threats faced by Christians in Syria (both generally and in their residential area). They stress that the Reviewing Officer ignored the evidence regarding the ongoing civil war, which makes life unbearable, notably as a result of aerial bombardment and besiegement. The evidence, both testimonial and documentary, also referred to attacks close to their residential areas. The Applicants add that risk is established with reference to similarly situated individuals: they do not need to have been personally attacked to establish such a risk (*Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at para 14).

[70] As mentioned above, the Minister responds that that Reviewing Officer cited section 25 of the Act and noted and described the 345 pages of evidence, the onus, and the Applicants' submissions. The Reviewing Officer also noted the lack of evidence as to the Applicants' individual fear of persecution and civil war. The Reviewing Officer further noted the Applicants' multiple movement in and out of Syria. The Minister notes that the Reviewing Officer acknowledged the evidence submitted by the Applicants, but found that they had chosen to remain in Syria and that the evidence concerned other areas of the country. The Reviewing Officer acknowledged that Syria remains unsafe, but found that the Applicants had not shown the risks they would face in Syria. The Reviewing Officer also cited the relevant legal provisions.

(2) Decision

[71] The Applicants have not convinced me that the Reviewing Officer failed to consider the evidence regarding the risks and hardships the Applicants faced in Syria. The Reviewing Officer did consider the situation in Syria and acknowledged it remains unsafe, but noted the lack of

evidence regarding personalised risk and weighed the risk in light of the fact that the Applicants remained in Syria.

[72] As the Minister indicated in his memorandum, the Reviewing Officer noted that, per the evidence, attacks are still happening near Damascus, placing residents at risk and that "the situation for Christians in Syria continues to be very dangerous." On this specific issue, the Reviewing Officer noted a number of elements, but could not find evidence or a personalised risk. The Reviewing Officer found that it was not reasonable that the Applicants would remain in a place where they feared human rights abuses when the alternative was economic hardship.

[73] Another decision-maker may have weighed the evidence differently, but while the Applicants disagree with the conclusions reached, the Court must refrain from re-weighing and reassessing the evidence considered by the decision-maker (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para. 64; see also *Dr Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at paras 41-42, cited in *Vavilov* at para 125; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 61; *Aghazadeh v Canada (Citizenship and Immigration)*, 2020 FC 211).

[74] The onus of establishing that an H&C exemption was warranted lied with the Applicants, and it was reasonable for the Reviewing Officer to conclude the burden had not been met.

D. *Did the Reviewing Officer minimise the hardship factor of the Applicants being separated from the children and grandchildren, based on unreasonable prospect for reunification?*

(1) Parties' submissions

[75] The Applicants submit that the Reviewing Officer unreasonably minimised the hardship factor of family separation by mentioning that the family (1) is accustomed to being separated and (2) could be reunited through other Canadian immigration programs or by travelling to a third country. First, the Applicants submit that obtaining temporary resident status in Canada would be unlikely, as the relevant test requires a demonstration that an applicant will leave Canada at the end of the authorised period (*Kindie v Canada (Citizenship and Immigration)*, 2011 FC 850 [*Kindie*]). Second, the Applicants submit that recent quotas have limited access to the relevant programs (no reference). Third, they state that the prospect of reunification in a third country is a pure conjecture, which constitutes a reviewable error (citing *Armstrong v Canada (Attorney General)*, 2010 FC 91 at para 39 [*Armstrong*]).

[76] The Minister responds that the Reviewing Officer acknowledged the Applicants' ties to Canada. The Reviewing Officer noted the relevant facts regarding the family, but found that other programs were available and that the Applicants could also travel to third countries, as they previous have.

[77] The Minister notes that the weight given to the evidence is a highly discretionary decision and that the court should not re-weigh the evidence. The Minister adds that the decision of an officer not to reopen a file warrants significant deference (citing, *inter alia*, *Hussein v Canada (Citizenship and Immigration)*, 2018 FC 44 [*Hussein*]). The Reviewing Officer only needs to consider additional evidence in exceptional circumstances of bad faith (*Hussein* at paras 55, 57).

The Reviewing Officer's explanation for not reopening the file complies with, and exceeds, the requirements of the case law and the guidelines provided by the Immigration, Refugees and Citizenship Canada (*The humanitarian and compassionate assessment: Reconsideration of a negative H&C decision* (Ottawa: Immigration, Refugees and Citizenship Canada, 2014), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/humanitarian-compassionate-consideration/processing/assessment-reconsideration-negative-decision.html>).

(2) Decision

[78] I again note that the Applicants are in fact again asking the Court to re-weigh the factors and the evidence, which it cannot do on judicial review. The Reviewing Officer substantively considered and weighed all the relevant facts and factors before them.

[79] Furthermore, I am not satisfied that *Kindie* lays out a conclusion of general applicability. I am therefore not satisfied that the Reviewing Officer should have concluded that the Applicants could not seek to obtain status in Canada through other immigration programs (or that these programs are limited by new quotas). The Reviewing Officer's conclusion that the Applicants could meet with their family in third countries is not a conjecture, given that (1) the Applicants have travelled to third countries before and (2) the Applicants have repeatedly travelled between

Syria and Lebanon. The citation to the *Armstrong* is not relevant, as the cited paragraph only defines a conjecture.

VI. Conclusion

[80] The Applicants have not convinced me that the Reviewing Officer ignored or misapprehend the evidentiary record in assessing the Applicants' request for an exemption under section 25 of the Act, nor that the Reviewing Officer's decisions are unreasonable under the framework set out in *Vavilov*. The Reviewing Officer considered and weighed the evidence on record, the crucial fact that the Applicants have remained in Syria and their reasons for doing so, solely justified by the situation in Lebanon. The Reviewing Officer provided ample and intelligible justification for the conclusions drawn, and their decisions are "based on an internally coherent and rational chain of analysis" and justified in relation to the facts and law that constrained them (*Vavilov* at para 85).

[81] The Applicants' arguments have not convinced me that the Reviewing Officer's decisions are unreasonable, in that they do not bear the hallmarks of reasonableness – justification, transparency and intelligibility – or that they are not justified in relation to the relevant factual and legal constraints.

[82] I will therefore dismiss the applications for judicial review.

JUDGMENT in 996-20 (IMM-1425-20)

THIS COURT'S JUDGMENT is that:

1. The Applications for judicial review are dismissed;

2. No question is certified.

"Martine St-Louis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-996-20 (IMM-1425-20)
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