

Federal Court



Cour fédérale

**Date: 20220209**

**Docket: IMM-515-21**

**Citation: 2022 FC 169**

**Ottawa, Ontario, February 9, 2022**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**ALFSENI CHAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review of a decision of a Senior Immigration Officer of Immigration, Refugees, and Citizenship Canada [the “Officer”], dated January 8, 2021, refusing the Applicant’s application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds [the “Decision”], pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the “Act”].

## II. Background

[2] The Applicant, Alfseni Cham, is a citizen of The Gambia. The Applicant arrived in Canada on January 24, 2013. The Applicant has an extensive application and immigration history, including a refugee claim and a previous H&C application – both refused.

[3] On September 6, 2019, the Applicant filed the current H&C application [the “Application”], seeking an exemption from the requirements of the *Act* to facilitate the processing of his application for permanent residence from within Canada.

[4] The Officer refused the Applicant’s H&C Application by Decision, dated January 8, 2021. The Applicant seeks:

- i. A writ *certiorari* quashing the Officer’s Decision;
- ii. An Order referring the matter to a different Officer for redetermination; and
- iii. Such further and other relief as counsel may advise and this Honourable Court deems just in the circumstances.

## III. Decision Under Review

[5] The Applicant based his Application on his establishment in Canada; risk of harm from the government and authorities in The Gambia; Adverse Country Conditions; and the best interests of his five children.

[6] Having conducted a global assessment of all the circumstances brought forward by the Applicant (as outlined below) and all of the documentation that was submitted, the Officer was not satisfied that the H&C considerations before him justified an exemption under subsection 25(1) of the *Act* and refused the Applicant's Application.

A. *Establishment in Canada*

[7] The Officer found that the Applicant has some establishment in Canada and gave positive consideration to the following:

- i. The Applicant has resided in Canada for eight years, which is a significant period of time;
- ii. The Applicant has made efforts to further his English language skills;
- iii. The Applicant has been able to obtain employment in Canada for several years;  
and
- iv. The Applicant has friends and acquaintances in Canada.

[8] The Officer noted that the Applicant does not have any family in Canada – all of the Applicant's immediate family members, including his spouse, five children, and three siblings are citizens of and reside in The Gambia. Accordingly, the Officer found that the Applicant has strong familial ties to The Gambia and few familial ties to Canada.

B. *Risk of Harm*

[9] The Applicant claims that he will be at risk of harm from the government and authorities in The Gambia due to his political activities on behalf of the United Democracy Party.

[10] The Officer noted that this claim was previously before the Refugee Protection Division [RPD] during the hearing of the Applicant's refugee claim in 2015. The RPD found that, *inter alia*, the Applicant's claim was "manifestly unfounded, and that there is no credible basis for the claim." The Applicant was also found to have fraudulently hidden his identity and that his intention to deceive the Canadian authorities and the RPD was deliberate and wilful.

[11] The Officer found that there was little recent documentary evidence to support this claim and that the Applicant did not demonstrate that he would be at risk of harm in The Gambia from either the government or the authorities.

C. *Adverse Country Conditions*

[12] The Officer found that, though a poor economy and a high rate of unemployment are serious and ongoing issues in The Gambia, the Applicant's familiarity with The Gambia, his previous work experience in The Gambia, and his work experience in Canada would greatly assist him in obtaining employment in The Gambia that would allow him to support himself and his family.

[13] While the Officer found that the Applicant would be negatively affected by the poor healthcare system and COVID-19 pandemic should he return to The Gambia, the Officer also noted that this was only a part of the Adverse Country Conditions materials in the Application, and that Adverse Country Conditions are only one factor in an H&C application – an H&C application is based on a global assessment of all the factors brought forward for consideration.

D. *Best Interests of the Children*

[14] The Applicant's five children reside with their mother, the Applicant's spouse, in The Gambia. The Officer found no indication that the Applicant's children were not doing well in The Gambia or that they would not benefit from the Applicant being present in their daily lives if he was to return to The Gambia to apply for permanent residence.

[15] The Officer acknowledged that the Applicant has provided important financial support to his children and reiterated that the Applicant's familiarity with The Gambia and work experience would greatly assist him in obtaining employment in The Gambia that would enable him to continue to support himself and his family.

[16] The Officer also noted that the Applicant has a close relationship with the two children of the friend he currently lives with in Canada. However, the Officer found little in the Applicant's H&C materials to indicate that the Applicant would be unable to keep in contact with these children if he had to return to The Gambia.

IV. Issues

[17] The issue is whether the Officer's Decision was reasonable.

V. Standard of Review

[18] The standard of review is reasonableness [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 25].

VI. Analysis

[19] Subsection 25(1) of the *Act* provides the Minister the discretionary authority to exempt foreign nationals from the requirements of the *Act* if such an exemption is justified on the basis of H&C considerations. The Applicant bears the onus of establishing that H&C relief is warranted.

[20] An officer must consider and weigh all relevant factors in an H&C application. While an officer may be guided by a liberal and compassionate approach, subsection 25(1) is not intended to be an alternative to the immigration scheme [*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61[*Kanthasamy*] at paragraph 23].

[21] The application of the “unusual and undeserved or disproportionate hardship” standard is supported by a non-exhaustive list of factors, such as establishment in Canada, ties to Canada, the best interests of any children affected by their application, factors in their country of origin,

health considerations, consequences of the separation of relatives, and any other relevant factors. Relevant considerations are to be weighed cumulatively as part of the determination of whether relief is justified in the circumstances and should not fetter the immigration officer's discretion to consider all relevant factors.

[22] A decision under subsection 25(1) will be found unreasonable if the interests of children affected by the decision are not sufficiently considered [*Kanthasamy* at paragraph 39].

[23] Absent H&C relief, the Applicant would be required to apply for permanent residence in Canada from The Gambia.

[24] The Applicant argues three key issues in challenging the Officer's Decision:

- i. The Officer erred in their analysis of the best interest of the children by ignoring or failing to reasonably address the fact that the Applicant was financially supporting his five children and wife residing in The Gambia with the income the earned in Canada;
- ii. The Officer erred in making an illogical and unintelligible finding by stating that the conditions in The Gambia are less than favourable, yet determining that the Applicant must return there to apply for permanent residence; and
- iii. The Officer erred by failing to explain why the Applicant's level of establishment in Canada spanning over eight years was insufficient to warrant H&C relief.

[25] The Respondent's position is that the Decision is reasonable and that the Officer did not err as claimed by the Applicant. I agree.

[26] The "best interests" principle is highly contextual and must be responsive to the particular details of the children in each case [*Kanthasamy* at paragraph 35]. While additional jurisprudence can inform the Court on the application of this principle, every case is different and must be assessed on its own evidence. Both of the cases provided by the Applicant can be distinguished from the current matter before the Court.

[27] The Officer's findings regarding the best interests of the Applicant's five children in The Gambia were reasonable. The Officer acknowledged and was alive to the important financial support that the Applicant provides for his children in The Gambia. The Officer reasonably found that the Applicant's familiarity with The Gambia, his work experience in The Gambia, and his work experience in Canada would greatly assist him in obtaining employment in The Gambia that would allow him to support himself and his family. The Applicant is effectively asking the Court to reweigh the evidence, which is not the Court's role in a judicial review.

[28] The Officer's findings regarding the impact of the Adverse Country Conditions on the Applicant are logical and intelligible. The Officer acknowledged the poor economy and high unemployment rate in The Gambia, as well as the issues with the healthcare system and the COVID-19 pandemic. The Officer's conclusions in this regard were not speculative – they were based on the evidence provided in the Application, the Applicant's previous work experience in both The Gambia and Canada, and the Applicant's familiarity with The Gambia.



[29] Further, the Officer's findings regarding the Applicant's establishment in Canada were reasonable. The Officer expressly dealt with, and gave positive consideration to, the factors advanced in support of the Applicant's establishment. The Officer did not discount the Applicant's degree of establishment, qualify it as insufficient, or hold out that it must meet an exceptional standard. The Officer was reasonable in finding that the Applicant had some establishment in Canada, but that the weight given to the factors raised by the Applicant was insufficient to support the Applicant's H&C Application.

VII. Conclusion

[30] For the reasons above, this Application is dismissed.

**JUDGMENT in IMM-515-21**

**THIS COURT'S JUDGMENT is that**

1. The Application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-515-21

**STYLE OF CAUSE:** ALFSENI CHAM v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 8, 2022

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** FEBRUARY 9, 2022

**APPEARANCES:**

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