

Federal Court



Cour fédérale

**Date: 20220224**

**Docket: IMM-2059-21**

**Citation: 2022 FC 257**

**Ottawa, Ontario, February 24, 2022**

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

**BETWEEN:**

**AHSAN MUNIR, IQRA ARSHAD  
MOHAMMAD ZAYAN, SUFYAN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is a judicial review of a decision by a Senior Immigration Officer [Officer] denying the Applicants' humanitarian and compassionate [H&C] application. The Applicants argue that the Officer made unreasonable findings concerning the best interests of the children [BIOC], the

new psychological report introduced on the reconsideration of the matter and the Applicants' ties to Canada – specifically to the Principal Applicant's sister.

[2] For the reasons that follow, this judicial review will be dismissed.

## II. Background

[3] The Applicants are a family of Pakistani citizens. The Principal Applicant and his wife [Female Applicant] have two young children (7 and 8 years old). The Principal Applicant has a sister who is a Canadian citizen.

[4] Central to the Applicants' claim is an alleged kidnapping attempt against the two children before they left Pakistan.

### A. *Pre-H&C*

[5] The Applicants had a significant immigration history in Canada—a fact referred to by the Officer. In addition to Temporary Resident Visas which were refused, their refugee claim was dismissed by the Refugee Protection Division [RPD] in March 2019. The RPD decision was upheld by the Refugee Appeal Division and the Federal Court dismissed leave.

[6] Having exhausted these avenues for residency in Canada, the Applicants applied for H&C relief which was refused. They then applied for reconsideration principally based on a

psychological report by Dr. Gerald M. Devins. Reconsideration was granted and the same Officer reviewed the reconsideration materials and upheld the original decision.

[7] The RPD decision denying refugee status was based upon the lack of credibility of the claimants and the existence of state protection. The RPD addressed the kidnapping attempt. It noted the absence of corroborating medical evidence and the failure to report the attempt to police. It found the story not plausible and described the event (if it happened) as more a matter of extortion and of general criminality but not grounded in the Convention pursuant to s 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27*.

B. *H&C*

[8] With respect to the factor of establishment, the Officer considered the sister's allegation that removal of the Applicants would cause her severe mental distress. The Officer concluded that the Applicants had not established mutual dependence and the connection could be maintained through virtual means.

[9] The Officer concluded that the positive weight of the Principal Applicant's employment was lessened by the minimal weight given to the Female Applicant's document deficiency with respect to her employment history.

[10] The Officer concluded that in respect of attendance at mosque and political involvement with a Cabinet minister, there would be no significant impact.

[11] On the critical factor of hardship, the Officer noted the hardship claimed based on the high rates of kidnapping and child abduction in Pakistan and specifically to an attempt against the children. He found that there was little objective evidence from witnesses and authorities nor was there any effort to solicit medical or mental health treatment for the children. There was insufficient evidence that the children are likely to be targeted for kidnapping.

[12] The Officer dismissed the assertion that the Female Applicant needed specialized medical treatment because there was no third party evidence that such medical attention was not available in Pakistan.

[13] On the BIOC factor, the Officer found that the claim that it was not in the children's best interest to return to Pakistan, the place of abduction, was speculative in the absence of evidence to establish that they were likely to be kidnapped or abducted. The Officer found that other features such as family in Pakistan, and their academic success would facilitate integration.

C. *Reconsideration*

[14] The reconsideration materials included the report of Dr. Devins, additional submissions on the Female Applicant's employment and additional information on country conditions.

[15] The Officer considered the doctor's opinion that the Principal Applicant and Female Applicant would suffer significant psychopathology, stressor-related disorder and post-traumatic stress disorder. The psychological report was found to lack details of the cited traumatic experiences and the Officer saw no reason to depart from the original conclusion that there was a

failure to provide objective evidence of the cited incident of trauma such as corroborative evidence.

[16] The Officer put no more emphasis on employment history. The Officer further found the additional evidence on country conditions did not establish that the Applicant children would be directly affected by the crimes outlined in their material.

### III. Analysis

#### A. *Standard of Review*

[17] Although the Applicants made no submissions on this issue, the law is now clear that for decisions of the nature here, the standard is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. In concluding a reasonableness review, the Court is not to undertake its own assessment of the Officer's conclusions but to determine whether they are reasonable based upon the record.

#### B. *Best Interests of the Children*

[18] A central point in the Applicants' argument was that with respect to the BIOC issue, the Officer's conclusions were faulty and not based upon the psychological report which he should have accepted.

[19] In my view, the Applicants have proceeded on the wrong premise that the RPD did not doubt the kidnapping attempt. A fair reading of the RPD decision is that the evidence was not

accepted. Comments that the kidnapping is not likely to occur again is not confirmation that the Officer or RPD accepted that the kidnapping happened.

[20] The Applicants' microscopic examinations of the RPD decision ignore comments in context and conclusions of credibility and lack of confirmatory evidence. In my view, the RPD rejected the kidnap narrative.

[21] The Officer reasonably concluded that the Applicants had not provided objective evidence that the kidnapping occurred. It was also not necessary for the Officer to refer to the RPD decision as it was part of the record and the Officer is presumed to have considered the record.

[22] Officers are "damned if they do and damned if they don't" in referring to RPD decisions. If they do, they are accused of not considering the evidence independently; if they don't, they are accused of not considering important evidence. In this case, the Officer threaded the line between those two views.

[23] The Applicants' reliance on Dr. Devins' report as part of their BIOC submissions is misplaced. A psychologist's report is only as good as the facts on which it is based. Here there is no factual basis upon which to base the opinion. On its face, the report is suspect, based on a single interview and on unsubstantiated facts.

[24] The Court, in assessing the Officer's reasonableness, can refer to Court experience with a witness. In this case, Dr. Devins' reports have been the subject of substantial criticism in this Court. The incidents of criticism are not merely the choice between experts' evidence or its persuasiveness but on its objectivity and professionalism.

[25] The criticisms outlined below apply to Dr. Devins' report in this case. The Court's conclusion is supported by these comments:

- Justice Mosley in *Molefe v Canada (Citizenship and Immigration)*, 2015 FC 317:

[32] In my view, Dr Devins's report crosses the line separating expert opinion from advocacy. Indeed, it concludes as follows:

Ms Molefe's condition can improve with appropriate care and guaranteed freedom from her threat of removal. It is fortunate, therefore, that she is currently receiving ongoing counselling. This should not be interrupted. If refused permission to remain in Canada, her condition will deteriorate. As noted, it will be impossible for Ms Molefe to feel safe anywhere in Botswana.

[33] Dr Devins has provided similar reports in many other cases. Indeed, by his own estimate in his report, he has assessed more than 3,900 refugee claimants since 1996. The language of his report in this instance is very similar to that reported in other cases such as *Mico v Canada (Citizenship and Immigration)*, 2011 FC 964 and *Fidan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1190. It lacks, in my view, what Justice Annis has described as "the required imprimatur of reliability": *Czesak*, above, at para 41.

- Justice Zinn in *Egbesola v Canada (Citizenship and Immigration)*, 2016 FC 204:

[13] This Court has observed that reports such as that before the RAD may cross the line separating expert opinion from advocacy: *Molefe v Canada (Minister of Citizenship and Immigration)*, 2015 FC 317 [*Molefe*]. In *Molefe*, Justice Mosley found at para 34 that the report submitted in that case, also from Dr. Devins, had crossed the line and was not of "such importance to a central issue of the case that the failure to mention it and analyse it requires a finding

that the decision was not made in accordance with the evidence.”  
Justice Mosley writes at para 32:

In my view, Dr Devins’s report crosses the line separating expert opinion from advocacy. Indeed, it concludes as follows:

Ms Molefe’s condition can improve with appropriate care and guaranteed freedom from her threat of removal. It is fortunate, therefore, that she is currently receiving ongoing counselling. This should not be interrupted. If refused permission to remain in Canada, her condition will deteriorate. As noted, it will be impossible for Ms Molefe to feel safe anywhere in Botswana.

[14] Virtually identical language is found in Dr. Devins’ report in this case. Here he writes:

Ms. Egbesola’s condition can improve with appropriate care and guaranteed freedom from the threat of removal. If refused permission to remain in Canada, her condition will deteriorate. As noted, it will be impossible for Ms. Egbesola to feel safe anywhere in Nigeria.

- Justice Zinn again in *Oluwakemi v Canada (Citizenship and Immigration)*, 2016 FC 973:

[8] The Applicants also submit that the RAD embarked on an “unwarranted excursion based on speculation” when it stated that the psychological report from Dr. Devins crossed “the line separating expert opinion from advocacy when it advocates the granting of refugee status.” While Dr. Devins does not use those words, a fair and reasonable reading of his opinion is that he is indeed advocating that the principal Applicant be granted status. I find nothing speculative in the discussion by the RAD. I too find that he crossed the line.

[26] As Dr. Devins’ report suffers from similar deficiencies, it was reasonable to reject it.



[27] In a case where credibility has been an issue from the beginning, reliance on a report that lacks a credible basis does not assist the Applicants.

[28] I conclude that there is nothing in the reconsideration that assists the Applicants and much that reinforces the reasonableness of the Officer's original conclusions.

IV. Conclusion

[29] The Officer's decision on this H&C application was entirely reasonable. This judicial review will be dismissed and there is no question for certification.

**JUDGMENT in IMM-2059-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification.

"Michael L. Phelan"

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Judge

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

**DOCKET:** IMM-2059-21

**STYLE OF CAUSE:** AHSAN MUNIR, IQRA ARSHAD, MOHAMMAD ZAYAN, SUFYAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 9, 2022

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** FEBRUARY 24, 2022

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