Federal Court  Cour fédérale

Date: 20221003

Docket: IMM-4226-20

Citation: 2022 FC 1368

Ottawa, Ontario, October 3, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

HAIMINDRA HARRIPERSAUD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Haimindra Harripersaud, seeks judicial review of the June 12, 2020 decision of a Senior Immigration Officer [the Officer] that refused his application for permanent residence, which he sought based on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] Mr. Harripersaud is a citizen of Guyana who arrived in Canada as a visitor in August 2017. He submitted his H&C Application in December 2018 based on his establishment, family ties in Canada, best interests of the children, and hardship due to lack of mental health support and services and adverse country conditions. The Officer concluded that the H&C exemption was not warranted.

[3] For the reasons that follow, the Application is dismissed. The Court does not find any breach of procedural fairness or error in the Officer's assessment of the evidence or the exercise of discretion that would render the decision unreasonable.

[4] Mr. Harripersaud closely scrutinizes the decision and argues that the Officer made many errors, but the reality is that the H&C considerations advanced and the evidence provided in support were simply not sufficient to warrant this relief. In *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], the Supreme Court of Canada noted that hardship associated with leaving Canada is inevitable and this, on its own, will not be sufficient to warrant relief, adding that the H&C process is not intended to be an alternative immigration scheme. Mr. Harripersaud's desire to remain with some of his family members in Canada is understandable, but his submissions appear to reflect a reliance on the H&C process as an alternative to other possible means of seeking to immigrate to Canada, which he has not pursued.

I. Background

[5] Mr. Harripersaud recounts that his wife and infant son left him in January 2016 and that he then began to drink excessively and believed he was “on the brink of depression.”

[6] In August 2017, Mr. Harripersaud entered Canada on a temporary resident visa to visit his sister, a Canadian citizen. His visa has been extended several times. He continues to live with his sister and her family. Since arriving in Canada, another sister became a permanent resident of Canada (in 2019), and his mother arrived in Canada as a visitor.

[7] Mr. Harripersaud recounts that his mental health has improved since arriving in Canada and living with family.

II. The Decision Under Review

[8] The Officer noted that, in support of his H&C application, Mr. Harripersaud raised: his establishment in Canada, including that he lives with his sister and her family, who are citizens; the best interests of his 10-year-old nephew; the hardship he would face due to adverse country conditions in Guyana, including high levels of crime and violence, poverty and unemployment, and lack of mental health services; lack of ties to Guyana; and his reliance on alcohol to cope while living in Guyana.

[9] The Officer noted that Mr. Harripersaud has not been employed in Canada, is financially supported by his sister, and that he presented little evidence of community involvement, continuing education or significant integration into Canadian society.

[10] The Officer acknowledged that Mr. Harripersaud's return to Guyana to apply for permanent residence would be emotionally difficult, but found that this would not sever his ties with his immediate family members in Canada. The Officer noted the close relationship between Mr. Harripersaud and his sisters and with his mother, who may intend to seek permanent residence status in Canada. The Officer found that communication via various means and visits could partially offset the impact of physical separation from his family.

[11] With respect to the best interests of the children affected by the decision [BIOC], the Officer acknowledged that Mr. Harripersaud had a close relationship with his nephew and that separation could be difficult for both, but that they could continue to communicate via technology and visits. The Officer also noted that Mr. Harripersaud is not the primary caregiver to his nephew, who lives with both his parents.

[12] The Officer also considered the best interests of Mr. Harripersaud's own son in Guyana, noting the absence of evidence that he could not be part of his son's life and that, typically, it is in the best interest of a child to have two parents in their life.

[13] With respect to risk and adverse country conditions in Guyana, the Officer acknowledged Guyana's high crime rate, but also noted Guyana's democratic status, established laws, and

functioning judiciary. The Officer noted that Mr. Harripersaud did not recount having experienced any problems due to crime or violence in Guyana.

[14] With respect to Mr. Harripersaud's submission that he would be adversely affected by poverty and unemployment, the Officer concluded that there was insufficient evidence that he would not be able to re-establish himself in Guyana, noting that he had lived in Guyana's largest urban centre for 35 years, gone to school, been employed and spoke English. The Officer also noted that Mr. Harripersaud had not demonstrated that he had ever been unemployed or without income and added that his family in Canada offered to financially support him.

[15] The Officer addressed Mr. Harripersaud's submission that he would suffer hardship upon return because of the lack of support and treatment for mental health issues. The Officer acknowledged that Mr. Harripersaud recounted that he resorted to alcohol after his wife and son had left him. However, the Officer found that "without a clinical diagnosis or expert opinion from a qualified professional … I am unable to conclude that the applicant suffered from clinical depression, substance abuse or any other diagnosable mental health disorder." The Officer was also unable to conclude that Mr. Harripersaud "required or currently requires treatment (either pharmacological or psychotherapeutic) for any mental health disorder."

[16] The Officer then noted the documentary evidence and found that mental health services and treatment are available in Guyana, acknowledging that they may not be "on par" with those in Canada.

[17] In the overall assessment, the Officer was not satisfied, after considering all the submissions and documents, that an H&C exemption was justified. The Officer acknowledged that Mr. Harripersaud has two sisters and some extended family in Canada and that his departure may be emotionally difficult. The Officer weighed these family ties against Mr. Harripersaud's lack of significant integration, lack of financial stability and the fact that he had only been in Canada since 2017. The Officer was not satisfied that Mr. Harripersaud would face significant difficulty re-establishing himself in Guyana.

III. The Applicant's Submissions

[18] Mr. Harripersaud submits that the Officer breached procedural fairness by relying on extrinsic evidence that was not disclosed.

[19] Mr. Harripersaud also submits that the decision is not reasonable.

[20] First, Mr. Harripersaud argues that the Officer erred in the assessment of hardship arising from his mental health and the lack of mental health services because he did not have a professional diagnosis.

[21] Second, Mr. Harripersaud argues that the Officer erred by speculating that he likely has a social support network in Guyana, despite his statement that he has limited family there and is socially withdrawn.

[22] Third, Mr. Harripersaud argues that the Officer erred by focusing on hardship upon return to Guyana rather than other relevant H&C considerations, specifically his family ties in Canada. He adds that the Officer did not address the nature of his (unique) relationship with his sister who monitors his alcoholism and provides mental health support to him.

[23] Fourth, Mr. Harripersaud argues that the Officer erred by not assessing how the generalized risk of crime and violence in Guyana would constitute hardship. He further submits that the Officer erred by applying a state protection type analysis.

IV. The Respondent's Submissions

[24] The Respondent submits that the Officer did not breach the duty of procedural fairness owed by referring to a news article regarding the availability of mental health services. The Respondent submits that the article is not extrinsic evidence as it is a publicly available article, readily and easily accessible, and the information is neither novel nor significant. The Respondent adds that Mr. Harripersaud has not indicated how he has been prejudiced by the Officer's consideration of this information.

[25] The Respondent submits, moreover, that the Officer's finding that there was insufficient evidence that Mr. Harripersaud suffered from substance abuse or any other mental health issue is determinative. The Officer's reference to the availability of mental health services and treatment if needed is a secondary finding and is not determinative.

[26] The Respondent argues that Mr. Harripersaud is challenging the Officer's assessment of the evidence and seeking a reweighing, which is not the role of the Court. The Respondent submits that the decision is reasonable; the Officer's decision is transparent, intelligible, and justified by the facts and the law.

V. The Issues and Standard of Review

A. *Issues*

[27] The issues are:

- Whether the Officer breached the duty of procedural fairness owed in the circumstances by referring to online news articles; and,
- Whether the decision is reasonable, which entails consideration of Mr. Harripersaud's several arguments.

B. *Standard of Review*

[28] Where an issue of procedural fairness arises, the Court considers whether the procedure followed by the decision maker was fair having regard to all of the circumstances *(Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). Where a breach of procedural fairness is found, no deference is owed to the decision maker.

[29] H&C decisions are discretionary and are reviewed on the reasonableness *standard (Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 57–62, 174 DLR (4th) 193 [*Baker*]; *Kanthasamy* at para 44).

[30] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16, 23 [*Vavilov*], the Supreme Court of Canada confirmed that reasonableness remains the standard of review for discretionary decisions and provided extensive guidance to the courts in conducting the review.

[31] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91).

[32] In *Vavilov*, at para 100, the Supreme Court of Canada noted that decisions should not be set aside unless there are "sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" and that "[t]he court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable."

C. *The H&C exemption*

[33] It is useful to note the purpose and scope of the H&C exemption and the jurisprudence that guides the Court in assessing the reasonableness of H&C decisions.

[34] Subsection 25(1) of the Act provides that permanent resident status or an exemption from the criteria or obligations of the Act may be granted on the basis of H&C considerations, "taking into account the best interests of a child directly affected." As noted below, the jurisprudence

confirms that the exemption is “exceptional” (see for example, *Huang v Canada (Minister of Citizenship and Immigration)*, 2019 FC 265, at para 17 [*Huang*].

[35] In the present case, the exemption, if granted, would permit Mr. Harripersaud to be granted permanent residence while remaining in Canada rather than returning to Guyana and seeking to immigrate to Canada in accordance with the applicable eligibility criteria for immigration.

[36] In *Kanthasamy*, the Supreme Court of Canada provided extensive guidance about how subsection 25(1) should be interpreted and applied.

[37] The Court endorsed the approach previously set out in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 [*Chirwa*], which described H&C considerations as referring to “those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another—so long as these misfortunes ‘warrant the granting of special relief’ from the effect of the provisions of the *Immigration Act*.” In *Chirwa*, the Immigration Appeal Board acknowledged that this definition implied “an element of subjectivity,” noting that there must also “be objective evidence upon which the relief ought to be granted” (*Kanthasamy* at para 13, citing *Chirwa*, at p 350).

[38] The Court explained, at para 23, that “[t]here will inevitably be some hardship associated with being required to leave Canada,” which on its own is generally not sufficient to grant relief, and added that the H&C process is not intended as an alternative immigration scheme.

[39] The Court also explained that what will warrant the exemption varies depending on the facts and context of each case. The significant aspects of *Kanthasamy* are the Court's clear directions to avoid imposing a threshold of unusual, undeserved or disproportionate hardship, to consider and weigh all of the relevant facts and factors, and to "give weight to all relevant humanitarian and compassionate considerations in a particular case" (at para 33; see also para 25) [emphasis in original].

[40] In *Huang*, the Chief Justice addressed what is required to meet the *Chirwa* "test" in H&C applications, noting at para 19:

> [19] Section 25 was enacted to address situations in which the consequences of deportation "might fall *with much more force on some persons ... than on others*, because of their particular circumstances ...": *Kanthasamy*, above, at para 15 (emphasis added), quoting the *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on Immigration Policy*, Issue No. 49, 1st Sess., 30th Parl., September 23, 1975, at p. 12. Accordingly, an applicant for the exceptional H&C relief provided by the IRPA must demonstrate the existence or likely existence of misfortunes or other H&C considerations *that are greater than those typically faced by others who apply for permanent residence in Canada* [emphasis in the original].

[41] With respect to the circumstances that may warrant relief, in *Shackleford v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1313 [*Shackleford*], at para 15, Justice Roy noted that the *Chirwa* description, endorsed in *Kanthasamy*, signals that hardship remains a consideration and that a degree of severity to the misfortunes of the applicant should be demonstrated.

[42] In *Shackleford*, Justice Roy expanded on the principle that an H&C exemption is exceptional, noting at para 16:

> [16] … Nothing in *Kanthasamy* suggests that H&C applications are anything other than exceptional: the *Chirwa* description itself, the fact that it is not meant to be an alternative immigration scheme, the fact that the hardship associated with leaving Canada does not suffice are all clear signals that H&C considerations must be of sufficient magnitude to invoke section 25(1). It takes more than a sympathetic case.

[43] In *Turovsci v Canada (Citizenship and Immigration)*, 2021 FC 1369, Justice Roy addressed the argument that H&C decision makers err by applying a "hardship lens," at para 26:

> [26] Some seek to suggest that a "hardship lens," or a "hardship centric" analysis, constitutes a reviewable error as such. Actually, what the Court frowns upon is for immigration officers to consider Humanitarian and Compassionate grounds only through the lens of the three adjectives as discrete and high thresholds, and use the language of "unusual and undeserved or disproportionate hardship" in a way that limits their ability to consider and give weight to all relevant Humanitarian and Compassionate considerations in a particular case.

[44] The key principles from the post-*Kanthasamy* jurisprudence can be summarized as follows:

- An H&C exemption is discretionary and exceptional relief;
- Reviewing courts must not substitute their discretion for that of the Officer;
- While undue, undeserved and disproportionate hardship is not the standard, hardship remains a relevant consideration;
- Some hardship is the normal consequence of removal and this type of hardship, on its own, does not support granting the exemption;
- Applicants must demonstrate with sufficient evidence that the misfortunes or hardships they will face are relatively greater than those typically faced by others seeking permanent residence in Canada;

- All other relevant H&C factors—not just hardship—must be considered and weighed; and,
- The best interest of the child is an important consideration but is not determinative of an H&C application.

VI. The Officer did not Breach the Duty of Procedural Fairness

[45] Mr. Harripersaud submits that the 2019 article from Kaieteur News, cited by the Officer, is extrinsic evidence that should have been disclosed. He argues that it is novel and significant information that he could not reasonably be expected to have seen or known about given that it was published after he made his application. He submits that this article should not outweigh the objective evidence he submitted regarding the state of mental health services.

[46] Mr. Harripersaud also characterizes the Officer's reference to an excerpt by the American Psychiatric Association [APA], which noted the distinction between depression and sadness, as extrinsic evidence. In addition, he submits that the Officer erred in not appreciating that his symptoms are consistent with the APA's description of depression.

[47] Mr. Harripersaud's argument that the Officer relied on extrinsic evidence to find that mental health services exist in Guyana overlooks several considerations. First, the Officer's finding is not a determinative finding. Second, the Kaieteur News article says little more than that mental health services in Guyana are available, including in Georgetown, and that those who feel depressed may seek help from health centres. Third, this information is consistent with the information in the articles submitted by Mr. Harripersaud that also note recent mental health initiatives.

[48] The Officer's primary finding with respect to Mr. Harripersaud's submission that he would experience hardship due to lack of mental health services in Guyana is that Mr. Harripersaud has not been diagnosed with either depression or substance abuse. The Officer explained that in the absence of a diagnosis, no conclusion about the need for any treatment for any mental health issue could be made. As a result, whether there are limited or ample mental health services available in Guyana is a secondary issue.

[49] In any event, the Officer clearly stated that the documentary evidence submitted by Mr. Harripersaud as well as the Kaieteur News article were considered. The Officer's conclusion that mental health services would be available if needed is supported by both Mr. Harripersaud's documentary evidence and the Kaieteur News article.

[50] There is extensive jurisprudence regarding whether a decision maker's reference to or reliance on evidence not provided by an applicant—and not specifically disclosed to an applicant—is a breach of procedural fairness. The jurisprudence has evolved to some extent over the years, particularly due to increased availability of online information.

[51] In *Mancia v Canada (Minister of Citizenship and Immigration*), [1998] 3 FC 461, 1998 CanLII 9066 [*Mancia*], the Federal Court of Appeal explained, at para 22:

> . . . Where the immigration officer intends to rely on evidence which is not normally found, or was not available at the time the applicant filed his submissions, in documentation centres, fairness dictates that the applicant be informed of any novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case.

[52] In *De Vazquez v Canada (Minister of Citizenship and Immigration)*, 2014 FC 530 [*De Vazquez*], Justice de Montigny elaborated on *Mancia*, at para 28, noting that the focus should be on the information contained in the document rather than the document itself.

[53] In *Joseph v Canada (Minister of Citizenship and Immigration)*, 2015 FC 904 [*Joseph*], Justice Brown noted, at paras 38 and 39, that two "tests" or approaches to determining what constitutes extrinsic evidence had emerged in the jurisprudence. He noted that one test is whether the evidence was sufficiently known or otherwise "reasonably available" to the applicants. The other test focuses on whether the information is novel and significant information that an applicant could not "reasonably anticipate"; if so, disclosure is required.

[54] In *Bradshaw v Canada (Minister of Citizenship and Immigration)*, 2018 FC 632, at para 64 [*Bradshaw*], I noted that although the "novel and significant" approach continues to be applied, the jurisprudence regarding the treatment of extrinsic evidence has evolved to favour a more contextual approach, which considers, *inter alia*, the nature of the decision and the possible impact of the evidence on the decision.

[55] In *Sylain-Pierre v Canada (Citizenship and Immigration)*, 2022 FC 404 at para 24, Justice Mosley also noted that nuances in the approach had emerged, but the novel and significant test continued to be applied:

> [24] The "novel and significant" test in *Mancia* continues to be applied. See, for example: *Adefule v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1227 at para 19 and *Ahmed v Canada (Minister of Citizenship and Immigration)*, 2018 FC 471 at para 27. In *Ashiru v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1313 at paras 47-48, Justice Kane noted

> that in the recent application of the test courts have adopted a more contextual approach which includes consideration of the nature of the decision and the possible impact of the evidence on the decision.

[56] Mr. Harripersaud relies on *Vieira Sebastiao Melo v Canada (Citizenship and Immigration)*, 2022 FC 544 [*Sebastio Melo*], in support of his submission that none of the tests established in the jurisprudence would permit unfettered reliance by an Officer on information not disclosed. I agree, but in the present case, the Officer did not rely only on the undisclosed information.

[57] In my view, *Sebastio Melo*, does not establish new or more restrictive principles for the determination of what constitutes extrinsic evidence that must be disclosed. In *Sebastio Melo*, Justice Zinn referred to many of the same cases noted above, including *Joseph*, *Bradshaw*, and *De Vazquez*.

[58] In *Sebastio Melo*, at para 30, Justice Zinn noted that, with respect to the information at issue in that case, "the primary question is whether [the applicants] could have reasonably anticipated the information contained in the documents. What is relevant in that regard is the nature of the information, its source, and the submissions made to which it is responsive."

[59] With respect to the APA reference, the passage notes only that there is a distinction between sadness and depression. This is neither novel nor significant information, and is likely common knowledge. In addition, contrary to Mr. Harripersaud's submission, the Officer did not err by not considering whether Mr. Harripersaud's account of his symptoms amounted to

depression, in accordance with the APA description. The Officer is not a medical professional and the point of the APA information is that depression requires a professional clinical diagnosis.

[60] The Kaieteur News article about the availability of mental health services is also not novel or significant information. The article notes that untreated depression can have serious consequences and that, once a mental illness is diagnosed, treatment for a minimum of six months is required. It also notes that those who feel depressed can seek help from health centres, including the mental health centre in Georgetown and the Georgetown Public Hospital Psychiatry Department, where there are social workers, psychologists and psychiatrists.

[61] Moreover, the information in the Kaieteur News article does not contradict the information submitted by Mr. Harripersaud. The article relied on by Mr. Harripersaud from Borgen magazine published in 2017 notes that: Guyana has a high suicide rate; mental illness affects 25% of the population; in 2008 there was one psychiatric hospital with three full-time psychiatrists and two outpatient mental health facilities; increased attention has since been placed on mental health services and suicide prevention; and, new initiatives are now in place to increase awareness and address the gaps in the mental health system.

[62] The article relied on by Mr. Harripersaud published in 2017 in Global Health Now reports on an interview with one psychologist at the Georgetown Public Hospital Psychiatric Ward (the same facility described in the Kaieteur News). While noting that the hospital is busy, the psychologist recounted that NGOs and volunteers are working to improve mental health and that counselling services have been put in place to fill gaps. In addition, the article notes that the

2015 Mental Health Action Plan and National Suicide Prevention Plan prioritized resources to train mental health professionals. The first cohort of psychology students in a four-year program would graduate in 2019.

[63] In the present case, my conclusion—that the Kaieteur News article and the APA excerpt do not constitute extrinsic evidence that should have been disclosed—would be the same whether I apply the jurisprudence that establishes that extrinsic evidence should be disclosed if it is "novel and significant and demonstrates changes in general country conditions that may affect the decision", or the jurisprudence that supports a broader contextual approach, which includes consideration of the nature of the evidence and the possible impact, or whether I consider the question posed in S*ebastio Melo* at para 30. The information was not novel and significant and did not demonstrate changes in the country conditions that might affect the decision. As noted, the Officer's finding regarding the availability of mental health treatment, if needed, was based on all the information referred to, and was not determinative of the H&C application. The information in Kaieteur News, which noted the availability of psychologists and psychiatrists at the Georgetown Hospital and at mental health centres, is consistent with the information submitted by Mr. Harripersaud. In these circumstances, the Officer did not breach the duty of procedural fairness by not disclosing the Kaieteur News article to Mr. Harripersaud.

VII. The Officer's Decision is Reasonable

[64] I have applied the guidance of the Supreme Court of Canada in *Vavilov* and the principles from the H&C jurisprudence as noted above in determining whether the Officer's decision is reasonable.

[65] The Officer's decision addressed Mr. Harripersaud's submissions, evidence and all the relevant H&C considerations. The Officer did not ignore or misapprehend any evidence nor did the Officer focus on hardship to the exclusion of considering all other relevant H&C factors. Mr. Harripersaud's arguments appear to be a request to the Court to reweigh the evidence and, in particular, to attribute more weight to family ties in Canada and the hardship of returning to Guyana than to other relevant considerations, including his lack of establishment, financial stability or initiative on his part to integrate into Canadian society.

[66] The Officer did not err in the assessment of Mr. Harripersaud's mental health. Mr. Harripersaud alleged that he would suffer hardship due to the lack of mental health services in Guyana. As noted above, Mr. Harripersaud has not been diagnosed with any substance abuse disorder and, while he may indeed feel depressed, he has not been diagnosed with clinical depression. There is also no evidence that he has even sought a diagnosis or any treatment while in Canada. Contrary to Mr. Harripersaud's argument, the Officer did not ignore his submissions regarding his alcohol use or feelings of depression. The Officer accepted both, but reasonably found that Mr. Harripersaud's self-diagnosis was not sufficient evidence to support his allegations about the need for treatment that would be unavailable.

[67] Mr. Harripersaud's argument that the Officer erred by requiring a diagnosis in order to assess hardship overlooks that he alleged that hardship would result from the lack of mental health services in Guyana. The onus was on him to establish that he would require such services and that he would not have access to services and treatment. The Officer's reasons are intelligible and justified; the Officer first found that there was insufficient evidence that

Mr. Harripersaud has a mental health or substance abuse disorder and then found, as a logical result, that the Officer could not conclude that Mr. Harripersaud required any treatment.

[68] Nevertheless, the Officer considered all the documentary evidence submitted by Mr. Harripersaud and the Kaieteur News article, that mental health services would be available to Mr. Harripersaud, if needed, acknowledging that these services may not be "on par" with Canada.

[69] Mr. Harripersaud relies on *Kim v Canada (Citizenship and Immigration)*, 2020 FC 581 at para 66-67 [*Kim*], where Justice Ahmed found, on the facts of that case, that the officer had erred by failing to consider the applicant's hardship in relation to his mental health. In *Kim*, the Court found that the applicant's suicidal ideations were submitted to describe the extreme hardship and difficult life he experienced as a North Korean defector and that this hardship should have been considered. The Court's finding arises from very different facts. The hardship alleged was not, as in Mr. Harripersaud's case, that hardship would arise from a lack of mental health services. Moreover, in my view, *Kim* does not establish any new principle that overrides the onus on an applicant to support their H&C application with sufficient evidence.

[70] Contrary to Mr. Harripersaud's submissions, the Officer also did not err by speculating that he could turn to a social support network in Guyana. Mr. Harripersaud submits that this finding is inconsistent with his own statement that he has no family remaining and has socially withdrawn. However, the Officer's comment was made in the context of addressing Mr. Harripersaud's submission that he would face hardship due to poverty and unemployment.

The Officer noted several factors that would assist Mr. Harripersaud in obtaining employment, including that he had lived, gone to school, been consistently employed in Guyana, spoke English, and added, “as well as his social support network (e.g., friend, former colleagues, etc.).” The Officer’s reference to a “social support network” in this context is a logical and reasonable inference based on Mr. Harripersaud's description of his past employment and life in Guyana for 35 years. In addition, this was not a primary or determinative consideration with respect to his allegations of hardship due to poverty and unemployment.

[71] With respect to Mr. Harripersaud’s current argument that his fragile mental health would affect his ability to be employed, as noted, there is insufficient evidence of a mental health condition and no evidence that he has sought treatment while in Canada. In addition, he had continued to work in Guyana for more than 18 months after his wife left him, which he alleges, precipitated his feelings of depression and reliance on alcohol, and before arriving in Canada.

[72] Mr. Harripersaud’s submission that it was sheer speculation for the Officer to find that his return to Guyana would allow him to connect with his son also overlooks the context for this finding. In an H&C application, the best interests of the children affected by the decision are considered. This includes Mr. Harripersaud’s own son. In this context, it is not speculation for the Officer to note that a father’s presence in his own child’s life is typically beneficial. The Officer also noted the lack of evidence that Mr. Harripersaud would <u>not</u> be able to reconnect with his son.

[73] The Officer did not ignore or misapprehend the evidence of family ties or the impact of family separation. Nor did the Officer focus only on hardship or apply the threshold of "undue, undeserved or disproportionate hardship." As noted in the jurisprudence, hardship is a relevant consideration (*Kanthasamy* at para 23, *Huang* at para 53, *Shackleford* at para 16, *Turovski* at para 26). The jurisprudence also establishes that more than the typical hardship arising from the inherent consequences of removal must be established. The Officer addressed the submissions regarding hardship and the other relevant H&C considerations, including Mr. Harripersaud's close family ties to his sisters and his nephew in Canada and gave this consideration positive weight. Mr. Harripersaud now wants the Court to give this factor more weight, which is not the role of the Court.

[74] Mr. Harripersaud also submits that the Officer did not appreciate the role of his sister in monitoring his alcohol abuse and providing emotional support to help him with his feelings of depression. However, as repeatedly noted, Mr. Harripersaud did not provide sufficient—or any—evidence of his mental health or substance abuse issues, other than his own account. Nor did he provide more than his own statement and that of his sister that she kept him in line. As noted, the Officer gave weight to the family ties, but reasonably concluded, based on the global assessment of all relevant considerations that the H&C exemption was not warranted.

[75] Contrary to Mr. Harripersaud's argument, the Officer did not base the assessment of alleged hardship resulting from the high rate of crime and violence as noted in the country condition documents on potential improvements in country conditions.

[76] *Ramesh v Canada (Citizenship and Immigration)*, 2019 FC 778 at paras 19–21 [*Ramesh*], does not support Mr. Harripersaud's argument that the Officer erred in not considering the hardship resulting from the high crime rate and erred in relying on state efforts to address the rate of crime and violence.

[77] The findings in *Ramesh* arose from very different facts. In *Ramesh*, the applicants recounted the discrimination that they had faced in Swaziland and their failed efforts to resolve the human rights abuses they described. In this context, Justice Russel stated at para 19:

> The issue of hardship and adverse country conditions must be taken into account by an officer in assessing a subsection 25(1) application (*Kanthasamy* at paras 50-56; *Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73 at para 19).).

[78] Justice Russel also found, based on the facts in *Ramesh*, that the officer erred by relying only on the future efforts of the government, rather than on the actual societal conditions and by failing to assess "the probability of hardship occurring in reality" (at paras 19-21).

[79] *Ramesh* does not change the basic principle that an applicant must support their H&C application with sufficient evidence. Unlike *Ramesh*, Mr. Harripersaud did not provide any evidence that he had experienced any hardship from crime or violence in Guyana. In any event, the Officer did assess the probability of hardship from crime and violence "occurring in reality."

[80] Mr. Harripersaud also argues that state protection is not a determinative factor in an H&C application (*Walcott v Canada (Citizenship and Immigration)*, 2011 FC 415 at para 64), and that the Officer erred by conducting a state protection type analysis rather than assessing hardship. I

disagree. The Officer did not rely on state protection as a determinative factor. As noted, the Officer reasonably found that the evidence did not support Mr. Harripersaud's contention that he would experience hardship due to crime and violence in Guyana. The Officer was not required simply to accept that Mr. Harripersaud would suffer hardship based only on country condition evidence, without any evidence of Mr. Harripersaud's own experience or likelihood of facing such hardship.

[81] In conclusion, Mr. Harripersaud has not raised any shortcomings that are sufficiently central or significant to render the decision unreasonable. The Officer's decision shows a rational chain of analysis; the Officer considered all Mr. Harripersaud's H&C submissions and the evidence provided in support, weighed the evidence, conducted a global assessment, and reasonably found that the H&C exemption was not justified. The Officer did not breach the duty of procedural fairness by referring to information that had no bearing on the decision, was not novel or significant and, moreover, was generally consistent with the information relied on by Mr. Harripersaud.

JUDGMENT in IMM-4226-20

THIS COURT'S JUDGMENT is that

1. The Application is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4226-20
STYLE OF CAUSE:	HAIMINDRA HARRIPERSAUD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 6, 2022
JUDGMENT AND REASONS:	KANE J.
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