

Federal Court



Cour fédérale

Date: 20230117

Docket: IMM-6949-21

Citation: 2023 FC 71

Ottawa, Ontario, January 17, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**MUBARRA BASHIR
MOHAMMAD USAMA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of a Migration Officer of the Family Reunification Unit of Immigration, Refugees and Citizenship Canada [IRCC] at the High Commission of Canada in London, United Kingdom [Officer], dated August 13, 2021 [the

Decision]. In the Decision, the Officer refused the request of the Applicants, who are citizens of Pakistan, for relief based on humanitarian and compassionate [H&C] grounds in considering their application for permanent residence in Canada under the Family Class.

[2] As explained in more detail below, this application is allowed, because the Decision fails to disclose any engagement with the Applicants' submissions on country conditions surrounding gender-based discrimination and violence and adverse labour and employment conditions in Pakistan. The Decision is therefore unreasonable, because it is not possible for the Court to identify whether, or how, the Officer took those submissions and related evidence into account in finding that H&C relief was not warranted.

II. **Background**

[3] The Applicants are a 20-year-old woman and a 26-year-old man. They are siblings and are both citizens of Pakistan.

[4] After the passing of their father in 2014, the Applicants lived in Pakistan with their older brother [the Sponsor] and their mother. The Sponsor subsequently moved to Canada in 2016 to be with his wife, who is a Canadian citizen. The Sponsor obtained permanent residence status in Canada under the spousal sponsorship program in April 2016, and together he and his wife have a son, who is now 6 years old and a Canadian citizen.

[5] In 2018, the Sponsor applied to sponsor his (and the Applicants') mother under the Family Class. At that time, both Applicants were under the age of 22 and therefore qualified as their mother's dependent children for purposes of the Family Class.

[6] Unfortunately, their mother passed away in November 2018. During this same time, the Sponsor, his wife, and their son were visiting his mother and the Applicants in Pakistan. The Sponsor's wife decided to stay in Pakistan (with their son) to care for the Applicants while the Sponsor returned to Canada.

[7] In December 2019, IRCC notified the Sponsor that he was not an eligible sponsor because the Applicants no longer qualified as members of the Family Class following the passing of their mother. The Sponsor was also notified that he and his wife's combined income did not meet the minimum necessary income requirement.

[8] In May 2021, IRCC requested updated documents from the Applicants and invited them to make submissions regarding H&C grounds in support of their application. In response, the Applicants made H&C submissions grounded on hardships the Applicants would face in Pakistan including in relation to mental health, the country conditions in Pakistan, and the best interests of the Sponsor's son.

III. **Decision under Review**

[9] In the August 13, 2021 Decision that is the subject of this application for judicial review, the Officer refused the Applicants' permanent residence application.

[10] The Officer found that the Sponsor and his wife did not meet the requirements of section 133 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], as their combined income was not at least equal to the minimum necessary amount. The Officer also found that, without the Sponsor's mother as the principal applicant, the Applicants were not members of the Family Class under section subsection 12(1) of the IRPA and were therefore inadmissible under subsection 11(1) of the IRPA.

[11] The Applicants are not challenging these findings. Rather, they challenge the reasonableness of the Officer's findings with respect to the H&C considerations they raised under subsection 25(1) of the IRPA. The Officer's H&C analysis is found in the accompanying Global Case Management System [GCMS] notes, which form part of the Decision.

[12] At the beginning of that analysis, the Officer noted that both Applicants are now the age of majority and are able to freely work, study, travel, vote, and marry. The Officer also noted, based on the additional family information form, that the Applicants have seven uncles and aunts living in Pakistan.

[13] The Applicants made H&C submissions regarding their, and the Sponsor's wife's, mental health struggles. The Officer observed that, despite these claims, the Applicants were doing well in school and the Sponsor's wife, as a Canadian citizen, was free to return to Canada to access mental health services here. The Officer further noted that all of the medical evidence relating to the Applicants' and the Sponsor's wife's mental health struggles had been dated in the few weeks after IRCC requested information related to H&C considerations, and that there was no medical information that pre-dated that request. As such, the Officer did not attribute a great deal of weight to this factor.

[14] With respect to the best interests of the Sponsor's son, the Officer noted that the Applicants placed great weight on the fact that he has autism spectrum disorder [ASD] and that Pakistan does not have good educational or support systems for his needs. However, the Officer found that that the Sponsor's wife and son, who are both Canadian citizens, are able to return to Canada at any time to avail themselves of the health and educational benefits Canada has to offer. As such, the Officer did not attribute weight to this factor.

[15] Based on this analysis, the Officer concluded that the H&C considerations did not outweigh the Applicants' failure to meet the financial requirements of section 133 of the IRPA or the lack of a principal applicant in their application.

IV. **Issues**

[16] This application raises a single issue - whether the Officer unreasonably assessed the Applicants' H&C factors. As suggested by this articulation of the issue, the parties agree (and I concur) that the applicable standard of review is reasonableness.

V. **Analysis**

[17] My decision to allow this application for judicial review turns on the failure of the Officer to engage with the Applicants' submissions on applicable country conditions, surrounding gender-based discrimination and violence and adverse labour and employment conditions in Pakistan, to which they argued they would be exposed if not granted H&C relief. The Applicants submit that, in finding only that they are both now age of majority and free to work, study, travel, vote and marry, the Decision demonstrates a complete disregard of the country condition evidence upon which their submissions relied.

[18] In their respective written and oral submissions, the parties' arguments focused significantly upon this Court's jurisprudence addressing whether an officer determining an H&C application errs in refusing relief based on applicants' failure to adduce evidence linking country condition evidence to their particular circumstances. By way of example, the Applicants referred the Court to *Marafa v Canada (Citizenship and Immigration)*, 2018 FC 571, for the principle that officers must not limit their assessment of the hardship that applicants would face in their home country to hardship connected to the applicants' personal characteristics (at para 4). In contrast,

the Respondent relied on *Uwase v Canada (Citizenship and Immigration)*, 2018 FC 515, which held that applicants have the burden of establishing a link between country condition evidence and their personal situation (at para 41).

[19] In my view, the task of considering the relationship between these and other authorities upon which the parties' arguments rely is best left to another matter in which the jurisprudence can be applied to a decision in which an officer has provided reasons explaining whether, or how, country condition evidence and evidence of personal circumstances has factored into an H&C analysis. The Decision in the case at hand is devoid of any such reasons or analysis, leaving the Court unable to assess whether, or how, the Officer took into account the Applicants' submissions surrounding adverse country conditions in Pakistan. It is on this basis that I find the Decision to lack the justification and transparency necessary to withstand reasonableness review (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 81 and 127).

[20] This application for judicial review must therefore be allowed, and it is unnecessary for the Court to consider the parties' other arguments surrounding the reasonableness of the Decision.

[21] Consistent with the relief sought by the Applicants, my Judgment will set aside the Decision and refer the matter for redetermination to a different decision-maker who has the delegated authority under subsection 25(1) of the IRPA, following an opportunity for the Applicants to submit updated documentation in support of their application. The Applicants also

requested that the Court order that the redetermination take place within 90 days of the Judgment. I agree with the Respondent's position that the Applicants have not adduced evidence or argument supporting that particular element of the requested relief, and I decline to so order.

[22] Neither party raised any question for certification for appeal, and none is stated.

JUDGMENT in IMM-6949-21

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and the matter is referred for redetermination to a different decision-maker who has the delegated authority under subsection 25(1) of the IRPA, following an opportunity for the Applicants to submit updated documentation in support of their application.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6949-21

STYLE OF CAUSE: MUBARRA BASHIR AND MOHAMMAD USAMA
V THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 16, 2023

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: JANUARY 17, 2023

APPEARANCES:

Arghavan Gerami FOR THE APPLICANTS

Yamen Fadel FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gerami Law PC FOR THE APPLICANTS
Barristers and Solicitors
Ottawa, Ontario

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario