

Federal Court



Cour fédérale

Date: 20230602

Docket: IMM-8550-22

Citation: 2023 FC 769

Toronto, Ontario, June 2, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

MILTON ANTHONY LECKY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a 35-year-old citizen of Jamaica, seeks judicial review of a decision of a Senior Immigration Officer dated August 16, 2022 refusing his application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] 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 H&C considerations. An H&C determination under subsection 25(1) of the *IRPA* is a global one, where all the relevant considerations are to be weighed cumulatively in order to determine if relief is justified in the circumstances. Relief is considered justified if the circumstances would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another [see *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 13, 28; *Caleb v Canada (Citizenship and Immigration)*, 2020 FC 1018 at para 10].

[3] The applicable standard of review of an H&C decision is reasonableness [see *Kanthasamy, supra* at para 44]. In conducting a reasonableness review, the Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 83]. The Court must ask itself whether the decision bears the hallmarks of reasonableness – namely, justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision [see *Vavilov, supra* at para 99]. The burden is on the party challenging the decision to show that it is unreasonable and the Court "must be satisfied that any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable" [see *Vavilov, supra* at para 100].

[4] While the Applicant has advanced a number of grounds of review, I am satisfied that the Officer's flawed consideration of the effect of removal on the Applicant's mental health is determinative of this application.

[5] In support of his H&C application, the Applicant provided a report from a registered psychotherapist dated August 3, 2021, which opined that the Applicant was exhibiting symptoms consistent with post-traumatic stress, generalized anxiety and major depression with regard to trauma that he has experienced, as well as the stress and fear of being removed from Canada. She opined that removing the Applicant from his sources of support in Canada would cause significant psychological and emotional suffering.

[6] While recognizing that the psychotherapist's assessment was completed in a one-time 90 minute session with the Applicant and that the report was lacking in certain details, the Officer nonetheless accorded the report moderate weight, finding that it had been completed by an individual who is an educated, trained and skilled professional in her field. The Officer then went on to consider the availability of mental health treatment in Jamaica and found that if the Applicant required mental health treatment in Jamaica, the objective documentary evidence indicates that psychological health care would be available and not difficult to access.

[7] The Officer concluded as follows regarding their consideration of the Applicant's mental health:

As previously stated the applicant asserts that he suffers from mental health due to trauma and the breakup with his fiancée. Aside from the assessment completed by Ms. Riback in 2019, additional medical, or other documentation has not been provided to

corroborate the applicant's mental health ailment, or to outline the extent of his condition. The documentary evidence before me do not indicate that the applicant has not sought treatment for his mental health, or for any other medical ailment. Submissions are silent as to whether the applicant has availed himself of mental health treatment in Canada, either before or following the assessment completed by Ms. Riback. He does not inform that he attended his family doctor, the Canadian Centre for Victims of Torture, or other mental health care professional to receive mental health care, counselling, or prescription medication. The applicant's mental health is noted however, for the reasons noted above they are granted minimal weight.

[8] A difficulty that I have with the Officer's consideration of the Applicant's mental health is that, after finding that the psychotherapist's report was to be attributed moderate weight, the Officer ultimately concluded that the Applicant's mental health should only be afforded minimal weight. In determining that the overall weight should be minimal (as opposed to aligning with the moderate weight attributed to the report), the Officer took into consideration, among other things, the fact that the Applicant had not sought any mental health treatment since receiving the psychotherapist report, noting that the psychotherapist's report was from 2019. However, the psychotherapist's report was from August of 2021, just a few weeks before it was submitted for the Officer's consideration.

[9] While I appreciate that the psychotherapist did not make a definitive diagnosis that the Applicant suffers from post-traumatic stress disorder, generalized anxiety and major depression (as she is not qualified to do so), the Officer does not question her determination that the Applicant exhibits symptoms consistent with such disorders, nor does the Officer take issue with the absence of a definitive diagnosis. Having not done so and in the face of clear evidence from the psychotherapist of the effect of removal on the Applicant's mental health, I find that it was

unreasonable for the Officer to rely on the absence of follow-up care to undermine the Applicant's evidence [see *Kanthasamy, supra* at para 47].

[10] In light of the above errors, I am not satisfied that the Officer reasonably considered and weighed the impact of removal on the Applicant's mental health. These errors alone are sufficient to warrant the granting of this application for judicial review and accordingly, I will not go on to consider the other grounds of review raised by the Applicant.

[11] Accordingly, the application for judicial review shall be granted, the Officer's decision set aside and the matter remitted to a different officer for redetermination.

[12] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-8550-22

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision of the officer dated August 16, 2022 refusing the Applicant’s H&C application is set aside and the matter is remitted to a different officer for redetermination.
3. The parties proposed no question for certification and none arises.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8550-22

STYLE OF CAUSE: MILTON ANTHONY LECKY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 1, 2023

JUDGMENT AND REASONS: AYLEN J.

DATED: JUNE 2, 2023

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