

Federal Court



Cour fédérale

**Date: 20231206**

**Docket: IMM-5171-22**

**Citation: 2023 FC 1643**

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

**Montréal, Quebec, December 6, 2023**

**PRESENT: Justice Sébastien Grammond**

**BETWEEN:**

**LAAYDIA LAHSAYNI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered from the Bench at Montréal, Quebec, on December 6, 2023).**

[1] Ms. Lahsayni is seeking judicial review of the refusal of her application for relief based on humanitarian and compassionate [H&C] grounds. I allow her application since the officer did not grasp the true basis of her application and carried out a compartmentalized analysis.

[2] Ms. Lahsayni is a citizen of Morocco. Her daughter is a permanent resident of Canada and lives in Montréal. In November 2020, within the span of a week, Ms. Lahsayni's husband, son and two sisters-in-law died of COVID-19. Ms. Lahsayni's adopted son was the sole heir to the family home. He immediately evicted his adoptive mother. With no support or resources left in Morocco, Ms. Lahsayni came to Canada. She lives with her daughter.

[3] Deciding an H&C application involves a significant degree of discretion. To provide a framework for the exercise of such discretion, the guidelines specify the main factors that an officer may consider, such as establishment in Canada or hardship upon returning to the applicant's country of origin. In addition, section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, provides that an officer must take into account the best interests of a child directly affected.

[4] The guidelines were undoubtedly developed against the backdrop of the frequent case of people who remain in Canada after their refugee claim has been rejected. The guidelines may be less well suited to other types of cases. They are not “the only possible formulation of when there are humanitarian and compassionate grounds justifying the exercise of discretion”: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 31, [2015] 3 SCR 909 [*Kanthasamy*].

[5] In this case, the officer devoted a significant portion of her reasons to the question of whether Ms. Lahsayni had demonstrated her establishment in Canada. She concluded that she had not demonstrated financial autonomy and that this constituted a negative factor. She also

addressed the issue of Ms. Lahsayni's psychological distress and concluded that she can receive care in Morocco. Finally, the officer concluded that Ms. Lahsayni had not provided any documentation concerning her eviction from the family home and that, in any case, her daughter can help her financially.

[6] In my view, the decision is unreasonable. Because the analysis was segmented, the officer never clearly discussed the real issue: whether an H&C exemption is justified by the actual situation in which Ms. Lahsayni finds herself following the death of her loved ones, her eviction from the family home and the loss of her financial resources in Morocco. Nor do the reasons for the decision show the empathy required when an officer considers an H&C application. In short, the officer did not consider the situation as a whole, as required by *Kanhasamy*.

[7] The use of pre-established categories to analyze the application also prevented the officer from grasping the essence of the arguments Ms. Lahsayni raised concerning her financial dependence on her daughter. On the one hand, the officer stated that she does not know whether the daughter is currently providing financial support to her mother, even though the evidence reveals that they live together. On the other hand, she concluded that the daughter may continue to send money to her mother if she returns to Morocco. In addition to contradicting herself, the officer did not seem to appreciate the fact that it would be much more difficult for the daughter to help her mother if she returned to Morocco, since she would have to pay not only for her own accommodations in Montréal, but also for her mother's in Morocco.

[8] Finally, the officer did not seem to have taken into account the affidavit that Ms. Lahsayni had provided in support of her H&C application. This affidavit explains how she would be personally affected if she returned to Morocco. In particular, she asserts that it would be impossible for her to find work, which the objective evidence corroborates. Assuming that the officer required Ms. Lahsayni to submit additional evidence to corroborate her affidavit, it is difficult to understand how there can be documentary evidence proving a lack of resources. The officer did not express any doubts as to Ms. Lahsayni's credibility.

[9] For all these reasons, Ms. Lahsayni's application for judicial review will be allowed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is allowed.
2. The decision rendered on May 18, 2022, concerning the applicant's application for relief based on humanitarian and compassionate grounds is set aside.
3. The matter is referred back to another officer for redetermination.
4. No question is certified.

“Sébastien Grammond”

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Judge

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

**DOCKET:** IMM-5171-22

**STYLE OF CAUSE:** LAAYDIA LAHSAYNI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** DECEMBER 6, 2023

**JUDGMENT AND REASONS:** GRAMMOND J

**DATED:** DECEMBER 6, 2023

**APPEARANCES:**

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