Federal Court  Cour fédérale

Date: 20240301

Docket: IMM-2818-21

Citation: 2024 FC 334

Ottawa, Ontario, March 1, 2024

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

LIBAN HASSAN AHMED
ASLI OMAR MOHAMED
OMAR LIBAN HASSAN
LOUKMAN LIBAN HASSAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants are citizens of Djibouti who applied for permanent residence on humanitarian and compassionate ("H&C") grounds. The Applicants have been refused twice on H&C grounds; this Court overturned the first refusal and sent it back for redetermination: *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 777 [*Ahmed 2020*]. The redetermination decision is under review in this application.

[2] For the reasons that follow, the application for judicial review will be granted. I find the Officer's analysis of the Applicants' establishment to be seriously flawed, and since this was a central element of the H&C analysis, the errors cast doubt over the entire decision.

II. Background

[3] The Applicants are a family of five: Liban Hassan Ahmed ("the Principal Applicant" or "PA"); his spouse Asli Omar Mohamed ("Asli"); and their three young children, Loukman Liban Hassan (11-year-old), Omar Liban Hassan (9-year-old), and Ilyan Liban Hassan (6-year-old). All are citizens of Djibouti except for Ilyan (their Canadian-born child).

[4] The Applicants arrived in Canada in 2016 and made a refugee claim based on persecution due to their Shekhal ethnicity and violent incidents with the Djibouti police. The Refugee Protection Division dismissed the Applicants' refugee claim in 2017, finding that the Applicants lacked credibility and that their claims were not well founded.

[5] Shortly thereafter, the Applicants submitted their first H&C application. This application was refused on March 27, 2019, and the Applicants sought judicial review of the decision at the Federal Court. As they awaited judicial review, the Applicants made submissions for a Pre-Removal Risk Assessment ("PRRA") on January 27, 2020.

[6] Though the PRRA officer issued a negative decision, the family was not removed. On July 21, 2020, I allowed their first judicial review application and sent their first H&C application back for redetermination because the officer had failed to consider new evidence they submitted (*Ahmed 2020*).

[7] The Applicants submitted an updated H&C application in September 2020 and were refused a second time. This second decision is the subject of this judicial review.

III. The Decision under Review

[8] The Officer rendered a negative decision after considering three H&C factors: (A) risks and adverse country conditions; (B) best interests of the child (BIOC); and (C) establishment in Canada. Ultimately, the Officer determines that these factors were "not sufficient for [the Applicants] to be granted an exemption on humanitarian and compassionate grounds."

[9] The Officer assigns little favourable weight to risk and adverse country conditions. The same Officer had denied their PRRA application in a separate decision and, as in the PRRA application, the Officer finds that there is insufficient evidence to overcome the RPD's credibility findings. The Officer acknowledges that they are not bound by previous RPD decisions but accords the RPD's findings "much weight" for this H&C application, given the material similarities in evidence.

[10] In regard to adverse country conditions, the Officer concludes that while living in Djibouti is less favourable, the Applicants have adduced insufficient evidence to demonstrate that they face particular hardship there. The Officer points to the Principal Applicant's Bachelor's degree and both adult Applicants' experience working abroad, finding them both educated and knowledgeable regarding how to obtain employment. The Officer notes that, although there are "some unfavourable situations" that could present themselves to the adult Applicants, they previously lived in Djibouti as adults. Therefore, they will likely experience a shorter period of adjustment in finding work compared to those who spent their adolescence outside of Djibouti.

However, the Officer gave “some modest weight” to the pandemic's bearing on Djibouti's economy.

[11] Turning to the best interests of the child, the Officer recognizes that Ilyan's Canadian citizenship carries some weight (he was born here after the Applicants’ arrival). While this poses some challenges for the adult Applicants, Ilyan can acquire citizenship because of his parents' status as citizens of Djibouti. While he is quite young, he has not had the time to become particularly established in Canada.

[12] The Officer notes that the Principal’s letter indicates the two older children are engaged in learning at school, have virtually spotless attendance records, and that their parents have tried their best to provide a safe environment to allow them to succeed in school. However, the letter does not suggest that the children's current environment in Canada is the source of their growth as “respectful individuals”. The Officer states “the parents will instill good values unto their children no matter the environment.” Nevertheless, the Officer accorded moderate weight to the letter since it is a testament to the parents' successful efforts in prioritizing their children.

[13] The Officer also concludes that the children’s school record indicate they have the capacity to adapt to a new environment and that this could help them re-integrate into the educational system back in Djibouti. Furthermore, the children have been learning French in school, which should promote a smoother transition back to Djibouti society. In fact, the Officer considered the family to be “perfectly trilingual.”

[14] On the Applicants' submission that there are limited educational opportunities in Djibouti and that childhood exploitation is a concern, the Officer found many of the issues raised on this point insufficiently supported by documentation or not sufficiently explained "in terms of their probable impact on the children...." Therefore, the Officer assigns modest weight to this factor.

[15] In terms of the Applicants' extended family, the Officer recognized that three of Liban's siblings reside in Ottawa and that they spend time with the family and get together over holidays. However, the Applicants "do not live with the families of [PA's] siblings." Each family member leads their own separate life and person-to-person interactions are reserved for certain occasions. Furthermore, while the PA's parents live in Canada, the Applicants provided limited information on the time spent with them. Despite the claim that the children benefit from living in Canada because their grandparents and extended family surround them, the Officer found little information on the nature of this relationship. If they only visit one another occasionally and on holidays, there is little to suggest they cannot do this while residing in Djibouti. Therefore, the Officer accorded modest weight to the children's relationships with extended family.

[16] In terms of Ilyan's best interests, the Officer assigns some weight to the fact that he was born in Canada, although there is little information to support that his key interests could only be met in Canada. Therefore, the Officer assigns modest weight. As for the children's collective interest, the Officer was not satisfied that returning to Djibouti as a family would adversely affect this factor, particularly considering their young age.

[17] Despite the modest weight given to the children's performance at school and their relationships with extended family, the Officer found insufficient evidence to support BIOC as a

significant factor in granting an H&C exemption. Therefore, the Officer finds that there is insufficient evidence to support BIOC as a significant factor.

[18] In terms of the Applicants' establishment, the Officer listed the numerous documents submitted in support of the application. The Officer first discusses the Asli's ESL classes, finding that, while she enrolled, it is unclear how much she has improved her English skills. Therefore, the officer assigns limited weight to this factor.

[19] The Officer noted that the Principal Applicant's employment opportunities in Canada have been for relatively short contractual periods and do not convey a strong sense of income stability and establishment. In particular, the Officer observed that the Principal Applicant currently works at Delivery Me and that his weekly income is fluid depending on the number of packages he delivers. Therefore, the Officer only assigns employment, as a factor of establishment, modest weight.

[20] The Officer also notes that the Principal Applicant experienced a layoff but almost immediately found new employment and demonstrates "his determination to provide for his family." The Officer then concludes that this determination will undoubtedly help him in finding employment in less favourable circumstances, including those found in the Djibouti workforce.

[21] In regard to other aspects of establishment, the Officer found some important information missing from the Applicants' materials regarding the family's overall living expenses, including a copy of a lease agreement or bank transactions showing the cost of rent. The Officer states that this creates a lack of evidence that essential living needs have stabilized – and therefore it cannot

be concluded that a disruption of their life in Canada would be a considerable disadvantage to the Applicants.

[22] The Officer then turns to the PA's spouse, Asli, and evidence of her establishment. The Officer finds that despite the fact that works two part-time jobs, there is missing information regarding her weekly hours. The Officer also notes that her job at CSC Vanier is not permanent and concludes that they cannot assign "as much weight as [they] would have had there been some assurance that this position was going to be somewhat permanent." The Officer chooses to assign the employment aspect of establishment only modest weight.

[23] The Officer also questions what qualifications the Asli has to work as a "resource person" at HIPPY (a program that helps vulnerable and isolated mothers in educating their preschool children). The Officer states that if she was acting as a counselor they would be prepared to give this position more weight given that she would be providing an invaluable service. The Officer concludes that notwithstanding the lack of information, modest weight is assigned to the relationships she has built in the community through her job.

[24] While the Applicants' H&C application asserted that Asli is "instrumental" in organizing the community centre's events, the Officer finds insufficient evidence to support this claim. The letters do support her involvement at the centre, but neither convey the sense that she was "instrumental." The Officer finds that the centre would have carried out these programs, regardless of Asli's involvement. The Officer makes similar comments about Asli volunteering with tax returns, questioning her qualifications and noting the limited time she has spent doing this.

[25] The Officer then reviews letters of recommendation from CRC Vanier, her children's Principal, and a neighbour. These note her positive impact, including her involvement in parent council and her role as a Community Liaison in association with HIPPY. Therefore, the Officer accords Asli's community involvement, as a component of establishment, favourable consideration.

[26] In the concluding paragraphs of the Officer's decision, the Officer recognizes that the adult Applicants have formed ties in Canada through their work. However, they do not provide sufficient information on a "key aspect" of their establishment, such as their interpersonal ties to the community and the economic component as it relates to housing. This lack of information bars the Officer from assigning more than modest weight.

[27] Therefore, the Officer only assigned modest weight to the Applicants' establishment and the BIOC. This was not deemed sufficient to grant an H&C exemption and, therefore, the Officer refused the application.

[28] The Applicants seek judicial review of this decision.

IV. Issues & Standard of Review

[29] The primary issue in this case is whether the Officer's decision is reasonable. The Applicants argue that it is not because: (A) the Officer's undue reliance on the RPD's negative credibility assessment tainted the entire decision; (B) the Officer's assessment of their establishment focused on microscopic details and applied the wrong test; and (C) the Officer's

analysis of the best interests of the children was not alert, alive and sensitive to their best interests.

[30] The standard of review that applies is reasonableness, in accordance with the framework set out in *Canada (Minister of Citizenship and Immigration)* v *Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v. Canada (Citizenship and Immigration),* 2023 SCC 21. In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paragraph 2 [*Canada Post*]). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at paragraph 102).The Applicants also seek a directed outcome and costs in this case, given that the decision under review is a redetermination of a prior decision overturned by this Court. I will deal with these submissions after determining the reasonableness of the underlying decision.

V. Analysis

A. *The Officer's decision is not tainted by an undue reliance on negative RPD credibility findings*

[31] The Applicants submits that the Officer unreasonably afforded the RPD's findings "much weight" in assessing the H&C factors. The Officer stated that the evidence in the H&C is materially the same as the evidence provided in support of their PRRA application. The Applicants consider this reasoning flawed. While there is undoubtedly overlapping country

condition evidence between both applications, the legal test for an H&C is ultimately that of hardship resulting from the assessment of the various H&C factors, pursuant to subsection 25(1) of the *IRPA*. On the other hand, a PRRA application involves considering the persecution and risks faced if the Applicants were returned to Djibouti. These are two different legal frameworks, which involve different exercises of discretion, according to the Applicants.

[32] Furthermore, the Applicants assert that the new evidence relating to their establishment and BIOC are only relevant to the Officer's H&C assessment and have no bearing on the PRRA. Since none of that evidence was before the previous decision-maker, they say it was unreasonable for the Officer to afford “much weight” to the RPD's initial credibility findings.

[33] The Applicants submit that this flawed reasoning tainted the Officer's analysis and decision, as the Officer mistakenly attributed negative credibility findings to the Applicants' H&C evidence. The Applicants “deserved a clean slate”, particularly since this Court already reviewed this case once – holding that the Applicants deserved a decision in which the Officer demonstrated that they had reviewed and considered all of the relevant evidence.

[34] The Respondent first argues that the Officer reasonably considered the RPD's credibility assessment of the alleged risks in Djibouti. Citing *Demetrio v Canada (Citizenship and Immigration)*, 2021 FC 1139, the Respondent argues it is not an error for an Officer to defer to the RPD's credibility findings when the risks alleged are effectively the same. It is difficult for the Applicants to overcome a prior negative credibility finding when they present a story that the RPD found not credible. In this case, most of the risks alleged in the H&C were based on the

same facts found not credible by the RPD – that the Police Chief targeted the Principal Applicant, and that he risked imprisonment upon return to Djibouti.

[35] I am not persuaded by the Applicants' argument on this point. Contrary to the Applicants' argument, these credibility findings did not taint the Officer's entire H&C analysis. The Officer only references them in connection with the alleged risks of harm in Djibouti, following a discussion of the similarity in the evidence the Applicants put forward in both applications. The Officer does not raise credibility in any other part of the decision.

[36] To the extent the Applicants' H&C claim rested on alleged risks in Djibouti, based on the same evidence they had relied on in their PRRA application, it was not unreasonable for the Officer to find it less than persuasive. In assessing this aspect of their claim, the Officer was entitled to pay attention to the negative credibility findings of the RPD in relation to their original refugee claim, because their narrative was the foundation for their subsequent evidence and submissions regarding risks.

[37] This is not a case where the Applicants asserted they faced an entirely new risk, unlike that which had formed the basis for their previous refugee claim or PRRA application. Instead, their new evidence sought to add to their previous persecution claim. In this situation, it was not unreasonable for the Officer to give considerable weight to the RPD's negative credibility finding.

[38] It is also relevant that the Officer went on to analyze the Applicants' claim that they would face hardship finding employment in Djibouti, as well as the general country conditions

there. There is no mention of the negative credibility finding in the discussion of these aspects of the Applicants' claim, nor is it repeated in relation to the rest of the analysis in the decision. I am not persuaded that the Officer's decision was tainted by an undue reliance on the RPD's negative credibility finding.

B. *The Officer conducted an overly microscopic analysis of establishment factors*

[39] The Applicants submit that the Officer's assessment of establishment was unreasonable. The Officer started their analysis with a number of irrelevant considerations. For example, the Officer noted that the Applicants lived in Djibouti as adults and, therefore, the adjustment period in terms of finding work there will likely be shorter. The Applicants argue that this comparator is "altogether meaningless and irrelevant" to their case. This is not a reasonable chain of analysis for the assessment of establishment.

[40] Similarly, the Officer stated that the adult Applicants are educated and likely gained some knowledge on what it takes to find a job, regardless of the employment market. The Applicants submit that this is also flawed and not reflective of a rational chain of analysis. Regardless of whether or not they have such knowledge, if they are unable to find work to support their family, they will suffer hardship from losing their current life and employment in Canada, after 5.5 years of living in Canada.

[41] In accordance with *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], officers making H&C determinations must consider and weigh *all* relevant facts and factors (at paragraph 25). In the case at hand, the Applicants set out extensive details of their establishment. Based on the foregoing, the Applicants submit that their establishment is very

strong, especially in light of the hardship their family would suffer if they were forced to uproot from Canada and return to Djibouti.

[42] The Applicants submit that the Officer acknowledges the Applicants' establishment, only to disregard and dismiss their contribution to their community, unreasonably focusing on how these skills will help them reintegrate into the Djibouti workforce. By this logic, the stronger the Applicants' establishment in Canada, the more likely they can return and reintegrate in Djibouti, regardless of country conditions there. This conclusion cannot be reasonable. The Applicants submit that, “the stronger the establishment, the more likely the Applicants will be able to integrate into Canadian society, work and support their family and contribute to the economic welfare of Canada.”

[43] On this point, the Applicants rely on *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813, for the proposition that when assessing establishment, the Officer was required to assess the Applicants' initiatives, as well as whether disrupting their establishment favours granting the application (at paragraph 21). It is also important for the Officer to assess establishment without comparison to whether they could re-establish themselves in Djibouti, as stated in *Sosi v Canada (Citizenship and Immigration)*, 2008 FC 1300 [*Sosi*] at paragraph 18. Furthermore, in *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 [*Lauture*] at paragraph 26, Justice Rennie stated that, “an analysis of the applicants’ degree of establishment should not be based on whether or not they can carry on similar activities in Haiti.” This is applicable to the case at hand.

[44] The Applicants argue that the overwhelming evidence they ought to have satisfied the Officer of their establishment. Instead, the Officer decided to take a microscopic line of analysis, demanding onerous and unnecessary details, in order to find shortcomings with their establishment.

[45] For example, the Officer required the PA to provide details of his company's financial structure and provide a financial overview of his earnings, remaining unsatisfied with the clear evidence he was earning $700 per week working for Delivery Me. Clearly, since his pay was based on the number of packages delivered, his salary could vary from week-to-week, but his employment letter clearly indicated he worked full time. Furthermore, the Officer took issue with the family's "overall living expenses" since the Applicants did not provide a copy of a lease in support of rent payments or bank statements indicating rent payments. Therefore, the Officer unfairly drew a negative inference before allowing the Applicants to address the concern.

[46] The Officer then criticized the PA for working short-term contracts without considering that he is a newcomer who came to Canada during a global pandemic without a Canadian education. The Officer should have assessed the PA's situation with appreciation for the context and sensitivity to the family's circumstances.

[47] The Applicants also point to issues in the Officer's assessment of Asli's establishment. For example, the Officer said that she failed to lead evidence regarding what it meant to be designated a "resource person." The Applicants counter with an excerpt from the PA's affidavit, where the PA explains what this designation means. Furthermore, as indicated by a letter from CSC Vanier, Asli completed several training sessions which provided her with the knowledge

and skills to do her job and seek further employment. Despite this letter, the Officer sought corroborative evidence.

[48] The Applicants argue that the Officer was wrong to seek evidence that Asli is “instrumental” in her role at the community centre. The point here is not that someone else could have filled Asli's role, but that she did contribute, her work mattered, and she made a positive impact on the lives of mothers in vulnerable circumstances.

[49] The Officer concluded that, despite the Applicants' professional work and community involvement, the Officer was not satisfied with the Applicants' establishment due to a lack of information on other “key aspects” of their establishment in Canada, like their interpersonal ties to the community and housing. The Applicants submit that this finding is overly harsh and microscopic, and a failure to appreciate the Applicants' considerable establishment during a global pandemic. The Applicants state that failing to consider the relevant evidence is exactly the mistake the Officer had made in the initial decision. On reconsideration, the Officer would have reached a different conclusion had they carefully considered all of the Applicants' evidence based on a reasonable, global assessment.

[50] The Respondent argues that the Officer's assessment of establishment is reasonable. The Officer considered the factors raised by the Applicants, acknowledging the PA's successful employment, volunteering and language classes. The Officer also considered the Applicants' relationships with extended family in Canada. However, the Respondent submits, the Officer “pointed to significant gaps in the evidence of the application – particularly as relates to housing and other connections in the community.”

[51] The Officer did not focus on whether the Applicants could re-integrate in Djibouti in their establishment assessment. While they mentioned that the Applicants' skills would assist them in re-integrating, this was "referenced primarily in the first portion of the decision" and the bearing these facts have on hardship. Unlike in the cases of *Sosi* and *Lauture* cited by the Applicants, this was only mentioned in passing in the Officer's establishment assessment – in only one line out of the four pages of analysis.

[52] The Respondent concedes that the Officer erred when they stated that the Applicants failed to define a “resource person”, but finds that this is not a reviewable error. This is because the error is not sufficiently central or significant to render the decision unreasonable (*Vavilov* at paragraphs 100, 102). This definition was in no way conclusive of the weight assigned to the Applicants' establishment, let along the H&C application's outcome. The Applicants' remaining arguments amount to a mere disagreement with the Officer's reasons and are requests for the Court to reweigh the evidence.

[53] I find the Officer’s establishment analysis to be fatally flawed, for three inter-related reasons. First, the Officer referred on several occasions to the ways in which the Applicants’ successful integration into Canadian society would assist them in transitioning back to Djibouti. Their success here was held against them. Second, the Officer engaged in a microscopic examination of many aspects of their establishment. Third, the Officer gave great weight to evidence that was missing, for example the absence of a rental agreement, without explaining why it was so central to the analysis.

[54] On the first point, the Officer makes statements that appear to indicate they lost their way in some parts of the establishment analysis. In reviewing the PA's success in finding employment in Canada, the Officer found that "he will be able to apply his skills and knowledge in a multitude of settings, included [sic] those found in the Djibouti workforce." The Officer then stated: "In fact, neither the male applicant nor his spouse have demonstrated that they would be unable to seek employment opportunities upon their return to Djibouti."

[55] I am persuaded by the Applicants' argument that this line of reasoning repeats the mistakes that were found to be fatal to decisions in *Sosi* and *Lauture*. It is true that a claimant's inability to find work in their country of origin may be a relevant consideration in assessing hardship; it is difficult to understand how it is relevant to an examination of their degree of establishment in Canada. Whether they can work in Djibouti is not relevant to an assessment of the nature and scope of their integration into Canadian society.

[56] Next, the Office discounted the PA's and Asli's employment and volunteer work, questioning details on virtually every element without explaining why these served to diminish this aspect of their claim. It is not necessary to list each instance, a few examples will suffice. Despite evidence that the PA had repeatedly found employment, despite setbacks, and that he was earning $700 per week delivering packages after his last job ended, the Officer questioned the PA's work history because he had only obtained a series of short-term jobs, and his current income was not stable (his salary depended on the number of packages he delivered).

[57] Two points should be noted on this: first, while it is true that the PA was only able to find short-term work, the evidence shows that he made great efforts to provide for his family while they adjusted to life in Canada, and he continued to seek employment more suited to his professional background and skills. The Officer mentions this, but appears to give more prominence to the short-term nature of the jobs, as well as his lack of stable guaranteed income with his delivery position.

[58] It is the Officer's job to assess the evidence and to explain the rationale for the weight assigned to the most pertinent elements. I am unable to discern the Officer's rationale for the assessment of the PA's employment history, beyond a desire for more details. The Officer notes that the PA's current employer's letters did not provide "the necessary insight into the company's compensation structure or even the nature of the business, leaving its purported affiliations with Amazon suspect." Why details regarding the company's compensation policies or connections to Amazon is pertinent to an assessment of the PA's establishment is not explained. It is difficult to understand, since the Officer did not question the evidence showing that the PA was earning $700 per week from this job.

[59] A similarly microscopic analysis marks the Officer's examination of Asli's work and volunteer history. The evidence shows that she worked with several organizations dedicated to assisting new mothers, in particular new mothers who had recently arrived in Canada. The Officer focused on the short-term and part-time nature of these jobs, explaining that "a part-time positon that requires working only a few hours a week will have lesser weight than a full-time, permanent job." This kind of analysis and explanation is reasonable, when measured against the

Vavilov framework. In contrast, the Officer also discussed the Applicant's role in HIPPY, noting that she was described as a "resource person" whose work benefits the many individuals who rely on that organization for assistance. The Officer then stated "it is unclear what qualifications she holds to be able to offer this type of advice." The Officer indicated that if Asli was "acting as counselor, I would be prepared to give this position more weight given that she would be providing an invaluable service."

[60] The problem here is that, as the Respondent acknowledged, the record did show that Asli was, in fact, acting as a counselor and there was evidence about her qualifications to play this role. Among other things, Asli had benefitted from HIPPY services after her arrival in Canada, during a period when she was adjusting to her new life and had just given birth to the youngest child. The Officer failed to mention this evidence, and instead gave Asli's work as a counselor at HIPPY only modest weight. Based on the Officer's own words, if the evidence had been taken into account the Officer would have recognized that Asli was providing an "invaluable service" to her community and that people were relying on her for help. It was unreasonable to fail to mention this evidence on a central aspect of the claim.

[61] The problem was compounded by the Officer's analysis of Asli's volunteer role assisting members of her community with their tax returns. The Officer discounted this, because it was not clear whether she was qualified to provide service in this capacity. Again, there is no indication that Asli claimed to be qualified to offer expert tax advice; instead, she volunteered her time to help others fill out their tax forms. After questioning her qualifications, the Officer stated "there is very little to indicate that she would not be able to pursue similar activities in Djibouti",

repeating a mistake I have discussed above. This analysis is not a reasonable review of the evidence that explains the conclusions reached by the Officer. It falls short of the type of responsive justification called for by *Vavilov* and *Mason*.

[62] Finally, the Officer discounted the Applicants' degree of establishment because there was very little information provided on their overall living expenses, and in particular their housing arrangements. The officer noted the absence of a lease or rental agreement, and their bank records did not make clear what they paid in rent each month. Evidence showing that their living needs were stabilized would have been given great weight, according to the Officer, because it would show that a "disruption of this stability would be of considerable disadvantage to the applicants." Without a clear overview of their housing situation, the Officer found they could only give limited weight to the paystubs, tax assessment, bank transactions and utility bills that had been provided.

[63] Again, the Officer's role is to assess the evidence and explain their reasoning. The problem here is that it is not clear why evidence about whether the Applicants were leasing or renting was so important, given the other evidence they had filed. All of the other evidence in the record showed that the PA, Asli and their children were living stable lives and had successfully integrated into their work, school and community. They may not have provided evidence of the precise terms of their living arrangements, but it is not clear why this other evidence, combined with income tax, employment and utility bills did not satisfy the Officer, especially in light of the other evidence regarding the family's situation.

[64] The Officer’s analysis is not reasonable, because it does not demonstrate a global assessment of the Applicants’ situation in Canada, based on the evidence in the record.

[65] For the reasons set out above, I find the Officer’s analysis of the Applicants’ establishment in Canada to be fatally flawed. This is a core element of the H&C assessment.

C. *Best Interests of the Child*

[66] The Applicants submit that the Officer's assessment of the best interests of the children, or BIOC, was unreasonable. The Applicants submit that the Officer failed to be “alert, alive, and sensitive to the child's interests” as required by *Kanthasamy*. They argue the Officer failed to consider the negative impact removal from school would have on the children, considering that the children have made friends, maintained connections with family, and integrated into life in Canada. The Officer should have carefully considered these facts to determine if it is in the children's best interest to remain in Canada.

[67] The Applicants also argue that the Officer exhibited flawed reasoning when stating that the children's positive adjustment and bilingualism will help them re-integrate into the educational system in Djibouti. It cannot be that the more integrated a child is in Canada, the better his reintegration will be in Djibouti, and should return there. On the contrary, a child's successful integration and exemplary performance in school should not be disturbed, if it is in their best interest to have stability and continuity. The Applicants assert that a return to Djibouti will undoubtedly cause a negative impact on the children.

[68] The Officer also unreasonably diminished the Applicants' relationship with their extended family, in the view of the Applicants. Their evidence shows that they maintain a very close relationship with their family in Canada, “communicating and seeing one another almost daily.” Therefore, it is in the children's best interest to have daily contact with their grandparents and extended family, as they have for the past five years.

[69] The Respondent argues that the Officer reasonably assessed the best interests of the children. The Officer explained that returning to Djibouti as a family will not adversely affect the BIOC, considering their relative age, ability to adjust in Canada, French-speaking skills, and that they will remain in their parents' care. The Officer reasonably determined that the children will continue to benefit from their parents' support, as noted in *Ahmed 2020* at paragraph 26. The children's bilingualism was similarly reasonable, given its relevance to the real-life impact of removal.

[70] Contrary to the Applicants' submissions, the Officer acknowledged the “frequent contact” between the children and their extended family in Canada. However, the Officer observed that the Applicants do not live with extended family and generally live independent lives from their extended family members. There is little to suggest that they would be unable to maintain relationships with them if returned to Djibouti.

[71] As stated in *Ahmed 2020*, presumably in most cases, the children will be better off with the *status quo* of remaining in Canada. There will always be some hardship related to leaving

Canada and moving elsewhere. What is required of a BIOC analysis is that these considerations are given due weight. The Officer did precisely this, according to the Respondents.

[72] I am not persuaded that this aspect of the Officer's decision is unreasonable. The Applicants cannot point to any evidence that was ignored, but rather question the weight that the Officer attributed to the various elements. I can find no basis to question this part of the reasons, given the Officer's clear acknowledgement of the children's success in school, their relationships with their extended family and the disruption they would face if they have to move to Djibouti. The fact that the Officer also noted the children's age, adaptability and the obvious commitment to their parents to give them a loving and supportive environment is not a basis to question the decision.

[73] For this reason, I reject the Applicants' argument that the decision should be overturned because of a flawed BIOC analysis.

VI. Directed Outcome & Costs

[74] The Applicants seek an order for costs and a "directed outcome" to set aside the Officer's decision and direct the decision-maker to grant the Applicants' permanent residence application on H&C grounds. They argue that a directed outcome is warranted in this case because the decision-maker made the very same mistake the Court cautioned against making in the first judicial review. The Applicants cite *Canada (Public Safety and Emergency Preparedness) v LeBon*, 2013 FCA 55 at paragraph 14 as a precedent where a matter had been set aside once,

only for the decision-maker to make the same mistake upon redetermination, resulting in a directed outcome.

[75] The Applicants state that this has been oppressive on them, justifying a directed outcome. They say that there can only be one reasonable decision – a finding that an H&C exemption should be granted in this case. They argue that the Court should not send this matter back for redetermination. There is a limit to the deference that the Supreme Court recognized in *Vavilov*, to prevent the "merry-go-round" of numerous judicial reviews (at paragraph 142).

[76] The Respondent submits that a directed verdict is not appropriate. The appropriate remedy is to send the matter back to the administrative decision-maker for re-determination if this judicial review is granted. A directed verdict is an exceptional power that is only granted in the clearest of cases (*Gerges v Canada (Citizenship and Immigration)*, 2018 FC 106 at paragraph 21; *Canada (Minister of Human Resources Development) v Rafuse*, 2002 FCA 31 [*Rafuse*] at paragraph 14). No directed verdict is necessary here, given the fact-driven, discretionary nature of an H&C decision, the Respondent contends. Furthermore, no costs are available unless there are special reasons justifying them. There are no special reasons or evidence relating to the Officer's alleged misconduct (e.g. oppressive behaviour, bad faith). Therefore, the Officer's reasons contain no error of law or principle.

[77] While I understand the Applicants' frustration with the lack of certainly and finality in this process, I am not persuaded that this is the type of exceptional circumstance where I should step into the decision-maker's role. I do not accept that there is only one possible outcome on the

Applicants' H&C claim. I agree with the Respondents that this is a highly fact-driven, discretionary decision that calls for an examination of a wide array of factors.

[78] Instead of a directed outcome as requested by the Applicants, I will quash and set aside the Officer's decision and send the matter back for reconsideration by a different Officer in accordance with these reasons, as well as the reasons in *Ahmed 2020*. This will give the Applicants another opportunity to put forward their best and most recent evidence and further submissions in support of their request for H&C relief.

[79] As for costs, the starting point is that costs are not available in immigration proceedings unless there are "special reasons" justifying them: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, Rule 22. I am not persuaded that there are any such "special reasons here". The fact that the Applicants have succeeded for a second time in showing that a decision is unreasonable is not, in itself, a basis to award them costs. No other conduct is alleged that warrants an award of costs.

VII. Conclusion

[80] For the reasons set out above, the application for judicial review will be granted, because I find the Officer's analysis of the Applicants' establishment to be unreasonable. This was a central element of their H&C request, and the flaws in the Officer's analysis are sufficiently serious and fundamental to cast doubt over the entire decision. Based on this, the Officer's decision will be quashed and set aside, and the matter will be remitted back for reconsideration

by a different Officer, in accordance with the reasons set out here, as well as the reasons previously provided in *Ahmed 2020*.

[81] Two final points. No question of general importance was raised by the parties, and none arises in this case. Finally, I want to acknowledge the delay in providing this decision to the parties, and to apologize to the parties for the time it has taken.

JUDGMENT in IMM-2818-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The Officer's negative H&C decision is hereby quashed and set aside.

3. The matter is remitted back to a different Officer for reconsideration, in accordance with these reasons as well as the reasons provided in *Ahmed 2020* (2020 FC 777).

4. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2818-21
STYLE OF CAUSE:	LIBAN HASSAN AHMED, ASLI OMAR MOHAMED, OMAR LIBAN HASSAN, LOUKMAN LIBAN HASSAN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VIA ZOOM (OTTAWA)
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APPEARANCES:

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