

Federal Court



Cour fédérale

Date: 20091119

Docket: IMM-1071-09

Citation: 2009 FC 1186

Ottawa, Ontario, November 19, 2009

**PRESENT:** The Honourable Mr. Justice Kelen

**BETWEEN:**

**ZEESHAN SHAFQAT,  
ISMAT ZEESHAN, and  
RAHEL ZEESHAN,  
By her litigation guardian,  
ZEESHAN SHAFQAT**

**Applicants**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**ON** this an application for judicial review of a decision by an immigration officer dated January 20, 2009, denying the applicants' application for permanent residence on humanitarian and compassionate grounds (H&C) pursuant to section 25 of the *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27;

**AND UPON** hearing the parties and reviewing the material in the motion records;

**AND UPON** the Court concluding that the officer's H&C decision is unreasonable in that the H&C officer did not give any weight to the principal female applicant's extraordinary degree of establishment, notwithstanding that the H&C officer found at page 14 of the decision that the applicant's "establishment is well documented and it is exemplary". The Court was referred to the Judgment of now Chief Justice Pierre Blais, then a puisne Judge of this Court in *Jamrich v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1076 at paragraph 29:

¶29 In my view, the IC made an unreasonable finding of facts: the IC's conclusions that "their establishment is no more than is expected of any refugee who is given similar opportunities in Canada" and that she is "not satisfied that in their case, their establishment can be considered so different and significant that it differs from what is expected from any other person who resides in Canada while undergoing the refugee determination process" are patently unreasonable in the circumstances of this case.

In that case, like the case at bar, the evidence of the applicant's establishment was overwhelming. Similarly, Madam Justice Eleanor Dawson in *Raudales v. Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No. 532 held at paragraph 18 and 19 that (and I paraphrase):

- (1) establishment is a relevant factor to consider when assessing an H&C application;
- (2) absent a proper assessment of establishment, a proper determination could not be made of whether requiring the applicant to apply for permanent residence from abroad would constitute hardship that is unusual and underserved or disproportionate; and
- (3) on the evidence, the H&C officer's decision was patently unreasonable because of the applicant's establishment in the community;

**AND UPON** the Court concluding in the case at bar that the H&C officer recognized that the female adult applicant's establishment is "exemplary" and exceptional, yet failed to give it the

weight it reasonably deserved. The PRRA officer cited case law that failed refugee claimants “should not be encouraged to gamble on overstaying in Canada” in the hope that they can demonstrate that they can establish themselves in the intervening period. This is not a proper consideration upon which to dismiss the extraordinary degree of establishment shown in the evidence by Dr. Ismat Zeeshan;

For these reasons, this application for judicial review will be allowed.

#### **CERTIFIED QUESTION**

Both parties advised the Court that this case does not raise a serious question of general importance which ought to be certified for an appeal. The Court agrees.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. the decision of the H&C officer dated January 20, 2009 is set aside; and
2. this application for judicial review is allowed and the H&C application is remitted to another H&C officer for redetermination in accordance with these Reasons for Judgment.

“Michael A. Kelen”

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Judge

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

**DOCKET:** IMM-1071-09

**STYLE OF CAUSE:** ZEESHAN SHAFQAT ET AL. v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** October 29, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** KELEN J.

**DATED:** November 19, 2009

**APPEARANCES:**

Mr. Daniel Kingwell FOR THE APPLICANTS

Ms. Deborah Drukarsh FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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