Federal Court  Cour fédérale

Date: 20110726

Docket: IMM-7348-10
IMM-7349-10

Citation: 2011 FC 932

Ottawa, Ontario, July 26, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

VECKQUETH NEROW STEPHENSON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks to have two decisions judicially reviewed. Both decisions were made by the same Pre-Removal Risk Assessment Officer (the Officer) on November 30, 2010.

[2] In the first decision, the Officer rejected the applicant's Pre-Removal Risk Assessment (PRRA) application after concluding that neither a risk of persecution under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] nor a danger of torture, a threat to

life, nor a risk of cruel and unusual treatment or punishment under section 97 of the IRPA had been established. Court file IMM-7348-10 relates to this decision.

[3] In the second decision, the Officer denied the applicant's request under subsection 25(1) of the IRPA to have his application for permanent residence processed from within Canada on Humanitarian and Compassionate (H&C) grounds after finding that the applicant had not demonstrated that he would experience unusual and undeserved or disproportionate hardship if he were required to apply for residence from abroad. Court file IMM-7349-10 relates to this decision.

[4] Both applications for judicial review were heard together. As such, these reasons will address both applications and a copy shall be placed in each of the Court's files.

I. Background

[5] The applicant, born October 24, 1961, is a citizen of Jamaica. He began to experience vision problems in 1995, at the age of 34. In 1998, he had an accident and lost all vision in his left eye. At the same time, he was diagnosed with glaucoma. The vision that was remaining in his right eye deteriorated over time to a point where, eventually, he became legally blind.

[6] The applicant arrived in Canada in June 2000, where his mother and two sisters lived (they were, and are, Canadian citizens). In July 2004, he applied for refugee protection on the basis of an alleged risk related to his prior involvement in Jamaican politics. His claim was denied in May 2006.

[7] In November 2006, the applicant filed an H&C application, requesting permission to apply for permanent residence from within Canada. The applicant alleged that he would suffer from discrimination based on his visual impairment if he returned to Jamaica. He also claimed that he was well-established in Canada and relied on his family here for support and, as such, the requirement to apply for permanent residence from abroad would constitute a significant hardship.

[8] In August 2008, the applicant filed a PRRA application. He alleged that he would suffer discrimination based on his impaired vision if he was returned to Jamaica and that discrimination would, cumulatively, amount to persecution. Furthermore, he claimed that he would not have access to adequate healthcare in Jamaica such that his physical and moral integrity would be threatened.

[9] On February 3, 2010, negative decisions were rendered on both the applicant's PRRA and H&C applications. The applicant applied for judicial review and, by order upon consent of the parties issued by the Federal Court on October 19, 2010 (files IMM-2256-10 and IMM-2257-10), both the PRRA and H&C applications were returned for re-determination by a different PRRA officer.

II. The decisions under review

[10] On November 30, 2010, the applicant's PRRA and H&C applications were denied again. These are the decisions that are currently under review.

A. *The PRRA Decision (File IMM-7348-10)*

[11] The Officer divided his analysis into two main parts: first he considered the risk related to the applicant's visual impairment generally, and second, he considered the applicant's allegations regarding the provision of inadequate healthcare in Jamaica.

[12] As to the issue of visual impairment, generally, the Officer found that the applicant had provided only minimal evidence to suggest that he had been personally subject to discrimination in Jamaica. Instead, the allegations at issue largely concerned the situation faced by similarly situated people: Jamaicans with disabilities.

[13] While he acknowledged that a high unemployment rate existed among Jamaicans with disabilities, the Officer explained that the causes for this unemployment went beyond discrimination and included inaccessible workplaces as well as low levels of training and experience. Furthermore, the Officer found that the presence of organizations such as the Jamaica Society for the Blind (JSB) and the Jamaica Council for Persons with Disabilities demonstrated that Jamaican authorities and Non-governmental Organizations (NGOs) were seeking to improve circumstances for the disabled, including the visually impaired.

[14] According to the Officer, little evidence had been provided concerning the workforce participation of the visually impaired or concerning social discrimination against the visually impaired in particular.

[15] The Officer concluded that, while people with disabilities may be discriminated against in relation to employment and education, the available documentation did not indicate that such discrimination was sustained or systemic so as to constitute persecution. He found that the applicant had provided insufficient evidence to establish that the visually impaired faced persecution in Jamaica.

[16] As to the issue of healthcare, the Officer emphasized that subparagraph 97(1)(b)(iv) of the IRPA excluded risk caused by the inability of a country to provide adequate health care. In any event, the Officer cited the UK Home Office as stating that the Jamaican health system was capable of providing primary, secondary and tertiary care. The Officer found that there was insufficient evidence suggesting that the Jamaican government was unwilling to provide medical services to the disabled.

[17] Overall, the Officer concluded that neither a risk of persecution, nor a danger of torture, a threat to life, nor a risk of cruel and unusual treatment or punishment, had been sufficiently demonstrated by the applicant.

B. *The H&C Decision (File IMM-7349-10)*

[18] The Officer divided his H&C analysis into two parts: first he considered the risk alleged by the applicant and, second, he considered the question of establishment.

[19] The Officer's analysis of the risk alleged vis-à-vis the applicant's visual impairment was virtually identical to the analysis set out in his PRRA decision. He concluded, however, by stating that the applicant had not demonstrated that he was personally affected by discrimination relative to employment and education and that he had provided insufficient evidence of widespread social or official discrimination, specifically targeting the visually impaired. As a result, the Officer was not satisfied that the applicant would experience a risk amounting to unusual and undeserved or disproportionate hardship relating to discrimination based on his visual impairment.

[20] On the question of establishment, the Officer stated that the issue was whether the applicant had established links to Canada that, if broken, would cause unusual and underserved or disproportionate hardship.

[21] The Officer found that the applicant had demonstrated only minimal integration into the Canadian economy and that his degree of establishment specific to the Canadian workforce, i.e. his part-time work as a janitor, was not in itself sufficient to warrant an exemption on humanitarian grounds. The Officer noted that the applicant would be able to access the type of government supported employment services in Jamaica that he was prevented from accessing in Canada due to his immigration status. The Officer was not satisfied that the applicant's employment potential would be negatively affected by leaving Canada.

[22] The Officer noted that the applicant had provided evidence of a substantial contribution to community organizations through volunteering. Although he found the applicant's efforts to be laudable, he indicated that the applicant had not explained what hardship he would suffer if he were

no longer associated with these organizations. In any event, he did not find any evidence that the applicant would be unable to continue with similar community based activities in Jamaica.

[23] The Officer then turned to consider the applicant's ties to his Canadian family members. He acknowledged that the evidence demonstrated that the applicant was dependent on his mother and sisters to a certain extent. However, he found that there was little indication as to the level of dependency and, in light of his community involvement, the Officer was not satisfied that the applicant's visual impairment would prevent him from caring for himself upon returning to Jamaica.

[24] In terms of whether adequate healthcare would be available to the applicant in Jamaica, the Officer noted that the Jamaican health system was capable of providing primary, secondary and tertiary medical care and that, if cost were a factor, the applicant's family had not indicated that they would be unable to continue to financially support him.

[25] The Officer was not satisfied that the applicant would experience unusual and undeserved or disproportionate hardship if he were required to apply for permanent residence from abroad and, as such, he denied the applicant's request for exemption.

III. Issues

[26] These applications raise several issues. The following issue relates to both applications for judicial review (i.e. both IMM-7348-10 and IMM-7349-10) :

(1) Did the Officer breach the duty of procedural fairness by failing to disclose certain country conditions documents and by failing to provide the applicant with an opportunity to comment on those documents?

[27] The applications also raise issues that are specific to each file:

The application relating to the PRRA decision (IMM-7348-10)

(2) Did the Officer err in his assessment of risk for the purposes of the PRRA application?

The application relating to the H&C decision (IMM-7349-10)

(3) Did the Officer err in his assessment of hardship relative to discrimination for the purposes of the H&C application?

(4) Did the Officer err in his assessment of hardship relative to the applicant's access to medical treatment for the purposes of the H&C application?

(5) Did the Officer err in his assessment of establishment for the purposes of the H&C application?

[28] At the hearing, counsel for the applicant requested, should the Court decide to allow one or both applications, that the Court grant costs as well as a stay of removal until a re-determination is finalized. I will address these requests after reviewing the PRRA and the H&C decisions.

IV. Standard of review

[29] Questions related to procedural fairness are to be reviewed using the correctness standard (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53, [2006] 3 FCR 392). As such, the first issue, regarding the Officer's treatment of the documentary evidence, will be reviewed without deference to the decision-maker.

[30] The remaining issues will be reviewed against the reasonableness standard.

[31] The jurisprudence is clear that the standard of review applicable to an officer's determination on an H&C application is reasonableness (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18, [2010] 1 FCR 360). Likewise, the standard to be applied when reviewing a PRRA determination is also reasonableness (*Kanaku v Canada (Minister of Citizenship and Immigration)*, 2009 FC 394 at para 45, 176 ACWS (3d) 1122). It is also well established that the same standard applies to the decision-maker's assessment of the evidence (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190) [*Dunsmuir*]).

[32] The Court's role when reviewing a decision against the reasonableness standard is enunciated in *Dunsmuir*, above at para 47:

> . . . A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision

> falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

V. Analysis

Files IMM-7348-10 and IMM-7349-10

(1) Did the Officer breach the duty of procedural fairness by failing to disclose certain country conditions documents and by failing to provide the applicant with an opportunity to comment on those documents?

[33] The applicant submits that the Officer breached the duty of procedural fairness by relying on extrinsic country conditions evidence, i.e. documents that were neither submitted by the parties nor available in the Immigration and Refugee Board's National Documentation Package on Jamaica, without providing him with an opportunity to make submissions in response to that evidence.

[34] In particular, the applicant points to four documents included in the list of "Sources Consulted" at the end of the Officer's PRRA decision and in the "Bibliography" at the end of the Officer's H&C decision:

1. "Freedom in the World 2010 – Jamaica" *Freedom House* (3 May 2010).
2. "JSB, Empowering the Blind for 50 Years" *Jamaica Information Service* (10 March 2004).
3. "Society for the Blind Sets Sights on Raising Funds" *The Gleaner* (12 June 2010).
4. "Jamaica Society for the Blind Needs Help" *The Gleaner* (18 July 2010).

[35] It is well accepted that a PRRA officer need not disclose every document relied upon in a PRRA or H&C assessment. The Federal Court of Appeal in *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 F.C. 461, 161 DLR (4th) 488 (CA) [*Mancia*] set out what is required in terms of disclosure. The Court of Appeal indicated that where an officer intends to rely on evidence not normally found in documentation centres, fairness requires "that the applicant be informed of any novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case" (*Mancia* at para 22).

[36] The Officer referred to the first document, "Freedom in the World 2010 – Jamaica", in both his PRRA and H&C decisions, as part of his consideration of the risk of political violence alleged by the applicant on his initial claim for refugee protection. Since the applicant did not advance this risk as a basis for either his PRRA or H&C applications, it can hardly be said that the Officer relied on the first document for information that had the potential to affect the disposition of the applicant's case. As such, the Officer did not err in failing to disclose this document or the information contained within it.

[37] The other three impugned documents are news articles related to the JSB. These articles describe the role of the JSB in providing skills training, employment counselling, and specialized tools and facilities for the visually impaired in Jamaica. They also indicate that the JSB receives part of its funding from the Jamaican government, and part of its funding from the private sector. The Officer relied partly on these articles in both his PRRA and H&C decision to conclude that,

"Jamaican authorities and NGOs are seeking to improve the circumstances for the disabled, including the visually impaired."

[38] While I am satisfied that these particular articles were not part of the standard documentation package for Jamaica, I am not satisfied that the information contained in them was "novel and significant information which evidences a change in the general country conditions" so as to engage the disclosure requirement set out in *Mancia*, above. The US Department of State Report, "2009 Human Rights Report: Jamaica", which was included in the Immigration and Refugee Board's National Documentation Package on Jamaica (NDP), contained similar information, it indicated:

> The Ministry of Labor has responsibility for the Jamaica Council for Persons with Disabilities, which had a budget of J$47 million ($500,000) in 2008-09. The ministry also has responsibility for the Early Stimulation Project, an education program for children with disabilities, as well as the Abilities Foundation, a vocational program for older persons with disabilities.

[39] Justice Michel Beaudry, in *Jiminez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1078 (available on CanLII) [*Jiminez*], highlighted that when considering an officer's obligation to disclose, the question is not whether the impugned document was available to the applicant, the question is whether the information contained in that document was available to the applicant. I find, in the current case, that the information relied upon by the officer – regarding the existence of government-funded organizations and programs designed to improve the circumstances of the disabled in Jamaica - was available to the applicant at the time of his application. Although the existence of the JSB itself may not have been mentioned in the NDP, the details set out in the

impugned articles would not have been difficult to come across. I adopt the words of Justice Beaudry from *Jiminez* at para 19:

> I find that there was no lack of procedural fairness here. The information relied upon is widely available, and even if the applicants had not read that specific article, it is a piece of information that would have been easy to come across. . . .

The application relating to the PRRA decision (IMM-7348-10)

(2) Did the Officer err in his assessment of risk for the purposes of the PRRA application?

[40] The applicant argues that the Officer erred in assessing whether the discrimination faced by the visually impaired in Jamaica – in terms of access to education, employment and healthcare – amounted to persecution on a cumulative basis for the purposes of section 96 of the IRPA.

[41] Discrimination does not always amount to persecution. Although the term "persecution" is undefined in the IRPA, the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 63, 103 DLR (4th) 1, endorsed a definition whereby "persecution" is given the following meaning: a "sustained or systemic violation of basic human rights demonstrative of a failure of state protection". Discrimination, thus, may amount to persecution if it satisfies this definition. This was the test applied by the Officer in his reasons.

[42] The applicant submits that the Officer erred in determining that there was insufficient evidence to find that discrimination against the visually impaired in Jamaica was sustained or systemic. He points to evidence showing that persons with disabilities encounter discrimination in terms of access to employment, education and healthcare. He also emphasizes that there are no laws prohibiting discrimination against persons with disabilities in Jamaica. In essence, the applicant is asking the Court to re-weigh the evidence that was before the Officer and substitute its own assessment as to whether the discrimination faced by the visually impaired in Jamaica is sustained or systemic so as to amount to persecution. That is not the role of this Court on judicial review.

[43] While the Officer recognized that discrimination relative to employment and education may persist against the disabled in Jamaica, he was nonetheless unconvinced that sustained or systemic discrimination against the visually impaired, within the meaning of the definition from *Ward*, had been demonstrated. He explained that the applicant was relying almost entirely on evidence relating to similarly situated individuals, and not evidence as to his own personal experience in Jamaica. He had concerns about that objective evidence, as it was general in nature – addressing the issues of employment and education in relation to persons with disabilities generally, but not particularly addressing the situation of the visually impaired. Ultimately, given the existence of government funded organizations working to improve the circumstances of the visually impaired, the Officer found that the test for persecution as set out in *Ward* had not been met. I cannot find that this weighing of the evidence was unreasonable.

[44] The applicant also attacks particular aspects of the Officer’s analysis.

[45] First, he submits that the Officer unreasonably concluded that the Jamaica Council for Persons with Disabilities (JCPD) and the JSB could provide him with protection. He contends that the mandate of these organizations is to provide rehabilitative services and employment counselling, not to provide protection.

[46] However, the question at issue was whether the discrimination alleged by the applicant truly constituted a “sustained or systemic violation of basic human rights”. The Officer did not conclude that the JCPD and JSB would “protect” the applicant from discrimination; instead, he concluded that the existence of these organizations showed that Jamaican authorities were seeking to improve the circumstances of the visually impaired. It is not unreasonable for the Officer to have considered the existence of government-funded organizations that work to provide services to the disabled and to ameliorate their disadvantaged position in society in his assessment of whether discrimination was truly sustained or systemic so as to amount to persecution. I can find no error in the Officer’s assessment in this regard.

[47] Second, the applicant argues that the Officer erred when he suggested that discrimination was not the sole cause for the high rate of unemployment amongst persons with disabilities in Jamaica. The applicant submits that the other factors pointed to by the Officer – low levels of training and experience, and inaccessible workplaces – are all, essentially, the result of discrimination.

[48] It is possible that the Officer meant to differentiate between employers who directly discriminate based on a person’s disability and more indirect forms of discrimination. Nonetheless, I

agree with the applicant that it would be a mistake not to recognize that a disabled person's restricted access to training, and even their restricted access to certain physical workplaces, may very well be the result of discrimination. Although I find the Officer's statement that, "the causes for [the high unemployment rate amongst the disabled in Jamaica] include inaccessible workplaces and low levels of training and experience, in addition to discrimination", to be problematic, I cannot find that it renders his entire analysis as to persecution unreasonable. The Officer's primary finding – that, in light of the government-funded organizations dedicated to providing assistance to the visually impaired, and in light of the general nature of the evidence presented by the applicant, insufficient evidence had been adduced to establish that the applicant would face discrimination amounting to a sustained or systemic violation of basic human rights – is unaffected.

[49] Third, the applicant takes issue with the Officer's finding that "little evidence" had been provided concerning the workforce participation of the visually impaired in particular. He argues that the 73 percent unemployment rate for persons with disabilities cited in the evidence before the Officer included visually impaired people. While this may be true, it is not unreasonable that the Officer was concerned with the generality of this evidence. The onus was on the applicant to demonstrate that he would be persecuted upon returning to Jamaica. While he was entitled to rely on evidence as to similarly situated individuals, the more specific that evidence to the applicant's particular circumstances, the more compelling it is. The applicant did include a newspaper article in his submissions that highlighted the case of a visually impaired woman who had been unable to secure work. However, that anecdotal evidence hardly constitutes evidence as to "trends in workforce participation" [emphasis added] relating to the visually impaired.

[50] Finally, the applicant submits that the Officer erred in considering the evidence as to inadequate healthcare. He points to documentary evidence that was before the Officer which indicated that the Jamaican health care system lacked specialized services for persons with disabilities.

[51] Subparagraph 97(1)(b)(iv) of the IRPA indicates that a claimant cannot be considered a person in need of protection if they allege a risk to their life or a risk of cruel and unusual treatment or punishment where that risk is caused by the "inability" of their home country to provide adequate health or medical care. The Federal Court of Appeal in *Covarrubias v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365, [2007] 3 FCR 169 [*Covarrubias*] interpreted the word "inability" to be broad enough to include inability resulting from a good faith decision, made for legitimate political and financial priority reasons, not to provide care.

[52] The Officer referenced subparagraph 97(1)(b)(iv) of the IRPA and *Covarrubias*, and found that there was "insufficient basis to conclude that healthcare in Jamaica [was] allocat[ed] for reasons other than financial priorities." The onus was on the applicant to demonstrate that the lack of specialized services was the result of something other than a legitimate political or financial priority reason (*Covarrubias* at para 41). The applicant adduced no evidence in this regard and, as such, the Officer's finding under section 97 of the IRPA was reasonable

[53] The applicant also argues that, quite apart from the issue of section 97, the lack of specialized services for persons with disabilities is also demonstrative of systemic discrimination sufficient, when combined with the discrimination related to employment and education, to

constitute persecution under section 96 of the *IRPA*. He contends that the absence of specialized services has a disproportionate impact on people with disabilities and, as such, is a form of indirect discrimination.

[54] Although the Officer did not specifically address the question of indirect discrimination, it is clear that he was not satisfied that the applicant would be provided with inadequate medical care in Jamaica. The Officer cited evidence from the UK Home Office indicating that the Jamaican health system was capable of providing primary, secondary and tertiary care and that the Jamaican government did provide a certain level of financial assistance in this regard. Given this, I cannot find that it was unreasonable for the Officer to find that the applicant had not demonstrated that he would receive inadequate treatment for his glaucoma if required to return to Jamaica.

[55] Overall, I find that the Officer did not err in his assessment of risk for the purposes of the PRRA application. As such, the application for judicial review of the PRRA decision is dismissed. The remaining issues relate to the H&C decision only.

The application relating to the H&C decision (IMM-7349-10)

(3) Did the Officer err in his assessment of hardship relative to discrimination for the purposes of the H&C application?

[56] The applicant submits that the Officer erred in concluding that there was insufficient evidence of discrimination to warrant a finding that unusual and undeserved or disproportionate hardship would result if he were required to apply for permanent residence from abroad.

[57] The applicant argues that the Officer erred in finding that the discrimination faced by people with disabilities in Jamaica was not systemic or widespread. He points to the same evidence of discrimination that he pointed to in relation to the PRRA decision. As with the PRRA, the applicant is asking the Court to re-weigh the evidence. This time, he is asking the Court to substitute its own assessment as to whether the discrimination faced by the visually impaired in Jamaica was widespread enough to warrant finding that the he would suffer unusual and underserved or disproportionate hardship. Again, that is not the role of this Court on judicial review.

[58] The Officer expressed concern over the fact that the applicant had not demonstrated that he would personally be affected by discrimination in Jamaica. He had concerns about the objective evidence of discrimination, as it was general in nature – relating to people with disabilities broadly, but not to the visually impaired specifically. Ultimately, given the existence of government funded organizations working to improve the circumstances of the visually impaired, the Officer found that there was insufficient evidence of widespread discrimination targeting the visually impaired to warrant finding unusual and underserved or disproportionate hardship in the applicant's case. I cannot find that this weighing of the evidence was unreasonable.

[59] The applicant alleges the same specific faults as he did in relation to the PRRA decision. Although the test to be applied is different – instead of being concerned with whether the

discrimination amounts to persecution, in the H&C context we are concerned with unusual and underserved or disproportionate hardship – the reasons I set out above in relation to these points are equally applicable in the H&C context. Ultimately, I find that the Officer's treatment of the evidence as to discrimination was reasonable.

(4) Did the Officer err in his assessment of hardship relative to the applicant's access to medical treatment for the purposes of the H&C application?

[60] The applicant argues that the Officer erred in concluding that there was little evidence to establish that medical treatment available to the applicant in Jamaica would be inadequate.

[61] He submits that his affidavit evidence was clear that he was not getting proper treatment prior to coming to Canada. While it is true that the applicant did state in his affidavit that his eyesight had deteriorated while he was in Jamaica because he "was not getting proper treatment", he went on in that affidavit to explain that the reason for that lack of treatment was that he was having problems paying for the necessary eye drops. The treatment was available, but the applicant could not personally afford it. The Officer addressed this concern by indicating that, "Should cost be a factor, the Applicant's family have not indicated that they would be unable to continue financially supporting [him] as they do now." I cannot find that the Officer's conclusion in this regard was unreasonable.

[62] Furthermore, the applicant points to the general country conditions evidence which indicates that health services specific to persons with disabilities are not available in Jamaica. I cannot find

that the Officer's reasons for dismissing the applicant's medical concerns are rendered unreasonable simply because he did not mention a general indication as to health services provided to persons with disabilities. There was evidence before the Officer that treatment was available for people with glaucoma. This specific evidence would presumably take precedence over the more general evidence referenced by the applicant. In any event, the Officer also noted the UK Home Office report which stated that the Jamaican health system was capable of providing primary, secondary and tertiary care.

[63] Ultimately, I cannot find that the Officer erred in his consideration as to the adequacy and availability of medical care in Jamaica.

(5) Did the Officer err in his assessment of establishment for the purposes of the H&C application?

[64] The applicant argues that the Officer unreasonably assessed his establishment in Canada.

[65] First, the applicant submits that the Officer failed to properly consider the extent to which he was dependent on his family in Canada (i.e. his mother, his two sisters, and his niece and nephew). He submits that, contrary to the Officer's statement that there was "little indication about his level of self-sufficiency or about the activities that his family must perform for him regularly", there was, in fact, significant detail in this regard. Not only did the Officer fail to properly consider the evidence adduced as to dependency, the applicant further contends that the Officer failed to consider that there would be no family available to provide him with a similar type of support in Jamaica. I agree.

[66] Although the Officer did acknowledge that the applicant's "lack of self-sufficiency may have led to a degree of dependence on his family in Canada", I find that the officer unreasonably underestimated that dependence. His conclusion that there was "little indication" about the applicant's level of self-sufficiency or about the support provided by his family in Canada was made without proper regard to the evidence before him.

[67] The record clearly demonstrated that the applicant was dependent on his mother for employment: the only job he had been able to secure, due to his disability, was a job given to him by his mother. It also demonstrated that the applicant was dependent on his mother for shelter: he lived in an apartment building that she owned and he "contribute[d]" by paying her $260 a month. The record further revealed that the applicant lived in very close proximity to his mother and two sisters, living in the building next door to theirs, so that they could provide him with assistance related to his disability: with errands such as shopping and medical appointments, with day-to-day activities such as dressing, and more generally with keeping him out of danger. His family emphasized in a number of letters that the applicant depended on them a great deal. It is also important to note that the record before the Officer demonstrated that the applicant relied on his family in Canada for much-needed emotional support as well.

[68] Not only did the Officer neglect to appropriately consider the above evidence of dependence, he also neglected to consider that, in Jamaica, the applicant would have no family members to provide him with similar types of support. The applicant's only family member in Jamaica is his elderly father, who is unable to provide the applicant with care. Citizenship and

Immigration Canada's IP 5 Manual indicates that an immigration officer should have consideration for the existence of “family members remaining in the country of origin”. I find that this consideration is particularly important in the applicant’s case. In this regard, I note the applicant’s affidavit evidence regarding the situation he previously faced (prior to coming to Canada in the year 2000) as a blind man living without family support in Jamaica:

> I was living by myself in a little room without a proper roof. My belongings would get wet when it rained. The living conditions were very bad. There were lots of rats and cockroaches. It was not healthy. The room was not very secure, because the hinges on the window did not lock. It was easy for someone to break into my house. Some of my belongings would go missing.

[69] The Officer’s reasons for not being satisfied that the applicant would face unusual and undeserved or disproportionate hardship if forced to leave his family support network in Canada lacked justification, transparency and intelligibility. On this basis, I find that the Officer’s determination on the H&C application as a whole was unreasonable.

[70] For all of the above reasons, the application for judicial review of the PRRA decision will be dismissed and the application for judicial review of the H&C decision will be allowed.

VI. Costs

[71] The applicant requests that I allow costs. He contends that there exist “special reasons” in his case to justify an award of costs under Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22 [the Rules]. In particular, he argues that because it is the second time that he has had to file applications for judicial review in relation to negative PRRA and H&C

decisions, and because the second Officer repeated the errors made by the first, he should be entitled to costs. The applicant relies on the following comments made by Justice Eleanor Dawson of the Federal Court, as she then was, in *Johnson v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1262 at para 26, 275 FTR 316: "Special reasons may be found if one party has unnecessarily or unreasonably prolonged the proceedings, or where one party has acted in a manner that may be characterized as unfair, oppressive, improper or actuated by bad faith."

[72] Counsel for the respondent argues that the applicant's case does not warrant an award of costs. He emphasizes that the order setting aside the initial PRRA and H&C decisions was rendered upon consent and, as such, it did not set out any reasons. Therefore, there is no evidence to support the applicant's argument that the Officer committed the "same errors" in rendering the decisions under review as were committed with respect to the initial decisions. He further contends that there is no evidence that the respondent or that he, as counsel, acted in a manner so as to justify an award of costs. I agree.

[73] There is no support for the applicant's argument that the Officer, when rendering the H&C decision currently under review, made the same errors as were made by the officer who rendered the initial H&C decision. The applicant's primary argument in this regard is that the initial decisions were returned for re-determination on consent because the initial officer had erroneously considered extrinsic evidence without providing the applicant an opportunity to respond to that evidence. Since I have found that the Officer did not commit any such error in rendering the decisions currently under review, this basis for the applicant's argument as to "special reasons" must fail.

[74] Justice Anne Mactavish in *Dhaliwal v Canada (Minister of Citizenship and Immigration)*, 2011 FC 201 at paras 29-33 (available on CanLII), recently provided a summary of the principles surrounding the awarding of costs in immigration proceedings:

> [29] Costs are not ordinarily awarded in immigration proceedings in this Court. Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22 provides that "No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders".
>
> [30] The threshold for establishing the existence of "special reasons" is high, and each case will turn on its own particular circumstances: *Ibrahim v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1342, [2007] F.C.J. No. 1734, at para. 8.
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> [31] This Court has found special reasons to exist where one party has acted in a manner that may be characterized as unfair, oppressive, improper or actuated by bad faith: see *Manivannan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1392, [2008] F.C.J. No. 1754, at para. 51.
>
> [32] However, "special reasons" have also been found to exist where there is conduct that unnecessarily or unreasonably prolongs the proceedings: see, for example, *John Doe v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 535, [2006] F.C.J. No. 674; and *Johnson v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1262, [2005] F.C.J. No. 1523, at para. 26; *Qin v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1154, [2002] F.C.J. No. 1576. In my view, this is such a case.
>
> [33] The mere fact that an immigration application for judicial review is opposed, and the tribunal is subsequently found to have erred, does not give rise to a "special reason" justifying an award of costs. . . .
>
> [see also *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 (available on CanLII)]

[75] It is unfortunate that the second Officer committed errors in his assessment of the evidence presented in support of the applicant’s H&C application, but in my view, his errors do not constitute

"special reasons" as the concept has been developed by our Court and by the Federal Court of Appeal.

VII. Stay

[76] The applicant further requests that I order a stay of his removal until the H&C decision is finally re-determined. The respondent opposes this request.

[77] I see no basis for ordering a stay of removal at this stage. I do not even see on what legal ground the Court could base its jurisdiction to entertain such a stay. The Court's jurisdiction with respect to the present applications for judicial review will be extinguished with the issuance of this judgment and the Court will become *ex officio*. The Court does not have any residual jurisdiction over the process that will lead to a re-determination of the H&C application.

[78] No questions of general importance were proposed for certification and none arise.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. In file IMM-7348-10, the judicial review is dismissed;

2. In file IMM-7349-10, the decision of the PRRA Officer dated November 30, 2010 is set aside and the matter is referred back to Citizenship and Immigration Canada to be re-determined by a different immigration officer;

3. No costs are awarded;

4. No question of general importance is certified.

5. A copy of these reasons is to be placed in Court's files IMM-7348-10 and IMM-7349-10.

"Marie-Josée Bédard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7348-10 and IMM-7349-10
STYLE OF CAUSE:	VECKQUETH NEROW STEPHENSON. v. MCI
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	July 19, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	Justice Marie-Josée Bédard
DATED:	July 26, 2011

APPEARANCES:

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