Federal Court  Cour fédérale

Date: 20120206

Docket: IMM-3986-11

Citation: 2012 FC 158

Ottawa, Ontario, February 6, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

JOAHANA AWAH AMBASSA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of a Senior Immigration Officer (Officer) at Citizenship and Immigration Canada (CIC), dated 19 April 2011 (Decision). In the Decision, the Officer refused the Applicant's application for an exemption under subsection 25(1) of the Act on Humanitarian and Compassionate grounds.

BACKGROUND

[2] The Applicant is a citizen of Cameroon and of no other country. She has a brother and sister living in Cameroon and no family in Canada. She came to Canada on 15 September 2003, after she fled from Cameroon where she fears persecution because she is a lesbian. She claimed protection on 24 September 2003, but the Refugee Protection Division (RPD) of the Immigration and Refugee Board denied her claim on 4 September 2004.

[3] As an unsuccessful refugee claimant, the Applicant is subject to a deportation order. She applied for an H&C Exemption on 20 January 2005 and filed additional materials in support of this application on 15 April 2010. On 31 December 2010, she applied for a Pre-removal Risk Assessment (PRRA).

[4] In her 2004 claim for protection, the Applicant had claimed that she had suffered domestic abuse at the hands of her husband. She had also claimed that she faced persecution because she is HIV+ and is a lesbian. The RPD found that she was not credible and that she had not established that she had suffered domestic abuse. It also found that she was not a lesbian and that she had attended Gay Pride events in Toronto solely to bolster her claim. After her claim was denied, the Applicant asked this Court for leave and judicial review of that decision. Leave was denied on 24 January 2005.

[5] In her application for an H&C exemption, the Applicant said that she had become established in Canada. She also said that she had not had an easy life in Cameroon, where she had been in an abusive, polygamous marriage into which she had been unable to bring a child. After her husband began starving her and beating her, the Applicant said she got help from members of her

community. One person who helped her was a widow with whom the Applicant developed a relationship. When the Applicant's husband found out about their relationship, the Applicant says her partner was beaten to death by a mob and her house was destroyed. The Applicant was told that she would be next because she could not be allowed to corrupt the girls in their village. These were substantially the same allegations she had raised in her refugee claim.

[6] The Applicant also said in her submissions that she was positive for both HIV and Hepatitis C and was under continuing medical care. She said that she would not be able to access medical treatment for her condition in Cameroon, so it would be a hardship for her to return. She drew attention to the fact that women in Cameroon suffer discrimination, including sexual violence. She said that the same people who sought to harm her before she fled in 2003 continued to hold animosity toward her and would harm her if she returned.

[7] In support of her H&C application, the Applicant submitted an affidavit (Ambassa Affidavit) from her brother (Ambassa), who still lives in Cameroon. She also submitted a letter (Muki Letter) from her Cameroonian lawyer, Mr. T.F. Muki. (Muki). Both of these documents spoke to the events that had happened to the Applicant in Cameroon. She also submitted two convocations from the General Delegation for National Security in Cameroon. These convocations were addressed to her and her brother and requested that they report to Public Security in Limbe, Cameroon. The Muki Letter said that her husband had lodged a complaint against the Applicant because she had deserted their matrimonial home.

[8] The Officer considered the Applicant's submissions and came to his decision. On 19 April 2011, he denied the Applicant's request for an H&C exemption. He notified her of his decision by letter, dated 19 April 2011.

DECISION UNDER REVIEW

[9] The Officer began his analysis by reviewing the Applicant's immigration history. He noted that she had unsuccessfully claimed refugee status, had applied for leave and judicial review, and had applied for an H&C exemption on 20 January 2005. The Officer also noted that the Applicant had made updated submissions in April 2010 and had applied for a PRRA in December 2010

[10] The Officer reviewed the grounds the Applicant had raised to support her request for an exemption. He noted that she said she had been in a polygamous marriage and was mistreated by her husband because she could not have a child. He also noted that she had been involved in a relationship with another woman and that the Applicant was afraid she would be persecuted because of this relationship. The Applicant had also said in her submissions that homosexuality is against the law in Cameroon and she would face discrimination there because she has HIV and Hepatitis C and that she would not be able to access medical treatment for these conditions in Cameroon. The Officer reviewed the Applicant's employment in Canada and her volunteer work and involvement in her community.

Determination

[11] The Officer found that the Applicant had not demonstrated sufficient humanitarian and compassionate grounds to merit an exemption from the requirement to apply for a visa from outside of Canada. The Applicant had not shown that she would face unusual and undeserved or disproportionate hardship if her application for an exemption were rejected.

Analysis of Risk

[12] The Officer said that the risks the Applicant alleged she faced were considered by the RPD when it determined her refugee claim in 2004. He examined the Ambassa Affidavit, pointing out that it said the Applicant had been give away as a child bride, mistreated by her husband, and that her partner had been beaten to death by a mob. That affidavit also said that Ambassa had seen strange people around his house who, when confronted, confirmed that the Applicant's husband was looking for her. The Officer also noted that a letter from Muki to Ambassa said the Ambassa Affidavit had been back-dated to 6 December 2010. The Officer concluded that the Ambassa Affidavit had been prepared sometime after 6 December 2010, at least seven years after the events it attested to took place. He also said that Ambassa was not a witness to the events he attested to in his affidavit. For these reasons, the Officer attached little probative value to the Ambassa Affidavit.

[13] In the Muki Letter, the Applicant's Cameroonian lawyer said that he was aware of the problems she had and that she looked battered, beaten, and scared, when he met with her. The Officer noted that the Muki Letter, like the Ambassa Affidavit, was prepared seven years after the events it spoke to. Further, the letter was not based on objective evidence, because the Applicant and Ambassa were Muki's clients. The Officer said that the RPD found that the facts in the letter were not credible, and the Applicant had not provided additional evidence to corroborate her allegations.

[14] As noted above, the Applicant had provided convocations issued to her and Ambassa by the General Delegation for National Security in Cameroon as evidence she was wanted by the authorities. The convocations did not say why the Applicant and Ambassa were required to report and were dated from 2009, six years after she left Cameroon. The Officer said that the Applicant

had not explained why her lawyer could not get more recent documentation showing she was still wanted. The convocations did not lead the Officer to conclude the Applicant was wanted by the Cameroonian authorities.

[15] The Applicant also submitted an article from a Cameroonian newspaper, *The Weekender*, about what had happened to her. The Officer said that this article was unreliable because it was written by an author who could not be traced and the article was based on the Applicant's own statements. The article was also written more than seven years after the Applicant left Cameroon.

[16] The Officer also reviewed a number of documents the Applicant submitted on the situation of women, HIV+ people, and homosexuals in Cameroon. He noted that the US Department of State's *2009 Human Rights Report for Cameroon* said that homosexuality was illegal there and that homosexual people generally keep a low profile. That report also said there was discrimination against people with HIV in Cameroon, but there were no reports of discrimination with respect to employment, housing, or health care based on sexual orientation. The Officer also referred to a report from Amnesty International which noted that the Cameroon government had committed itself to improving the status of women. He found that, though human rights were not always respected in Cameroon, homosexual relationships were prohibited, and people with HIV may be discriminated against, the evidence did not suggest that the Applicant would face unusual and undeserved or disproportionate hardship if she had to return to Cameroon to apply for permanent residence.

[17] The Applicant had also submitted medical evidence in support of her application, which the Officer reviewed. He noted that a medical certificate she filed indicated that she needed ongoing treatment but the certificate did not say what treatment she required. Though the Applicant had asserted that she would not receive medical treatment in Cameroon, her submissions did not

indicate what treatment she would be unable to receive. The Officer referred to the 2008 World Health Organization *Epidemiological Fact Sheet on HIV and AIDS*, which said that anti-retroviral treatments are available in Cameroon. He found that the Applicant had not shown what kind of treatment she was receiving in Canada and had not demonstrated that her health justified an exemption from the requirement to apply for a visa from abroad.

[18] The Officer found that the risks the Applicant faced in Cameroon would not result in unusual and undeserved or disproportionate hardship from having to apply for a visa from outside Canada.

Ties to Canada

[19] In addition to the risks the Applicant faced in Cameroon, the Officer also examined how she had established herself in Canada. He found, based on her T4 – Employment Income Statements, that she had successfully integrated herself into the Canadian labour market. He also found that she had donated to St. Mary's Parish and had volunteered for that parish and the Archbishop of Toronto. She had also been involved with the Cameroonian Alliance. The Officer found that, though her economic self-sufficiency, community involvement, and development of a social network were positive factors, the Applicant had not demonstrated how they would cause unusual and undeserved or disproportionate hardship if she were returned to Cameroon. He also found that the skills she had obtained from working in Canada would be useful to her in Cameroon and ease her transition back into that country.

[20] The Officer also found that the Applicant had limited ties to Canada because she did not have family here and had lived for more than 34 years in Cameroon, where she had family. He was

not satisfied that the Applicant's establishment in Canada would cause her to suffer unusual and undeserved or disproportionate hardship if she were required to apply for a visa from outside Canada. The Officer therefore denied the Applicant's request for an H&C exemption.

STATUTORY PROVISIONS

[21] The following provisions of the Act are applicable in this proceeding:

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
…	…
25. (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into	**25.** (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

account the best interests of a child directly affected.	
[…]	[…]
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	(1.3) Le ministre, dans l'étude de la demande d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.
[…]	[…]
113. Consideration of an application for protection shall be as follows:	**113.** Il est disposé de la demande comme il suit :
(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	*a*) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

ISSUES

[22] The Applicant raises the following issues in this application for judicial review:

a. Whether the Officer applied the correct test for hardship;

b. Whether the Officer correctly applied subsection 113(a) of the Act;

c. Whether the Officer's conclusion she would not experience unusual and undeserved or disproportionate hardship was reasonable.

STANDARD OF REVIEW

[23] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[24] In *Sahota v Canada (Minister of Citizenship and Immigration)* 2011 FC 739, Justice Michael Phelan held at paragraph 7 that the application of the proper legal test is reviewable on the standard of correctness. See also *Garcia v Canada (Minister of Citizenship and Immigration)* 2010 FC 677 at paragraph 7 and *Markis v Canada (Minister of Citizenship and Immigration)* 2008 FC 428 at paragraph 19. The standard of review with respect to the first issue is correctness. As the Supreme Court of Canada held in *Dunsmuir* (above, at paragraph 50).

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

[25] Subsection 113(a) of the Act concerns the circumstances under which evidence may be adduced in a PRRA application. In *Lai v Canada (Minister of Citizenship and Immigration)* 2005

FCA 125, the Federal Court of Appeal held at paragraph 43 that, so long as the decision-maker applies the correct test, the standard of review with respect to the admissibility of evidence is reasonableness. As noted above, the standard of review on the application of the correct test is correctness. With respect to the second issue, the question of whether the Officer should or should not have applied subsection 113(a) will be reviewed according to the correctness standard. With respect to the balancing of the factors in subsection 113(a), the standard of review will be reasonableness (see *Raza v Canada (Minister of Citizenship and Immigration)* 2007 FCA 385 at paragraphs 18 and 19).

[26] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] SCJ No 39, the Supreme Court of Canada held that when reviewing an H&C decision, "considerable deference should be accorded to immigration Officers exercising the powers conferred by the legislation, given the fact-specific nature of the inquiry, its role within the statutory scheme as an exception, the fact that the decision-maker is the Minister, and the considerable discretion evidenced by the statutory language" (paragraph 62). Justice Phelan followed this approach in *Thandal v Canada (Minister of Citizenship and Immigration)* 2008 FC 489, at paragraph 7. The standard of review on the third issue is reasonableness.

[27] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that

it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

ARGUMENTS

Preliminary Issue – The Applicant’s Affidavit

[28] The Respondent says that paragraphs 8 and 11 to 16 of the Applicant’s affidavit in support of judicial review contain argument and conclusions that are not within her knowledge. In paragraph 8, the Applicant says she does not put excessive demand on provincial health resources because she is privately insured. Paragraphs 11 to 16 contain arguments about the Officer’s treatment of the evidence before him, The Respondent points to Rule 12(1) of the *Federal Courts Immigration and Refugee Protection Rules* SOR/2002-232 which holds that affidavits must be confined to evidence within the knowledge of the deponent. He asks the Court to give little weight to these paragraphs.

[29] The Applicant has not addressed this issue in her written submissions.

The Applicant

The Officer Applied the Wrong Test for Hardship

[30] The Applicant says that hardship which will merit an exemption under subsection 25(1) of the Act is hardship which is not anticipated by the Act or the *Immigration and Refugee Protection Regulations* SOR/2002-227. This hardship must also be beyond applicants’ control. Though the particular hardships faced by applicants may not be unusual and undeserved, they may be

disproportionate and support an exemption. In the Applicant's case, the Officer failed to assess whether the circumstances she faces in Cameroon amount to hardship, though they may not have amounted to a risk of persecution or of cruel and unusual treatment or punishment.

The Officer Incorrectly Applied Subsection 113(a) of the Act

[31] When the Officer rejected as evidence the convocations issued to the Applicant and Ambassa by the General Delegation for National Security and the Muki Letter, he incorrectly applied subsection 113(a) of the Act. The Officer did not consider that the Muki Letter was written on Muki's letterhead and was written by Muki as a member of the Cameroon Bar. These factors should have been weighed in support of admitting the Muki Letter as evidence. The Applicant notes that in *Raza*, above, the Federal Court of Appeal said that, under subsection 113(a) of the Act, a PRRA officer must consider five factors in evaluating evidence submitted in a PRRA application: credibility, relevance, newness, materiality, and express statutory conditions. The Applicant says that the Ambassa Affidavit, the Muki Letter, and the convocations fall within the criteria under subsection 113(a), so the Officer erred when he gave these documents no weight.

[32] Although the Officer examined the Ambassa Affidavit and the Muki Letter, he unreasonably rejected them because they were prepared by Ambassa and Muki, who had ties to the Applicant. The Officer's conclusion that these documents were not objective and independent because of the Applicant's ties to their authors was speculative. She points to *Isse v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1020 where Justice William Mackay quoted from *Canada (Minister of Employment and Immigration) v Satiacum*, [1989] FCJ No 505 (FCA) (WestLaw). In *Satiacum*, the Federal Court of Appeal held at paragraphs 33 and 34 that

> The common law has long recognized the difference between reasonable inference and pure conjecture. Lord Macmillan put the distinction this way in *Jones v. Great Western Railway Co.* (1930), 47 T.L.R. 39 at 45, 144 L.T. 194 at 202 (H.L.):
>
> > The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. The attribution of an occurrence to a cause is, I take it, always a matter of inference.
>
> In *R. v. Fuller* (1971), 1 N.R. 112 at 114, Hall J.A. held for the Manitoba Court of Appeal that "[t]he tribunal of fact cannot resort to speculative and conjectural conclusions." Subsequently a unanimous Supreme Court of Canada expressed itself as in complete agreement with his reasons: [1975] 2 S.C.R. 121 at 123, 1 N.R. 110 at 112.

The Officer's Conclusion on Hardship Was Unreasonable

[33] The Applicant also says that the Officer failed to properly assess the hardship she would face in Cameroon as an HIV+ woman. She says that, at paragraphs 3 – 9 of *Mings-Edwards v Canada (Minister of Citizenship and Immigration)* 2011 FC 90, Justice Anne Mactavish set out the scope of the duty to evaluate the hardship faced by HIV+ women.

[34] When he considered her Canadian employment experience and said that it would assist her in Cameroon, the Officer failed to consider the employment discrimination against HIV+ people that is pervasive in that country. The Applicant says that the Officer did not consider the discrimination and stigma HIV+ people face in Cameroon and how it would create hardship for her if she were returned.

[35] In the Decision, the Officer acknowledged that some of the evidence before him demonstrated that human rights are not always respected in Cameroon and that homosexuality is criminalized there. The Officer concluded, however, that this evidence did not show the Applicant would face hardship. The Applicant says that the Officer did not consider the documentary evidence which shows that Cameroon has a poor human rights record and that she would face judicial and extra-judicial sanctions because she is a lesbian. The documents the Officer considered went only to the general situation in Cameroon and did not relate to the Applicant's particular situation. This renders the Decision unreasonable.

[36] The Applicant also challenges the reasonableness of the Officer's analysis of her ties to Canada. She says that the seven years she has lived in Canada are the only meaningful life she has had. The Officer failed to consider fundamental differences between the quality of life she will experience in Cameroon as compared to the life she leads in Canada. She says that the Officer imposed too high burden on her and did not satisfactorily analyse her claim. He unreasonably preferred evidence that showed Cameroon does not persecute homosexuals even though its laws criminalize homosexuality. The Officer's conclusion that the Applicant will be able to reintegrate, in spite of discrimination in Cameroon against HIV+ people, was unreasonable.

The Respondent

[37] The Respondent says that the Applicant did not produce evidence which could support a positive determination in her H&C application. She was found not credible at the hearing into her refugee claim in 2004 and did not adduce evidence which required a reassessment of the RPD's findings. She also did not provide evidence to justify an exemption on the basis of her medical condition. Her application for judicial review should be dismissed.

The Purpose of an H&C Exemption

[38] The H&C discretion vested in the Minister is not designed as a back door into Canada when all other legal avenues have been exhausted (see *Mayburov v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 953 at paragraph 39). H&C applications are not designed to eliminate all hardship, but only that hardship which is unusual and undeserved or disproportionate. Applicants for this kind of exemption must meet a high threshold for relief under subsection 25(1) of the Act. For these propositions, the Respondent relies on *Ahmad v Canada (Minister of Citizenship and Immigration)* 2008 FC 646; *Irimie v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1906 (FCTD), and *Owusu v Canada (Minister of Citizenship and Immigration)* 2004 FCA 38.

Decision Entitled To Deference

[39] An H&C determination involves a fact-specific weighing of the evidence before the Officer. The Respondent points to *Legault v Canada (Minister of Citizenship and Immigration)* 2002 FCA 125 at paragraph 11, where the Federal Court of Appeal said that

> In Suresh, the Supreme Court clearly indicates that Baker did not depart from the traditional view that the weighing of relevant factors is the responsibility of the Minister or his delegate. It is certain, with Baker, that the interests of the children are one factor that an immigration officer must examine with a great deal of attention. It is equally certain, with Suresh, that it is up to the immigration officer to determine the appropriate weight to be accorded to this factor in the circumstances of the case. It is not the role of the courts to reexamine the weight given to the different factors by the officers.

[40] In this case, the Officer weighed the evidence which was before him and came to a conclusion which was not perverse or capricious. He did not ignore material facts. The onus to

establish grounds for an H&C exemption lay with the Applicant, but she did not meet it. The Officer considered all the evidence. The Decision should stand.

The Decision Was Reasonable

[41] Though the Applicant may disagree with the Officer's conclusions, the Respondent says that she has not demonstrated any sufficient ground to justify the Court's intervention. He relies on *Mooker v Canada (Minister of Citizenship and Immigration)* 2008 FC 518 and says that the Officer properly considered this as an H&C application without applying the test applicable on a PRRA.

[42] The Respondent also says that *Pinter v Canada (Minister of Citizenship and Immigration)* 2005 FC 296 and *Ramirez v Canada (Minister of Citizenship and Immigration)* 2006 FC 1404 show that it is a reviewable error not to deal with risk factors when assessing an H&C application. However, this does not mean that, where a risk is alleged, it follows necessarily that there will be a finding that of unusual and undeserved or disproportionate hardship. In this case, the Officer applied the appropriate threshold for assessing risk in an H&C application: hardship. He examined both unusual and undeserved hardship and disproportionate hardship. Though the Applicant disagrees with the Officer's conclusions, this is not enough to overturn the Decision.

[43] In the Decision, the Officer considered when the Ambassa Affidavit and Muki Letter were written. He also looked at whether these documents came from objective sources. These were appropriate considerations for the Officer to look at and he weighed them appropriately. The Court should not intervene. The Officer was not bound to assign the Muki Letter any weight just because it was written by a member of the Cameroon Bar. The authorship of this letter entered the Officer's analysis and the weight he assigned was reasonable. Further, both the Muki Letter and the Ambassa

Affidavit were based on information from the Applicant, which the RPD found was not credible. The Officer reasonably found that the new evidence the Applicant presented in support of her H&C Application was insufficient to reassess the RPD's conclusions from her claim for protection. The Officer also reasonably assigned appropriate weight to the convocations and the Court should not re-weigh this evidence.

[44] The Respondent further says that the Officer reasonably assessed the Applicant's health condition. HIV+ status alone is not enough to grant an H&C exemption. The Officer's conclusion that her status would not result in unusual and undeserved or disproportionate hardship was open to him on the evidence and should not be interfered with. The Applicant has failed to meet the onus on her to prove the hardship her condition would cause. The Decision should stand. Likewise, the Officer's conclusion on the Applicant's ties to Canada was also open to him on the evidence and was reasonable.

ANALYSIS

[45] The Applicant makes a series of assertions in this judicial review application, some of which are simply not borne out by a reading of the full Decision. In my view, for example, there is nothing to support the Applicant's assertion that the Officer applied the wrong test for hardship or incorrectly applied subsection 113(a) of the Act.

[46] The purpose of the section 25 H&C discretion is to allow flexibility to approve deserving cases not anticipated in the legislation. It cannot be "a back door when the front door has, after all legal remedies have been exhausted, been denied in accordance with Canadian law." See *Mayburov*, above, at paragraph 39; *Rizvi v Canada (Minister of Citizenship and Immigration)* 2009 FC 463, at

paragraph 17, and *Gardner v Canada (Minister of Citizenship and Immigration)* 2011 FC 895, at paragraph 41. Further, it has been consistently asserted in this Court that the H&C process is not designed to eliminate any kind of hardship, but to provide the applicant relief from "unusual and undeserved or disproportionate hardship." This is a high threshold for applicants to meet. See *Ahmad*, above, at paragraph 49; and *Irimie*, above, at paragraph 26, and *Li v Canada (Minister of Citizenship and Immigration)* 2006 FC 1292, at paragraph 20.

[47] This Court should not intervene in this Decision if it falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. See *Dunsmuir*, above, at paragraph 47, 53, 55, and 62; *Khosa*, above, at paragraph 89; *Baker*, above, at paragraph 62, and *Ahmad*, above, at paragraphs 11-13. In my view, the Officer's Decision in this case was reasonable and was based upon a thorough weighing of the factual evidence before him. It is deserving of a high degree of deference. The Officer's findings did not ignore material evidence, nor did the Officer make perverse or capricious findings. See *Ahmad*, above.

[48] As the Respondent points out, an H&C decision is not a simple application of legal principles but rather a fact-specific weighing of many factors. As long as the Officer considers the relevant, appropriate factors from the H&C perspective, the Court should not interfere with the weight the Officer gives to those different factors, even if the Court would have weighed the factors differently. As the Federal Court of Appeal held in *Legault*, above, at paragraph 11

> In Suresh, the Supreme Court clearly indicates that Baker did not depart from the traditional view that the weighing of relevant factors is the responsibility of the Minister or his delegate. It is certain, with Baker, that the interests of the children are one factor that an immigration officer must examine with a great deal of attention. It is equally certain, with Suresh, that it is up to the immigration officer to determine the appropriate weight to be accorded to this factor in the

> circumstances of the case. It is not the role of the courts to reexamine the weight given to the different factors by the officers.

[49] It is well-established that the onus on an application for H&C relief lies with the Applicant. See *Owusu v Canada (Minister of Citizenship and Immigration)* 2003 FCT 94, at paragraphs 11 and12; *Li*, above, at paragraph 21; and *Ariyaratnam v Canada (Minister of Citizenship and Immigration)* 2010 FC 608, at paragraph 37. In my view, the Applicant was unable to meet the onus in this case.

[50] The Applicant says that the Officer erred in rejecting the new evidence from Ambassa and Muki, and that the Officer erred in his interpretation of subsection 113(a) of the Act when he refused to consider the police convocations obtained by the Applicant's lawyer confirming that she is wanted by the authorities in Cameroon.

[51] My reading of the Decision reveals that the Officer fully considered this new evidence and provided full reasons for rejecting it. The Officer was not obliged to accept evidence put forward by the Applicant and had a duty to assess its credibility and weight (see *Raza*, above). That is precisely what occurred in this case. The Applicant simply disagrees with the outcome and wants the Court to re-weigh the same evidence in her favour. That is not the role of the Court (see *Suresh v Canada (Minister of Citizenship and Immigration)* 2002 SCC 1, at paragraph 34, and *Legault*, above, at paragraph 11).

[52] The more substantial point raised by the Applicant is that the Officer failed to appreciate and consider the real hardship she would suffer in Cameroon as a result of being an HIV+ woman. In this regard, the Applicant cites and relies heavily on the words of Justice Mactavish in *Mings-Edwards*, above, at paragraphs 3 to 9:

I am of the view that this decision was unreasonable as the Officer failed to properly evaluate the hardship that Ms. Mings-Edwards would face in Jamaica as an HIV+ woman. Consequently, the application for judicial review will be granted.

Analysis

Although Ms. Mings-Edwards's H&C submissions were relatively brief, she clearly identified the stigma and discrimination that she would face in Jamaica as a result of her HIV+ status as a hardship factor. She also stated that she would have no employment prospects or family support in Jamaica.

Ms. Mings-Edwards provided the Officer with a substantial amount of country condition information that addressed the treatment of HIV+ individuals in Jamaica. Amongst other things, this evidence indicated that individuals living with HIV/AIDS in Jamaica face significant social stigma and discrimination, and that there are no laws in place to protect HIV+ individuals from discrimination. Amnesty International describes this as a "pressing unmet obligation".

The documentary evidence also demonstrated that HIV+ individuals in Jamaica are often ostracized by their families. They may lose their homes and their jobs, and can be treated like "a throwaway person".

Because AIDS is frequently dismissed as a disease of gay men and prostitutes, women infected with HIV are particularly stigmatized in Jamaican society, as they are regarded either as promiscuous or as sex trade workers. This can expose them to violence, and can also negatively affect their ability to access health care and other services.

The Officer recognized that no laws protected those infected with HIV from discrimination, and that human rights NGOs reported severe stigma and discrimination against HIV+ individuals. The Officer nevertheless went on to find that state protection, while not perfect, existed in Jamaica, and that it would not be a hardship for Ms. Mings-Edwards to access that protection, if required.

The Officer also noted that Ms. Mings-Edwards's doctor had indicated that she led a healthy, active and self-supporting life with medication and regular medical care, and that Ms. Mings-Edwards had not shown that she would not be able to access appropriate health care in Jamaica.

[53] The Applicant argues further that, even if the Officer does acknowledge the difficulties she will face in Cameroon, he minimalizes and turns a blind eye to them, and fails to evaluate the real hardship that awaits her, which hardship is supported by the Applicant's evidence, as well as the Officer's own research.

[54] The Respondent says that, given the scant evidence provided about the Applicant's medical condition and her particular circumstances, the Officer's treatment of the issue was reasonable.

[55] In his letter of 4 May 2009, Applicant's counsel asserted as follows:

> She is currently under treatment at Halton Health Services, Oakville, with Dr. Neil V. Ran, and is taking antiretroviral therapy. She has been wholly complaint (*sic*) with therapy. Ms. Ambassa has been paying for her medication through private insurance plan and on her own.
>
> Since fleeing the Cameroon, Ms. Ambassa has made a great effort to assimilate into her new Canadian surroundings. She is bright, hard working and ambitious woman with great potential. With appropriate treatment, her HIV disease has been rendered a chronic but not life-threatening condition.
>
> I am very concerned for her safety and ongoing health if she is forced to return to her native Cameroon. Firstly, she faces almost certain persecution, for both her social status and personal beliefs. Secondly, it would be impossible for her to access appropriate and adequate HIV treatment, which would almost certainly result in deterioration of her health, and eventual, premature death.

[56] It is not clear here what counsel means by "she faces almost certain persecution, for both her social status and personal beliefs." If this is intended to refer to her former marriage and her homosexual relationship, the Officer reasonably explains why these have not been established following the RPD Decision.

[57] The submissions appear to be most concerned with the Applicant's on-going health issues and the availability of treatment for HIV in Cameroon. These issues are addressed directly by the Officer in the Decision:

> Although the documents filed by the applicant and the objective evidence consulted indicate that human rights are not always respected, that the penal code criminalizes sexual relations between individuals of the same sex, and that people with HIV can be discriminated against in Cameroon, these articles describe the overall general conditions in that country and do not lead me to conclude that the applicant would face unusual and undeserved or disproportionate hardship if she were to return to Cameroon.
>
> To corroborate that she would not have access to adequate medical treatment if she returned to Cameroon, the applicant filed a medical certificate signed by Dr. Ibrahim, which is dated May 16, 2007. The certificate confirms that owing to her health problems, she needs ongoing treatment. However, the certificate does not specify the type of treatment it required. In a letter dated May 4, 2009, the applicant's representative states that it would be impossible for her to receive adequate medical treatment in Cameroon, but does not give any further explanations in this matter. In April 2010, the applicant's representative sent new information concerning this application, such as her T4 for 2009 and a bank statement. However, he did not give any further details on the applicant's health or on the treatment she must receive.
>
> With respect to the health care situation in Cameroon, information on the website of the Return and Reintegration in Countries of Origin (IRRICO) Web site of the International Organization for Migration states the following:
>
> > Programmes combating the malaria and AIDS/HIV pandemics have improved access to medicines for most of the population. The strategy is based on the introduction of generic medicines in order to stimulate competition in the pharmaceutical market….
> >
> > Between 2009 and 2010, the government intends to set up more health care centers to provide basic healthcare services to the population at a closer ranger [*sic*]. Malaria is the disease that kills most people in Cameroon. However, the prevalence of

> > AIDS raises new concerns. 12% of people aged 15-49 have HIV.
>
> To find further information on the treatment offered in Cameroon, I consulted the Epidemiological Fact Sheet on HIV and AIDS, core data on epidemiology and response, Cameroon, published in 2008 by the World Health Organization. This publication states that in 2007, antiretroviral therapy for people with HIV was available at 109 points of service in Cameroon. This same report points out that in 2007, 46,000 to 48,000 people received antiretroviral treatment in that country.
>
> In its Country of Origin Information Report CAMEROON, published in 2008, the UK Border & Immigration Agency states that:
>
> > A WHO representative reported that all the national hospitals and some provincial ones provided specialised care in most medical fields, including cancer, HIV/AIDS, tuberculosis, cardiovascular disease, eye, ear, nose and throat diseases. Essential medicine is generally available in most public health facilities and non-profit organizations run by the church.
>
> Though I am sensitive to the applicant's health, I note that she has not submitted any documents that describe the treatment she is receiving here in Canada and has not demonstrated why she would be unable to continue treatment in Cameroon. She has not specified what type of medication she has to take or how often she must see a doctor. I believe that she has not demonstrated that her health justifies the application of an exceptional measure in requiring her to file an application for permanent residence from outside Canada.

[58] The main problem in the present case was that the Applicant did not submit sufficient medical and other personal information to show what she would be facing in Cameroon as regards her medical needs. Given the evidence and the submissions that were before the Officer, I cannot say his finding was unreasonable or that the Officer turned a blind eye to the realities of the Applicant's position. There just was not sufficient evidence for the Officer to conclude that she faced unusual and undeserved or disproportionate hardship. I agree that, perhaps, the Officer could

have come to a positive conclusion, but I cannot say that the negative conclusion was unreasonable. The evidence and the submissions made by the Officer in this case do not appear to me to establish what Justice Mactavish felt the applicant in *Mings-Edwards*, above, had established. The reasonableness of the present Decision can only be gauged against the actual evidence that was before the Officer and counsel's submissions regarding the basis of the Applicant's request for an H&C exemption. It was open to the Officer to conclude, based on information available to him, that the Applicant had not provided sufficient evidence either of her condition, the treatment required, or the availability or lack of the required treatment in Cameroon to allow for a positive result. She failed to meet her onus in this case.

[59] Justice Mactavish said at paragraph 14 of *Mings-Edwards* that

> The more fundamental problem with the decision is that nowhere in the analysis does the Officer ever really come to grips with, or evaluate the hardship that Ms. Mings-Edwards would face in returning to a society where she would be exposed to pervasive discrimination and societal stigma as a result of her status as an HIV+ woman.

[60] The issue in *Mings-Edwards* was that the Officer did not appreciate the situation that the applicant faced on return to Jamaica. He had limited himself to two prongs of analysis: state protection and access to medical care. What was important to the H&C application, and the officer in that case failed to evaluate, were the more social aspects of the hardship the applicant would face related to her HIV+ status. In particular, he did not analyse the applicant's separation from her family and reduced employment prospects, both of which were connected to her HIV+ status. Here, I do not think the Officer committed the same error; he looked at the Applicant's employment prospects, the availability of medical care, her family ties and homosexuality, and the legal regime

in Cameroon. In the context of an unclear factual matrix, the Officer drew a reasonable conclusion from the evidence before him.

[61] It seems to me that important to Justice Mactavish's reasoning in *Mings-Edwards* was the clear link between the applicant's HIV+ status and specific, identifiable hardships she would face in Jamaica. Ms. Mings-Edwards had adduced evidence that:

- She was ostracized by her family because of her HIV status and thrown out of her aunt's home for the same reason;
- HIV/Aids was seen as a disease of gay men and prostitutes;
- HIV+ women were seen as promiscuous or sex-workers, so they were exposed to violence;
- She had been employed in Jamaica before contracting HIV, but became effectively unemployable after she was infected.

Ms. Mings-Edwards was able to paint a very clear picture of the hardship she would suffer in Jamaica, which the H&C officer did not fully examine.

[62] In this case, the situation before the Officer was much less clear. Though the Applicant had adduced evidence of employment discrimination against HIV+ people in Cameroon, she could not provide the same clear link as Mings-Edwards could. The Applicant did not show that anyone in Cameroon knows that she is HIV+, or that she will have to disclose her status to a potential employer. She also could not show what treatment she was under in Canada that would be unavailable to her in Cameroon.

[63] Also, in *Mings-Edwards*, it was clear that the applicant's family had ostracized her because of her status. In this case, there was no link between the Applicant's HIV+ status and the trouble she

faced from her family; she had faced difficulties because of her homosexual relationship, not her HIV status. At the same time, the Applicant's brother filed an affidavit, which could be taken as evidence that he supports her and will be able to support her in Cameroon. Though he may not have been aware of her HIV+ status, the brother's affidavit indicates that he was aware of the Applicant's homosexual relationship, but was prepared to help her anyway. The Applicant did not show that he would spurn her because she was HIV+. Against the brother's support, the Officer balanced the fact that the Applicant has no family in Canada, and concluded that she would have more support in Cameroon from her family than she does in Canada.

[64] All in all, I think the Officer in this case appreciated the situation that the Applicant faced in Cameroon. He looked at all the evidence before him and, though he concluded that there might be some hardship, this did not rise to the level of unusual and undeserved or disproportionate hardship required for H&C relief.

[65] I also agree with the Respondent that it was open to the Officer, in his assessment of the Applicant's establishment in Canada, to consider the fact that she has no family here; ties to Canada – including family – can indicate the degree of establishment. The fact that the Applicant has made a life for herself here and argues that she will suffer unusual, undeserved or disproportionate hardship if she has to leave Canada and return to Cameroon was adequately considered and found to be insufficient to warrant H&C relief. This is a matter of assessment of evidence and weight; this Court should not intervene.

[66] Counsel agree there is no question for certification in this case and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3986-11
STYLE OF CAUSE:	**JOAHANA AWAH AMBASSA**
	- and -
	THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	December 19, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	February 6, 2012

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