Federal Court Cour fédérale

Date: 20121129

Docket: IMM-4379-12

Citation: 2012 FC 1391

Vancouver, British Columbia, November 29, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SUSANNA JULIA DE HOEDT DANIEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Accompanying an application for permanent residence, intentions, alone, are not enough to address medical care and corollary healing professional services to be administered. An excessive demand on health and social services may be considered to be the outcome if a practical and detailed plan for paid medical care and accessory social services (ex. in respect of a required medical team) is not provided.

II. Introduction

[2] The Applicant, a Sri Lankan citizen, seeks judicial review of a decision of an immigration officer of the High Commission of Canada [HCC Officer] denying her application for permanent residence. The Applicant argues that the HCC Officer was unreasonable in finding that she and her accompanying family members were inadmissible on health grounds under paragraph 38(1)(*c*) and section 42 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In particular, she argues that it was unreasonable to conclude that she and her accompanying family members were inadmissible on health grounds because her son's Cerebral Palsy might reasonably be expected to cause excessive demand on health or social services.

III. Judicial Procedure

[3] This is an application, under subsection 72(1) of the *IRPA*, for judicial review of the decision of the HCC Officer, dated March 8, 2012.

IV. Background

[4] The Applicant, Ms. Susanna Julia De Hoedt Daniel, and her spouse, Mr. Jeromie Daniel, are both citizens of Sri Lanka.

[5] The Applicant's son, Jordan Isaac Daniel, was born in New Zealand in 2009 while the Applicant and her spouse were working in that country.

[6] Jordan has Cerebral Palsy, with spasticity and development delay. As a result, he has delayed growth and weight gain due to initial poor feeding, motor dysfunction, learning difficulties, and neurodevelopment limitations.

[7] Jordan was enrolled in an early intervention program and receives physiotherapy and occupational therapy. His physicians believed he was small but at a normal growth velocity, eating well, social, and gaining independence using a walking frame.

[8] The Applicant and her spouse have friends and family living and working in Canada. Her spouse's sister is a permanent resident living in British Columbia with her family.

[9] In August 2010, the Applicant applied for permanent residence in Canada [PR Application] under the Federal Skilled Worker Class, hoping to give Jordan an environment where children with Cerebral Palsy lead independent and fulfilling lives.

[10] On November 7, 2011, the HCC Officer received an Immigration Medical Exam Summary [IME Summary] for Jordan, which concluded that his Cerebral Palsy might reasonably be expected to cause excessive demand on health or social services.

[11] According to the IME Summary, Jordan would require a comprehensive assessment by a multi-disciplinary development team to establish and implement an appropriate program for Jordan. The services that Jordan would require, the IME Summary stated, would exceed the average amount spent on individual health care in Canada.

[12] The IME Summary identified the following estimates of specific costs of services that Jordan would likely require: (i) participation in an Early Intervention Program for three years ($20,250); (ii) special education costs once he reached school age ($112,000); (iii) respite care over a 10-year period ($24,000); (iv) wheelchair costs ($6,500 to $8,000); and, (v) physiotherapy, occupational therapy, and speech therapy.

[13] On November 24, 2011, the HCC Officer sent a letter to the Applicant [fairness letter] advising her that Jordan's health condition might reasonably be expected to cause excessive demand on health or social services. The fairness letter disclosed the findings of the IME Summary discussed above.

[14] The fairness letter requested submissions on a reasonable and workable plan (and the Applicant's financial means and intent to implement it) to offset excessive demands that Jordan would impose on Canadian social services. The fairness letter advised that an excessive demand is a demand for which the anticipated costs exceed the average Canadian per capita health and social services cost amount of $4806.00/year.

[15] The fairness letter contained a paragraph on the cost of vocational training and supported independent living for Jordan. The Affidavit of Mr. Sean Morency, filed by the Respondent, states that the fairness letter was drafted from a precedent letter and that this paragraph was included inadvertently.

[16] On February 3, 2012, the Applicant submitted a financial plan [Plan] on Jordan's social and medical costs.

[17] The Plan discussed the costs associated with Jordan's needs, the family's health and life insurance plan, job offers made to the Applicant and her spouse, their expected combined net income of $61,880 in Canada, and plans to accumulate $300,000 in savings over a 10-year period to meet Jordan's future needs.

[18] In conjunction with the Plan, the Applicant filed letters of support for long-term financial assistance and free physical care (including daycare) from members of the Maple Ridge, British Columbia community and the congregation of St. George's Anglican Church in Maple Ridge and letters from the Applicant's sister-in-law's family offering general support and free accommodation for 5 years.

[19] On March 8, 2012, the HCC Officer refused the PR Application, finding the family inadmissible because Jordan's health condition might reasonably be expected to cause excessive demand on health or social services in Canada [final decision letter].

V. Decision under Review

[20] The HCC Officer determined that Jordan was inadmissible to Canada on health grounds, under paragraph 38(1)(*c*) of the *IRPA*, because he has a health condition that might reasonably be expected to cause excessive demand on health or social services. Pursuant to section 42, the

Applicant and her spouse were also inadmissible to Canada because they were Jordan's accompanying family members.

[21] The HCC Officer took the position that the Plan did not challenge (i) the IME Summary's determination of Jordan's health condition, or (ii) the assessment of the excessive cost of health and social services that he would require in Canada. In particular, the HCC Officer was not satisfied that the Plan showed that social services suited to Jordan's needs could be secured and delivered by private or alternative means. Nor did the Plan show that the Applicant had the financial means or intent to implement it without imposing an excessive demand on the publicly-funded system.

[22] According to the Global Case Management System notes [GCMS Notes], the Plan addressed the Applicant's financial ability to meet Jordan's social services costs but did not ultimately disclose a credible individualized plan to privately deliver services.

[23] The HCC Officer found that the Plan was contingent on assumptions which, if correct, would show that it might be possible to meet Jordan's needs privately. Nonetheless, the Plan did not explain how the Applicants would provide services to him. Since the offers of support discussed below were not from persons with identified medical or social service qualifications relevant to Jordan's needs, they were not probative of this issue.

[24] The HCC Officer analyzed how the Plan compared the financial figures submitted by the Applicant with the social service costs projected in the IME Summary. The GCMS Notes summarize the 10-year table of figures presented in the Plan describing projected costs (early

intervention programming and special education) and note that this table omitted costs for respite care because family and friends would provide such care and anticipated to cover wheelchair costs through fundraising. The HCC Officer noted that the Plan compared these costs against the projected net income of the Applicants in Canada (less living expenses), funds of $7500 that they were bringing with them from Sri Lanka, a yearly donation from a relative, and $300,000 in expected savings for future medical costs.

[25] On the sister-in-law's offer to provide 5 years of free accommodation, the HCC Officer found that she had not explained how they would accommodate the Applicant's family. On her ability to accommodate the Applicant's family, the HCC Officer noted that her own family consisted of 5 individuals.

[26] The GCMS Notes recognized that the Plan contained offers of financial and general support (including childcare support) from community and fellow congregation members, a letter from the proprietor of a day care in Maple Ridge offering to accept Jordan at no charge, an affidavit by the Applicant and her spouse undertaking financial commitment for Jordan's needs and outlining their confirmed employment and expected financial resources, offers by family and friends to provide respite care as a substitute for paid respite care and to raise funds for a motorized wheelchair, and an offer to provide $50/month in assistance from a relative in Australia.

[27] On these offers, the HCC Officer concluded that they were insufficiently specific and did not explain how the offers would contribute to Jordan's social service costs.

[28] The HCC Officer stated that while medical insurance purchased for the Applicant's family gave some coverage for medical devices and home care, it "did not appear to be designed for someone with Jordan's chronic needs" (Affidavit of Sean Morency [Morency Affidavit], Exhibit "A" GCMS Information Request: Application at p 57). The HCC Officer reasoned that the limit on 10 visits per year to a speech therapist and a limit of $250 for physiotherapy seemed unlikely to meet his chronic ongoing needs for specialized services. Moreover, the HCC Officer distinguished insurance to pay for services from a plan to actually provide services.

[29] Finally, the HCC Officer found that the Plan did not disclose professional estimates or assessments that would show the Applicant has begun to organize the multi-disciplinary developmental team discussed in the IME Summary. In the absence of such information, the Plan was not credible in the view of the HCC Officer: "Without a credible plan that identifies qualified service providers willing and able to provide the required services, and the costs that would be incurred to provide the services, it is impossible to make a final determination with respect to the applicants' financial ability to avert the projected excessive demand" (Morency Affidavit, Exhibit "A" GCMS Information Request: Application at pp 58).

VI. Issues

[30] (1) Was the HCC Officer reasonable in finding that Jordan was inadmissible to Canada because of a health condition that might reasonably be expected to cause excessive demand on health or social services?

(2) Did the HCC Officer ignore or misconstrue the evidence before him?

VII. Relevant Legislative Provisions

[31] The following legislative provisions of the *IRPA* are relevant:

38. (1) A foreign national is inadmissible on health grounds if their health condition	**38.** (1) Emporte, sauf pour le résident permanent, interdiction de territoire pour motifs sanitaires l'état de santé de l'étranger constituant vraisemblablement un danger pour la santé ou la sécurité publiques ou risquant d'entraîner un fardeau excessif pour les services sociaux ou de santé.
(*a*) is likely to be a danger to public health;	
(*b*) is likely to be a danger to public safety; or	
(*c*) might reasonably be expected to cause excessive demand on health or social services.	
…	[...]
42. A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if	**42.** Emportent, sauf pour le résident permanent ou une personne protégée, interdiction de territoire pour inadmissibilité familiale les faits suivants :
(*a*) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; or	*a*) l'interdiction de territoire frappant tout membre de sa famille qui l'accompagne ou qui, dans les cas réglementaires, ne l'accompagne pas;
(*b*) they are an accompanying family member of an inadmissible person.	*b*) accompagner, pour un membre de sa famille, un interdit de territoire.

[32] The following provisions of *the Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] are relevant:

1. (1) The definitions in this subsection apply in the Act and	**1.** (1) Les définitions qui suivent s'appliquent à la Loi et

in these Regulations.	au présent règlement.
…	[...]
"excessive demand" means	« fardeau excessif » Se dit :
(*a*) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required under paragraph 16(2)(*b*) of the Act, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or	*a*) de toute charge pour les services sociaux ou les services de santé dont le coût prévisible dépasse la moyenne, par habitant au Canada, des dépenses pour les services de santé et pour les services sociaux sur une période de cinq années consécutives suivant la plus récente visite médicale exigée en application du paragraphe 16(2) de la Loi ou, s'il y a lieu de croire que des dépenses importantes devront probablement être faites après cette période, sur une période d'au plus dix années consécutives;
(*b*) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of an inability to provide timely services to Canadian citizens or permanent residents.	*b*) de toute charge pour les services sociaux ou les services de santé qui viendrait allonger les listes d'attente actuelles et qui augmenterait le taux de mortalité et de morbidité au Canada vu l'impossibilité d'offrir en temps voulu ces services aux citoyens canadiens ou aux résidents permanents.
…	[...]
20. An officer shall determine that a foreign national is inadmissible on health grounds if an assessment of their health condition has been made by an	**20.** L'agent chargé du contrôle conclut à l'interdiction de territoire de l'étranger pour motifs sanitaires si, à l'issue d'une évaluation, l'agent chargé

officer who is responsible for the application of sections 29 to 34 and the officer concluded that the foreign national's health condition is likely to be a danger to public health or public safety or might reasonably be expected to cause excessive demand.	de l'application des articles 29 à 34 a conclu que l'état de santé de l'étranger constitue vraisemblablement un danger pour la santé ou la sécurité publiques ou risque d'entraîner un fardeau excessif.

VIII. Position of the Parties

[33] The Applicant submits that the HCC Officer had a duty to explain his analysis of the Plan and that his failure to provide adequate reasons is a reviewable error.

[34] According to the Applicant, the HCC Officer breached his duty to provide adequate reasons in failing to explain why the Plan and the evidence submitted in its support was insufficient to show that Jordan might not reasonably be expected to cause excessive demand on heath or social services in Canada. The Applicant contends that the reasons are inadequate because it is difficult to assess how the Plan did not overcome paragraph 38(1)(*c*) of the *IRPA* from the fairness and final decision letters.

[35] From this, the Applicant infers that the immigration officer was determined on refusing their application, whatever the evidence provided in their plan.

[36] The Applicant further argues that the HCC Officer based his decision on an erroneous finding of fact that he made without regard to the material before him.

[37] The Applicant claims that the Plan addressed: (i) all costs outlined in the fairness letter and IME Summary; (ii) her and her spouse's goal to accumulate $300,000 over a 10-year period through saving and fundraising; (iii) her family's comprehensive medical and life insurance; (iv) her and her spouse's job offers; (v) how the Maple Ridge community would support Jordan by letters of support promising to assist with respite care, ongoing fundraising, car pools, and other needs; (vi) her family's access to free accommodation for five years with her sister-in-law; (vii) free daycare available to Jordan; (viii) the Applicant's ability to begin work immediately on arrival in Canada; and, (xi) her savings of $7,500 to meet the family's immediate needs.

[38] If the HCC Officer had considered the elements of the Plan, as discussed above, the Applicant argues, then he would have found that paragraph 38(1)(*c*) did not apply to Jordan. Citing *Canada (Minister of Citizenship and Immigration) v Colaco*, 2007 FCA 282, the Applicant contends that a decision-maker may not ignore evidence of an applicant's ability and willingness to pay for services in assessing the extent of his or her excessive demand on health or social services under paragraph 38(1)(*c*) of the *IRPA*. By extension, the Applicant argues that the HCC Officer should have considered the availability of community support.

[39] The Applicant requests that this Court apply Justice Luc Martineau's decision in *Sokmen v Canada (Minister of Citizenship and Immigration)*, 2011 FC 47, which holds that "some demand [on health or social services] is acceptable" under paragraph 38(1)(*c*) of the *IRPA* and that, by consequence, the HCC Officer was required to conduct "a full analysis … to determine whether the demand is 'excessive'" (at para 34).

[40] The Respondent submits that the HCC Officer conducted the individualized assessment of the Applicant's circumstances, as required by *Hilewitz v Canada (Minister of Citizenship & Immigration)*, 2005 SCC 57, [2005] 2 SCR 706. Since the Plan provided by the Applicant was not credible, the HCC Officer could not determine if it would actually meet Jordan's needs.

[41] The Respondent submits that the Plan was not credible because it did not address physiotherapy and speech therapy, special education, or a multi-disciplinary team. The statements of support were not probative of the Applicant's ability to meet these needs because these volunteers were not identified as professionally qualified. Finally, the Respondent submits that the HCC Officer acknowledged the Applicant's medical and life insurance but found that it was not designed to meet Jordan's needs.

[42] In the Respondent's opinion, the fairness letter shows that the Applicant ought to have been aware of the need to submit a satisfactory plan. The Respondent cites OB 063 "Assessing Excessive Demand on Health and Social Services", which takes the position that a declaration of ability and intent must be supported by a credible plan, that the quality of this plan is the most significant element in assessing ability and intent, and that the plan should reflect the needs of the affected person.

[43] The Respondent argues that, since the Plan was not sufficiently concrete to allow the HCC Officer to analyze the Applicant's intent and ability to pay, his decision was reasonable and consistent with the evidence. The Respondent distinguishes *Sokmen*, above, on the basis that the applicant in that application had submitted a specific plan which included a plan that her son would

receive treatment from a specific physician in France. By contrast, the Applicant did not submit a comparably concrete plan.

[44] With respect to the adequacy of the HCC Officer's reasons, the Respondent submits that this argument does not speak to the GCMS Notes, which form part of the HCC Officer's decision. The Respondent notes that the Applicant indicated that she had received written reasons for the decision in her Application for Leave and for Judicial Review and that the Court did not initiate a request for reasons under Rule 9 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22 [*Rules*]. Citing *Toma v Canada (Minister of Citizenship and Immigration)*, 2006 FC 779, 295 FTR 158 and *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298, 302 FTR 127, the Respondent submits that the Applicant's failure to initiate a request under Rule 9 amounts to a waiver of the right to receive the report.

[45] The Respondent cites *Ikhuiwu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 344, [2008] 4 FCR 432 and *Singh v Canada (Minister of Citizenship and Immigration)*, 2006 FC 315, for the proposition that the Applicant's complaint on the adequacy of reasons is answered by her failure to request further reasons under Rule 9.

[46] In her Reply, the Applicant submits that the Plan did address physiotherapy and speech therapy, special education, and a multi-disciplinary team. She states that, while her insurance did not entirely address physiotherapy and speech therapy costs, it did provide some coverage; she submits that her general ability and intent to address Jordan's needs shows that she would have increased the insurance premium to provide further coverage. The Applicant also notes that the Plan did discuss

special education beginning at Year 4 of the Plan. Finally, the Applicant argues that she was not obligated to include a plan for a multi-disciplinary team because this component was discussed in the IME Summary, to which she did not have access.

[47] The Applicant's Reply also submits that the HCC Officer's decision that the letters of support were not from individuals who had identified themselves as qualified to meet Jordan's needs is also incorrect. The Applicant observes that a daycare operator wrote in her letter of support that she had cared for "children with various special needs" and that another set of individuals identified themselves as a teacher and software engineer who "have done professional respite care with community living ... and have significant experience with special needs children" (Applicant's Record [AR] at pp 39-40). The Applicant submits that the HCC Officer had a duty to further inquire into the qualifications of these persons.

IX. Analysis

Standard of Review

[48] Whether the Applicant is inadmissible to Canada because of a health condition that might reasonably be expected to cause excessive demand on health or social services is a question of mixed fact and law reviewable on the standard of reasonableness (*Ovalle v Canada (Minister of Citizenship and Immigration)*, 2012 FC 507). The HCC Officer's findings of fact are also reviewable on a standard of reasonableness (*Chauhdry v Canada (Minister of Citizenship and Immigration)*, 2011 FC 22, 382 FTR 145).

[49] Since the standard of reasonableness applies, this Court may only intervene if the reasons are not "justified, transparent or intelligible". To satisfy this standard, the decision must also fall in the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[50] The Applicant's submission that the final decision letter did not sufficiently explain why the Plan was insufficient amounts to a challenge to the adequacy of the HCC Officer's reasons. The Supreme Court of Canada has, however, held that if reasons are given, a challenge to the reasoning or result is addressed in the reasonability analysis. According to *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, "reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (at para 14). This Court may not "substitute [its] own reasons" but "may look … to the record for the purpose of assessing the reasonableness of the outcome" (at para 15).

[51] This Court also observes that the GCMS Notes are part of the HCC Officer's reasons. *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 has held that "notes to file" are sufficient reasons in administrative immigration proceedings (at paras 43 and 44). Although the Applicant did not make submissions on the application of Rule 9 of the Rules, the Respondent is correct that the Applicant's failure to initiate a request under Rule 9 amounts to a waiver of the right to receive the report (*Toma*, above, at para 13) and that the Applicant cannot complain as to the adequacy of reasons (*Ikhuiwu*, above, at para 18).

(1) Was the HCC Officer reasonable in finding that Jordan was inadmissible to Canada because of a health condition that might reasonably be expected to cause excessive demand on health or social services?

[52] In *Hilewitz*, above, the Supreme Court of Canada held that a decision-maker considering whether an applicant might reasonably be expected to impose an excessive demand on health and social services must conduct "individualized assessments", which require them to "take into account both medical and non-medical factors, such as the availability, scarcity or cost of publicly funded services, along with the willingness and ability of the applicant or his or her family to pay for the services" (at para 55 and 56). This is the touchstone principle of paragraph 38(1)(*c*) of the *IRPA*. Its rationale, as stated by Justice Rosalie Abella, is that a decision-maker who "considers the need for potential services based only on the *classification* of the impairment rather than on its particular manifestation" will take a "generic rather than individual" approach "which attaches a cost assessment to the disability rather than to the individual. This in turn results in an automatic exclusion for all individuals with a particular disability, even those whose admission would not cause, or would not reasonably be expected to cause, excessive demands on public funds" (at para 56).

[53] In assessing the reasonability of this decision on this PR Applicant, the question to ask is: did the HCC Officer assess Jordan as an individual, taking into account his particular situation or as a member of a class of persons ; that is, as someone with Cerebral Palsy?

[54] To conduct this analysis, this Court must examine the Plan and ask if it is evidence of a credible plan that shows that Jordan's individual circumstances will not impose an excessive demand on health and social services. In *Zhang v Canada (Minister of Citizenship and*

Immigration), 2012 FC 1093, Justice Martineau held that an applicant arguing that paragraph 38(1)(*c*) of the *IRPA* does not apply must "provid[e] a credible plan for mitigating the excessive demand on social services in Canada" (at para 21).

[55] This Court is not satisfied that the Plan is a credible and viable plan showing that Jordan's individual situation is not such that it might reasonably be expected to impose an excessive demand on health and social services.

[56] The Applicant's insurance plan does not appear to provide extensive coverage for someone in Jordan's particular circumstances; a young person in the early stages of child development with Cerebral Palsy. Although it is true that "some demand" is acceptable under paragraph 38(1)(*c*) of the *IRPA* (*Sokmen*, above) and that the insurance plan does begin to meet some of Jordan's physiotherapy and speech thebapy costs, the insurance plan is not sufficient to meet many of Jordan's other chronic and ongoing need for highly specialized services.

[57] The Plan did not discuss a multi-disciplinary development team that would assess, establish, and implement an appropriate program to meet Jordan's medical developmental needs. Contrary to the Applicant's submissions, the need for such a team assessment was discussed in the fairness letter (Morency Affidavit, Exhibit "C"at pp 1-2).

[58] The letters offering financial, physical, and other support do not demonstrate a level or quality of support that could meet Jordan's highly specific needs. Perhaps the most troubling aspect of this PR Application is the HCC Officer's assessment (and the judicial review of that assessment)

of the offers from the Maple Ridge community and the Applicant's extended family. It falls within the range of reasonable, acceptable outcomes to find that such expressions of support do not establish a credible and viable plan. The HCC Officer reasonably observed that these persons are not necessarily qualified to provide the professional care that Jordan needs. Although some of the letters were from persons experienced with special needs children and respite care, there is no indication that these persons had a specialized expertise working with persons with Cerebral Palsy. The undersigned member of this Court stresses that the question that should (and indeed did) control the HCC Officer's decision under paragraph 38(1)(*c*) of the *IRPA* was whether the Plan was sufficient to meet Jordan's individualized needs. In Jordan's case, it was reasonable to find that general offers of support (even if the individuals making those offers had general experience in respite care for special needs persons) would not be sufficient to meet the highly specific medical needs of a very young boy with Cerebral Palsy.

[59] Although it seems pedantic, the HCC Officer was also reasonable in questioning how the sister-in-law would actually accommodate the Applicant's family, given the size of her own family.

[60] In finding that the offers of support from community members and family did not discharge the onus under *Zhang*, above, this Court recalls the following remarks of Justice Frank Iacobucci in *Canada (Director of Investigation and Research) v Southam Inc*, [1997] 1 SCR 748:

> [80] I wish to observe, by way of concluding my discussion of this issue, that a reviewer, and even one who has embarked upon review on a standard of reasonableness simpliciter, will often be tempted to find some way to intervene when the reviewer him- or herself would have come to a conclusion opposite to the tribunal's. Appellate courts must resist such temptations. My statement that I might not have come to the same conclusion as the Tribunal should not be taken as an invitation to appellate courts to intervene in cases

> such as this one but rather as a caution against such intervention and a call for restraint. Judicial restraint is needed if a cohesive, rational, and, I believe, sensible system of judicial review is to be fashioned.

The offers of support from community members and family presented in the Plan demonstrate much that is admirable in the human condition. Unfortunately, that is not enough to practically satisfy the requirements of the *IRPA* and the reasonability analysis as discussed by Justice Iacobucci in *Southam*, above.

[61] It was reasonable to conclude that the Plan was not credible and viable on the basis of the Applicant's assumptions that she and her spouse could accumulate $300,000 over 10 years after moving to a new country, that fundraising could meet Jordan's complex and extensive needs, and that members of the Maple Ridge community could meet many of Jordan's extensive needs. The measure of a plan, that is to say, its credibility, often depends on the extent and strength of its assumptions. These assumptions, unfortunately, were not particularly strong without adding specific viable detail.

(2) Did the HCC Officer ignore or misconstrue the evidence before him?

[62] Reviewing the final decision letter and the GCMS Notes suggests that the HCC Officer did not ignore or misconstrue the evidence. This conclusion is confirmed by the analysis of the reasonability of the HCC Officer's decision that Jordan was inadmissible to Canada because of a health condition that might reasonably be expected to cause excessive demand on health or social services. The Applicant has not pointed to any evidence that was not discussed in the final decision letter or the CGMS Notes.

X. Conclusion

[63] For all of the above reasons, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be dismissed. No question of general importance for certification.

OBITER

It is recommended by the undersigned that the number of well-intentioned individuals, organizations and entities, having come forward to assist the Applicant with the care of the said child, begin the process again and that the Canadian authorities give priority to that process, recognizing the time and effort that has already been given to the voluminous documents accompanying the application for permanent residence by all involved, including the specific individuals and entities in Maple Ridge, British Columbia.

It would seem that a viable plan requires the preparation of a practical commitment on paper to ensure that it is acknowledged and understood as such by the authorities who would then make their decision thereon.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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