Federal Court  Cour fédérale

Date: 20130313

Dockets: IMM-2328-12
IMM-4970-12

Citation: 2013 FC 265

Ottawa, Ontario, March 13, 2013

PRESENT: The Honourable Madam Justice Strickland

Docket: IMM-2328-12

BETWEEN:

ANOWARA BEGUM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-4970-12

AND BETWEEN:

ANOWARA BEGUM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] This is an application made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) for judicial review of two decisions of a senior immigration officer of Citizenship and Immigration Canada (Officer). The first decision denied the request of Anowara Begum (Applicant), made pursuant to subsection 25(1) of the IRPA, for an exemption on humanitarian and compassionate (H&C) grounds from the requirement of subsection 11(1) of the IRPA to apply for permanent residence from outside Canada. The second decision maintained that denial upon reconsideration.

[2] The Applicant is a 68 year old woman from Bangladesh who arrived in Canada on October 6, 2006 as a visitor with a temporary resident visa. She submitted her claim for refugee protection on November 25, 2008, which was denied by a panel of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) on November 30, 2010. Her subsequent application for leave and judicial review of that decision was denied by this Court on May 6, 2011.

[3] By letter from her immigration consultant dated February 26, 2011, the Applicant applied for permanent residence on humanitarian and compassionate grounds the (H&C Application). The grounds being 1) the interdependent relationship between her and her daughter's family, with whom she resides, 2) hardship if she were to return to Bangladesh, 3) her establishment in Canada, and 4) the best interests of her grandchildren. The H&C Application was denied on February 2, 2012 and that decision was communicated to the Applicant on February 22, 2012 (Decision).

[4] The Applicant's husband, who resided in Bangladesh throughout the time that she has been in Canada, died on January 7, 2012. Her immigration consultant, who was not aware that the Decision had already been rendered, communicated this fact to the Citizenship and Immigration Canada (CIC) backlog office on February 10, 2012. The Decision was received by the Applicant on February 22, 2012 and on February 27, 2012 her consultant wrote to the Officer who issued the Decision and asked that it be reconsidered in light of the death of the Applicant's husband. The H&C Application was reconsidered by the Officer on March 9, 2012 and was again denied (Reconsideration).

[5] The Applicant filed an application for leave and for judicial review on March 8, 2012 with respect to the Decision (IMM-2328-12) followed, on May 23, 2012, by an application for leave and for judicial review with respect to the Reconsideration (IMM-4970-12). By separate Orders, both dated November 13, 2012, this Court granted leave with respect to the application seeking judicial review of the Decision (IMM-2328-12) and of the Reconsideration (IMM-4970-12), and ordered that the two matters be heard together. This is the judicial review of both of those matters.

II. Positions of the Parties

A. *The Applicants Position*

[6] In essence, the Applicant's position is that the length of time that she has been in Canada, the financial and emotional interdependence of the Applicant and her daughter's family and the marginalization that the Applicant would face in Bangladesh must lead to the conclusion that the Applicant would endure undue and disproportionate hardship should she be required to leave Canada. Further, because the Applicant's daughter and son-in-law work all day during the week, her

departure would require the Applicant's daughter to stay home with the children or hire a third party to provide child care services. Either event is less desirable than having the children cared for by the Applicant, a family member, and will significantly reduce the family income which is not in the best interests of the children nor is the severing of the emotional relationship with their grandmother. The Applicant submits that Officer's failure to give any weight to her establishment in Canada was unreasonable and that he was not alert, alive and sensitive to the best interests of the children.

[7] With respect to the Reconsideration, the Applicant's position is that Officer's finding that the death of her husband would not have a significant impact on her circumstances is contrary to, or ignored, the new evidence. Therefore, the finding that the Applicant would not face unusual and undeserved or disproportionate hardship should she leave Canada was unreasonable. Further, that the Officer should not have drawn conclusions about the Applicant's financial situation from information contained in her three year old Personal Information Form (PIF) as her situation had subsequently changed as indicated by the submissions accompanying her request for reconsideration. The Officer breached procedural fairness by not providing the Applicant with an opportunity to explain the apparent inconsistencies before drawing conclusions and negative inferences from them.

B. *The Respondent's Position*

[8] The Respondent, in essence, submits that the Applicant is requesting that the Court reweigh the evidence and come to a different conclusion. However, as long as the Officer considered the relevant factors, the Court cannot interfere with the weight given to those factors, even if it would have weighed them differently. The power to exempt individuals from the applicable requirements

for permanent residence is exceptionally discretionary. Considerable deference is owed to an officer when exercising such power.

[9] The Respondent submits that the Officer properly considered the Applicant's submissions including the Applicant's six year stay in Canada, the interdependent relationship with her daughter's family, and the best interests of the Applicant's grandchildren. The H&C process is not meant to eliminate the hardship inherent in being asked to leave after one has been in place for a period of time, but to provide relief from unusual, undeserved and disproportionate hardship that would be caused if an applicant was required to leave Canada and apply from abroad in the normal fashion. The Officer reasonably concluded that it would not constitute unusual and undeserved or disproportionate hardship if the Applicant had to return to Bangladesh.

[10] The Officer reconsidered his refusal of the Applicant's H&C application including the fact that her husband had died, but determined that the Applicant's submissions that she would be alone, destitute and penniless if she returned to Bangladesh were inconsistent with the record before him. There was no duty on the Officer to seek clarification or elicit additional financial information from the Applicant. The Officer properly considered the request for reconsideration based on the record before him and there was no breach of procedural fairness.

III. Issues

[11] I have phrased the issues raised by the Applicant as follows:

As regards to the Decision:

A. Did the Officer fail to give any weight to the Applicant's establishment in Canada thereby causing the Decision to be unreasonable?

B. Was the Office alive, alert and sensitive to the best interests of the Applicant's grandchildren?

As regards to the Reconsideration:

C. Was the Officer's decision in the Reconsideration unreasonable and reviewable as it was not consistent with or ignored the evidence?

D. Did the Officer deny the Applicant procedural fairness by not allowing her to address apparent inconsistencies in evidence about her financial situation?

IV. Standard of Review

[12] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 57 [*Dunsmuir*] 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 the search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis (*Dunsmuir*, above; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18 [*Kisana*]).

[13] The standard of review on H&C decisions is reasonableness (see *De Leiva v Canada (Minister of Citizenship and Immigration)*, 2010 FC 717 at para 13; *Adams v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1193 at para 14; *Kisana*, above, at para 18; *Walker v Canada (The Minister of Citizenship and Immigration)*, 2012 FC 447 at para 31 [*Walker*]). When

reviewing a decision on the standard of reasonableness the analysis will be concerned with "the existence of justification, transparency and intelligibility of 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 the law (see *Dunsmuir*, above, at para 47; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]). Put otherwise, the Court should only intervene 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 the law" (*Dunsmuir* at paragraph 47). The standard of review for the first three issues is reasonableness.

[14] Conversely, with regard to the fourth issue, being whether or not an applicant has been provided with a meaningful opportunity to respond to a visa officer's concerns, this a matter of procedural fairness to be reviewed on the standard of correctness (see *Rahim v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1252 at para 12; *Zare v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1024 at paras 20 – 21; and *Yazdani v Canada (Minister of Citizenship and Immigration)*, 2010 FC 885 at paras 24 – 25). No deference is owed to a decision-maker on this standard.

V. Analysis

The Decision

A. *Establishment*

[15] The Applicant submits that the Officer's failure to give any weight to the Applicant's establishment in Canada was unreasonable.

[16] In the Decision the Officer acknowledged the Applicant's submission that she had lost many links to her home country as she had been in Canada for the last six years, that she now had a highly interdependent relationship with her daughter's family, a sound pattern of financial management, was integrated into her community with a strong civil record and no criminal convictions. The Officer also acknowledged the Applicant's submission that she lived with her daughter and helped with food preparation, shopping and household chores and that although the Applicant has a pacemaker, her daughter and son-in-law were paying for her related medical costs such that she would not be a burden on Canada's health care system.

[17] The Officer determined that the Applicant's civil records were good, but not an achievement, and that there was insufficient evidence to establish that the Applicant was integrated into her community or involved in local community activities. The Officer did not agree that the Applicant had lost her links to Bangladesh noting that her husband (who, unknown to the Officer when the Decision was made, had died on January 7, 2012) and two brothers were still in Bangladesh. The Officer noted that although the Applicant had alleged in her refugee claim that she had problems with one of the brothers, the RPD previously found that the allegation was not credible.

[18] With respect to the interdependent relationship between the Applicant and the Applicant's daughter and her family, the Officer did not find that the Applicant would be faced with unusual and undeserved or disproportionate hardship if she had to leave her daughter and grandchildren and return to Bangladesh. The Applicant and her daughter had been separated for many years before the Applicant came to Canada in 2006 and, although the daughter would not be able to help with the

Applicant's health condition if she were to return to Bangladesh, this did not constitute unusual and undeserved or disproportionate hardship nor was there sufficient evidence to establish that Bangladesh did not have the knowledge and technology to care for patients with pacemakers.

[19] When reviewing a 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" (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 62, [1999] SCJ No 39 [*Baker*]).

[20] Further, it is not up to a reviewing court to substitute its own view of a preferable outcome (see *Kisana*, above, at para 20; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ no 1425, 157 FTR 35 at para 14), nor is it the function of the reviewing court to reweigh the evidence (*Khosa*, above, at paras 59 and 61; *Suresh v Canada (Minister of Citizenship and Immigration*), 2002 SCC 1 at paras 34 and 37). The weighing of a particular factor, here establishment in Canada, is for the Officer to determine (*Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1391 at para 63; *El Thahir v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1439 at para 43) and the court should refrain from re-evaluating the weight given to the different factors considered by an officer (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 11 [*Legault*]).

[21] Here the Applicant does not point to any specific evidence that the Officer overlooked or misinterpreted but submits that the Officer failed to give any weight to the evidence of establishment. However, the Decision refers to the Applicant's age, the length of time she has been in Canada and the interdependent relationship with her daughter's family. Further, when making the Decision, the evidence of establishment on the record before the Officer was limited to the February 26, 2011 submission of the Applicant's immigration consultant outlining the Applicant's interdependent relationship with her daughter's family and her contribution to the running of her daughter's household. The Applicant did not work outside the home and there was no evidence that she owned property in Canada or of any community interaction or other form of establishment.

[22] While the Applicant submits that the Officer's failure to give any weight to the Applicant's establishment in Canada was unreasonable, in my view this is not the case. The Decision demonstrates that the Officer did consider and weigh the evidence before him pertaining to the Applicant's establishment in Canada. The Officer reasonably exercised his discretion in determining what, if any, weight was to be subscribed to the Applicant's establishment in Canada. As I have noted above, the jurisprudence is clear that it is not the role of this Court to reweigh the factors of the H&C determination (*Legault*, above). As a result, the Applicant's argument on this issue cannot succeed.

B. *Best Interest of the Child*

[23] The Applicant submits that the Officer was not alive, alert and sensitive to the best interests of her grandchildren.

[24] In the Decision the Officer acknowledged the submission, made on behalf of the Applicant by her immigration consultant, that a strong interdependent relationship between the Applicant and her daughter's family existed and that removal from Canada would have a significant impact on her three grandchildren. It was further acknowledged that the Applicant acts as a live in caregiver to her grandchildren and without that support one of the children's parents would have to stay at home with a resultant loss of income necessary for the children's care and future education.

[25] This was followed by the Officer's analysis of the best interests of the children:

> There is only one photo showing the applicant with her daughter and the grandchildren that has been submitted. I do not find it sufficient to show the strong interdependent relationship between the applicant and her grandchildren.
>
> I agree that the applicant's daughter may have to stay home to look after her own children if the applicant is returned to Bangladesh. However, I do not find it against the best interest of her three grandchildren if the applicant has to leave Canada and submit her H&C application outside of Canada.

[26] The Applicant submits that the Officer failed to consider that if the Applicant's daughter were forced to stay home to care for the children that the family income would, effectively, be cut in half which is not in the best interests of the children. The Respondent submits that the evidence before the Officer was that the grandchildren are 12, 8 and 5 years old, that the Applicant's daughter and son-in-law work full time but that they did not state their hours of work, and that the Applicant's submissions did not address whether the parents had considered or could make alternate childcare arrangements or whether the parents would be unable to provide the care and support that the Applicant provides to the grandchildren. Accordingly, there was insufficient evidence before the

Officer to establish that the Applicant's daughter would have to stay at home or that the family's income would be cut by half.

[27] The record before the Officer when the Decision was made included the February 26, 2011 submission letter from the Applicant's immigration consultant. This stated that the Applicant provides emotional support to the family and a real contribution to the efficient running of the household by acting as care giver to the young children which is important as the Applicant's daughter and son-in-law are employed full time. The daughter "works every day" as a Customer Service Representative at Subway Restaurants and the son-in-law "works full time" for Career Connections Staffing of Canada. The submission further states that:

> Since [the Applicant's daughter and son-in-law] are both busy during the week all day, their children need supervision to ensure they go to school, are taken care of when they arrive from school, are fed properly, cleaned and dressed, do their homework and that all other care is taken of them.
>
> […]
>
> As described above, a strong interdependent (sic) has developed between the applicant and the family of her sponsor. The children are particularly dependant on their grandmother to take care of them and raise them, while both of the parents earn an income. Without this support, one of the parents would have to stay at home, loosing (sic) important income necessary for their care, and future education. The family may also alternatively need to hire a care giver, which is a major expense, and will likely not be live-in, and certainly not be a family member. Family members do make better parents or surrogates because they can better (sic) trusted with children to whom they have a stronger emotional attachment".

[28] When considering the best interest of children affected by an immigration decision, the Supreme Court of Canada has stated that:

> […] for the exercise of the discretion to fall within the standard of reasonableness, the decision-maker should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them. That is not to say that children's best interests must always outweigh other considerations, or that there will not be other reasons for denying an H & C claim even when children's interests are given this consideration. However, where the interests of children are minimized, in a manner inconsistent with Canada's humanitarian and compassionate tradition and the Minister's guidelines, the decision will be unreasonable
>
> (*Baker*, above, at para 75).

[29] The foregoing indicates that while the best interests of affected children, which include grandchildren (*Walker*, above, at para 38; *Afocha v Canada (Minister of Citizenship and Immigration)*, 2008 FC 240 at para 7), is an important factor to consider in H&C decisions, there is no *prima facie* presumption that the children's considerations should outweigh other factors (*Legault*, above at para 31; and *Walker*, above, at paragraph 41). Furthermore, the onus is on the applicant to provide evidence on adverse effects to the children should the applicant leave (*Walker*, above, at para 39; and *Liniewska v Canada (Minister of Citizenship and Immigration)*, 2006 FC 591, at para 20).

[30] In this case the Officer's analysis of the best interests of the children was brief, making up only three small paragraphs of the Decision. On the other hand, the Applicant, through her counsel's submissions dated February 26, 2011, provided limited evidence on the best interests of her grandchildren. Further, the submissions made in support of this application for judicial review assert only that the officer was not alert, alive and sensitive to the best interests of the children in this matter because there was a failure to taken into account the financial consequences if an alternate

child care arrangement had to be implemented, that is, a reduction in family income otherwise available for child care and education purposes.

[31] The Officer acknowledged that the Applicant's daughter may have to stay at home to care for her children if the Applicant returned to Bangladesh. The record before the Officer included the 2009 Notices of Assessment for the Applicant's daughter and her husband. Impliedly then, the Officer recognized that if the Applicant's daughter was required to stay home to care for her children, or if a third party care giver was retained, then the family income would be reduced which could impact the children. The fact that the Officer did not explicitly state this does not mean that he was not alert, alive and sensitive to the best interests of the children. Rather, it was one factor that he considered in arriving at his conclusion that it would not be against the children's best interests if their grandmother had to submit her application for permanent residence outside of Canada.

[32] While the consideration of the best interest of the grandchildren was not lengthy or detailed, the Decision was based on the record then before the Officer. Unfortunately, this contained little evidence of the emotional relationship between the Applicant and her grandchildren or of any adverse effects, other than financial, that would be suffered by the grandchildren should the Applicant leave. On the evidence before him, the Officer took into account the best interest of the grandchildren as required by section 25 of the IRPA, there was no reviewable error.

The Reconsideration

C. *Treatment of the Evidence*

[33] The Applicant argues that the Officer failed to consider the emotional dependency between the Applicant and her daughter's family in Canada which became more important upon the death of

the Applicant's husband. The Applicant further argues that the Officer did not take into account the significant factual difference between her remaining in Canada with her only nuclear family or returning to Bangladesh. Accordingly, the Officer's determination that the death of the Applicant's spouse would not have such a significant impact on her that it would constitute unusual, undeserved or disproportionate hardship should she leave Canada is unreasonable.

[34] This Court has held that there is no obligation on an immigration officer to reconsider an application for permanent residence but that "on the basis of fairness and common sense, a visa officer should reconsider a file if, within days of a negative decision, new evidence that confirms a material fact is presented" (see *Mansouri v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1242 at para 8, citing *Marr v Canada (Minister of Citizenship and Immigration),* 2011 FC 367, at para 57). In this case the Officer did reconsider the Decision in response to the February 29, 2012 request and submission of the Applicant's immigration consultant.

[35] That submission included representations made on behalf of the Applicant by her consultant, the death certificate of the Applicant's husband and statutory declarations of both her daughter and son-in-law. The daughter's declaration states, amongst other things, that the death of the Applicant's husband made it substantially more difficult for the Applicant to return to Bangladesh. As she is the Applicant's only child, there is now no immediate family remaining in Bangladesh. Further, that her mother has no property in Bangladesh, no savings, no inheritance or pension from her husband and would be unable to work and destitute if she were to return. To survive, her daughter would have to send money to the Applicant which would further reduce the family's financial resources. The declaration states that the Applicant depends on her daughter's household to live, that the Applicant

takes care of her three granddaughters while the daughter and husband work, and no one could be more trusted than the Applicant to look after the grandchildren, and, that the grandchildren are much attached to the Applicant and would be devastated were she to leave. The declaration of the son-in law contains similar statements and also adds that his daughters have become very close to their grandmother. As the youngest are five and six years old, the Applicant has lived and taken care of them for most of their lives and is another parent to them to whom they have become attached.

[36] The Reconsideration refers to the Applicant's February 27, 2012 request for reconsideration including the submissions of her immigration consultant, the statutory declarations and the death certificate. It notes that the information contained in the submission concerning the Applicant's financial situation is not consistent with that provided by the Applicant in her Personal Information Form (PIF) and the disclosure made during her refugee intake interview. In the PIF the Applicant states "I'm a citizen of Bangladesh and live there permanently along with my husband. A homemaker by profession, I'm economically solvent and have regular earnings from family real estate and land", and in her Record of Examination, the Applicant's own words were that "[m]y father left some properties for me…". Based on this inconsistent information the Office found that there was insufficient evidence to support the Applicant's submission that she has no place to live if she returns to Bangladesh.

[37] In the Reconsideration the Officer also notes that the Applicant had lived in Dhaka, Bangladesh, for nearly sixty years before coming to Canada, still has siblings there and, on the balance of probabilities, should know that community very well. The Officer stated that having thoroughly reviewed the additional submission requesting reconsideration that he did not find that

the death of the Applicant's husband would have a significant impact on her circumstances such as to cause unusual and undeserved or disproportional hardship if she has to leave Canada and return to Bangladesh.

[38] The Applicant submits that the Officer failed to consider the evidence as to the "emotional dependency" between the Applicant and her daughter's family. However, the Applicant herself made no submissions as to a mutual emotional dependency with her daughter's family nor did she distinguish or otherwise address the nature of the relationship that she has with her siblings in Bangladesh. The only evidence speaking to this issue included in the submission seeking reconsideration was the declarations described above which the Officer referenced in the Reconsideration.

[39] The Applicant cites *Yu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 956 [*Yu*] to support her argument that the Officer did not take into account the significant factual difference between the Applicant remaining in Canada with her remaining nuclear family and her return to Bangladesh. In *Yu*, above, the issue was whether the immigration officer erred in finding that the applicant, Ms. Yu, was not a *de facto* family member of her sixty one year old twin sister's family. Ms. Yu had a close and dependant emotional relationship with her twin and had resided for most of her life with her twin sister's family before they immigrated to Canada and had sought to be reunited with her since that time.

[40] *Yu* is distinguishable as it concerns the issue of *de facto* family members and because there the evidence established the very close emotional dependency between the siblings which evidence

had been ignored by the immigration officer. The court noted that there is a "significant factual difference" between living together and sharing day-to-day life and an occasional visit, but its conclusion was founded on its finding that the officer did not consider the relevant humanitarian and compassionate factors in finding that Ms. Yu was not a *de facto* family member.

[41] As noted above, an H&C decision is reviewable on the standard of reasonableness. Further, when reviewing an H&C decision considerable deference should be accorded to the immigration officer (*Baker*, above, at paragraph 62). Accordingly, the Officer in this case is owed considerable deference in the absence of any misinterpretation or ignoring of the evidence. I am satisfied that the Officer reviewed and considered the Applicant's February 27, 2012 request for reconsideration, including what evidence there was of the emotional dependency asserted by the Applicant.

[42] Further, I am satisfied that the Officer reasonably afforded little or no weight to the statutory declarations of the Applicant's daughter and son-in-law concerning the financial circumstances of the Applicant as they appear to be contradicted by her own prior representations.

[43] Finally, it should be noted that the Applicant submitted an affidavit dated May 20, 2012 in support of her application for judicial review of the Reconsideration. This affidavit did address her changed financial circumstances and other matters and included statements from her grandchildren as to the impact that separation from her would have on them. However, that evidence was not on the record before the Officer when he made his Reconsideration on March 9, 2012. For that reason it also cannot be considered by this Court (see *Saifee v Canada (Minister of Citizenship and Immigration)*, 2010 FC 589 at para 28 [*Saifee*]).

D. *Procedural Fairness*

[44] The Applicant submits by her counsel's submissions to this Court, and in her May 20, 2012 affidavit made in support of the application for judicial review of the Reconsideration, that her brother has taken over the family properties and, as a result, she no longer derives an income from them. She argues that she should have been given an opportunity to address any concerns the Officer had about the discrepancy between what she reported in her PIF and during her refugee intake interview, and what was stated in the statutory declarations submitted by her daughter and son-in-law in support of her request for reconsideration of the H&C Decision.

[45] As noted above, the evidence regarding the Applicant's brother having taken over the family properties is new evidence that was not before the Officer. Further, this evidence was apparently available prior to the Applicant's husband's death, as she states in her affidavit that her brother "stopped providing an income to [her] or [her husband] while he was alive". This Court has repeatedly held that a judicial review application is to be determined on the basis of the record before the decision-maker (*Saifee*, above at paragraph 28). Accordingly, the Applicant may not now rely on that affidavit evidence to challenge the Reconsideration.

[46] Moreover, the onus was on the Applicant to place before the Officer all information available to support her H&C application (*Mann v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 567). As held in *Kisana*, above, at paragraph 45:

> The ultimate question in each case is whether the person affected by a decision 'had a meaningful opportunity to present their case fully and fairly' (see: *Baker*, above, at paragraph 30). In the context of H&C applications, it has been consistently held that the onus of establishing that an H&C exception is warranted lies with

> an applicant; an officer is under no duty to highlight weaknesses in an application and to request further submissions (see, for example: *Thandal*, above , at paragraph 9).

And, in *Pan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 838:

> **26** In the case of visa applicants, the minimum degree of procedural fairness to which they are entitled is at the low end of the spectrum (*Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297, at para. 41 (C.A.); *Khan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, [2002] 2 F.C. 413, at paras. 30-32; *Patel v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 55, 23 Imm. L.R. (3d) 161, at para. 10).
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> **27** In general, the onus is on a visa applicant to put his best foot forward by providing all relevant supporting documentation and sufficient credible evidence in support of his application. The onus does not shift to the visa officer and there is no entitlement to a personal interview if the application is ambiguous or supporting material is not included (*Silva v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 733, at para. 20).
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> **28** In addition, a visa officer has no legal obligation to seek to clarify a deficient application (*Sharma v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 786, at para. 8; *Fernandez v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 994, at para. 13; *Dhillon v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 574, at para. 4), to reach out and make the applicant's case (*Mazumder v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 444, at para. 14), to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met (*Ayyalasomayajula v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 248, at para. 18), or to provide the applicant with a "running-score" at every step of the application process (*Covrig v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1413, at para. 21). To impose such an obligation on a visa officer would be akin to requiring a visa officer to give advance notice of a negative decision, an obligation that has been expressly rejected (*Ahmed v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 940 (QL); *Sharma*, above).”

[47] Here the Officer was entitled to refer to the information previously provided by the Applicant and was under no obligation to give notice to the Applicant that the information concerning her financial situation submitted by way of the statutory declarations contradicted the information that she had previously given by way of her PIF and her refugee intake interview and to offer her an opportunity to address the contradiction. There was no breach of procedural fairness.

VI. Conclusion

[48] The Officer did not ignore or misinterpret any of the evidence. The Decision and Reconsideration were reasonable as they fell within the range of acceptable outcomes that are defensible in fact and law. As the Officer considered the relevant H&C factors, this Court cannot enter into an exercise of reweighing them, even though I may have weighed them differently. The burden was on the Applicant to put forward all available evidence to support the original H&C application and the request for reconsideration. The Officer had no duty to advise the Applicant of the discrepancy in the financial evidence and did not breach the duty of fairness owed to the Applicant.

[49] In the result, the applications for judicial review must be dismissed.

[50] Neither party wished to submit a proposed serious question of general importance for my consideration nor does one arise.

JUDGMENT

THIS COURT'S JUDGMENT is that the applications for judicial review are dismissed.

No question of general importance for certification has been proposed and none arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2328-12
STYLE OF CAUSE:	ANOWARA BEGUM v MCI
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PLACE OF HEARING:	Toronto
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DATED:	March 13, 2013

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