

Federal Court



Cour fédérale

**Date: 20140410**

**Docket: IMM-2865-13**

**Citation: 2014 FC 352**

**Calgary, Alberta, April 10, 2014**

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

**BETWEEN:**

**HANA SAHYOUNI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application challenges a negative Humanitarian and Compassionate (H&C) decision dated October 11, 2012, rendered by a Visa Officer pursuant to s.25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*Act*).

[2] The critical facts underlying the H&C application are as follows: on January 8, 2009 the Applicant, a citizen of Lebanon, married her Canadian husband, Mr. Chatila; the couple resided

in Canada from January 2009 to February 2010 when they returned to Lebanon for diagnostic testing of Mr. Chatila's health; on October 13, 2010, the Applicant gave birth to their son, Omar Chatila, a Canadian citizen; on April 11, 2011 Mr. Chatila applied to sponsor the Applicant for landing in Canada as a member of the family class; on July 24, 2011, Mr. Chatila passed away due to cancer while the Applicant's family class application was still being processed; as a result, on January 4, 2012, the Applicant applied in Lebanon for permanent residence in Canada on humanitarian and compassionate grounds based on Omar's best interests. The Respondent engaged the Application on September 12, 2012 (Applicant's Application Record, pp. 159-160).

[3] Understandably, the evidence in support of the H&C Application goes to establish that, in Omar's best interests, Canada is a better place for the Applicant to raise her son than Lebanon.

[4] By letter dated October 11, 2012, the Visa Officer reviewing the Application gave the following reasons for rejecting the Application:

I have considered the circumstances of your application, including your previous residence in Canada, your Canadian citizen child, the relative of your late husband who resides in Canada, and the fact that your own family continues to reside in Lebanon. While the death of your husband is a tragic event, you no longer have any immediate family members residing in Canada who can support you or who are eligible to sponsor you for permanent residence. After considering all the factors, I am not satisfied that there are sufficient reasons to consider your application under humanitarian and compassionate circumstances.

(Applicant's Application Record, p. 5)

On the same date, the following entry was made in the Officer's computer record which forms further reasons for decision:

The applicant's consultant has informed our office that the sponsor has died. As the applicant no longer has a sponsor, she does not meet the requirements of the Family Class (R117 & R130). The applicant has requested consideration under A25: H&C, noting that the aunt of the applicant's late husband resides in Canada and will support the family. I note that the applicant's immediate family all reside in Lebanon. I am not satisfied that there are compelling reasons to refer the application to the IPM for consideration for H&C. While the circumstances of this case are tragic, the purpose of the family class program is to reunite family members. The applicant has a dependent son who is a Canadian citizen. However, there is no program for sponsorship of non-Canadian parents of minor children. Rather, I find that the best interest of the child is to be with his mother and extended family in Lebanon. I also note that the applicant has previous study and residence in Canada, but this in itself is not sufficient for consideration within the Family Class program. Should the applicant wish to immigrate to Canada, she can explore other avenues for relocation. Application refused.

(Tribunal Record, p. 1d)

[5] With respect to H&C applications generally, and this Application in particular, s. 25 of the *Act* required the Visa Officer to take into account Omar's best interests as a child directly affected by his mother's plea to be admitted to Canada. It is agreed that the established jurisprudence with respect to H&C consideration of the best interests of a child applies to the present overseas Application. Thus, the Visa Officer was required to alert, alive, and sensitive to Omar's best interests. I find that the Visa Officer's reasons do not conform with the law as stated in *Kolosovs v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 165). Therefore, I find the decision under review is unreasonable.

**ORDER**

**THIS COURT ORDERS that**

The decision under review is set aside and the matter is referred back for redetermination by a different Visa Officer.

There is no question to certify.

"Douglas R. Campbell"

Judge

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

**DOCKET:** IMM-2865-13

**STYLE OF CAUSE:** HANA SAHYOUNI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** APRIL 10, 2014

**REASONS FOR ORDER AND  
ORDER:** CAMPBELL J.

**DATED:** APRIL 10, 2014

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