Federal Court Cour fédérale

Date: 20170421

Docket: IMM-3065-16

Citation: 2017 FC 395

Ottawa, Ontario, April 21, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

RAHMA MANENO SULEIMAN
TAHJAIRA ABDULLA SALEH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for judicial review of the decision of an Immigration Officer in the Backlog Reduction Office in Vancouver [Visa Officer], dated June 28, 2016 [Decision], which denied

Rahma Maneno Suleiman's [Principal Applicant] application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

II. BACKGROUND

[2] The Principal Applicant is a 44-year-old citizen of Tanzania and has resided in Canada since August 4, 2010. She has eight children, two of whom reside in Canada and six of whom reside in Tanzania under the care of her sister. Of the two children that reside in Canada, one has US citizenship and the other has Canadian citizenship.

[3] In 1995, the Principal Applicant met her male common-law partner, Abdulla Mandero, with whom she had five children. After Mr. Mandero's death in 2005, she married her husband Abdulla Saleh Ussi.

[4] In 2007, the Principal Applicant and her husband fled to the US, where their daughter Tahjaira was born. On August 4, 2010, the Principal Applicant left Mr. Saleh Ussi and arrived in Canada with Tahjaira.

[5] On August 31, 2010, the Principal Applicant claimed refugee protection on the basis of political opinion and religion, which was refused on December 7, 2011 by the Refugee Protection Division [RPD]. The Principal Applicant's application for leave to seek judicial review of the decision was refused on March 14, 2012.

[6] On November 3, 2011, the Principal Applicant and Tahjaira applied for permanent residence in Canada as dependents of Abdulla Saleh Fatawi under the Protected Persons class. The Principal Applicant and Mr. Saleh Fatawi had a daughter, Zunaira, on December 9, 2012. The application for permanent residence was refused on September 7, 2014. The Principal Applicant then commenced a pre-removal risk assessment [PRRA] application on October 7, 2014 on the basis of sexual orientation, gender, ethnicity, religion, and political opinion. However, this was rejected on March 23, 2015 and an application for leave to seek judicial review of the decision was denied on August 12, 2015.

[7] On January 14, 2015, the Principal Applicant initiated an application for permanent residence based on H&C grounds, which was refused on March 18, 2015. She sought judicial review of the decision on April 10, 2015, but the matter was discontinued on the basis that the application would be reconsidered by another visa officer. That reconsideration is the subject of this judicial review.

III. DECISION UNDER REVIEW

[8] The Decision sent from the Visa Officer to the Principal Applicant by letter dated June 28, 2016 determined that the Principal Applicant did not qualify for an exemption from legislative requirements that would allow her application for permanent residence to be processed from within Canada.

A. *Background*

[9] In rendering the Decision, the Visa Officer first reviewed the Principal Applicant's background. This review included: her membership in the Civic United Front [CUF], a political party opposed to the ruling political party of Tanzania; political violence against the Principal Applicant and her family; and the Principal Applicant's sexual orientation and prior incidents involving her relationships with women. With regards to the latter, the Visa Officer noted, in particular, an incident relating to an affair with a woman who was publicly exposed and which resulted in attacks against both individuals, and the Principal Applicant's departure to the United States [US] with her husband. The Visa Officer also noted the circumstances in which the Principal Applicant left the US and entered Canada.

B. *Establishment*

[10] The Visa Officer then considered the degree of establishment in Canada, noting that the Principal Applicant had lived in Canada for nearly six years, volunteered in the lesbian, gay, bisexual, and transgender [LGBT] community, and had obtained a certificate in cash register skills. These considerations, along with her efforts to seek assistance from others, led the Visa Officer to conclude that the Principal Applicant was a resourceful individual with a demonstrated ability to assimilate. Based on the Principal Applicant's successful integration into the Canadian society, the Visa Officer found that she would be able to adapt to the environment in Tanzania, especially since she had a large network of family members there. Additionally, the Visa Officer noted the volunteer work that the Principal Applicant had performed in the LGBT community;

however, while this was viewed positively, it was insufficient to warrant an exemption from the legislative requirements of completing an application for permanent residence outside of Canada.

C. *Sexual Orientation*

[11] As part of the assessment of the risks and adverse country conditions, the Visa Officer examined the Principal Applicant's alleged sexual orientation as a lesbian. The Principal Applicant said she had experienced discrimination and violence based on her sexual orientation while in Tanzania, citing several incidents. However, she had not provided this information to the RPD in her prior refugee claim. Although the Principal Applicant had explained that she was advised to omit the information by her interpreter, the Visa Officer noted that the interpreter was not present at the RPD hearing and was not her representative. Due to the delay in seeking protection on the basis of sexual orientation, the Visa Officer found the Principal Applicant lacked subjective fear.

[12] Moreover, although the Visa Officer accepted the existence of societal discrimination and violence against sexual minorities in Tanzania, little weight was assigned to the Principal Applicant's claims of experiencing personal discrimination and violence on this ground. Several of the incidents, such as the corrective rape that was reported to the authorities and the murder of her same-sex partner, would have resulted in documentation such as a police report and a death certificate; however, the Principal Applicant did not provide any supporting documents. Based on the lack of documentary evidence to substantiate her claims, the Visa Officer found that the Principal Applicant had not proven she was targeted and sought by the Tanzanian authorities due to her sexual orientation.

[13] Also, with regards to the matter of the Principal Applicant's sexual orientation, the Visa Officer reviewed documentary evidence including a psychotherapeutic assessment by Dr. Patricia Durish, a letter from the director of counselling services at the Barbara Schlifer Commemorative Clinic [BSCC], and a letter from the vice chairman of Jukumuletu, an organization that the Principal Applicant volunteers with.

[14] There were several issues with Dr. Durish's assessment; most notably, the determination that the Principal Applicant's presentation was consistent with her declared sexual orientation as a lesbian. The Visa Officer found that Dr. Durish's assessment was based on information provided by the Principal Applicant and that the Principal Applicant had focused on female partners during the interview due to her vested interest in the outcome; as such, the Visa Officer afforded little weight to the assessment.

[15] The BSCC letter was then discussed; however, like Dr. Durish's assessment, the Visa Officer afforded little weight to it because it was based on information solely provided by the Principal Applicant, rather than objective evidence. It was also noted that the letter did not detail the physical and sexual violent incidents that the Principal Applicant had allegedly experienced in Tanzania.

[16] The Visa Officer also noted the Principal Applicant's volunteer activities within the LGBT community. However, the Principal Applicant's volunteer work was found not to demonstrate that she was a lesbian because the organizations she was involved with were open to people of all sexual orientations. The Visa Officer also dismissed the letter from Jukumuletu that

stated the Principal Applicant was a lesbian on the basis that the vice chairman could not have learned about her sexual orientation in a manner other than through the Principal Applicant's own statements. As such, little weight was assigned to the vice chairman's letter. Ultimately, the Visa Officer accepted that the Principal Applicant had PTSD and depression, but not that she was a lesbian.

[17] The Principal Applicant had also provided a number of articles and reports on the treatment of sexual minorities in Tanzania. While the Visa Officer accepted that societal discrimination and violence against sexual minorities occurred, the documentary evidence was given little weight because the Principal Applicant had not provided sufficient evidence to demonstrate how the issues would affect her return to Tanzania.

D. *Political and Religious Violence*

[18] In both the Principal Applicant's previous application for refugee status and the current application for permanent residence, the Principal Applicant had stated that she had faced political and religious violence on a number of occasions in Tanzania. In the refusal of the refugee claim, the RPD had rejected the Principal Applicant's allegations on the basis that the claims were not adequately explained and that she lacked credibility. In addition to the RPD's finding, the Visa Officer also noted the lack of documentary evidence to support the allegations, such as medical reports, police reports, or letters from family members. Based on this lack of supporting evidence, the Visa Officer did not find the Principal Applicant had demonstrated that she was a victim of political and religious violence. As a result, little weight was assigned to these grounds.

E. *Gender Based Violence*

[19] The Principal Applicant also claimed that she suffered abuse from her Tanzanian husband, Mr. Saleh Ussi. However, the Visa Officer noted that Mr. Saleh Ussi had entered the US with the Principal Applicant and there was no indication that he would return or had returned to Tanzania. Thus, the Principal Applicant had not established that she would face hardship due to violence from Mr. Saleh Ussi.

[20] Similarly, the Visa Officer did not find that the Principal Applicant would face hardship due to violence from Mr. Saleh Fatawi, her Canadian husband, who was also alleged to have abused her. It was noted that the couple no longer lived together and there was no evidence that demonstrated he would follow her to Tanzania.

[21] The Visa Officer recognized that gender-based violence was an existing problem in Tanzania; however, the Principal Applicant had not provided sufficient evidence to demonstrate how she would suffer hardship from such violence upon her return. Consequently, little weight was afforded to this ground of concern.

[22] Likewise, little weight was assigned to a report on the effects of family violence on children. The Principal Applicant had not provided sufficient evidence to demonstrate that her daughters had suffered from the two previous abusive relationships, or how their departure from Canada would further complicate their lives in this regard.

F. *Mental Health Issues*

[23] The Principal Applicant had provided evidence that she was in treatment for post-traumatic stress disorder [PTSD] and depression. The Visa Officer found that the Principal Applicant may have mental health issues due to her prior abusive relationships, but was not convinced that a return to Tanzania would prevent her from receiving appropriate counselling services. The IRB Research Directory Document was cited to demonstrate that "one-stop" centers in Tanzania provide counselling and other resources. As such, the Visa Officer found there were accessible resources in Tanzania to help the Principal Applicant with any emotional, mental health, and medical needs. Accordingly, the Visa Officer did not find that the Principal Applicant's mental health issues would cause her to suffer from any hardship upon her return to Tanzania due to a lack of treatment options or for other reasons.

G. *Best Interests of the Children [BIOC]*

[24] Only six of the Principal Applicant's children were considered, because two of them were over the age of 18 at the time of the application for permanent residence. Additionally, the analysis focused on Tahjaira and Zunaira, the two children in Canada, because the Principal Applicant did not indicate how the best interests of the children in Tanzania would be affected by her return to Tanzania.

[25] The Visa Officer recognized that violence against children in Tanzania was a problem. This was clear from the US Department of State's 2015 Human Rights Report that specifically identified corporal punishment in schools. The Visa Officer found that the Principal Applicant

could overcome this problem and protect her children because she was a loving and nurturing mother who could provide a loving and caring environment for her children upon her return. Although the Principal Applicant had stated that her children in Tanzania had previously been raped there, the Visa Officer found the lack of evidence to substantiate these statements, such as police reports or court documents, did not demonstrate these incidents had occurred and, as a result, little weight was assigned to them. The Visa Officer also noted that the Principal Applicant's sister had provided a violence-free home to six children in Tanzania for six years and could also extend this support to Tahjaira and Zunaira.

[26] The Visa Officer also found that education was not an unsurmountable issue for Tahjaira and Zunaira. Tanzania provides compulsory and free education up to the age of 15, with fees required only for books, uniforms, and lunches. While the system is not perfect, the Tanzanian authorities are training teachers and parents on the issues of corporal punishment and child abuse. Thus, the Visa Officer concluded it was unlikely that the Principal Applicant's children would be subjected to corporal punishment in Tanzania, particularly if they were enrolled in specific schools that had suspended such punishment.

[27] The Principal Applicant had also expressed worries that her daughters would be kidnapped or killed on the basis of holding western citizenships. However, this statement was not substantiated by sufficient evidence and little weight was assigned to it. Additionally, the Visa Officer did not see how the identity of the children's citizenships would be revealed in Tanzania.

[28] The Visa Officer then assessed the issue of sexual exploitation of children, particularly girls in Tanzania. While the incidence of child rape is recognized as rising in Tanzania, the Visa Officer did not find that the Principal Applicant had provided sufficient evidence to demonstrate that her daughters would be the victims of sexual exploitation upon their return to Tanzania. The Visa Officer viewed the Principal Applicant as a loving and nurturing mother who would be able to shield her children from unsafe environments. Likewise, the Principal Applicant's abilities were cited as sufficient to demonstrate that she could protect her children from general country violence in Tanzania. These abilities, in addition to insufficient evidence regarding how the children would be personally subjected to violence, led to the conclusion that the best interests of the Principal Applicant's daughters would not be directly compromised if they returned to Tanzania.

[29] In additional support for the finding that the daughters' interests would not be directly compromised, the Visa Officer noted that the young ages of Tahjaira and Zunaira indicated they would be able to assimilate to a new environment after an initial period of adjustment. It was also found that it would be in the best interests of all the children in Tanzania to have their mother with them. Moreover, it would be in the best interests for Tahjaira and Zunaira to build a relationship with their other siblings.

[30] The Visa Officer noted that the Principal Applicant's sister allegedly had financial problems and was aided by the Principal Applicant. However, the Principal Applicant's alleged financial assistance was not corroborated by documentation such as remittance slips or bank transfers and little weight was given to it. Moreover, the Visa Officer reasoned that the financial

problems were not a barrier because education was free in Tanzania. As a result, the Visa Officer did not conclude that the best interests of the children were directly compromised by the return of the Principal Applicant, along with Tahjaira and Zunaira, to Tanzania.

[31] After consideration of all the factors raised, the Visa Officer was not satisfied that the H&C considerations justified an exemption under s 25(1) of the *IRPA*.

IV. ISSUES

[32] The Applicants submit that the following are at issue in this application:

1. Was the Visa Officer's *BIOC* analysis unreasonable?
2. Was the Visa Officer's analysis of the mental health evidence unreasonable?
3. Was the Visa Officer's analysis of the evidence regarding the Principal Applicant's sexuality unreasonable?
4. Did the Visa Officer reach an unreasonable conclusion regarding the Principal Applicant's ability to re-establish herself in Tanzania?

[33] The Respondent submits that the following is at issue in this application:

1. Did the Visa Officer err in exercising discretion to find that the Primary Applicant's circumstances did not justify an exemption under s 25(1) of the *IRPA* from the normal requirement to apply for permanent residence status from outside Canada?

V. STANDARD OF REVIEW

[34] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*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 settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[35] A visa officer's decision rendered under s 25(1) of the *IRPA* is reviewable on a standard of reasonableness: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at para 44; *Madera v Canada (Citizenship and Immigration)*, 2017 FC 108 at para 6.

[36] 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 para 47, and *Khosa v Canada (Citizenship and Immigration)*, 2009 SCC 12 at para 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."

VI. STATUTORY PROVISIONS

[37] The following provisions from the *IRPA* are relevant in this proceeding:

Application before entering Canada	**Visa et documents**
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.
…	…
Humanitarian and compassionate considerations —request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who	25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de

applies for a permanent resident visa, 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 account the best interests of a child directly affected.	territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, 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.

[38] The following provisions from the *Federal Courts Rules*, SOR/98-106 [*Rules*] are relevant in this proceeding:

Content of affidavits	**Contenu**
81 (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.	81 (1) Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

[39] The following provisions from the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*CIRP Rules*] are relevant in this proceeding:

Affidavits	**Affidavits**
12 (1) Affidavits filed in connection with an application	12 (1) Tout affidavit déposé à l'occasion de la demande

for leave shall be confined to such evidence as the deponent could give if testifying as a witness before the Court.	d'autorisation est limité au témoignage que son auteur pourrait donner s'il comparaissait comme témoin devant la Cour.

VII. ARGUMENT

A. *Applicants*

(1) Best Interests of the Child

[40] The Applicants submit that the *BIOC* analysis was unreasonable and inconsistent with the governing jurisprudence. The *BIOC* analysis did not adequately identify the children's interests as required by *Kanthasamy*, above. Instead, the Decision was focused on the two children in Canada, Tahjaira and Zunaira.

[41] With regards to Tahjaira, the Visa Officer did not consider the prospect of her removal to the US but, instead, focused on the preferred outcome of her joining her mother in Tanzania. The Principal Applicant had stated that she feared Tahjaira would be forced to grow up in state care or an abusive home in the US, yet this possibility was not addressed.

[42] Zunaira is a Canadian citizen, which distinguishes her from her sister, who is a US citizen. Yet, the Visa Officer did not devote individual attention to Zunaira's citizenship by considering the prospects of her removal from her country of citizenship, nor did the Visa Officer compare her prospects to Tahjaira's. The Applicants contend that, as part of the *BIOC* analysis, Zunaira's citizenship should have been explicitly addressed.

[43] The *BIOC* analysis devoted an excessive amount of space to challenging claims concerning the adverse country conditions of Tanzania, which fettered the analysis to an unduly narrow focus. The analysis was structured to rebut the Applicants' arguments concerning the country conditions, and failed to adequately identify the children's interests. This is similar to the case of *Chandidas v Canada (Citizenship and Immigration)*, 2013 FC 258 at para 69, where the officer did not identify the best interests involved, other than stating that the child should remain with her parents. In the current case, the Visa Officer presumed that the two children will be removed with their mother, which is not a proper *BIOC* analysis. The Court also found in *Sahyouni v Canada (Citizenship and Immigration)*, 2014 FC 352 at paras 4-5 that a failure to take into account the deceased mother's plea to be admitted to Canada was a reviewable error in the *BIOC* analysis.

[44] In the conclusion to the *BIOC* analysis, the Visa Officer observes that there was insufficient evidence to demonstrate that having to depart Canada for the purpose of applying for permanent residence would have a significant impact on the best interests of the children. The Applicants submit that this is an application of the unusual and undeserved or disproportionate hardship tests that was found to be unreasonable in the *BIOC* context in *Kanthasamy*, above, at para 59.

[45] As for the children in Tanzania, the Applicants argue that the analysis was slanted to favour a negative decision. The Visa Officer found that it was in the best interests of these children to have their mother with them in Tanzania, which leaves unexamined the possibility

that the Principal Applicant could, if the H&C exemption was granted, sponsor them to Canada after acquiring permanent residence.

[46] A *BIOC* analysis should favour non-removal, yet the Visa Officer takes the opposite view: *Hawthorne v Canada (Citizenship and Immigration)*, 2002 FCA 475 [*Hawthorne*]. The Applicants submit that the Visa Officer seemed intent on demonstrating that conditions in Tanzania were not sufficiently poor to justify not removing the children and their mother. But as an H&C application for permanent residence, the analysis should have been focused on whether the decision was good for the children: *Li v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 451 at para 1.

(2) Mental Health Issues

[47] The Applicants take issue with the Visa Officer's focus on whether resources for the treatment of mental health are available in Tanzania. This ignores the effect of the removal from Canada on the Principal Applicant's mental health. The Applicants argue that the Principal Applicant's mental health would likely worsen with removal, which is a relevant consideration that must be identified and considered.

[48] The Decision also discusses irrelevant issues, most notably that there was insufficient evidence to demonstrate the Principal Applicant was targeted due to sexual orientation, or was a victim of political and religious violence. These issues, which are addressed earlier in the Decision, are not relevant to mental health issues.

[49] The Visa Officer also did not contemplate, beyond emotional difficulty, the effect of the removal on the Principal Applicant. Instead of solely comparing the mental health resources between Tanzania and Canada, the Applicants argue that there should have been consideration of the impact of the removal process, which can be traumatic and pose mental health challenges.

[50] Additionally, the mental health evidence was treated in isolation. Dr. Durish had explained that the Principal Applicant's narrative was difficult to follow because of the mental health issues. The Applicants contend that, had the Visa Officer considered Dr. Durish's evidence, there would have been more empathy and understanding that could have enriched the Decision.

(3) Sexual Orientation

[51] Although not explicitly stated, the Visa Officer was skeptical that the Principal Applicant was a lesbian. Despite the Principal Applicant's devotion of her free time to participating in the LGBT community, the Visa Officer finds this insufficient to demonstrate she is a lesbian on the basis that the community accepts people of all sexual orientations. While this is presumably true, there is no evidence to support such a claim. Additionally, common sense dictates that, although open to everyone, LGBT organizations are likely to attract LGBT individuals.

[52] Minimal weight was assigned to all third party evidence concerning the Principal Applicant's sexuality on the basis that it was hearsay or obtained via sources that were personally close to the Principal Applicant. For instance, the Visa Officer discounted the vice chairman's letter that said the Principal Applicant would be persecuted or killed due to her

sexual orientation on the basis that he could not have personally witnessed her sexual preferences or obtained first-hand knowledge of her sexual orientation. Instead, the statement was found to have been based on the accounts of other members who had likely formed relationships with the Principal Applicant after four years of participation.

[53] The Visa Officer does not state what evidence would have been sufficient. It is possible to infer that a same-sex relationship would have demonstrated evidence of the Principal Applicant's sexual orientation, but the Principal Applicant does not have a long-term partner. Notably, Dr. Durish's assessment stated that the Principal Applicant would like to be in a same-sex relationship but has been held back by her personal challenges.

[54] The Applicants also argue that certain aspects of the Principal Applicant's personal history counted against her in the assessment, namely the fact that she has been married three times and has eight children. However, this is also addressed in Dr. Durish's report, which explains that the Principal Applicant's history with men was not inconsistent with her being a lesbian due to the extreme homophobia present in Tanzania.

[55] The Applicants also take issue with the finding that the Principal Applicant lacked subjective fear of persecution and discrimination as a lesbian, which was grounded on the absence of sexual orientation as a ground in her prior refugee claim. The Principal Applicant explained that this ground was omitted based on the advice of members from her linguistic community. The Principal Applicant does not speak English or French and relied on the evidence of others. Additionally, as a Member of a sexual minority from an intensely homophobic society,

the Principal Applicant's decision to not disclose her orientation to strangers, including authority figures, echoes the case of *Fah Ng v Canada (Citizenship and Immigration)*, 2012 FC 583.

[56] The Applicants also cite *VS v Canada (Citizenship and Immigration)*, 2015 FC 1150 [*VS*] for support. The Visa Officer found insufficient evidence to demonstrate how the issues of discrimination and violence against sexual minorities in Tanzania would affect the Principal Applicant upon her return, but the Applicants note that the implications for a gay woman entering an intensely homophobic environment should be clear.

(4) Re-Establishment

[57] The Visa Officer found that the Principal Applicant's successful establishment in Canada demonstrated she could assimilate with equal success in Tanzania. However, the mental health evidence demonstrates that the Principal Applicant has limitations that would affect her ability to assimilate. Additionally, the Principal Applicant's success in Canada within the LGBT community is unlikely to be duplicated in Tanzania due to societal discrimination and violence.

[58] The Decision also states that the Principal Applicant is a resourceful and adaptable individual who was able to escape from an abusive relationship after years of suffering. The Applicants argue that this successful establishment was dependent on the goodwill of a variety of civil society organizations and free legal representation and counselling. While the Principal Applicant may have adequately established herself in Canada, this does not prove she is a resourceful individual who would be able to thrive in a difficult environment after nine years away.

[59] In summary, the Applicants submit that the Decision is unreasonable. The Applicants also say that the Visa Officer breached the principles of fundamental justice, but do not elaborate further.

B. *Respondent*

[60] As a preliminary matter, the Respondent takes issue with paragraphs 12, 14-21 of the Applicants' affidavit, which contains argument and conclusions not within their knowledge and which should be afforded little or no weight: Rule 81 of the *Rules*; Rule 12 of the *CIRP Rules*.

[61] The Respondent submits that the denial of the H&C exemption in this case does not involve the determination of an applicant's legal rights; rather, it is a refusal of a request for an exemption from the applicable requirements with which foreign nationals applying for permanent residence must comply. In this context, the Visa Officer appropriately considered all the factors, but the Applicants were unable to meet the onus upon them due to insufficient evidence. Thus, the Decision does not warrant judicial intervention.

(1) Best Interests of the Children

[62] The Respondent submits that the Visa Officer provided a detailed analysis of the *BIOC* based on the information provided. The evidence simply did not demonstrate that the *BIOC* required the children to stay in Canada; this finding was based on the fact that they should remain with their mother and join their siblings in Tanzania.

(2) Mental Health Issues

[63] With regards to the Visa Officer's treatment of the mental health evidence, the Respondent submits that there was no error in focusing on the treatment options available in Tanzania because there was little evidence regarding the effect of the removal on the Principal Applicant. The psychotherapist's assessment did not assess the effect of the return and only noted the behaviour exhibited by the Principal Applicant when asked about the possibility of return. The Principal Applicant's PTSD is not a sole justification for an H&C exemption.

(3) Sexual Orientation

[64] There was no error in the assessment of the evidence regarding the Principal Applicant's sexual orientation, which was never raised as a fear before the RPD, where it could have been examined. The evidence provided was insufficient to establish that the Principal Applicant would be adversely affected by country conditions based on her sexual orientation. In particular, involvement with LGBT organizations does not suffice to establish that she is a lesbian.

[65] While the Principal Applicant provided an explanation for omitting her sexual orientation in her refugee claim, the Respondent contends that the Visa Officer was not obliged to find the explanation sufficient. The Principal Applicant has not demonstrated an error in the consideration of her failure to cite sexual orientation as a ground in her refugee claim.

[66] Since the Visa Officer did not accept that the Principal Applicant was a lesbian, this case is distinguishable from *VS*, above.

[67] Moreover, the Visa Officer was entitled to look at past behaviour, including the Principal Applicant's past personal history in heterosexual relationships. The Principal Applicant could have provided sufficient evidence to demonstrate she was a lesbian but failed to do so.

(4) Establishment

[68] The finding that the Principal Applicant could re-establish herself in Tanzania is not unreasonable. There was evidence, including the existence of a family network, to support the conclusion.

[69] In summary, the Visa Officer assessed the evidence as a whole and found it insufficient to justify an exemption on H&C grounds. Thus, the Decision should stand.

C. *Respondent's Further Memo*

[70] The Respondent reiterates and relies on prior submissions and adds the following arguments.

(1) Breach of Natural Justice

[71] The Respondent takes issue with the Applicants' assertion that the Decision was unfair as the assertion carries no evidentiary support aside from statements in the affidavit that disagree with the Visa Officer's conclusion. This submission has no merit and does not show how the conclusions were not based on evidence or common sense.

(2) Reasonableness

[72] The Respondent continues to take the position that the Decision is reasonable. While the Principal Applicant says that the inconsistences regarding her evidence at the RPD hearing were due to her inability to focus and concentrate, there does not appear to be evidence presented to the RPD to explain her difficulties. As such, the RPD's credibility findings must stand, which make them available and relevant for consideration in the context of the Visa Officer's Decision.

[73] Moreover, the Visa Officer's conclusion that the Principal Applicant was resourceful and adaptable was based on the material presented, including her statutory declaration that she participated in many volunteer activities.

(3) Onus for H&C Relief

[74] The Applicants failed to demonstrate that they had achieved a degree of establishment in Canada sufficient to warrant an exemption under s 25 of the *IRPA*. The Principal Applicant argued that her establishment was dependent upon the goodwill of various organizations, which supports the Visa Officer's finding. However, the Respondent submits that since most of the Applicants' family is present in Tanzania, they can aid the Principal Applicant in her re-establishment.

(4) Best Interests of the Child

[75] In *Hawthorne*, above, at paras 5-8, the FCA found that a *BIOC* analysis requires the determination of the likely degree of hardship to the child caused by removal of the parent and the weighing of this together with other factors militating in favour of or against the removal of the parent. Additionally, *Kharlan v Canada (Citizenship and Immigration)*, 2016 FC 678 at paras 25-26, found that *Kanthasamy*, above, did not change the nature of H&C determinations; the onus remains on applicants to justify the exemption, which was not done in this case. Furthermore, the Respondent cites *Puna v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1168 and *Fernando v Canada (Citizenship and Immigration)*, 2016 FC 1372 at para 16 for additional jurisprudential support of the *BIOC* analysis in the context of the IAD.

VIII. ANALYSIS

[76] The Applicants have raised four principal issues which I will deal with in turn.

A. *Best Interests of the Child*

[77] Given the evidence adduced and the submissions made by the Applicants, it is difficult to understand some of the allegations of error which she now says were made with regard to the Visa Officer's *BIOC* analysis.

[78] The Applicants complain that the Visa Officer focussed his decision on the Principal Applicant's two children in Canada, thus effectively excluding the overseas children.

[79] The Visa Officer explains why the two children in Canada are the necessary focus:

> The applicant has a total of eight children, six in Tanzania, and two in Canada. The applicant children are Hussain, Madrik, Jamal, Arafat, Mohammed, Kauthar, Tahjaira, and Zunaira; their ages are 20, 20, 18, 15,12, 9, 6 and 3 respectively. I note that Husain and Madrik were over the age of eighteen at the time the applicant's application for permanent residence was received; therefore, the Best Interests of Children, BIOC, does not apply to them. According to IP 5.12, BIOC "applies to children under the age of 18 years as per the Convention of the Rights of the Child". While Jamal, Arafat, Mohammed and Kauthar were under the age of eighteen at the time the applicant's application for permanent residence was received, I note that the applicant did not indicate how their best interests would be affected by her return to Tanzania, as such, I will focus the topic of BIOC on Tahjaira and Zunaira.
>
> [Emphasis added]

[80] Given the dearth of submissions on the children in Tanzania, the Visa Officer could only offer a general finding that the Principal Applicant "has three underage children who are currently residing in Tanzania; I find it would also be in their bests interests to have their mother with them in their country of residence. I find that the applicant can extend her love and support to all her children upon their return to Tanzania."

[81] The onus was upon the Applicants to put forward the factors they wanted the Visa Officer to take into account. The Visa Officer dealt with the submissions on violence against children, education, kidnapping, sexual violence and abuse. Apart from these factors, the Applicants do not say what the Officer should have considered with regards to the Tanzanian children except that the Principal Applicant "left unexamined the possibility that, if the H&C exemption was granted, those children could ultimately be sponsored to Canada by their mother once she achieved permanent residence."

[82] But this is a factor the Applicants have raised for this judicial review. It was not something the Principal Applicant asked the Visa Officer to consider in her H&C application. The Visa Officer did not have to consider all future contingencies and possibilities. This would not be possible, in any event. It was up to the Principal Applicant to put forward what was material for a consideration of the best interests of her Tanzanian children, and the fact is that most of her evidence and submissions were directed to the interests of the children presently in Canada.

[83] For example, in *Garas v Canada (Citizenship and Immigration)*, 2010 FC 1247, the Court held as follows:

> [46] An H&C application is not a mathematics formula that is applied in a vacuum. The officer does not have the responsibility to consider all possible scenarios that could possibly result from the applicant's removal, nor does she have to address issues that are purely speculative. The officer's role is to assess the special circumstances that the applicant raises and to determine whether they warrant the application of an exceptional exemption.
>
> [47] Therefore, I conclude that in this case, the possibility that the applicant's children would remain in Canada was simply not raised by the applicant, and as such, the officer did not have to assess the impact upon the children of such a scenario.
>
> [emphasis in original]

[84] In *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 the Federal Court of Appeal also confirmed at para 5:

> An immigration officer considering an H & C application must be "alert, alive and sensitive" to, and must not "minimize", the best interests of children who may be adversely affected by a parent's deportation: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 75. However, this duty only arises when it is sufficiently clear from the material submitted

> to the decision-maker that an application relies on this factor, at least in part. Moreover, an applicant has the burden of adducing proof of any claim on which the H & C application relies. Hence, if an applicant provides no evidence to support the claim, the officer may conclude that it is baseless.
>
> [emphasis added]

[85] The Applicants also say that the Visa Officer did not consider the best interests of Tahjaira, who is an American citizen by birth. The error alleged in that the "Officer did not consider the prospect of her removal, or return to the United States, only the Officer's preferred outcome of her joining her mother in Tanzania."

[86] Once again, as the Decision makes clear, the Applicant's submissions were that "it is not in the best interests of the children to leave their lives in Canada for Tanzania at this crucial development stage in their lives…." There was no indication that Tahjaira would not be accompanying her mother to Tanzania or that the Visa Officer needed to consider her removal to the United States.

[87] The Applicants argue further that the Visa Officer does not "devote individual attention to the fact that Zunaira is a Canadian citizen." The Principal Applicant appears to think that this is important because the "law is clear that Canadian citizen children can be removed with their parents to another country where appropriate" and the Applicants attempt to clarify the concern as follows:

> 20. To be clear, it is not being argued that the mere fact of Zunaira's being a Canadian citizen automatically entitles her, her sister and her mother to remain in Canada. The law is clear that Canadian citizen children can be removed with their parents to another country where appropriate. The Applicants merely point

> out that the fact of Zunaira's citizenship, in conjunction with her age and all other best interests of the child factors, should have been explicitly addressed by the Officer to produce a reasonable decision. The Officer, in discharging their duty to render a reasonable decision, could have been guided by the words of Snider J.:
>
> > In general, a reasonable approach to this difficult issue of the consideration of the best interests of the child would be to consider the duty as a continuum. On one end of that continuum would be the thorough analysis required in the context of an H & C application, as described in Baker, supra. At the other end would be a less thorough, but nonetheless sensitive, direction of the decision-maker's mind to the children affected by the decision.
>
> [footnotes omitted]

[88] Zunaira is not an applicant in this application. Practically speaking, she may have no choice but to remain with her Mother and accompany her to Tanzania at this time. But, as a Canadian citizen, Zunaira is free to re-enter and live in Canada at some time in the future. It is not clear what the Applicants feel the Visa Officer failed to consider. In my view, the Decision provides a reasonable assessment of Zunaira's best interests, given the submissions made on point.

[89] The Applicants also say that the Visa Officer did not address the possibility that Tahjaira, as an American citizen, could be removed "to the United States or Tanzania." The Principal Applicant did mention the possibility of Tahjaira's removal to the US in her H&C affidavit at para 40: "I am also terrified for my daughter if she had to return to the United States or Tanzania. Even though she has citizenship in the United States, she is only four years old and could not live without me. I have no right to enter or remain in the United States. Her father was abusive to me

and did not like our daughter, and would often say that he didn't think she was his. I am afraid she would grow up in state care or in an abusive home." However, there was no indication as to how this might occur and it is an invitation to the Visa Officer to consider speculative fears. As I pointed out above, the submissions were that Tahjaira would be leaving Canada with her mother to go to Tanzania, so it was not necessary for the Visa Officer to consider speculation about her removal to the United States. If that is not what the Principal Applicant intends, then all of her submissions on what Tahjaira would face in Tanzania would be irrelevant. If the Principal Applicant means that the Visa Officer failed to consider that Tahjaira could be removed from Tanzania to the United States, then there is nothing to suggest that this was anything more than a fear of the Principal Applicant She produced no evidence and made no submissions on this point, and the onus was on her to do so.

[90] In a more general way, the Applicants claim that the "BIOC analysis is structured as a rebuttal of the arguments concerning country conditions made by Ms. Suleiman's counsel":

> This leads to a reviewable error by the Officer, namely failing to adequately identify the children's interests. This fails to live up to the requirements that interests be well-identified and defined, and examined with attention in light of evidence.

[91] It is not a reviewable error for the Visa Officer to address the arguments raised by the Applicants' counsel. It would be a reviewable error if she did not do so. The Visa Officer addressed the *BIOC* in so far as those interests were identified by the Applicants and/or were apparent on the record, and in so far as the evidence supported the Applicants' submissions. The Visa Officer's principal finding on this, as on other grounds, is that the Applicants did not adduce sufficient persuasive evidence to support the concerns that she raised.

[92] The Applicants further accuse the Visa Officer of simply applying the old "unusual and underserved or disproportionate" hardship test by a different name. There is nothing in the Decision to support this allegation. The Visa Officer's observation that the evidence does not support that leaving Canada to make a permanent residence application "would have a significant negative impact on the best interests of the children concerned" or that "the daughter's interests would be directly compromised," is not a requirement that the Applicants prove a particulate level of hardship. It is a comment upon what the evidence demonstrates, or fails to demonstrate.

[93] At the oral hearing of this application before me on March 6, 2017, the Applicants' principal point was that the Visa Officer did not sufficiently weigh the benefits of the children remaining in Canada against the consequences of their going to Tanzania.

[94] A reading of the Decision in full, however, reveals that the Visa Officer makes the usual assumption that the children would be better off in Canada but, given what the children are likely to encounter in Tanzania, there was insufficient evidence to suggest that there would be a "significant negative impact on the best interests of the children concerned." This includes the children presently in Tanzania as well as the two young children (ages 6 and 3) presently in Canada with the Applicant. I don't see that the Visa Officer could have done more in terms of a comparison. The conclusion was that, although the young children in Canada would be better off staying here, the children in Tanzania will be better off if they have their mother and siblings with them, and effecting this result will not negatively impact the children in Canada sufficiently

to make this a significant factor in the overall decision. It is possible to disagree with this reasoning and conclusion but, in my view, it is not possible to say that it is unreasonable.

[95] I can find no reviewable error with Visa Officer's *BIOC* analysis.

B. *Assessment of Mental Health Evidence*

[96] The Applicants say that the Visa Officer "ignored what the effect of removal from Canada would be on the Principal Applicant's mental health" and assert that "her mental health would likely worsen if she were to be removed to Tanzania…." The Applicants offer no evidence to support this assertion. I see nothing in the psychotherapist's report to suggest that the Visa Officer should consider this factor. In oral argument before me, the Applicants said that Dr. Durish's report makes it clear that she is so traumatized that she cannot cope and cannot even leave the house. However, the Principal Applicant also placed before the Visa Officer extensive evidence of her involvement in the lesbian community where she is an active and effective volunteer. This evidence does not suggest that the Principal Applicant is so traumatized that she is unable to function. In any event, the Visa Officer's conclusions obviously encompasses the psychological difficulties of removal to Tanzania:

> I accept that it may be emotionally difficult for the applicant to return to Tanzania due to her desire to remain in Canada; however, I find that there are resources that are available in Tanzania to help her cope with her emotional, mental health and medical needs. I am satisfied that the applicant will be able to secure reliable and consistent mental health treatment, including counselling, that she requires for her mental health issues in Tanzania. I find that the applicant's self-awareness of her mental health issues make it more likely for her to resort to the mental health treatments that are available in Tanzania. I find that the applicant has provided insufficient evidence to demonstrate how her mental health issues

> would cause her to suffer from hardship upon her return in Tanzania due to ta lack of treatment options or other reasons.

[97] The Visa Officer's analysis also addresses and encompasses the Applicant's assertion that the Officer does not consider the effects of the removal process itself. There is no evidence that the Principal Applicant cannot travel and the Visa Officer reasonably concludes that, whatever her medical needs are upon arrival in Tanzania, there is nothing to suggest they cannot be met there.

[98] In oral argument, Applicants' counsel emphasized that Dr. Durish's report is the "foundation of the application" because it explains many other matters, such as why she was not able to produce any documentation. The Applicants point to the direct observations that were made by Dr. Durish and say that they were not really dealt with by the Visa Officer.

[99] The Visa Officer fully accepts that the Principal Applicant is suffering from PTSD and depression, but what she cannot accept is that Dr. Durish's report, when read in the full context of the other evidence, establishes the Principal Applicant's lesbian orientation. It has to be borne in mind that the full context includes:

(a) The Applicant's failure to raise sexual orientation before the RPD for no reasons that the Visa Officer could accept;

(b) A negative PRRA decision that did not receive leave when it came before this Court;

(c) The fact that the Principal Applicant has married three different men in her life and has had eight children; and

(d) A total lack of documentation to support her back-narrative on sexual orientation and sexual activity when she lived in Tanzania.

[100] Dr. Durish's report says that the Principal Applicant's fear of returning to Tanzania "was palpable" but this does not establish her sexual orientation. Dr. Durish can say that "her eagerness to talk about the experiences of LGBTQ folks in Canada and her fixation on her female partners support [the Principal Applicant's] claims regarding her sexual orientation." This may well be the case, but Dr. Durish is not taking into account the full context of the Principal Applicant's immigration and refugee history in the way that the Visa Officer must.

[101] The Visa Officer gives full reasons as to why Dr. Durish's report is not sufficient, in the full context of the case, to establish sexual orientation. It is possible to disagree with these reasons but, once again, I cannot say that they fall outside of the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[102] Also, the Visa Officer did not consider the mental health issues in isolation. It was not problems with the Principal Applicant's memory or her narrative that led the Visa Officer to reject her positions. The Applicants simply failed to produce sufficient evidence to support the assertions the Principal Applicant made.

C. *Sexual Orientation Evidence*

[103] The Principal Applicant says that her sexual orientation - a lesbian woman - was central to the H&C application because it affected both establishment factors in Canada and adverse country conditions in Tanzania.

[104] The Principal Applicant's sexual orientation was a particularly difficult factor for the Visa Officer to assess in this case for reasons attributable to the Principal Applicant herself.

[105] First of all, she did not raise sexual orientation before the RPD for reasons that the Visa Officer reasonably rejected. In addition, her PRRA application was rejected and the Court did not grant leave for judicial review.

[106] Secondly, the Principal Applicant's back-story of incidents related to her sexual identity was not supported by any documentation. For example, the Principal Applicant says that the death and circumcision of an important same-sex partner, Martha, had been reported to her by her (the Principal Applicant's) sister. Yet she did not provide a letter from her own sister or any other documentation to support her story of what had happened. Given that the Principal Applicant had not mentioned sexual orientation before the RPD, supporting documentation was particularly important.

[107] In addition, of course, the Principal Applicant has been married three times and is the mother of eight children.

[108] The Principal Applicant, however, chose to rely upon the psychotherapeutic assessment of Dr. Durish that had been requested by the Principal Applicant's own lawyer, as well as a letter from the Barbara Schlifer Commemorative Clinic (where the Principal Applicant had been counselled for the physical and sexual abuse she claimed to have faced in Tanzania), a letter from APAA where the Principal Applicant had volunteered to assist gays and lesbians, and a letter from Jukumuletu, where she had volunteered for four years.

[109] The problem for the Visa Officer in confronting and assessing this later evidence, is that it was assembled after the RPD decision and after the Principal Applicant had decided to assert a lesbian identity to resist any return to Tanzania. Evidence that has been assembled in this way and for this purpose is very difficult to assess and the Visa Officer gave reasons why the evidence provided did not establish a sexual orientation that could be relied upon. Given the lack of evidence from the past and the Principal Applicant failure to raise sexual orientation as part of her refugee claim, and the fact that the later evidence did not come from anyone who had personally witnessed or who had some first-hand knowledge of the Principal Applicant sexual orientation, the Visa Officer found that the evidence was not sufficient.

[110] Dr. Durish explained that the Principal Applicant's history with men is not inconsistent with her being a lesbian but, of course, nor does it support that she is.

[111] The Principal Applicant now asserts, in order to overcome her failure to raise sexual orientation before the RPD, that sexual minorities, especially people coming from intensely homophobic societies, cannot and should not be expected in all situations to disclose their

identity to strangers, including authority figures. But there is nothing in the Decision to suggest that the Visa Officer did harbour such an expectation. He simply took what the Principal Applicant told him (that a woman from Zancan had told her that her sexual orientation is not a reason for refugee protection in Canada) and pointed out that this woman was not present at the refugee hearing and that the Principal Applicant had had counsel to help her with her refugee claim, and she still did not raise sexual orientation.

[112] Presumably, the Principal Applicant was not involved in any same-sex relationship at the time of her H&C application or she would have produced evidence to this effect. She points out now that "not everyone is so fortunate as to be in a committed relationship," but this goes both ways. The fact that she can produce no direct evidence of a same-sex relationship doesn't mean she wouldn't like to have such a relationship; but nor does it prove that she is a lesbian, and without some more objective evidence, there is little to counter the established fact that she has been married three times and has eight children.

[113] If I had been assessing this factor myself, I might have given the Principal Applicant the benefit of the doubt, but that is not my role. What I cannot say is that, given the evidence before the Visa Officer on this issue, the conclusions he came to were not reasonable and fell outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

D. *Ability to Re-establish Herself in Tanzania*

[114] The Applicants' final point is that the Visa Officer reached an unreasonable conclusion regarding the Principal Applicant's ability to re-establish herself in Tanzania.

[115] The Applicants accuse the Visa Officer of being callous for pointing to the Principal Applicant's resourcefulness and ability to assimilate, but the Applicants' main point is as follows:

> 55. The Principal Applicant has managed to survive in Canada, under difficult conditions, for six years. During this period she has, as the Officer noted, accomplished a degree of establishment. But this establishment is incomplete and largely dependent on the goodwill of a variety of civil society organizations, mostly rooted in either the African and/or LGBTQ communities, that she has been able to associate with on a voluntary basis. She has also benefitted, during this period, from a large amount of free representation and free counselling.
>
> 56. It is open to an immigration officer to decide that the above constitutes an adequate or inadequate level of establishment in Canada on which to grant an humanitarian and compassionate exemption from the normal permanent residence application rules. But it is unreasonable to try to claim, as the Officer has done, that the above proves the Principal Applicant is a resourceful individual. The ability to eke out continued survival should not be conflated with the ability to adapt and thrive in a difficult environment after nine years absence.

[116] The "difficult environment" referred to by the Principal Applicant assumes that her sexual orientation is an established fact, but that is not the case. And, as the Visa Officer points out:

> [T]he applicant is an educated person who received twelve years of schooling and completed her secondary school in Tanzania. She is also an independent woman who worked as a business owner and

> obtained employment at the Zanzibar International Airport. I find she is a cultured woman who possesses the ability to protect her children from the general country violence in Tanzania. While I recognize that the standard of living in Tanzania is not the same as the standard of living in Canada, I find that Parliament did not intend for the purpose of s. 25 of the Immigration and Refugee Protections Act (IRPA) to be to make up for the difference in standard of living between Canada and other countries.

[117] The Visa Officer also noted that resources are "available in Tanzania to help her cope with her emotional, mental health and medical needs" and that most of her family are in Tanzania.

[118] None of this sounds callous to me, and it cannot be said to be unreasonable.

IX. Certification

[119] Counsel agree that no question for certification arises 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

SOLICITORS OF RECORD

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