Federal Court  Cour fédérale

Date: 20190102

Docket: IMM-5275-17

Citation: 2019 FC 3

Ottawa, Ontario, January 2, 2019

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

GRANT ALEXANDER SKINNER,
DIANNE SANDRA SKINNER,
BRITTANY-PAIGE SKINNER,
CHESNEY-JANE SKINNER, and
MIELO-TRENT SKINNER by his litigation guardian DIANNE SANDRA SKINNER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are citizens of the Republic of South Africa. The primary Applicant, Grant Alexander Skinner, is 53 years old. His 48-year-old wife, Dianne Sandra Skinner, and his nine-year-old grandson, Mielo-Trent Skinner, are co-Applicants. They applied for permanent residence visas from within Canada on humanitarian and compassionate [H&C] grounds. Mr.

and Mrs. Skinner's adult daughters, Brittany-Paige Skinner, age 25, and Chesney-Jane Skinner, age 23, also applied for permanent residence visas from within Canada on H&C grounds at the same time as their parents did in separate applications. The Applicants' applications were received by Citizenship and Immigration Canada in December 2016.

[2] In three separate decisions, each dated November 9, 2017, the same Senior Immigration Officer at the then Citizenship and Immigration Canada [CIC] determined that exemptions would not be granted to the Applicants and refused their applications for permanent residence from within Canada. The Applicants have now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], for judicial review of the Officer's three decisions. They ask the Court to set aside the decisions and return their applications for redetermination by another immigration officer.

I. Background

[3] Mr. and Mrs. Skinner and their two daughters have lived in Canada since December 2007. Mielo-Trent resided with his mother in South Africa until her death in a car crash in December 2012. Mielo-Trent was in the car at the time of the crash; he survived but his right leg was injured and required eight screws and a metal plate to mend. Mrs. Skinner went to South Africa to bury her daughter (which she says was not only emotionally difficult due to the loss of her child, but also because she had to bribe state undertakers to have her daughter appropriately buried), and to take care of Mielo-Trent since his father was unable or unwilling to care for him. The North Gauteng High Court in Pretoria granted Mrs. Skinner guardianship of Mielo-Trent, and he has resided with his family in Canada since January 2013.

[4] Mr. Skinner came to Canada under a work permit issued in December 2007 permitting him to work for Axentia Solutions Corporation; this permit was valid until December 2011. Mrs. Skinner was issued an open work permit, and Brittany-Paige and Chesney-Jane were issued study permits in December 2007; these permits were also valid until December 2011. Their requests to extend these permits were refused in February 2012 as were their requests for restoration in June 2012. In September 2012, Mr. Skinner was issued a work permit for Axentia/Accenture Canada and his spouse was issued an open work permit; these permits were valid until September 2014.

[5] An application for permanent residence pursuant to the Canadian Experience Class based on Mr. Skinner's work experience in Canada was sent to CIC in November 2012. This application, which included the entire Skinner family, was refused in April 2014 because the Applicants' former counsel had submitted incorrect documentation; their counsel at the time provided a letter to support a Labour Market Opinion rather than a letter to confirm Mr. Skinner had worked in Canada in a qualifying occupation for several years. A further application on this basis failed because the maximum number for such applications had been met by the time it was resubmitted.

[6] In November 2014, Mr. and Mrs. Skinner submitted visitor record requests. These were approved in March 2015. However, their extension requests submitted before expiration of their temporary resident status were refused in September 2015. After losing their status in Canada, the Applicants sought to regularize it by submitting applications for permanent residence visas from within Canada on H&C grounds.

II. The Officer's Decisions

[7] In separate decisions, each dated November 9, 2017, the Officer refused the H&C application in respect of Mr. and Mrs. Skinner and their grandson as well as the applications of Brittany-Paige and Chesney-Jane. The Officer noted the Applicants' H&C grounds were the best interests of Mielo-Trent, hardship associated with adverse country conditions in South Africa, and their establishment in Canada.

A. *Best interests of Mielo-Trent*

[8] The Officer acknowledged that Mielo-Trent had created limited ties to Canada, finding it unlikely that he had forged deep or meaningful relationships outside his family which would be severed should he reside in South Africa. After noting that the Applicants appeared to be a tight and cohesive family unit, the Officer found it was in Mielo-Trent's best interests to remain with his loving grandparents. The Officer then stated: "I somewhat agree with the applicants that it is in the child's best interests to stay in Canada. … Nonetheless, I am neither satisfied that he is so integrated into Canadian society nor that the country conditions in South Africa are so bad that accompanying his grandparents to South Africa would significantly compromise the [*sic*] his wellbeing."

[9] With respect to the x-rays and photos of Mielo-Trent's injuries from the car accident, the Officer found this evidence of insufficient probative value to establish that he had received inadequate treatment in South Africa. The Officer remarked that, although Canadian health services are superior to what is generally available in South Africa, and while the Applicants

may not like the quality of state health care facilities in South Africa, there was little information to suggest they could not afford private health care.

[10] The Officer recognized that, while Canada has a quality education system, the Applicants had provided little objective evidence of how the Canadian education system compared to that in South Africa. The Officer noted that Mielo-Trent's grandparents did not suggest that either of their adult children were held back upon entering the Canadian school system. This, the Officer said, suggested that the levels of education were comparable. The Officer further noted that Mielo-Trent was in the beginning stages of learning and he would have access to family members whose native language is Afrikaans. In the Officer's view, there was little evidence to suggest the Applicants could not afford additional resources, such as a tutor, to assist with Mielo-Trent's return.

[11] The Officer found Mielo-Trent likely had made friends, is close to his family, and has participated in community activities, factors which the Officer accorded some positive weight. However, the Officer found Mielo-Trent's separation from his father, which would be made permanent if permanent residence was granted, went somewhat against his best interests. Mielo-Trent also has relatives in South Africa around his age who could provide support during his transition back.

[12] With respect to Mr. and Mrs. Skinner's fear of child abuse, the Officer found their statements unpersuasive as South Africa has policies to prevent child abuse and Mielo-Trent has trustful adults in his life in the form of his grandparents. The Officer also found that, while crime

and violence may cause some anxiety and Mielo-Trent would not have the same level of freedom to play outside as he would in Canada, there are methods of redress, and the Applicants had not shown why he would be personally affected.

[13] The Officer acknowledged that Mielo-Trent would go through a period of adjustment upon return to South Africa because he will need to make new friends and acclimatize to the language and culture. The Officer further acknowledged that Mielo-Trent's adjustment may be harder than other children due to his injuries sustained from the car accident, the death of his mother, and his grandmother's potential mental health issues. The Officer nevertheless found Mielo-Trent would be supported by his grandfather, aunts, and, if required, an au pair.

B. *Hardship associated with adverse country conditions*

[14] After reviewing Mr. and Mrs. Skinner's personalized experiences in South Africa and the general country conditions there, the Officer concluded that, while South Africa has a high general crime rate as well as gender-based harassment, the information indicated that the likelihood of crime as well as gender-based crime was low for individuals similarly situated to the Applicants. The Officer then reviewed the circumstances surrounding the death of Mielo-Trent's mother, finding there was insufficient evidence to establish bribery was required to bury his mother.

[15] The Officer also reviewed a psychological assessment conducted by Dr. Day relating to Mrs. Skinner's post-traumatic stress disorder [PTSD]. The Officer quoted from the psychologist's report as follows:

> … it is almost certain that returning to that country [South Africa] will lead to an immediate and profound exacerbation of her already prominent PTSD symptoms. In this circumstance, she is likely to be overwhelmed by fear and avoidance that will largely incapacitate her. In addition, to an expected profound exacerbation of her PTSD symptoms, it is also likely that she will fall into a full-fledged major depressive episode .... There is little doubt, returning to South Africa will lead to an onslaught of psychological symptoms of such intensity that they will threaten to render her incapable of adequately fulfilling even minimal life role responsibilities. This eventually raises particularly grave concerns regarding her ability to effectively care for her handicapped grandson, for whom she is the primary caregiver.
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> …
>
> … it is unlikely significant progress can be made in addressing her PTSD symptoms until such a time as she does not feel in danger of being returned to an environment that expose to her a continuation of the abuse and traumatisation she has been subjected to.

[16] In assessing Dr. Day's report, the Officer noted there was little indication Mrs. Skinner had sought out treatment since the assessment occurred more than a year before submission of the H&C application. Although the Officer accepted Dr. Day's diagnosis and recognized him as an expert in his field, the Officer was nonetheless

> … cognizant that he spent an unstated amount of time during an unknown amount of sessions interviewing the secondary applicant for the purposes of an immigration case. Moreover, he does not explain why there is only a single method available to treat Mrs. Skinner's mental health issues. Further, I find that Dr. Day does not indicate in his report that he witnessed the series of events in Zimbabwe/South Africa/Canada. Accordingly, I find that the information in Dr. Day's report concerning the circumstances of the applicants' lives are not objective since it is likely based on information that was provided to Dr. Day by the secondary applicant only. In the same vein, I have little evidence that Dr. Day consulted country condition documentation for the applicants' country of return. Thus, the resources available to Mrs. Skinner in South Africa are not accounted for in the conclusion. I assign only some value in the assessment's other conclusions without further documentary evidence to support the statements …

[17] After referring to documentary evidence about mental health services in South Africa, the Officer concluded that mental health services would be available to Mrs. Skinner in South Africa if she required them.

[18] The Officer ascribed little weight to Mr. and Mrs. Skinner's fear of crime. Although the Officer accepted that anyone leaving Canada to return to a country with higher rates of crime and weaker law enforcement structures would have concerns about their personal security, the Officer found it would be speculative to suggest the Applicants would find themselves victims of crime in view of the objective country condition documentation.

[19] With respect to other adverse country conditions in South Africa, the Officer acknowledged that being absent from the country for several years caused some hardship for Mr. and Mrs. Skinner. The Officer found, however, they would not have the added hurdle of a language barrier, they appeared to be able to locate employment regardless of the economy, and the majority of their lives had been spent in South Africa. The Officer also noted that, while Mr. Skinner had a long history of being a self-starter in both South Africa and Canada, he had not explained how he would be unable to conduct his current business remotely from South Africa or why his business would not be viable in the South African economy.

[20] The Officer recognized that, while the Applicants would miss their Canada-based friends and family should they return to their country of origin, separation from Canada would not prevent them from maintaining relationships. Social media such as Facebook, Twitter, and Skype made the ability to maintain relationships from afar instantaneous, inexpensive, and simple. In

the Officer's view, this ease of accessibility would also be invaluable to their transition back to South Africa because they would still be able to have a social support network.

C. *Establishment in Canada*

[21] Prior to assessing the establishment of Mr. and Mrs. Skinner and their grandson, the Officer noted it was not the place of an H&C application to reassess whether Mr. Skinner would have met the requirements for permanent residence under the Canadian Experience Class. The Officer also noted that Mr. and Mrs. Skinner had resided in Canada for nine years, while Mielo-Trent had lived in Canada for nearly four years. The Officer observed that, while Mr. and Mrs. Skinner held valid work permits for roughly six years and two months and had maintained visitor status for nearly six months, they were without status in Canada for a total of about 40 months at the time they submitted their H&C application.

[22] The Officer further observed that Mielo-Trent held visitor status for just under six months of his three and a half years in Canada. Although the Officer found that little information had been provided as to Mielo-Trent's establishment in Canada, the Officer nonetheless recognized that he likely had made friends, was close to his family, and had participated in community activities. The Officer gave some positive weight in this regard and stated that no negative weight was assigned to Mielo-Trent's period of unauthorized stay or study in Canada because he was a minor.

[23] The Officer found Mr. and Mrs. Skinner had created several friendships, primarily through work, but found little information had been provided as to the depth or breadth of those

relationships. The Officer acknowledged that Mr. and Mrs. Skinner had created friendships in Canada, despite Mrs. Skinner's mental health issues, and assigned a small amount of positive weight in this regard. The Officer also acknowledged that they likely engaged in community activities and assigned this a small amount of weight.

[24] The Officer accepted that, while Mr. Skinner had paid taxes for 2010 to 2013 and Mrs. Skinner for 2014, there was little explanation as to why he and his wife failed to provide evidence for other tax years. The Officer found the absence of evidence related to payment of taxes lessened the positive weight afforded to their history of paying taxes because the picture was incomplete. The Officer then noted that Mr. and Mrs. Skinner did not have criminal records, know English well, have sound financial management and savings, and that there was little evidence they had applied for social assistance. The Officer found the extent of Mr. and Mrs. Skinner's volunteer work uncertain because it was described in unquantifiable terms.

[25] While the Officer accepted that Mr. and Mrs. Skinner had worked in Canada, they were inconsistent as to the dates or locations. The Officer found Mr. Skinner's work outside of Axentia was done without authorization, and although the Officer assigned a moderate amount of weight to his authorized work, his unauthorized work had significantly negative weight. The Officer placed some positive weight on Mrs. Skinner's authorized employment and some negative weight on her unauthorized work.

[26] The Officer concluded the assessment of the Applicants' establishment by reviewing their assets and the sale of the house they bought shortly after arrival in Canada. The Officer

found it unclear as to how much the house sold for and said the information about their assets in or outside of Canada was incomplete. The Officer noted that Mr. and Mrs. Skinner had a joint bank account with $11,322.85 and expressed a belief that they more likely than not had a significant amount of additional savings.

D. *Brittany-Page's application*

[27] The Officer noted that Brittany-Page had arrived in Canada along with her sister and mother in December 2007, and that she lost her temporary resident status in Canada when her father's work permit was refused in February 2012.

[28] The Officer observed that Brittany-Page had held a valid study permit for about 50 months and did not hold a valid temporary resident status for approximately 58 months. The Officer acknowledged that coming to Canada as a child was out of her control and assigned no negative weight to her period of unauthorized stay or work in Canada when she was a minor. The Officer also acknowledged that Brittany-Page had no criminal record, never applied for social assistance, and had sound finances, and placed a small amount of positive weight in this regard.

[29] The Officer remarked that Brittany-Page had resided with her common-law spouse since September 2015, and that the photos as well as the letters from her spouse, associates, friends, and family spoke to the relationship. In the Officer's view, she was also close to her parents, sister, and nephew, and they often saw each other and celebrated holidays together. The Officer noted that her mother's birth family were in British Columbia. The Officer gave her spouse and family members with status in Canada a moderate amount of positive weight and placed some

positive weight on the fact she had created a diverse network of friends and associates who described her with great esteem.

[30] The Officer then proceeded to review Brittany-Page's education, granting no negative weight to her studies without a permit since it was at the secondary school level and some negative weight in respect of her unauthorized study at a post-secondary institution. With respect to her employment history, the Officer accepted that she likely paid taxes for at least 2010, 2014, and 2015 since T4s had been submitted. The Officer remarked that Brittany-Page had provided little explanation as to why she failed to provide evidence for other tax years, and the absence of evidence in this regard lessened the positive weight afforded to her history of paying taxes because the picture was incomplete. The Officer found her periods of unauthorized work had significantly negative weight.

[31] After reviewing Brittany-Page's education and work history, the Officer conducted an analysis of the risk and adverse country conditions in South Africa in a manner identical to that in the decision concerning Mr. and Mrs. Skinner and their grandson. The Officer reiterated the analysis and conclusions about Dr. Day's report concerning the mental health of Brittany-Page's mother. The Officer stated that, because Brittany-Page's nephew, Mielo-Trent, was expected to return to South Africa with his grandparents, it was in his best interests that she accompanies him to South Africa to continue to give in-person emotional support.

[32] The Officer found it more likely than not that Brittany-Page would return to South Africa with her parents, sister, and nephew. The Officer acknowledged that she would miss her

Canada-based friends and family, including her common-law spouse, should she return to her country of origin, but like her other family members she would be able to maintain these relationships through social media.

[33] The Officer acknowledged that being absent from South Africa for several years caused some hardship, and that Brittany-Page would have more to adjust to since she has lived in Canada for the second half of her adolescence. Nonetheless, the Officer noted she would not have the added hurdle of a language barrier, her work experience was more likely than not transferrable to the South African economy, and she would likely continue to have the in-person support of her parents, sister, and nephew. In relation to general country conditions, the Officer found these did not present an exceptional difficulty for Brittany-Page given the minimal likelihood she would be personally affected and there were mechanisms for redress.

[34] The Officer concluded the reasons for this decision by noting that Brittany-Page could apply for permanent residence from outside of Canada under the family class (spousal) category in view of her common-law relationship with a Canadian.

E. *Chesney-Jane's application*

[35] The Officer noted that Chesney-Jane had arrived in Canada along with her sister and mother on December 17, 2007 and that she lost her temporary resident status in Canada when her father's work permit was refused in February 2012.

[36] The Officer observed that Chesney-Jane had held a valid study permit for about 50 months and did not hold a valid temporary resident status for approximately 58 months. The Officer acknowledged that coming to Canada as a child was out of her control and assigned no negative weight to her period of unauthorized stay or work in Canada when she was a minor.

[37] The Officer remarked that Chesney-Jane was close to her parents and nephew as well as her sister who lives nearby with her common-law spouse, and they often saw each other and celebrated holidays together. The Officer noted her mother's birth family were in British Columbia. The Officer gave her family members with status in Canada some positive weight and placed some positive weight on the fact she had created a diverse network of friends and associates who described her with great esteem.

[38] The Officer then proceeded to review Chesney-Jane's education, granting no negative weight to her studies without a permit since it was at the secondary school level and finding her educational endeavours in Canada had some positive weight. The Officer recognized that Chesney-Jane had no criminal record and never applied for social assistance and assigned a very small amount of positive weight to these facts. The Officer observed that she did not indicate whether she pays rent, no bills in her name were on file, and her financial documentation suggested she was frequently in overdraft. The Officer found insufficient evidence to establish she would be able to meet her daily needs alone, and that her financial management had some negative weight.

[39] The Officer then proceeded to review Chesney-Jane's work history, noting that she likely paid taxes for 2014 since a T4 had been submitted. The Officer remarked that she had provided little explanation as to why she failed to provide evidence for other tax years, and the absence of evidence in this regard lessened the positive weight afforded to her history of paying taxes because the picture was incomplete. While no negative weight was placed on her employment while a minor, the Officer was unable to assign her work positive weight since it was done without authorization and found her unauthorized work had significantly negative weight.

[40] After reviewing Chesney-Jane's education and work history, the Officer conducted an analysis of the risk and adverse country conditions in South Africa in a manner identical to that in the decision concerning Mr. and Mrs. Skinner and their grandson. The Officer reiterated the analysis and conclusions about Dr. Day's report concerning the mental health of Chesney-Jane's mother. The Officer stated that, because her nephew, Mielo-Trent, was expected to return to South Africa with his grandparents, it was in his best interests that she accompanies him to South Africa to continue to give in-person emotional support.

[41] The Officer found it more likely than not that Chesney-Jane would return to South Africa with her parents, sister, and nephew. The Officer acknowledged that she would miss her Canada-based friends and family should she return to her country of origin, but like her sister and other family members she would be able to maintain these relationships through social media.

[42] The Officer acknowledged that being absent from South Africa for several years caused some hardship and that Chesney-Jane would have more to adjust to since she has lived in Canada for the second half of her adolescence. Nonetheless, the Officer noted she would not have the added hurdle of a language barrier, her work experience was more likely than not transferrable to the South African economy, and she would likely continue to have the in-person support of her parents, sister, and nephew. In relation to general country conditions, the Officer found these did not present an exceptional difficulty for Chesney-Jane given the minimal likelihood she would be personally affected and there were mechanisms for redress.

III. Analysis

[43] Although the parties have identified several discrete issues concerning the Officer's decisions, in my view the over-arching issue raised by this judicial review is - were the Officer's decisions reasonable?

A. *Standard of Review*

[44] An immigration officer's decision to deny relief under subsection 25(1) of the *IRPA* involves the exercise of discretion and is reviewed on the reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44, [2015] 3 SCR 909 [*Kanthasamy*]). An officer's decision under subsection 25(1) is highly discretionary, since this provision "provides a mechanism to deal with exceptional circumstances," and the officer "must be accorded a considerable degree of deference" by the Court (*Williams v Canada (Citizenship*

and Immigration), 2016 FC 1303 at para 4, [2016] FCJ No 1305; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15, [2002] 4 FC 358).

[45] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

[46] So long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; nor is it "the function of the reviewing court to reweigh the evidence": *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339.

B. *Were the Officer's decisions reasonable?*

[47] The Applicants say each of the Officer's decisions do not meet the standards established by the Supreme Court of Canada in *Kanthasamy*. They maintain that the Officer's contradictory analysis of Mielo-Trent's best interests in the application relating to Mr. and Mrs. Skinner is

problematic: on the one hand, the Officer somewhat agreed with the Applicants that it was in Mielo-Trent's best interests to stay in Canada; yet, on the other, the Officer was neither satisfied that Mielo-Trent was so integrated into Canadian society, nor that the country conditions in South Africa were so bad, that accompanying his grandparents to South Africa would significantly compromise his wellbeing. In the Applicants' view, the Officer applied a hardship analysis in assessing Mielo-Trent's best interests, contrary to the Supreme Court's view in *Kanthasamy* (at para 41) that children will rarely, if ever, be deserving of any hardship and that the concept of "unusual and undeserved hardship" is presumptively inapplicable to the assessment of the hardship invoked by a child to support an application for H&C relief.

[48] The Respondent says the Officer reasonably considered and assessed Mielo-Trent's best interests. The Respondent also notes that, while the Officer found Canada offered a lifestyle and opportunities generally considered more desirable than those in South Africa and Mielo-Trent's best interests would be better served in Canada, the best interests of the child was only one factor to be considered and it was open to the Officer, weighing this factor, to find it was not determinative.

[49] In my view, the Officer's analysis of Mielo-Trent's best interests is conflicted to the point of being unintelligible and, therefore, unreasonable. Having found it was in Mielo-Trent's best interests to remain with his grandparents, and "somewhat" agreeing with Mr. and Mrs. Skinner that his best interests were to stay in Canada, it was not reasonable for the Officer to then find, nevertheless, that returning to South Africa would not significantly compromise his well-being.

[50] The Officer's undivided focus and attention on Mr. and Mrs. Skinner returning to South Africa meant that the Officer did not adequately or reasonably consider whether it might be in Mielo-Trent's best interests to stay in Canada with his grandparents and maintain the status quo. As the Court remarked in *Etienne v Canada (Citizenship and Immigration)*, 2014 FC 937 at para 9, 30 Imm LR (4th) 315: "In order for an officer to be properly 'alert, alive and sensitive' to a child's best interests, the officer should have regard to the child's circumstances, from the child's perspective." In my view, this perspective was not reasonably assessed or addressed by the Officer in this case.

[51] The Applicants also challenge the Officer's assessment of Dr. Day's report, arguing that the Officer dismissed the report as not being objective since, in the Officer's view, it was likely based on information provided by Mrs. Skinner.

[52] The Respondent defends the Officer's assessment of Dr. Day's report. According to the Respondent, the Officer did not accept the report as credible since Mrs. Skinner had not previously been seen by a psychologist, the assessment had been conducted over a year before the H&C application was submitted, it had been prepared for her immigration case, and Mrs. Skinner had not sought treatment after the assessment.

[53] In my view, the Officer's approach to the evidence concerning Mrs. Skinner's mental health was not reasonable because it runs afoul of the teachings from *Kanthasamy*.

[54] In *Kanthasamy*, the Supreme Court of Canada found that an H&C officer had unreasonably assessed a psychologist's report about the applicant's mental health, stating that:

> [46] In discussing the effect removal would have on Jeyakannan Kanthasamy's mental health, for example, the Officer said she "[did] not dispute the psychological report" and "accept[ed] the diagnosis". The report concluded that he suffered from post-traumatic stress disorder and adjustment disorder with mixed anxiety and depressed mood resulting from his experiences in Sri Lanka, and that his condition would deteriorate if he was removed from Canada. …
>
> [47] Having accepted the psychological diagnosis, it is unclear why the Officer would nonetheless have required Jeyakannan Kanthasamy to adduce *additional* evidence about whether he did or did not seek treatment, whether any was even available, or what treatment was or was not available in Sri Lanka. Once she accepted that he had post-traumatic stress disorder, adjustment disorder, and depression based on his experiences in Sri Lanka, requiring further evidence of the availability of treatment, either in Canada or in Sri Lanka, undermined the diagnosis and had the problematic effect of making it a conditional rather than a significant factor.
>
> [48] Moreover, in her exclusive focus on whether treatment was available in Sri Lanka, the Officer ignored what the effect of removal from Canada would be on his mental health. As the Guidelines indicate, health considerations *in addition to* medical inadequacies in the country of origin, may be relevant: *Inland Processing*, s. 5.11. As a result, the very fact that Jeyakannan Kanthasamy's mental health would likely worsen if he were to be removed to Sri Lanka is a relevant consideration that must be identified and weighed regardless of whether there is treatment available in Sri Lanka to help treat his condition: …
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> [Emphasis in original]

[55] In this case, the evidence about Mrs. Skinner's mental health was that there was "little doubt" that returning to South Africa would "lead to an onslaught of psychological symptoms of such intensity that they will threaten to render her incapable of adequately fulfilling even minimal life role responsibilities." In Dr. Day's opinion, this raised "particularly grave concerns

regarding her ability to effectively care for her handicapped grandson, for whom she is the primary care giver."

[56] As in *Kanthasamy*, the Officer in this case accepted the psychological diagnosis and recognized the psychologist as an expert in his field. Nonetheless, in assessing Dr. Day's report, the Officer faulted it since the amount of time Dr. Day had spent with Mrs. Skinner was unstated, the amount of sessions he spent with Mrs. Skinner was unknown, and he did not explain why there would be only a single method available to treat her mental health issues. The Officer noted there was little indication Mrs. Skinner had sought out treatment since the assessment occurred more than a year before submission of the H&C application.

[57] In my view, the Officer in this case, like the officer in *Kanthasamy*, ignored what the effect of removal from Canada would be on Mrs. Skinner's mental health. The Officer did not reasonably consider or adequately assess and weigh the evidence that returning to South Africa would trigger or cause further psychological harm to Mrs. Skinner. The Officer did not consider whether this hardship was such that it warranted H&C relief. The Officer's treatment of the evidence concerning Mrs. Skinner's mental health, in view of *Kanthasamy*, was unreasonable.

IV. Conclusion

[58] For the reasons stated above, the Applicants' application for judicial review is allowed.

[59] The Officer's unreasonable assessment of Mrs. Skinner's mental health is contained in each of the three decisions of the Officer. Consequently, each of the three decisions is set aside

on this basis. The decision relating to Mr. and Mrs. Skinner and their grandson is also set aside on the basis that the Officer's assessment of Mielo-Trent's best interests was unreasonable.

[60] Neither party raised a serious question of general importance; so, no such question is certified.

JUDGMENT in IMM-5275-17

THIS COURT'S JUDGMENT is that: the application for judicial review is granted; each of the decisions of the Senior Immigration Officer dated November 9, 2017, is set aside; the matter is returned for redetermination by a different immigration officer or officers in accordance with the reasons for this judgment; and no question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5275-17
STYLE OF CAUSE:	GRANT ALEXANDER SKINNER, DIANNE SANDRA SKINNER, BRITTANY-PAIGE SKINNER, CHESNEY-JANE SKINNER, and MIELO-TRENT SKINNER by his litigation guardian DIANNE SANDRA SKINNER v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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