

Federal Court



Cour fédérale

**Date: 20190521**

**Docket: IMM-4456-18**

**Citation: 2019 FC 717**

**Ottawa, Ontario, May 21, 2019**

**PRESENT: Mr Justice James W. O'Reilly**

**BETWEEN:**

**SHANE GERSHION CUMBERBATCH AGARD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr Shane Gershion Cumberbatch Agard applied for permanent residence in Canada on humanitarian and compassionate grounds (H&C) and for a Temporary Resident Permit (TRP). An immigration officer denied both applications.

[2] Mr Cumberbatch argues that the officer's decision on the H&C was unreasonable because the officer failed to take adequate account of the best interests of his children and applied the wrong standard for hardship. He also maintains that the officer applied the wrong test to his TRP application. He asks me to quash the officer's decision and order another officer to reconsider his applications.

[3] I agree with Mr Cumberbatch that the officer erred in respect of both the H&C and the TRP. I will therefore allow this application for judicial review.

[4] There are two issues:

1. Was the officer's H&C decision unreasonable?
2. Was the officer's decision on the TRP unreasonable?

## II. Background

[5] In 2008, Mr Cumberbatch came to Canada as a permanent resident from Barbados, sponsored by his father. He now has a daughter from a previous relationship, and two children and a step-child with his current partner with whom he lives.

[6] Mr Cumberbatch has a criminal record – criminal harassment, assault, failure to comply with a recognizance, drug trafficking, importing drugs, and possession for the purposes of trafficking. After his appeal of a deportation order failed, he applied for an H&C and, in the

alternative, a TRP. He relied on the best interests of his children, his establishment in Canada, and the hardship he would face if he returned to Barbados.

[7] The officer found that Mr Cumberbatch was not rehabilitated, that he had not developed strong ties in the community, that his family relationships were not deep, and that family separation would not sever the family bonds. While Mr Cumberbatch provided financial support to his daughter, he could continue to do so from Barbados. Similarly, he could maintain contact with his other children and his partner through electronic means and visits. Further, the officer concluded that conditions in Barbados were not so poor that Mr Cumberbatch could not relocate there. The officer rejected Mr Cumberbatch's H&C.

[8] In addition, the officer found that there was no compelling reasons to allow Mr Cumberbatch to remain in Canada, and dismissed his TRP.

III. Was the officer's H&C decision unreasonable?

[9] The Minister argues that the officer gave adequate attention to the best interests of the children involved and the hardship Mr Cumberbatch would face in Barbados.

[10] I disagree. At no point did the officer actually identify what the best interests of the children were. The officer considered a variety of factors affecting them and then concluded that Mr Cumberbatch had not shown that his removal would be contrary to their interests. The officer did not weigh the impact of Mr Cumberbatch's removal on the children against the benefits of his remaining in Canada.

[11] The officer also erred in his analysis of hardship. The officer found that Mr Cumberbatch had not shown that his re-integration in Barbados was “unattainable” or “not feasible.” This is too high a standard to expect an applicant to meet on an H&C. The officer was required to measure the hardship facing Mr Cumberbatch and determine whether it was excessive, not whether it presented an insurmountable obstacle.

[12] Therefore, I find that the officer’s H&C decision was unreasonable.

IV. Was the officer’s decision on the TRP unreasonable?

[13] The Minister argues that the officer’s decision on the TRP flowed from the officer’s findings on the H&C. In effect, says the Minister, the officer found that Mr Cumberbatch had not shown a compelling need to stay in Canada.

[14] Again, I disagree. The officer actually found that Mr Cumberbatch had presented compelling reasons in support of his H&C but that they fell short of what was required for a successful application. The officer’s finding that Mr Cumberbatch had failed to provide compelling reasons to support his TRP, at least on the surface, appear to contradict the officer’s earlier findings. In any case, however, the officer’s errors in the analysis of Mr Cumberbatch’s H&C carried over to his conclusion on the TRP. Accordingly, the TRP was unreasonably denied.

V. Conclusion and Disposition

[15] The officer's analysis of Mr Cumberbatch's application for an H&C and his request for a TRP was unreasonable. Therefore, I must allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-4456-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed.

No question of general importance is stated.

"James W. O'Reilly"

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Judge

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

**DOCKET:** IMM-4456-18

**STYLE OF CAUSE:** SHANE GERSHION CUMBERBATCH AGARD v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 4, 2019

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** MAY 21, 2019

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