Federal Court  Cour fédérale

**Date: 20190624**

**Docket: IMM-5031-18**

**Citation: 2019 FC 851**

**Ottawa, Ontario, June 24, 2019**

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

**BETWEEN:**

**AB**
**CD**
**EF**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The applicants, a mother, her daughter and her grandson, seek to set aside a decision of an officer refusing their application for permanent residency on humanitarian and compassionate grounds [the H&C application].

[2] As a consequence of the alleged basis of applicants' fears of harm, as set out in the record, the leave judge ordered that the file be sealed and treated as confidential. After the hearing, a further Order was made to anonymize the names of the applicants. While there are suggestions made that these fears are not real, that is not a matter this Court can or should decide.

[3] The principal basis for the applicants' H&C application is that they feel that they are only safe in Canada and their removal might lead all three of them to commit suicide.

[4] In 2017, when the applicants made their H&C application, they submitted psychological evaluations by Dr. Agarwal for each of the three applicants [the Reports].

[5] All three Reports diagnose the individual applicants with Post-Traumatic Stress Disorder. They all describe a risk of a suicide. In CD's Report, Dr. Agarwal writes:

> The only reason that she is not attempting suicide is her concern for her son, and her hope that there may still be a way for her, her mother, and son to be able to live in Canada. It is my medical opinion that if this hope is taken away from her, she will decompensate to a point where she will not be able to think about anything but suicide as a way of relieving her pain and distress. This will place her at a very high risk of attempting and or completing suicide. My biggest concern is that because they are so close knit as a family and each one of them is so traumatized that they might commit suicide together as a family.

[6] The other reports are similar, with Dr. Agarwal reporting in EF's that only the hope of remaining in Canada keeps him from committing suicide, while in AB's it is reported that the thought of being permanently separated from EF makes her want to kill herself. The reports

reflect the collective belief of the applicants that if removed from Canada, EF will be separated from his mother and grandmother.

[7] The reports and materials filed in support of the H&C application contain other information that is not material to the reason I have determined that this application must be allowed. In light of the confidentiality order, nothing will be said about these aspects of the decision under review.

[8] The focus of the decision under review was not on the evidence that each or all of these applicants may commit suicide if they are not permitted to remain in Canada. In fact, this aspect of the evidence was not addressed at all by the officer.

[9] The Minister submits that the officer's decision is discretionary and that the purpose of H&C relief is not an alternative immigration scheme but to allow flexibility. It is noted that there will inevitably be hardship with having to leave: *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61.

[10] The Minister accepts that the officer does not address the risk of suicide but argues that the decision is reasonable based on the record and that there is no need for the officer to refer to every piece of evidence: *Newfoundland and Labrador Nurses Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*].

[11] The Minister further submits that just because the applicants might commit suicide does not make denial of the H&C application unreasonable, and points to a similar situation in *Kaur v Canada (Minister of Citizenship and Immigration)*, 2017 FC 757 [*Kaur*] where the decision under review was found to be reasonable.

[12] Previous decisions of this Court, including *Kaur*, have found that a risk of suicide on removal does not make a decision unreasonable. However, in each of the decisions relied on by the Minister, the Court found that the officer had directed his or her mind to that specific risk. There is no such evidence here. I cannot find that the officer directed his or her mind to the possibility of suicide as disclosed in the Reports.

[13] In oral submissions, counsel for the Minister stated that she was relying heavily on the decision of the Supreme Court of Canada in *Newfoundland Nurses*. That decision does not assist the Minister here in overcoming the significant fact that there is no evidence that the decision-maker turned his or her mind to the risk of suicide disclosed by the Reports. In *Newfoundland Nurses*, the Supreme Court observed that reasons must be read together with the outcome. The purpose of reasons is to show whether the result falls within a range of possible outcomes based on the record. If the reasons allow the reviewing court to understand why the decision reached was made and permit it to determine whether the conclusion is within the range of acceptable outcomes, the criteria set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] have been met. In both *Newfoundland Nurses* and *Dunsmuir* the Supreme Court stressed that deference requires "a respectful attention to the reasons offered or which could be offered in support of a decision." Deference does not go so far as to require reviewing Courts to turn a blind eye to

relevant and material evidence pointing to a contrary result that is not addressed by a decision-maker: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (TD). Nor does it permit a reviewing Court to step into the shoes of the errant decision-maker and develop entirely new reasons why to discount relevant unassessed evidence. Minister's counsel often points out to this Court that it is not our role to reweigh the evidence before a decision-maker. I would point out that it is also not our role to weigh relevant evidence not previously weighed by a decision-maker.

[14] I agree with Minister's counsel, for all of the reasons she advanced at the hearing, that the opinion in the Reports of suicide might ultimately be given little weight and the decision reached on a new review might be the same. That is the job of the officer assessing the H&C application; it is not the job of counsel or of this Court.

[15] For these reasons, this application will be allowed. Both parties are of the view that no question arises out of this application that is appropriate for certification.

**JUDGMENT in IMM-5031-18**

**THIS COURT'S JUDGMENT is that** this application is allowed, and the H&C applications of the applicants are to be re-determined by a different officer, and no question is certified.

"Russel W. Zinn"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5031-18 |
| **STYLE OF CAUSE:** | AB ET AL v MCI |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JUNE 12, 2019 |
| **JUDGMENT AND REASONS:** | ZINN J. |
| **DATED:** | JUNE 24, 2019 |

**WRITTEN SUBMISSIONS BY:**

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|---|---|
| Giancarlo Volpe | FOR THE APPLICANTS |
| Catherine Vasilaros | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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|---|---|
| Chantal Desloges<br>Desloges Law Group<br>Barristers and Solicitors<br>Toronto, Ontario | FOR THE APPLICANTS |
| Attorney General of Canada<br>Department of Justice Canada<br>Toronto, Ontario | FOR THE RESPONDENT |