

Federal Court



Cour fédérale

Date: 20190829

Docket: IMM-6116-18

Citation: 2019 FC 1110

Ottawa, Ontario, August 29, 2019

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

**MANAL SAIDOUN
BASSEL KAROUT
RANI MOUNIR KAROUT
RENIA SIHAM KAROUT
ADAM KAROUT**

Applicants

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is a judicial review of an Immigration, Refugees and Citizenship Canada [IRCC] decision refusing a humanitarian and compassionate [H&C] Application made pursuant to section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Preliminary Matter

[2] One of the Applicants' names in the style of cause is different than as it appears on the Applicants' documentation. In the style of cause it is stated as *Reina Siham Karout* and in the Applicants' documents it appears as *Renia Siham Karout*. At the hearing, the Court requested that the Applicants post-hearing indicate if they wished the style of cause to be amended and as they did not correspond to the style of cause will not be amended.

III. Facts

[3] The Applicants are a family of five and are all citizens of Lebanon. Manal Saidoun is the principal Applicant and the other Applicants are her husband, Bassel Karout, and their three children: Adam Karout, a 6 year old, and twins Rani Mounir Karout and Reina Siham Karout, 11 years old. In January 2016, they came to Canada and filed refugee claims, alleging that they fled Lebanon as they feared for their safety.

[4] Ms. Saidoun worked at a bank in Lebanon, where she dealt with transactions involving VIP clients. In August 2015, a woman by the name of Lina contacted Ms. Saidoun asking for her help to start a company in Lebanon.

[5] Shortly after their first meeting, Lina met Ms. Saidoun again and offered her money in exchange for personal and financial information about the bank's high net worth clients.

[6] Ms. Saidoun alleges that Lina threatened to harm her and her family if she did not comply with her requests and further advised her not to contact the police.

[7] Ms. Saidoun alleges that on August 19, 2015, a masked man followed her into an underground parking lot and beat her. He also threatened to harm her children if she did not comply with their demands. Fearing for the safety of her family, Ms. Saidoun did not contact the police; however, she did receive medical attention for her injuries.

[8] In her Statutory Declaration, Ms. Saidoun stated that she is not certain, but believes that Lina and the attacker might be connected to Hezbollah. This information was originally omitted from the Basis of Claim form.

[9] After the incident, Ms. Saidoun continued to receive threatening calls. She eventually resigned from her job, removed the children from school, and hid in a friend's home with her family until they received their visas to Canada in December 2015. The family filed refugee claims once they arrived in Canada.

[10] Ms. Saidoun provided a report from a Lebanon based psychiatrist dated September 2, 2015, confirming that following the incident, she suffered from post-traumatic stress disorder [PTSD] and severe panic attacks.

[11] Another psychiatrist report from Dr. Parul Agarwal (Toronto), dated October 6, 2017, concludes that Ms. Saidoun achieved partial recovery when the family fled to Canada and filed their refugee claim; however, Ms. Saidoun now suffers from a relapse of PTSD as a result of their claim being refused and the fear of returning to Lebanon.

[12] The Applicants' refugee hearing took place on April 10, 2017, during which the panel did not find them to be convention refugees nor persons in need of protection, and ultimately denied their refugee claim. The Refugee Protection Division [RPD] found insufficient credible evidence to support the fact that the principal Applicant or her family are being targeted as alleged. The RPD concluded that Ms. Saidoun was likely the unfortunate victim of a random act of violence. The determinative issue in the hearing was credibility. But it must be considered that the RPD did accept:

- that Ms. Saidoun was attacked;
- the doctor's expertise; and
- the doctor's post-traumatic stress disorder (PTSD) diagnosis and recommendations to avoid deterioration.

[13] The RPD decision was appealed to the Refugee Appeal Division and was dismissed for lack of perfection.

[14] The Applicants later applied for permanent residence on H&C grounds. Their application was refused on November 28, 2018, with the Immigration Officer noting that Ms. Saidoun's mental health and the best interests of the children did not justify granting the application.

IV. Issues

[15] The Applicants submit the following issues:

1. Was the Immigration Officer's assessment of Ms. Saidoun's mental health unreasonable?
2. In the alternative, did the unreasonable assessment of Ms. Saidoun's mental health render the best interest of the children assessment unreasonable?

V. Standard of Review

[16] The standard of review of an H&C decision is reasonableness (*Kanhasamy v Canada (MCI)*, 2015 SCC 61 at para 44).

VI. Analysis

- (1) *Was the Immigration Officer's assessment of Ms. Saidoun's mental health unreasonable?*

[17] In considering an H&C application, the decision-maker must consider elements related to the hardships that affect the foreign national (*IRPA, supra*, s. 25(1.3)).

[18] In *Sutherland*, Mr. Justice Gascon said that an officer is required to consider the adverse effect the removal would have on the Applicant's mental health condition and on her children, as this is "an obvious component of any hardship analysis in an H&C application" (*Sutherland v Canada (MCI)*, 2016 FC 1212 at para 16).

[19] In cases where the evidence shows there will be hardship inherent in return to a country, the Officer should consider the impact of the removal itself and not just post-removal treatment

options (*Jeong v Canada (MCI)*, 2019 FC 582 at para 57). It is well established in leading case law that failure to consider the impact of removal on an applicant's mental health renders a decision unreasonable:

When psychological reports are available, indicating that the mental health of applicants would worsen if they were to be removed from Canada, an officer must analyze the hardship that applicants would face if they were to return to their country of origin. An officer cannot limit the analysis to a determination of whether mental health care is available in the country of removal.

(*Sutherland, supra* at para 17, citing *Kanthasamy, supra* at para 48; *Ashraf v Canada (MCI)*, 2013 FC 1160 at para 5 and *Davis v Canada (MCI)*, 2011 FC 97, at para 19).

[20] In this case, Dr. Agarwal's report had indeed indicated that the treatment will only be effective in the context of her [Ms. Saidoun] feeling safe and secure, not only for herself, but for her husband and children in the longer term, adding that an individual cannot fully heal from their symptoms until they are assured that the trauma will not occur again.

[21] The Officer disregarded the triggering effect that removal would have on Ms. Saidoun's mental health, and limited the analysis on the availability of treatment in Lebanon. In light of the leading case law, this renders the decision unreasonable. *Cardona v. The Minister of Citizenship and Immigration* 2016 FC 1345 para 26-28 [*Cardona*]

[22] In the decision, the Officer notes that Dr. Agarwal's diagnosis is in part based on a risk allegation that was found not to be credible. On the other hand, the Officer noted that some weight is given to the PTSD diagnosis and the impact of returning to Lebanon. Yet, the Officer failed to concretely elaborate and consider such impact as the decision simply states that Ms.

Saidoun's mental health situation does not warrant a visa waiver due to the family support and treatment options she has in Lebanon.

[23] Based on the cases cited above, accepting the doctor's diagnosis and accepting evidence showing the PTSD-diagnosed Applicant would be re-traumatized upon return to Lebanon does not allow the decision-maker to rely solely on family ties and local treatment facilities to justify the decision to dismiss.

[24] As an example: if a decision-maker accepts evidence that you would be seriously assaulted upon return to your country, but noted that there are police and paramedics to respond to the attacks so it is safe for you to be returned and attacked, that would not be justifiable, transparent and intelligible. In this example of physical violence, the availability of some general supports does not logically weigh against the real attack from which she would suffer and which would cause her to need medical support. Trying to look at mental health the same way, the Officer seemed to minimize the diagnosis and her re-traumatization upon return, even after the psychiatrist outlined the Applicant's distress when asked about the fear of returning to Lebanon.

[25] The likely re-traumatization inherent in the very fact of the return was not sufficiently addressed, as the focus on family support and availability of treatment go against the psychiatrist's (unchallenged) finding that she would suffer if she returned to an environment that was not safe and secure. Factors like nightmares, fear of leaving the house, focus and memory issues (which were in the medical report and which the Applicant's counsel persuasively described at the hearing) impact both her mental health and the best interests of her children, increasing the importance of the mental health considerations to the outcome.

[26] It must be remembered that the RPD did accept:

- that Ms. Saidoun was attacked;
- the psychiatrist 's expertise; and
- the psychiatrist 's post-PTSD diagnosis and recommendations to avoid deterioration.

[27] In light of the above, I believe that the Officer's decision is unreasonable based on the general rule that officers must not limit their analysis to the availability of treatment in the country of origin but must consider the likelihood of the mental health condition worsening as a result of the removal and in this case it would be a relapse.

(2) *In the alternative, did the unreasonable assessment of Ms. Saidoun's mental health render the best interest of the children assessment unreasonable?*

[28] The general rule with respect to the best interest of children [BIOC] requires an officer to be "alert, alive, and sensitive" to these interests (*Legault v Canada (MCI)*, 2002 FCA 125).

[29] In *Shin v Canada (Citizenship and Immigration)*, Justice Southcott stated that a failure to consider the consequences that a negative impact on the parent's mental health might have on children meant the officer had failed to be alert and sensitive to best interest of children; that failure rendered the decision unreasonable (*Shin*, 2018 FC 1274). In *Cardona* at para 33, I too found that the mother's mental health deteriorate upon a return to Columbia how a young daughter in that case would be affected.

[30] In the present case, the Officer had not considered Ms. Saidoun's mental health deteriorating as a result of removal, and thus had not considered such effect on the children either.

[31] The Officer simply stated that the children would have the support of their family, and had not concretely considered their best interest in light of their mother's mental health issues. According to *Shin*, this renders the decision unreasonable.

[32] Although the Respondent argues that the children's best interest is not a paramount factor, the negative impact of removal on the mother's mental health will certainly have repercussions on the children, which warrants greater weight than that given by the Officer.

VII. Conclusion

[33] Most recent Federal Court rejections of H&C judicial reviews involve alleged re-traumatization are cases where the officer and the Federal Court do not believe in the Applicant's claim of PTSD and re-traumatization upon return. The difference here is that the Officer said: "I accept Dr. Agarwal's expertise and her diagnosis and recommendations."

[34] The Officer's decision is unreasonable because of the failure to fully consider the mental health impact of removal on Ms. Saidoun based on the accepted psychiatrist report in conjunction with what the RPD felt was credible. There was also a failure to consider Ms. Saidoun's diminished mental health when doing the BIOC in light of her diminished capacity and responsibilities as a parent. For these reasons I will grant the application and send it back to be re considered by a different officer. .

[35] No certified questions were presented and none arose.

JUDGMENT in IMM-6116-18**THIS COURT'S JUDGMENT is that:**

1. The application is granted and is sent back to be determined by a different decision maker.
2. No question is certified

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6116-18

STYLE OF CAUSE: MANAL SAIDOUN, BASSEL KAROUT, RANI MOUNIR KAROUT, REINA SIHAM KAROUT, ADAM KAROUT v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 21, 2019

ORDER AND REASONS: MCVEIGH J.

DATED: AUGUST 29, 2019

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