Federal Court Cour fédérale

Date: 20200204

Docket: IMM-2142-19

Citation: 2020 FC 195

Ottawa, Ontario, February 4, 2020

PRESENT: Mr. Justice Russell

BETWEEN:

DEENA ABDELSALAM
LOAY SAMEH BADR AHMED MOHAMED
HAMZA SAMEH BADR AHMED MOHAMED

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 a Senior Immigration Officer, dated March 8, 2019 [Decision] wherein the Officer denied the Applicants' application for permanent residence on humanitarian and compassionate [H&C] grounds.

II. BACKGROUND

[2] The Applicants, Ms. Abdelsalam and her two sons Loay and Hamza, are citizens of Egypt. The Applicants currently reside in Windsor, Ontario near Ms. Abdelsalam's brother and his three children. Ms. Abdelsalam's husband, Loay and Hamza's father, remains in Cairo, Egypt.

[3] Ms. Abdelsalam entered Canada on May 21, 2016, with a valid visa. Her sons, Loay and Hamza, subsequently joined her in Canada on June 23, 2016. The Applicants made their refugee claim nearly two months later on August 17, 2016. A Departure Order was issued against the Applicants that same day.

[4] The Applicants claimed they were refugees and persons in need of protection pursuant to ss 96 and 97(1) of the *IRPA* because they would face a serious risk of persecution and harm should they return to Egypt. The Applicants' central claim was that they were at risk of harm from the Muslim Brotherhood, notably due to their liberal interpretation of Islam, their opposition to the Brotherhood, and Ms. Abdelsalam's retention of incriminating documents against members and supporters of the Brotherhood.

[5] On January 16, 2017, the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] rejected the Applicants' claims under ss 96 and 97(1) of the *IRPA*. The RPD found that the Applicants had failed to provide credible and trustworthy evidence to establish their claim, notably that they are being threatened by members of the Muslim

Brotherhood and are unable to obtain adequate state protection in Egypt. In essence, the RPD found the Applicants' claims not credible due to their significant delay in leaving Egypt as well as the many inconsistencies and implausibilities in Ms. Abdelsalam's testimony. Moreover, upon reviewing the National Documentation Package for Egypt, the RPD was not satisfied that adequate state protection was unavailable to the Applicants should they be threatened by the Muslim Brotherhood upon return.

[6] The Applicants appealed the RPD's decision to the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. However, on July 31, 2017, the RAD dismissed the Applicants' appeal. The RAD agreed with the RPD that the Applicants' claims were not credible for largely the same reasons. It also found that the Applicants had failed to rebut the presumption of state protection in Egypt. The Applicants did not apply to this Court for judicial review of the RAD's decision.

[7] The Applicants, however, submitted an application for Permanent Resident status in Canada on H&C grounds on November 14, 2017, and a Pre-removal Risk Assessment [PRRA] application on January 5, 2019.

[8] The Applicants based their Permanent Resident application on the following H&C factors:

1. Their establishment in Canada;

2. Their risk of harm from the Muslim Brotherhood should they return to Egypt;

3. Adverse country conditions in Egypt, including the situation of women;

4. The impact on their mental health should they be forced to return to Egypt; and

5. The best interests of Ms. Abdelsalam's children, Loay and Hamza.

[9] On February 28, 2019, a Senior Immigration Officer rejected the Applicants' PRRA application. An addendum to the PRRA Decision was provided on March 5, 2019, in light of evidence included in their application for Permanent Resident status on H&C grounds.

[10] On March 8, 2019, the same Officer refused their application for Permanent Resident status on H&C grounds. A Direction to Report with a removal date of April 27, 2019, was issued to which Justice Brown ordered a Stay of Removal on April 26, 2019.

III. DECISION UNDER REVIEW

[11] In this application for judicial review, the Applicants contest the Senior Immigration Officer's Decision to reject their application for permanent residence on H&C grounds pursuant to s 25(1) of the *IRPA*.

[12] In essence, the Officer found that, upon a global assessment of all the H&C factors submitted, the Applicants failed to meet their onus of establishing sufficient H&C considerations to justify granting an exemption to the requirements of the *IRPA* for permanent residence from within Canada.

[13] Though the Officer found that it was possible that the Applicants might, at some point, be negatively affected by the adverse conditions in Egypt, the Officer grounded the Decision in: (1) their insufficient level of establishment in Canada; (2) the lack of evidence demonstrating a risk of harm at the hands of the Muslim Brotherhood; (3) the sufficiency of the mental healthcare available in Egypt; (4) the absence of any medical evidence concerning the present state of the Applicants' mental health or their future mental health needs; and (5) the lack of serious negative impact on Loay and Hamza, as well as Ms. Abdelsalam's three nephews, should the Applicants be forced to return to Egypt.

[14] The Officer acknowledged the adverse conditions in Egypt. Indeed, upon review of the research reports and articles submitted, the Officer found that the evidence demonstrated a number of serious ongoing issues in Egypt including abusive conduct by the security forces, government restrictions on freedom of expression and freedom of assembly, and the significant levels of violence and harassment faced by women. The Officer also recognized that Egypt's healthcare system is not as comprehensive as Canada's healthcare system. In light of the evidence submitted, the Officer found that it was possible that these adverse conditions could negatively affect the Applicants at some point. However, the Officer found that:

> the presence of adverse country conditions in Egypt is only one of the factors for consideration on this H&C application. My H&C decision is not based on one factor for consideration, but rather a global assessment of all of the H&C factors that the applicants have brought forward.

[15] Accordingly, the Officer concluded that an exemption on H&C grounds was not justified.

[16] First, the Officer found that the Applicants' materials did not demonstrate any significant establishment in Canada. The Officer noted that their attachment was no greater than the attachment any individuals similarly situated would acquire. The Officer gave positive weight to Ms. Abdelsalam's family ties in Canada, her employment, her efforts to improve her English language skills, her volunteer work and her friendships in Canada, as well as her sons' enrollment in school and their involvement in extra-curricular activities. However, the Officer noted that three years in Canada is a short period of time and that the Applicants maintain family ties in Egypt, where Ms. Abdelsalam's husband (Loay and Hamza's father) continues to live and work.

[17] Second, the Officer found that the Applicants had failed to demonstrate a personalized risk of harm from the Muslim Brotherhood should they return to Egypt. The Officer gave a great deal of weight to the RPD and the RAD's conclusions concerning the credibility of the Applicants' claims concerning the Muslim Brotherhood, and also referred to the previous PRRA decision as well. Moreover, in response to the Applicants' statement that Ms. Abdelsalam's husband was attacked on several occasions by the Muslim Brotherhood, the Officer cited the fact that the Applicants had provided no documentary evidence in support of this claim. The Officer also found that the research report submitted by the Applicants only provided general information concerning the Muslim Brotherhood in Egypt.

[18] Third, the Officer noted that, in the absence of medical documentation concerning the Applicants' present state of mental health or their future mental health needs, the Applicants did not demonstrate that they would be unable to obtain the mental healthcare they require in Egypt.

The Officer found that the psychological report concerning Ms. Abdelsalam was over a year old and did not sufficiently indicate that she would be unable to obtain the mental healthcare she requires in Egypt. The Officer also noted that the Applicants did not submit any evidence indicating that Ms. Abdelsalam had attended the bi-weekly sessions recommended to her in the report. In addition, the Officer acknowledged the approval for counselling services for Hamza but found that there was no evidence indicating whether he had attended counselling, or any indication as to whether he is currently experiencing mental health challenges.

[19] The Officer also dismissed the claim that Loay suffered from trauma related to his alleged kidnapping in Egypt (which the Officer noted the RPD and the RAD found not to be credible) as well as the claim that Loay is suffering trauma after being threatened at knifepoint in Windsor. The Officer noted a lack of evidence indicating that Loay is dealing with any mental health challenges or that he requires mental health treatment in the future.

[20] Fourth, the Officer concluded that the Best Interests of the Child [BIOC] did not justify granting permanent residence on H&C grounds. Regarding the best interests of Loay and Hamza, the Officer grounded the Decision in their ties to Egypt as well as the lack of evidence of a risk of harm in Egypt. The Officer found that they were both raised in Egypt before coming to Canada, their father currently lives there, and there is no indication that their parents would be unable to fully care for them in Egypt. The Applicants alleged that Loay and Hamza's best interests would not only be negatively affected by the adverse country conditions but also by corporal punishment from teachers, compulsory military service, Egypt's poor education system, the socially conservative culture and attitude towards women, as well as the emotional harm resulting from being separated from their cousins in Windsor. Though the Officer acknowledged

the potential negative effect of the adverse country conditions, they dismissed the remaining claims, finding that:

- no supporting evidence was submitted indicating that the children had sustained past corporal punishment from teachers in Egypt and the reports provided only discussed corporal punishment in primary schools, which the Applicants would not be attending, as well as corporal punishment by parents and caregivers;
- possible exemptions exist to compulsory military service in Egypt which Loay and Hamza may qualify for in three to four years' time;
- the documents submitted do not establish, in a satisfactory manner, that Loay and Hamza would be unable to access quality education in Egypt as the first article on this issue submitted by the Applicants did not include its author's credentials while the second article is over five years old;
- there is little in the Applicants' materials demonstrating that Ms. Abdelsalam and her husband would be unable to counter the "limiting cultural beliefs" Loay and Hamza may face in Egypt, or be unable to foster a respect for women;
- Loay and Hamza would be able to stay in communication with their cousins and uncle in Windsor via modern means of communication; and
- There is no indication that Ms. Abdelsalam's brother is unable to fully care for Ms. Abdelsalam's nephews and that modern means of communication would not allow them to stay in touch with the Applicants.

[21] Weighing all these H&C factors, the Officer concluded that an exemption under s 25(1) of the *IRPA* was not warranted. As such, the Applicants' permanent residence application on H&C grounds was denied.

IV. ISSUES

[22] The issues to be determined in the present matter are the following:

1. Did the Officer err in applying the legal test for making H&C determinations?
2. Did the Officer sufficiently analyze whether Ms. Abdelsalam would face gender-based harm in Egypt?
3. Did the Officer err in finding that adequate mental healthcare was available to the Applicants in Egypt?
4. Did the Officer err in their analysis of the best interests of Loay and Hamza?

V. STANDARD OF REVIEW

[23] This application was argued prior to the Supreme Court of Canada's recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. This Court's judgment was taken under reserve. The parties' submissions on the standard of review were therefore made under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] framework. However, given the circumstances in this matter, and the Supreme Court of Canada's instructions in *Vavilov* at para 144, this Court found that it was necessary to ask the parties to make additional submissions

on the standard of review. I have applied the *Vavilov* framework in my consideration of the application. Although it has changed the applicable standard to this Court's review of whether the Officer erred in applying the legal test for making H&C determinations, it has not changed my conclusion.

[24] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[25] Both the Applicants and the Respondent originally submitted that the standard of reasonableness applied to all of the issues in this case. On January 16, 2020, the parties were asked to make written submissions on the applicable standard of review in light of the *Vavilov* decision. Both parties, once again, submitted that the standard of reasonableness continues to apply to my review of all the issues in this case.

[26] I agree with both parties that the standard of reasonableness should be applied to my review of all the issues at bar as there is nothing to rebut the presumption that the standard of reasonableness applies.

[27] In the past, courts have often found that the standard of correctness applies to questions concerning whether a decision-maker applied the correct legal test. See, for example, *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at para 25 [*Ibabu*]; *Alexander v Canada (Citizenship and Immigration)*, 2019 FC 881 at para 14. However, following the Supreme Court of Canada's decision in *Vavilov*, a decision-maker's application of a legal test does not fall into any of the listed exceptions to the presumption of reasonableness, baring a constitutional dimension to the legal question, or a generality or "central importance to the legal system as a whole." However, clear language in a governing statutory scheme and a significant body of jurisprudence establishing a certain applicable legal test will impose strict constraints on a decision-maker's discretion, and a departure from such would generally be considered unreasonable in the absence of explicit persuasive reasons for this departure. See *Vavilov,* at paras 105-114, 129-132, and notably para 111:

> It is evident that both statutory and common law will impose constraints on how and what an administrative decision maker can lawfully decide: see *Dunsmuir*, at paras. 47 and 74. For example, an administrative decision maker interpreting the scope of its regulation-making authority in order to exercise that authority cannot adopt an interpretation that is inconsistent with applicable common law principles regarding the nature of statutory powers: see *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, at paras. 45-48. Neither can a body instructed by legislation to determine what tax rate is applicable in accordance with an existing tax system ignore that system and base its determination on a "fictitious" system it has arbitrarily created: *Montréal (City)*, at para. 40. Where a relationship is governed by private law, it would be unreasonable

> for a decision maker to ignore that law in adjudicating parties' rights within that relationship: *Dunsmuir*, at para. 74. Similarly, where the governing statute specifies a standard that is well known in law and in the jurisprudence, a reasonable decision will generally be one that is consistent with the established understanding of that standard: see, e.g., the discussion of "reasonable grounds to suspect" in *Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006, at paras. 93-98.

[28] As for this Court's review of the remaining questions, the application of the standard of reasonableness to these issues is also consistent with the existing jurisprudence prior to the Supreme Court of Canada's decision in *Vavilov*. See, for example, *Ibabu* at para 26; *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at para 22).

[29] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov,* at para 89 citing *Canada (Minister of Citizenship and Immigration) v Khosa,* 2009 SCC 12 at para 59). These contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90). Put in another way, the Court should intervene only when "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker's

reasoning process; and (2) untenability "in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, at para 101).

VI. STATUTORY PROVISIONS

[30] The following statutory provision of the *IRPA* is relevant to this application for judicial review:

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 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	**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 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.

child directly affected.

[…]	[…]
Non-application of certain factors	**Non-application de certains facteurs**
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	**(1.3)** Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

VII. ARGUMENTS

A. *Applicants*

[31] The Applicants say that the Decision should be overturned as the Officer failed to apply the proper legal test established by the Supreme Court of Canada and, in any case, ignored critical evidence directly contradicting the Officer's findings. Consequently, they argue that this judicial review should be allowed and the application be remitted to a different decision-maker.

(1) Legal Test for H&C Determinations

[32] The Applicants argue that the Officer failed to assess their application according to the hardship they would face if an exemption on H&C grounds were not granted. In fact, they state

that the Officer did not even make one reference to hardship in the Decision and clearly failed to assess if “unusual and undeserved” or “disproportionate” hardship was demonstrated.

[33] The Applicants argue that the Supreme Court of Canada has clearly set out the applicable legal test in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 25-26 [*Kanthasamy*], where it notes that:

> [25] What *does* warrant relief will clearly vary depending on the facts and context of the case, but officers making humanitarian and compassionate determinations must substantively consider and weigh *all* the relevant facts and factors before them: *Baker*, at paras. 74-75.
>
> [26] According to the Guidelines, applicants must demonstrate either “unusual and undeserved” *or* “disproportionate” hardship for relief under s. 25(1) to be granted. “Unusual and undeserved hardship” is defined as hardship that is “not anticipated or addressed” by the *Immigration and Refugee Protection Act* or its regulations, and is “beyond the person’s control.” “Disproportionate hardship” is defined as “an unreasonable impact on the applicant due to their personal circumstances”: Citizenship and Immigration Canada, *Inland Processing*, “IP 5: Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds” (online), s. 5.10.

(2) Analysis of Gender-Based Risk

[34] The Applicants argue that the Officer failed to properly analyze the gender-based hardship Ms. Abdelsalam would face as a woman in Egypt. They submit that the Officer failed to analyze: (1) the potential hardship Ms. Abdelsalam would face as a woman with liberal values in a socially conservative society; and (2) the serious threat of violence and harassment faced by women in Egypt, as detailed in the reports and articles submitted.

[35] First, the Applicants point to the fact that Ms. Abdelsalam has already been told by members and supporters of the Muslim Brotherhood, with whom she worked, to stop wearing pants, make-up, and bright colours. Instead, they insisted she wear more conservative attire. Consequently, the Applicants note that Ms. Abdelsalam will continue to face such hardships should she return to Egypt as a woman with liberal values.

[36] Second, the Applicants also argue that the abundance of reports and articles submitted clearly demonstrate that Egypt is not a safe country for women. They specifically cite articles and reports outlining the high rate of violence and harassment faced by women in Egypt. As such, the Applicants argue that the Decision is unreasonable because it goes against this objective evidence, which the Decision even fails to mention. They assert that it is "trite law that explanations which are not obviously implausible must be taken into account."

(3) Analysis of Mental Healthcare Available in Egypt

[37] The Applicants also argue that the Officer unreasonably assessed: (1) the impact their return to Egypt would have on their mental health; and (2) the adequacy of the mental healthcare available to them in Egypt.

[38] First, the Applicants say that the evidence presented clearly shows that the Applicants face important mental health challenges that would be exacerbated should they be forced to return to Egypt. Notably, they point to the psychological report by Dr. Carreria which they believe clearly indicates that Ms. Abdelsalam is receiving active mental health treatment and demonstrates the potential hardship she would face should she be forced to return to Egypt.

[39] Second, the Applicants state that the Officer unreasonably assessed the availability of adequate mental healthcare in Egypt. The Officer largely relied on an outdated 2003 study while ignoring more relevant and recent evidence outlining the poor mental health facilities in Egypt, as well as the stigma and the low priority of mental health in Egypt given the current political climate. Once again, they state that it is trite law that explanations which are not obviously implausible must be taken into account.

[40] The Applicants further argue that the approach taken by the Officer was inconsistent with the Supreme Court of Canada's decision in *Kanthasamy* at paras 47-48:

> [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: *Davis v. Canada (Minister of Citizenship and Immigration)* (2011), 96 Imm. L.R. (3d) 267 (F.C.); *Martinez v. Canada (Minister of Citizenship and Immigration)* (2012), 14 Imm. L.R. (4th) 66 (F.C.). As previously noted, Jeyakannan Kanthasamy was arrested, detained and beaten by the Sri Lankan police which left psychological scars. Yet despite the clear and uncontradicted evidence of such harm in the psychological report, in applying the "unusual and undeserved or

> disproportionate hardship" standard to the individual factor of the availability of medical care in Sri Lanka — and finding that seeking such care would not meet that threshold — the Officer discounted Jeyakannan Kanthasamy's health problems in her analysis.

(4) Best Interests of Child Analysis

[41] Finally, the Applicants argue that the Officer unreasonably analyzed the best interests of Loay and Hamza. They submit that: (1) the Officer erred by stating that the RPD and the RAD found Loay's kidnapping not credible; and (2) the evidence overwhelmingly demonstrates that it is in the best interests of Loay and Hamza to remain in Canada.

[42] First, the Applicants state that the RPD and the RAD's credibility analysis concerned the Muslim Brotherhood's involvement in the kidnapping and not the kidnapping itself. They therefore argue that it is unreasonable for the Officer to dismiss the potential hardships Ms. Abdelsalam's children would face as a result of this incident by simply referring to the RPD and the RAD's negative credibility finding.

[43] Second, the Applicants argue that the evidence overwhelmingly establishes that Loay and Hamza are excelling in Canada and would face significant hardship in Egypt. The Applicants argue that the evidence demonstrates that their mental health would likely suffer and that they are likely to face hardship due to the current conservative culture in Egypt. Accordingly, they state that the Officer's findings are unreasonable in light of this evidence and testimony.

B. *Respondent*

[44] The Respondent argues that the Decision was reasonable and the Officer applied the proper legal test for H&C determinations post-*Kanthasamy*. The Decision also properly takes into consideration the findings of the RPD and the RAD, and considers all the evidence presented in a way that is consistent with current jurisprudence. The granting of an exemption on H&C grounds pursuant to s 25(1) is an exceptional measure and a discretionary one. Since the Applicants had the burden of satisfying the Officer that they qualified for an H&C exemption, but failed to do so, the Respondent argues that this judicial review should be dismissed.

(1) Legal Test for H&C Determinations

[45] The Respondent disagrees with the Applicants' argument that the Officer failed to apply the proper legal test for H&C determinations. The Respondent points out that this Court has recently stated in *Nagamany v Canada (Citizenship and Immigration)*, 2019 FC 187 at para 31 that:

> Therefore, looking at the issue of H&C considerations solely through the lens of hardships is no longer sufficient and the language of "unusual and undeserved or disproportionate hardship" must not be used by immigration officers in a way that limits their ability to consider and give weight to all relevant H&C considerations in a particular case (*Kanthasamy* at para 33). A reviewing court must therefore be satisfied that the approach outlined in *Kanthasamy* transpires from the reasons and that the decision-maker has, in his or her analysis, properly considered not just hardships but all relevant H&C considerations in a broader sense.

[46] Accordingly, the Respondent concludes that the Officer did not commit an error in applying the legal test required by taking a holistic approach to assess the H&C factors in this case.

(2) Analysis of Gender-Based Risk and Mental Healthcare in Egypt

[47] The Respondent submits that the Officer's analysis of the potential for gender-based hardship in Egypt for Ms. Abdelsalam, as well as the availability of sufficient mental healthcare in Egypt, was reasonable.

[48] First, the Respondent says that it was the Applicants who had the burden to demonstrate that they would face hardship in Egypt sufficient to justify an H&C exemption. The Officer, upon reviewing the available information submitted by the Applicants, found that they had failed to demonstrate that the mental healthcare services in Egypt were not sufficient to satisfy the Applicants' needs, and they had failed to demonstrate a sufficient gender-based risk of hardship for Ms. Abdelsalam.

[49] Second, the Respondent submits that this Court has recognized that a decision-maker is presumed to have considered all the evidence before them. The Court has also warned against requiring decision-makers to cite all the relevant evidence at hand. The Respondent cites this Court's decision in *Kakurova v Canada (Citizenship and Immigration)*, 2013 FC 929:

> [18] […] It would be overwhelmingly burdensome for the Board to specifically cite every point in the evidence that runs contrary to its determinations. All it was required to do was to review the evidence and reasonably ground its findings in the materials before it, which it did.

[50] The Respondent submits that a "fair reading" of the Decision demonstrates that the Officer reviewed the evidence and reasonably based their findings on the materials before them.

(3) Best Interests of Child Analysis

[51] Finally, the Respondent argues that it was reasonable for the Officer to dismiss the Applicants' claims related to the Muslim Brotherhood, including the Applicants' claim concerning the kidnapping of Loay, by relying on the findings of the RPD and the RAD. The Respondent cites this Court's decision in *Zingoula v Canada (Citizenship and Immigration)*, 2019 FC 201 [*Zingoula*] in support of this position, which states:

> [11] It is therefore possible to invoke, in support of an H&C application, facts that had previously been invoked in support of a failed refugee protection claim. However, the RPD or the RAD must have found the evidence of these facts credible. It is well established that an H&C officer may reject evidence that has been found not to be credible by the RPD or the RAD: *Nwafidelie v Canada (Citizenship and Immigration)*, 2017 FC 144 at paragraph 22; *Jang v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 996 at paragraph 19. Obviously, if an applicant seeks to present essentially the same story that had been found not to be credible as a whole by the RPD or RAD, the H&C officer is entitled to reject it: *Miyir* at para 25.

VIII. ANALYSIS

[52] The Applicants raise a plethora of issues, most of which are not borne out of a simple reading of the Decision.

[53] For example, the Applicants say:

> 34. It is unclear whether the Officer read and relied upon the H&C materials before him including the Affidavit and

> Submissions given the repeated references to the "PRRA" submissions and "PRRA" affidavit.
>
> 35. As well, the Officer does not once reference "hardship" in this decision. It is clear the Officer applied the incorrect test. As such the Court must intervene.
>
> 36. The Officer also conflates the RPD findings on credibility with respect to the Muslim Brotherhood with a total lack of credibility here despite a plethora of objective supporting country condition materials provided regarding hardship.

[54] A simple reading of the Decision shows that the Officer makes it very clear why it is appropriate in this case to consider some of the PRRA submissions in the context of the H&C reasons. The Officer points out that he/she is the decision-maker for both the PRRA and the H&C applications and that "some of the issues that are in the statements of risk that the applicants brought forward in their PRRA have been raised by the applicants in the H&C context (for example, as Adverse Country Conditions or BIOC), and therefore are considered in the H&C decision in those contexts." There is nothing here to suggest that the Officer failed to rely upon the materials in their H&C submissions that are referred to throughout the Decision.

[55] The Decision also makes it clear that the Officer considered the difficulties and hardship of the Applicants' return to Egypt. In a post-*Kanthasamy* context, it is understandable that the Officer would avoid stating or suggesting that he or she was applying some kind of unusual, undeserved or disproportionate hardship test, or looking at other factors through the lens of hardship.

[56] Nor does the Officer conflate the RPD or the RAD findings on Ms. Abdelsalam's lack of credibility with everything that is raised in the H&C application. The Officer does not conflate;

he or she reasonably defers to the RPD and the RAD when dealing with assertions of risk to the Applicants from the Muslim Brotherhood in Egypt and state protection issues, because these issues have already been dealt with by the RPD and the RAD. See *Zingoula* at para 11. The Officer is rightly wary of Ms. Abdelsalam's bald statements and consistently looks for supporting objective evidence. Given that the onus is upon the Applicants to establish their case for H&C relief, this is an entirely reasonable approach to the evidence – or the lack thereof – that was presented in this case.

[57] As regards the Applicants' allegations about mental health treatment and facilities in Egypt, the Decision is based upon the fact that there was insufficient evidence that the Applicants had <u>any</u> present mental health needs that could not be dealt with adequately in Egypt. The Applicants have not established before me that this was an unreasonable conclusion.

[58] Another unsubstantiated assertion by the Applicants is that the Officer displayed a zeal to find instances of contradiction in the Applicants' evidence and was over-vigilant in their microscopic examination of the evidence. There is nothing in the Decision to support this bald assertion.

[59] An additional unexplained and unsubstantiated assertion is that "the principles as addressed in *Kanthasamy* were not followed at all." The Applicants make no attempt to explain what they mean by this assertion and I can find no support for it in the Decision.

[60] Another broad assertion is that the Officer neglected to consider specific, general country documents that undermine the Officer's conclusions. The Officer is presumed to have considered all the evidence before him and the Applicants have not demonstrated how the principles enunciated in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35 at paras 14-17, FCJ No 1425 come into play on the facts of the present case.

[61] In a general sense, the issues and arguments raised by the Applicants in this application fail to engage with the Decision in any way that would allow me to identify a reviewable error. The Applicants argue in writing that "it is clear that the Officer did not consider the material before him in a 'holistically' [*sic*]." But without specific examples of what this means, and what the Court can examine, this bald assertion is not sufficient for the Court to interfere with the Decision.

[62] As with their submissions in IMM-2143-19 dealing with their negative PRRA decision, the Applicants emphasize the alleged gender issues raised and their mental health status.

[63] Unlike in their PRRA application, however, the Applicants can cite and rely upon general adverse country conditions for women in their H&C submissions, although the mental health analysis is pretty well the same.

[64] In this instance, the Applicants complain that the Officer's treatment of the general negative situation for women in Egypt is not sufficiently defined or considered.

[65] It is true that the Officer's treatment of gender-based risk is brief. However, this does not mean it is inadequate or that the Officer failed to consider the evidence that was submitted. Quite appropriately, the Officer cites the "violence and harassment of women" and the adverse country conditions Ms. Abdelsalam will experience if she returns to Egypt. It was clearly a part of the record, and specifically mentioned in the H&C Decision, that Ms. Abdelsalam had submitted very little evidence that she had personally suffered any physical harm in the past.

[66] Before me, counsel emphasized the extremely negative impact that the general social climate in Egypt has upon women. Ms. Abdelsalam says that she has experienced problems as to her clothing in the past. However, there is no evidence that, within Ms. Abdelsalam's own family, she has been oppressed. This does not mean, of course, that she would not face problems outside the home. Nevertheless, her past problems with the Muslim Brotherhood were not believed by the RPD and the RAD, and the Applicants have not challenged those decisions in this Court. As the Decision makes clears, the Officer has to take into account that Ms. Abdelsalam has been found to be not credible. This does not mean she will not face cultural and other problems in the future, but the Officer fully acknowledged this and makes it clear that this factor was weighed in the analysis:

> Nonetheless, having reviewed the research reports and articles that the applicants have submitted, I acknowledge that if the applicants were to be returned to Egypt, it is possible that, at some point, they might be negatively affected by the adverse conditions that are present in that country.
>
> However, I note that the presence of adverse country conditions in Egypt is only one of the factors for consideration on this H&C application. My H&C decision is not based on one factor for consideration, but rather on a global assessment of all of the H&C factors that the applicants have brought forward.

[67] As evidenced above, the Officer makes it clear that the evidence on violence and harassment of women in Egypt was accepted and considered. That means the Applicants are simply disagreeing with the weight given to that evidence in the Officer's overall global assessment. The jurisprudence is clear that the Court cannot interfere with the weighing of evidence and come to its own conclusions on this issue. See *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313:

> [18] The decision under review is not without its faults. Nevertheless I have come to the conclusion that it deserves deference. It falls within the range of possible acceptable outcomes and is therefore reasonable. It is not for the Court to reweigh evidence or to relitigate the case (*Legault*, *supra*, at para 11). The test is reasonableness, not correctness. I share the view expressed by Boswell J. in *Stuurman v Canada (Minister of Citizenship and Immigration)*, 2018 FC 194, at para 9, that:
>
> > [9] 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).

[68] As with the Officer's PRRA decision in IMM-2143-19, the mental health factors are fully identified and addressed in the H&C Decision. It is possible to disagree with the Officer's conclusions but I do not think it is possible to say that the Applicants have established a reviewable error in this case.

[69] I have reviewed all of the Applicants' submissions against the Decision, as well as their submissions to the Officer. I can see room for disagreement but no reviewable error.

IX. CERTIFICATION

[70] Counsel agree there is no question for certification and the Court concurs.

<u>JUDGMENT IN IMM-2142-19</u>

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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