Federal Court  Cour fédérale

Date: 20210804

Docket: IMM-4294-20

Citation: 2021 FC 817

Ottawa, Ontario, August 4, 2021

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

LEONAT PRETASHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Leonat Pretashi, [Mr. Pretashi] seeks judicial review of a May 22, 2020 decision of an immigration officer [the Officer] which refused his application for permanent residence on humanitarian and compassionate [H&C] grounds, filed pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] Mr. Pretashi submits that the decision is unreasonable because the Officer erred in assessing his establishment and the hardship he would experience upon return to Albania and conflated the two factors. He also submits that the Officer breached procedural fairness by relying on extrinsic evidence and making veiled credibility findings without providing him with an opportunity to respond, including by not convening an oral hearing.

[3] For the reasons that follow, the Application is dismissed. No error can be found in the Officer's decision that the H&C exemption from the requirements of the Act was not justified. The Officer assessed the evidence of establishment and the evidence of hardship and reasonably attributed low weight to each factor. The Officer did not rely on extrinsic evidence and did not make any credibility findings. Rather, the Officer reasonably found that the evidence of hardship upon return to Albania, which focussed on the alleged threats by Mr. Pretashi's wife's family, lacked probative value.

I. Background

[4] Mr. Pretashi is a citizen of Albania. He became a permanent resident [PR] of Canada in December 2005 through spousal sponsorship. Shortly after arriving in Canada, he and his wife separated and in 2009, they divorced.

[5] In 2011, Mr. Pretashi married his Albanian girlfriend. In 2012, he filed an application to sponsor her to Canada. In the course of this sponsorship application, the visa officer became aware that Mr. Pretashi had failed to disclose on his PR application the existence of his child,

born in Albania in September 2005, and that he had married his first wife to obtain PR status in Canada.

[6] As a result of his misrepresentation, Mr. Pretashi was found to be inadmissible to Canada pursuant to paragraph 40(l) (a) of the Act. In 2017, an exclusion order was issued against him. Mr. Pretashi admitted that he engaged in misrepresentation with respect to not disclosing his son, but filed an appeal to the Immigration Appeal Division [IAD] arguing that the exclusion order was not valid and seeking relief on H&C grounds. On January 16, 2019, the IAD dismissed the appeal.

[7] Justice McVeigh dismissed Mr. Pretashi's application for judicial review of the IAD decision in *Pretashi v Canada (Public Safety and Emergency Preparedness*) 2019 FC 1105 [*Pretashi #1*]. Justice McVeigh's decision provides additional details of Mr. Pretashi's immigration history, which led to the IAD's finding.

[8] On October 7, 2019, Mr. Pretashi submitted a PRRA application. The PRRA was refused and the Court denied leave for judicial review.

[9] On December 11, 2019, Mr. Pretashi applied for permanent residence from within Canada on H&C grounds, citing his establishment in Canada, the best interests of his son, and the hardship he would suffer upon return to Albania due to the risk from his wife's cousins, who he alleged threatened to kill him because he had dishonored his wife by not sponsoring her to Canada.

II. The Decision under Review

[10] The Officer's decision canvassed Mr. Pretashi's submissions, the documentary evidence and the relevant principles from the jurisprudence.

[11] The Officer attributed moderate weight to Mr. Pretashi's inadmissibility to Canada based on his misrepresentation. The Officer attributed low weight to Mr. Pretashi's establishment in Canada, and to the alleged risk and adverse country conditions in Albania. The Officer found that Mr. Pretashi's removal would not compromise the best interests of his son. The Officer concluded that the H&C exemption was not warranted.

[12] With respect to establishment, the Officer considered Mr. Pretashi's financial and taxation records, and letters from his employer and family, noting that Mr. Pretashi had been employed full-time for at least 11 out of the 14 years he resided in Canada and he had transferred money to his wife and son between 2016 and 2018 and occasionally to his mother and brother. The Officer also noted that Mr. Pretashi's employment experience and skills could be applied in Albania and that he had not shown that he would be unable to find employment if he returned.

[13] The Officer acknowledged that Mr. Pretashi had made several friends in Canada and was well liked in his community, but found that these relationships were not of an interdependent or reliant nature such that granting an H&C exemption would be warranted.

[14] The Officer noted that Mr. Pretashi had lived most of his life in Albania and that all of his family members reside there. The Officer acknowledged that Mr. Pretashi had become accustomed to life in Canada and that he may experience difficulties relocating to Albania, but found that his adaptability, demonstrated by his establishment in Canada, his familial support in Albania and his knowledge of the language, customs and culture, would assist him in re-establishing himself in Albania.

[15] With respect to the best interests of Mr. Pretashi's son, the Officer noted the importance of family reunification, but found insufficient evidence that this reunification should occur in Canada and not in Albania where the son was born and had resided his entire life. The Officer concluded that there was insufficient evidence that it would be in the son's best interests to move to Canada and was not satisfied that the son's best interests would be compromised if Mr. Pretashi were removed from Canada.

[16] With respect to hardship, the Officer considered Mr. Pretashi's submissions that his wife's family threatened to kill him if he returned to Albania for deceiving and dishonouring his wife. The Officer noted the letter from Mr. Pretashi's wife stating that her family told her that her husband "will answer with his life" according to her father's last wishes and the letter from Mr. Pretashi's son stating that Mr. Pretashi would "face problems" from his mother's family who said that they would kill him.

[17] The Officer found that these letters were not of sufficient probative value to overcome Mr. Pretashi's own evidence before the IAD that he had no ongoing problems in Albania, and specifically had no problems with his wife's family.

[18] The Officer also considered country condition evidence, including about blood feuds in Albania, but concluded that Mr. Pretashi had not submitted sufficient evidence to demonstrate how these conditions would affect him personally.

III. Standard of Review

[19] H&C decisions, which are discretionary decisions, are reviewed on the reasonableness standard (*Baker v Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817 at paras 57-62, 174 DLR (4th) 193 [*Baker*]; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 44, [2015] 3 SCR 909 [*Kanthasamy*]). In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16, 23 [*Vavilov*], the Supreme Court of Canada confirmed that reasonableness is the applicable standard of review for discretionary decisions and has provided extensive guidance to the courts in reviewing a decision for reasonableness.

[20] The Court begins by examining the reasons for the decision with respectful attention, seeking to understand the reasoning process followed by the decision-maker to arrive at a conclusion. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105-110).

[21] Contrary to Mr. Pretashi's submission that the principles in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, regarding the adequacy of reasons no longer apply, the Supreme Court of Canada noted in *Vavilov* at para 91,

> A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside: *Newfoundland Nurses*, at para. 16. The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.

[22] Allegations of procedural unfairness are generally reviewed on the correctness standard. As noted in *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 34, [2018] FCJ No 382 (QL), correctness is not so much a standard of review as a finding that where a breach of procedural fairness is found, no deference is owed to the decision maker.

[23] As noted by Justice Norris in *Ahmed v Canada (Citizenship and Immigration*) 2018 FC 1207, at para 22 [*Ahmed*], where the issue was whether the PRRA officer erred in not holding an oral hearing,

[24] A court assessing a procedural fairness question "is required to ask whether the procedure was fair having regard to all the circumstances, including the *Baker* factors" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*], referring to *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at 837-41; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). In the

final analysis, a procedural choice which fails this test could be said to be both incorrect and unreasonable but, in my view, these adjectives would add little, if anything, to the fundamental conclusion that the procedure was unfair. As a result, I do not consider it necessary to join the debate over the standard of review. I must simply determine whether the procedure the PRRA officer followed was fair or not having regard to all the circumstances, including the statutory framework, the nature of the substantive rights involved, and the consequences of the decision for the applicant.

IV. The Applicant's Submissions

[25] Mr. Pretashi submits that the Officer erred in assessing his establishment and hardship and erred in conflating the two factors. He also submits that the Officer breached procedural fairness by relying on extrinsic evidence and by making veiled credibility findings without providing him with an opportunity to respond, either by way of a procedural fairness letter, as used in visa applications, or by convening an oral hearing. He has not challenged the Officer's assessment of the best interests of his son.

[26] Mr. Pretashi submits that the Officer inconsistently found that his "level of establishment" showed his determination and resilience yet attributed low weight to his establishment. He argues that the reference to "level of establishment" means a high level of establishment.

[27] Mr. Pretashi also submits that the Officer erred in muddling or conflating the assessment of his establishment with the assessment of the hardship he would face upon return to Albania

because the Officer found that his demonstrated ability to establish himself would mitigate the hardship upon return. He submits that the Officer erred by not assessing establishment independently from hardship. Mr. Pretashi points to *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633, [*Singh 2019*], which he submits is analogous, and argues that an officer cannot use positive establishment factors against an applicant.

[28] With respect to the hardship he will face upon return, Mr. Pretashi argues that the Officer breached procedural fairness by attributing substantial weight to the IAD decision. Mr. Pretashi characterizes the IAD decision as extrinsic evidence because he did not provide this decision as part of his H&C application and submissions. He argues that he should have been given an opportunity to respond to it.

[29] Mr. Pretashi also notes that his evidence to the IAD was provided over a year before his H&C application and his circumstances had changed. He submits that at the time of the IAD hearing, he had no problems with his wife's family because he had not lost his PR status at that point as there was still a chance that he could sponsor his Albanian wife to Canada. He submits that the risk from his wife's family only materialized once he was facing removal.

[30] Mr. Pretashi disputes that his wife's family knew of his plan for him to marry his first wife in order to gain status in Canada and then to sponsor his Albanian wife and son. He submits that only "his family" was aware.

[31] Mr. Pretashi also argues that the Officer breached the duty of procedural fairness by rejecting his allegations of hardship on the basis of veiled credibility findings–not insufficient evidence–without affording him an opportunity to address the Officer's concerns.

[32] Mr. Pretashi submits that the Officer made a credibility finding based on the IAD decision, which noted his statement that he did not face any problems from his wife's family and which is inconsistent with his H&C submissions that his wife's family threatened to kill him, as supported by the letters from his wife and son. He submits that the Officer could only reject his assertions of hardship and risk if the Officer found him untruthful.

[33] Mr. Pretashi submits that in accordance with *Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 [*Ahmed*] if, assuming the allegations are true, the factual propositions the evidence is tendered to establish would justify granting the application, the basis for rejecting the evidence is likely to be a credibility finding. Mr. Pretashi argues that the Officer rejected his evidence of risk as hardship - which should have justified the H&C exemption- because the Officer did not believe Mr. Pretashi.

[34] Mr. Pretashi also relies on *Singh v Canada (Minister of Employment and Immigration)*, [1985] l SCR 177, [*Singh 1985*] for his argument that where a significant credibility issue is involved, the issue must be determined by an oral hearing.

[35] Mr. Pretashi further argues that the Officer did not explain why the letters from his wife, son and mother regarding the hardship he would experience and the risk he would face upon

return had insufficient probative value. He submits that the Officer erred by discounting the letters simply because they were from family.

V. The Respondent's Position

[36] The Respondent submits that Officer reasonably found that the H&C exemption was not warranted. The Officer assessed establishment and hardship separately and attributed the appropriate weight to each factor and reached the overall conclusion that the H&C factors did not overcome Mr. Pretashi's inadmissibility.

[37] The Respondent submits that the Officer fully considered the submissions and evidence regarding establishment and reasonably concluded that Mr. Pretashi's employment and ties to friends in Canada should be given some positive- albeit low- weight, but this is not sufficient to warrant H&C relief to overcome his inadmissibility based on defrauding the immigration system.

[38] The Respondent disputes that the Officer contradicted himself in assessing establishment or conflated establishment and hardship, noting that the decision clearly states that low weight was attached to both establishment and hardship.

[39] The Respondent submits that the Officer did not breach procedural fairness. The IAD decision is not extrinsic evidence as it was known to Mr. Pretashi, confirmed by this Court and it precipitated his PRRA application and his H&C application. But for the IAD's finding of inadmissibility and issuance of the removal order Mr. Pretashi would still be a permanent resident and not in need of an H&C exemption. The Officer was entitled to rely on the IAD decision.

[40] The Respondent submits that the Officer did not make any credibility findings, noting that Mr. Pretashi did not provide any evidence by way of sworn affidavit to counter the statements he had made to the IAD.

[41] With respect to the allegations of hardship, the Respondent disputes Mr. Pretashi's submissions that his circumstances changed when the IAD refused his appeal and he lost his PR status and any possibility to sponsor his Albanian wife. The Respondent submits that if Mr. Pretashi were successful on this Application, he would retain his PR status and would have the option of seeking to sponsor his wife and son. Moreover, Mr. Pretashi was aware of his misrepresentation, including that of not disclosing his son in 2005, and would have been aware since that time that there was no guarantee that he would be able to sponsor his Albanian wife and son.

[42] The Respondent also disputes Mr. Pretashi's claim that his wife and her family were unaware of his plan to gain status in Canada in order to sponsor his wife and son. The Respondent notes that although Mr. Pretashi conceded his misrepresentation with respect to not disclosing the existence of his son in his appeal to the IAD, and the IAD upheld his inadmissibility on this basis, the finding of the Immigration Division [ID], which also found misrepresentation based on his lack of a genuine marriage to his Canadian wife, still stands.

[43] The Respondent submits that the Officer reasonably found that Mr. Pretashi's evidence of hardship lacked probative value. The Respondent notes that this evidence consisted of four undated and unsworn letters from family members that focussed on how they would be

financially affected. The Respondent notes that submissions made by counsel for Mr. Pretashi are not sworn evidence from Mr. Pretashi.

VI. The Decision is Reasonable and the Process was Fair

[44] Section 25 of the Act provides that an exemption from some findings of inadmissibility and from other criteria or obligations of the Act may be granted on the basis of H&C considerations. In the present case, the exemption, if granted, would overcome Mr. Pretashi's inadmissibility to Canada. It bears reiterating that an H&C exemption is discretionary and exceptional relief (*Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313 at para 11), and is not an alternative immigration scheme (*Kanthasamy* at para 23). The applicant bears the onus of establishing with sufficient evidence that an H&C exemption is warranted.

[45] In *Kanthasamy* the Supreme Court of Canada noted the approach previously set out in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, which described H&C considerations as "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another"

[46] The Supreme Court of Canada explained that what warrants relief on H&C grounds pursuant to section 25 will vary depending on the facts and context of each case. Officers making such decisions must substantively consider and weigh all of the relevant facts and factors before them (*Kanthasamy* at para 25).

[47] Mr. Pretashi argues that although he may not be a sympathetic applicant, his application should have been considered based on the evidence presented, but was not. I disagree. Despite Mr. Pretashi's chequered history, the Officer assessed his H&C application on the evidence presented and reasonably concluded that an H&C exemption was not justified.

[48] The Officer did not ignore or misapprehend the evidence. The Officer assessed all the relevant factors and attributed weight to each – which is in the Officer's discretion and is not to be re-weighed by the Court. The Officer's decision shows a rational chain of analysis and is justified by the facts and the law.

[49] The Officer did not inconsistently find that Mr. Pretashi had a "level of establishment" yet attributed low weight to establishment. The term "level" does not suggest a high level or any particular level. The Officer clearly stated that he attributed low weight to Mr. Pretashi's establishment, which consisted only of his employment and friendships.

[50] Contrary to Mr. Pretashi's submission that the Officer conflated establishment with hardship, the Officer separately assessed both factors. The Officer did not use positive establishment factors against Mr. Pretashi. Although the Officer noted that Mr. Pretashi had used his skills to establish himself in Canada, which he could also use to re-establish himself in Albania, and which could mitigate the expected and normal hardship of relocating, the Officer separately assessed Mr. Pretashi's allegations of hardship, which focussed on the alleged risk from Mr. Pretashi's wife's family.

[51] I do not agree that the Officer's assessment of establishment mirrors that found to be problematic by the Court in *Singh 2019* and *Lauture v Canada (Citizenship and Immigration),* 2015 FC 336 at para 26, [*Lauture*].

[52] Contrary to Mr. Pretashi's submission, *Singh* 2019 is not directly on point. Neither the facts nor the Officer's analysis are the same. Moreover, *Singh* does not establish a hard and fast rule that evidence of establishment cannot also be considered in the assessment of the hardship that occurs from removal to an applicant's home country.

[53] In *Singh 2019*, Justice Diner found that the officer's refusal of the H&C application was unreasonable because the officer "turned positive factors that weigh in favour of granting an exemption into a justification for denying it" (at para 23). In that case, the Officer noted that the applicants' ability to assimilate in Canada demonstrated their ability to assimilate in their home country. Justice Diner noted, at para 24, that this reasoning had been previously criticised by the Court in *Sosi v Canada (Citizenship and Immigration),* 2008 FC 1300 and in *Lauture.*

[54] In *Singh,* Justice Diner noted that establishment means establishment in Canada, which should be assessed as a unique category separate from the assessment of hardship (at paras 25-26). Justice Diner clarified this at para 27,

> 27] Including considerations of establishment in Canada when assessing an applicant's hardship upon return does not, by itself, render the Decision unreasonable (*Zhou v Canada (Citizenship and Immigration),* 2019 FC 163; see also *Brambilla*). Commingling becomes problematic, however, when an officer ascribes positive weight to an applicant's establishment on the one hand but, on the other, uses the positive establishment attributes (resiliency, drive and determination), to attenuate future hardship.

[55] In *Brambilla v Canada (Citizenship and Immigration)* 2018 FC 1137, Justice Diner also noted that the jurisprudence, including *Lauture* had not established that it is an error to address both hardship and establishment in the same part of the decision. Justice Diner identified the problem as the failure to assess establishment on its own, noting at para 12,

> [12] Furthermore, I do not agree with the Applicants that either *XY* or *Lauture* stand for the proposition that an officer cannot address both hardship and establishment within the same part of the H&C analysis. While I agree with the Applicants that it would be best to keep the concepts separate, to read either *Lauture* or *XY* as imposing a blanket prohibition on such commingling is to elevate form over substance. Rather, both of those cases faulted the officers for their failure to evaluate establishment evidence and weigh it along with other factors relevant to whether the H&C exemption applied. In both cases, the officer made the mistake of simply using the positive establishment attributes of the respective applicants in Canada, to find that they could therefore successfully establish abroad. [emphasis added]

[56] In *Zhou* v *Canada (Citizenship and Immigration)* 2019 FC 163, Justice Locke (as he then was) acknowledged the principle in *Lauture*, but found that the officer had not turned positive establishment into a negative factor, noting at para 17,

> [17] .... [ ] In my view, despite concluding that the applicants' establishment and integration in Canada was a positive factor, it remained open to the Officer to consider that some of the skills the applicants had acquired in Canada could reduce the potential hardship of their return to China. The Officer's assessment of the applicants' establishment was not improperly "filtered through the lens of hardship" as it was in *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 35.

[57] As in *Zhou*, I find that it was open to the Officer to note that skills acquired by Mr. Pretashi in Canada would assist in his reestablishment in Albania. It bears noting that the Officer also considered that Mr. Pretashi's whole family resided in Albania, and that he was familiar with the language and customs- none of which had anything to do with, or detracted from, his

establishment in Canada. Moreover, the Officer separately assessed the allegations of hardship, which focussed on the alleged risks from Mr. Pretashi's wife's family and not on his hardship in re-establishing himself in Albania.

[58] The Officer's assessment of Mr. Pretashi's establishment and the low weight attached to his establishment was reasonable. Mr. Pretashi's establishment in Canada after 14 years consisted of his employment and his friendships; it was not exceptional.

[59] The Officer did not breach procedural fairness. The procedure was fair having regard to all the circumstances (*Ahmed* at para 22). First, contrary to Mr. Pretashi's submissions, the IAD decision, relied on by the Officer, was not extrinsic evidence. Second, the Officer did not make any credibility findings, veiled or otherwise, against Mr. Pretashi or others; rather found that the evidence of risk (considered as hardship) was not of sufficient probative value. There was no need to provide an opportunity for Mr. Pretashi to attempt to clarify the inconsistencies or buttress his evidence. The onus was on him to support his H&C application with sufficient evidence.

[60] Mr. Pretashi's H&C submissions to the Officer were made by his counsel and stated that Mr. Pretashi believed that his wife's cousins would kill him because he has dishonoured their family by not following through on his promise to sponsor his Albanian wife and son to Canada. The submissions refer to the letters from his Albanian wife, and son.

[61] Mr. Pretashi now suggests that he adopted these submissions and that they are the same as his own affidavit evidence. I disagree. There is no affidavit or other sworn statement from Mr. Pretashi regarding the risk or hardship he alleges.

[62] The Officer reasonably attached substantial weight to the IAD's findings and decision confirming that Mr. Pretashi was inadmissible to Canada. The IAD's reasons noted that Mr. Pretashi did not mention any death threats and had stated that there were no problems with his wife's family.

[63] Mr. Pretashi's characterization of the IAD decision as extrinsic evidence- because he did not provide it with his H&C application- is disingenuous. Mr. Pretashi is well aware of his own long immigration history and of the submissions he has made at various stages and of the decisions rendered. Although not mentioned by the Officer, the IAD decision was confirmed by this Court in *Pretashi #1*. As a result, the IAD decision stands and the Officer was entitled to rely on it. In that decision, Justice McVeigh summarised Mr. Pretashi's marital history, his evolving narrative and his misrepresentation, which led to the finding that he is inadmissible to Canada. Although the Officer did not refer to *Pretashi #1,* it is part of Mr. Pretashi's immigration history, of which he is well aware.

[64] Mr. Pretashi's submission that his circumstances changed between the IAD hearing and his H&C application because by the time of his H&C application he had lost his permanent residence status and the reality that he would be unable to sponsor his wife and son had set in on her family denies the reality. The reality is that Mr. Pretashi has kept his Albanian wife and son

in a state of uncertainty for over 14 years, with promises to sponsor them to Canada when this was only a remote possibility, given his awareness that his status in Canada was based on his misrepresentation. Even if Mr. Pretashi had some slim hope of maintaining his permanent resident status, he has been aware for several years – at least since his wife revealed to visa officers at her own interview that Mr. Pretashi's previous marriage to a Canadian citizen was for the purpose of gaining status- that his own status was in jeopardy.

[65] If the hardship and risk Mr. Pretashi faced had changed in the time between the IAD hearing in June 2018 and his H&C application in December 2019, it was incumbent on him to provide sufficient evidence. I note that the IAD decision was rendered in January 2019 and this Court confirmed that decision in August 2019. Mr. Petrashi subsequently submitted a PRRA application and an H&C application. The same risks alleged by Mr. Pretashi in his H&C application as hardships were assessed as risks in his PRRA, submitted after the IAD decision. The PRRA was refused and leave for judicial review was denied.

[66] Mr. Pretashi's reliance on *Ahmed* to argue that the Officer made a credibility finding is misplaced. Given that Mr. Pretashi did not submit any affidavit or evidence with his H&C application alleging the risks he now relies on as hardship, the Officer could not make any finding that Mr. Pretashi was not truthful, and did not make any such finding.

[67] The Officer's finding that the letters from Mr. Pretashi's family lack sufficient probative value to overcome Mr. Pretashi's own statement to the IAD is not a veiled credibility finding.

[68] In *Ferguson v Canada (Citizenship and Immigration)* 2008 FC 1067, at para 26-27, Justice Zinn explained that the trier of fact – in this case, the Officer- can begin with an assessment of weight or probative value, without making a credibility finding,

> [26] If the trier of fact finds that the evidence is credible, then an assessment must be made as to the weight that is to be given to it. It is not only evidence that has passed the test of reliability that may be assessed for weight. It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight or probative value without considering whether it is credible. Invariably this occurs when the trier of fact is of the view that the answer to the first question is irrelevant because the evidence is to be given little or no weight, even if it is found to be reliable evidence. For example, evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not.
>
> [27] Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.

[69] In the present case, the Officer followed the approach described in *Ferguson*; the Officer did not make a credibility finding against Mr. Pretashi or his wife or son, rather found that the letters did not have sufficient probative value to establish on a balance of probabilities that Mr. Pretashi faced the alleged risk from his wife's unnamed cousins.

[70] The letter from Mr. Pretashi's son is not dated and recounts his son's desire to come to live in Canada, his father's financial support due to his work in Canada, states that "my dad will

face problems from my mom's family", and recounts third- hand that his mother's family issued threats.

[71] The letter from Mr. Pretashi's wife, also undated, stated her desire to come to Canada with their son, her family's concerns that Mr. Pretashi deceived her with his promise to sponsor her, and that many problems and economic difficulties will result if Mr. Pretashi is required to leave Canada. His wife also states that her family thinks that Mr. Pretashi deceived her and that "they told me that if he returns here and if he will not take you to Canada, he will answer with his life, for you are your father's last wish, because he no longer lives".

[72] The Officer's finding- that the undated and unsworn letters from Mr. Pretashi's wife and son that recounted only what other unnamed persons allegedly said- lacked probative value is reasonable.

[73] Mr. Pretashi's reliance on *Singh 1985* to argue that where credibility is at issue an oral hearing must be held is also misplaced. First, as noted, the Officer did not make a credibility finding. Second, Mr. Pretashi's reliance on *Singh* overlooks that in *Singh* the Supreme Court of Canada addressed the procedures for determining refugee status in a long since amended Act. The current Act (section 113) and the *Immigration and Refugee Protection Regulations* (section 167) address when an oral hearing should be held for a PRRA application. The criteria are not met in the present case.

[74] As the Respondent notes, Mr. Pretashi has had every opportunity to extend his status and time in Canada, despite his misrepresentation. Mr. Pretashi has availed himself of many applications to retain his status and to challenge the decisions of the Immigration Division and IAD regarding is inadmissibility and the decisions of Officers regarding his PRRA and H&C applications. The Officer's decision that an H&C exemption to overcome Mr. Pretashi's inadmissibility to Canada was not justified is reasonable and the process was fair.

JUDGMENT in IMM-4294-20

THIS COURT'S JUDGMENT is that

1. The Application for Judicial Review is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Bjorn Harsanyi	FOR THE APPLICANT
Galina Bining	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bjorn Harsanyi Barristers and Solicitors Calgary, Alberta	FOR THE APPLICANT
Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT