

Federal Court



Cour fédérale

**Date: 20220208**

**Docket: IMM-2409-21**

**Citation: 2022 FC 156**

**St. John's, Newfoundland and Labrador, February 8, 2022**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**AHMAD RASHID SIDIQI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Mr. Ahmad Rashid Sidiqi (the “Applicant”) seeks judicial review of the decision of a Senior Immigration Officer (the “Officer”), refusing his application for permanent residence in Canada on Humanitarian and Compassionate (“H&C”) grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S. C. 2001, c. 27 (the “Act”).

[2] The Officer determined that the Applicant had failed to show that his establishment in Canada and the best interests of his children were such that positive discretion should be exercised to allow him to apply for permanent residence from within Canada.

[3] The Applicant is a citizen of Afghanistan. He entered Canada in July 2015 and made a claim for refugee protection. His claim was denied by the Immigration and Refugee Board, by both the Refugee Protection Division and the Refugee Appeal Division. These negative decisions were made in November 2015 and January 2016.

[4] On April 18, 2019, the Applicant submitted his H&C application. He cited his establishment in Canada, as well as ties with members of his extended family who live in Canada. He cited the best interests of his five children who are presently living in India with his wife, their mother, where they have made claims to the United Nations High Commissioner for Refugees for refugee protection.

[5] The Applicant continues to live and work in Canada since removals to Afghanistan are subject to a Temporary Stay of Removal (“TSR”).

[6] The Applicant now argues, among other things, that the Officer unreasonably assessed his establishment in Canada and the best interests of his children.

[7] The Minister of Citizenship and Immigration (the “Respondent”) submits that the Officer considered all the evidence provided and reasonably concluded that Applicant’s circumstances

did not merit the positive exercise of discretion to allow him to apply for permanent residence from within Canada, on H&C grounds.

[8] The Officer's decision is reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[9] In considering reasonableness, the Court is to ask if the decision under review "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 that decision"; see *Vavilov, supra* at paragraph 99.

[10] In my opinion, the Officer's assessment of the Applicant's establishment in Canada does not meet this test.

[11] The Officer minimized the Applicant's work history and his family relationships, as well as the length of his stay in Canada. Due to the TSR, the Applicant will remain in Canada for reasons beyond his control.

[12] It is not necessary for me to address the other arguments raised by the Applicant.

[13] In the result, the within application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination. There is no question for certification proposed.

**JUDGMENT in IMM-2409-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination. There is no question for certification proposed.

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-2409-21

**STYLE OF CAUSE:** AHMAD RASHID SIDIQI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE  
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,  
NEWFOUNDLAND AND LABRADOR

**DATE OF HEARING:** FEBRUARY 3, 2022

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** FEBRUARY 8, 2022

**APPEARANCES:**

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David Knapp FOR THE RESPONDENT

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