

Federal Court



Cour fédérale

Date: 20220503

Docket: IMM-641-21

Citation: 2022 FC 647

St. John's, Newfoundland and Labrador, May 3, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

RAIHANA OSMANI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Raihana Osmani (the “Applicant”) seeks judicial review of the decision of an Officer refusing her application for permanent residence on Humanitarian and Compassionate (“H and C”) grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protections Act*, S. C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of Afghanistan. She has resided in Canada since December 2016. She submitted her H and C application in September 2019. She based her application upon establishment in Canada, family ties to Canada, the best interest of children, and the hardship of return to Afghanistan. Included under the last factor are concerns about her mental health, that were supported by a letter from a Nurse practitioner who has treated the Applicant in Canada.

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

[4] 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.

[5] The Applicant argues, generally, that the decision is unreasonable.

[6] The Minister of Citizenship and Immigration (the “Respondent”) argues that the decision is reasonable and there is no basis for judicial intervention.

[7] Upon considering the contents of the Certified Tribunal Record, the affidavit of the Applicant filed in support of this application, and the written and oral submissions of the parties,

I find that the Officer unreasonably dealt with the evidence presented about the Applicant's mental health.

[8] The Applicant provided a report from a Nurse Practitioner that gave a clear diagnosis of the Applicant's mental health and the potential for deterioration if she were to be removed to Afghanistan. The Officer did not explicitly reject these aspects of the report but focused on the lack of evidence about the Applicant's treatment in Canada and the lack of evidence about the unavailability of mental health assistance in Afghanistan.

[9] These were the only reasons given by the Officer for discounting the letter from the Nurse Practitioner. I refer to the decision in *Kanthisamy v. Canada (Minister of Citizenship and Immigration)*, [2015] 3 S.C.R. 909 at paragraph 48 where the Supreme Court of Canada said the following:

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 Kanthisamy'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 & Immigration)* 201196 Imm. L.R. (3d) 267 (F.C.); *Martinez v. Canada (Minister of Citizenship and Immigration)* 201214 Imm. L.R. (4th) 66 (F.C.). ...

[10] I also refer to the decision in *Jang v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 996 at paragraph 32, where the Court said the following:

Finally, I would also note that as the Supreme Court observed in *Kanhasamy*, it is unreasonable for an H&C Officer to discount evidence as to the effect of removal from Canada on the mental health of an individual because of the availability of treatment in the individual's country of origin: *Kanhasamy* at para. 48.

[11] The Officer's reasons do not meet the required test of justification, transparency and intelligibility, and are unreasonable.

[12] In the result, this application for judicial review will be allowed, the decision will be set aside and the matter remitted to another officer for redetermination. No question is proposed for certification.

JUDGMENT in IMM-641-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter remitted to another officer for redetermination. No question for certification is proposed.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-641-21

STYLE OF CAUSE: RAIHANA OSMANI 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: APRIL 12, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MAY 3, 2022

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