

Federal Court



Cour fédérale

Date: 20220804

Docket: IMM-965-21

Citation: 2022 FC 1165

Ottawa, Ontario, August 4, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**FAISAL ALI A ALKARRAMI
RIMA MOHAMED ABDALLA ALKARRAMI (AKA ALKARRMAI)
AMINA FAISAL ALI A ALKARRAMI
ALI FAISAL ALI A ALKARRAMI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Faisal Ali A Alkarrami and his family are citizens of Libya. They seek judicial review of a decision by a senior immigration officer [Officer] to refuse their request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] There is currently an administrative deferral of removals [ADR] in place for Libya. The Officer therefore concluded that any possible removal was unlikely, and assigned “little weight” to the hardship associated with the family’s return to Libya. In addition, the Officer found there were other possible pathways for Mr. Alkarrami and his family to obtain permanent residence in the future.

[3] An applicant for H&C relief is entitled to have the request considered on the basis of the circumstances as they presently exist, not as they may exist at some indefinite future time. It was unreasonable for the Officer to refuse equitable relief based on a series of contingencies that may or may not materialize. The application for judicial review is therefore allowed.

II. Background

[4] Mr. Alkarrami is 48 years old. He is married and has a daughter and son, aged 14 and 12 respectively. He came to Canada with his family in November 2013 to pursue a PhD at Memorial University in Newfoundland and Labrador.

[5] Shortly after arriving in Canada, Mr. Alkarrami’s son Ali was diagnosed with Autism Spectrum Disorder [ASD]. He is receiving specialized services, including at school.

[6] Mr. Alkarrami is not eligible for permanent residence under the Provincial Nominee Program [PNP], because his education is funded by the Libyan government. The PNP excludes applicants, such as Mr. Alkarrami, whose tuition is funded by a foreign government source.

[7] The family submitted the H&C application in August 2019. Mr. Alkarrami was the primary applicant, and his wife and children were listed as dependents. The request for H&C relief cited the family's establishment in Canada, the best interests of the children [BIOC], with a particular focus on Ali's diagnosis of ASD, and adverse country conditions in Libya.

[8] The Officer agreed that Ali's best interests were the most significant H&C consideration, specifically his educational and health needs. The Officer acknowledged that returning to Libya would cause "significant hardship" for Ali, and to a lesser extent for Mr. Alkarrami's daughter Amina.

[9] However, because there is currently an ADR in place for Libya, the Officer concluded that any possible removal was unlikely. The Officer therefore assigned "little weight" to the hardship associated with the family's return to Libya.

[10] In addition, the Officer found there were other possible pathways for Mr. Alkarrami and his family to obtain permanent residence in the future. The Officer found that Mr. Alkarrami would potentially be eligible for the Federal Skilled Workers Program [FSWP] after completing his PhD program.

[11] The H&C application was rejected on January 27, 2021.

III. Issue

[12] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

IV. Analysis

[13] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "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).

[14] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[15] In *Bawazir v Canada (Citizenship and Immigration)*, 2019 FC 623 [Bawazir], Justice John Norris held that it is an error for an immigration officer to ascribe little weight to adverse country conditions only because the country is subject to an ADR. *Bawazir* involved an application for judicial review of an unsuccessful H&C application by a citizen of Yemen. Like Libya, Yemen is currently subject to an ADR.

[16] The immigration officer in *Bawazir* accepted that the situation in Yemen was dire, but found this would have little to no impact on the applicant's personal circumstances so long as the ADR remained in place. Justice Norris found that the officer's reasoning omitted an important consideration (*Bawazir* at para 17):

[...] the officer did not consider that Mr. Bawazir has no choice but to leave Canada for Yemen if he wishes to apply for permanent residence unless an exception is made for him. The officer erred in effectively dismissing a factor which is clearly relevant to the equitable underlying purpose of section 25(1) of the IRPA.

[17] In *Omar v Canada (Citizenship and Immigration)*, 2021 FC 1201 [*Omar*], Justice Richard Southcott found that an immigration officer unreasonably assigned little weight to adverse country conditions due to the existence of an ADR. Like the applicant in *Bawazir*, in the absence of H&C relief, the applicant in *Omar* would have no choice but to leave Canada for his home country if he wished to apply for permanent residence (*Omar* at para 16).

[18] Justice James O'Reilly applied *Bawazir* in *Al-Abayechi v Canada (Citizenship and Immigration)*, 2022 FC 873, observing that the immigration officer's reasons led to the perverse outcome of a policy designed to respond to a humanitarian crisis, namely the ADR, being used as grounds to deny humanitarian relief (at para 15).

[19] The Respondent attempts to distinguish these authorities on the ground that, in this case, the Officer made an explicit finding that Mr. Alkarrami has another path to permanent residence

– one that does not require him to return to Libya in order to apply. The Officer found that Mr. Alkarrami would potentially be eligible for the FSWP after completing his PhD program.

[20] The Respondent relies on Justice Elizabeth Walker’s decision in *Alzoubei v Canada (Citizenship and Immigration)*, 2021 FC 1418 [*Alzoubei*]. In that case, the immigration officer stated that the ADR “is indicative that conditions in Libya are far from ideal and I assign this factor great weight”. The officer then considered whether the applicant could be removed from Canada despite the ADR, and held that both the applicant and his spouse would have status until 2022 and “as per the ADR [...] would be eligible for work/study permits”. Justice Walker upheld the officer’s conclusion that the applicant and his family would not be returned to Libya until conditions in that country improve and the ADR, which has been in place since 2015, is removed.

[21] The immigration officer in *Alzoubi* gave adverse country conditions in Libya “great weight”. Here, the Officer gave those same country conditions “little weight”, in light of the ADR.

[22] It is not clear from the reasons in *Alzoubei* what kind of work permit or study permit the applicant may have been eligible for. In this case, there are a number of contingencies that might affect Mr. Alkarrami’s ability to attain permanent residence without returning to Libya. He would have to complete his PhD program, obtain a post-graduate work permit, secure employment for at least 12 months at a satisfactory level, and then successfully apply for entry into the FSWP.

[23] An applicant for H&C relief is entitled to have the request considered on the basis of the circumstances as they presently exist, not as they may exist at some indefinite future time. It was unreasonable for the Officer to refuse equitable relief based on a series of contingencies that may or may not materialize.

[24] Furthermore, the Officer unreasonably considered the dangers faced by Mr. Alkarrami and his family in Libya to be “general hardships relating to conflict, government instability and absence, and education system breakdown in Libya”. But as the Officer acknowledged earlier in the decision:

The applicant’s son has been experiencing symptoms and receiving treatment and educational supplements regarding his autism spectrum disorder (ASD). He is regarded by the application as the greatest H&C consideration. I agree with this assessment. I consider that he is currently availing himself of Canadian resources helping him with his education, and may require these resource for an extended period (perhaps his whole life). I consider this a significant hardship in the case of removal to Libya.

[25] At least insofar as Ali is concerned, the potential hardship he faces in Libya is personal.

[26] Finally, the Officer expressed an intention to “consider the eventuality that the applicant will be unable to secure regular means to permanent residency before he is subject to removal”, However, the Officer never addressed this eventuality, rendering the decision incomplete as well as unreasonable.

V. Conclusion

[27] The application for judicial review is allowed, and the matter is remitted to a different immigration officer for redetermination. None of the parties proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed,
and the matter is remitted to a different immigration officer for redetermination.

“Simon Fothergill”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-965-21

STYLE OF CAUSE: FAISAL ALI A ALKARRAMI, RIMA MOHAMED ABDALLA ALKARRAMI (AKA ALKARRMAI), AMINA FAISAL ALI A ALKARRAMI, ALI FAISAL ALI A ALKARRAMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN TORONTO AND OTTAWA, ONTARIO

DATE OF HEARING: JULY 20, 2022

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: AUGUST 4, 2022

APPEARANCES:

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