Federal Court  Cour fédérale

**Date: 20210813**

**Docket: IMM-2692-20**

**Citation: 2021 FC 840**

**Fredericton, New Brunswick, August 13, 2021**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**Y.A.**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the June 1, 2020 refusal of his application for permanent resident status on humanitarian and compassionate (H&C) grounds. For the reasons that follow, this judicial review is dismissed as the Officer's decision is reasonable.

**Confidentiality Order**

[2] On May 5, 2021, Prothonotary Molgat issued a Confidentiality Order with the provision that it would be reconsidered at the hearing of the judicial review. Following submissions at the hearing, I agree that it is appropriate to maintain the terms of the Confidentiality Order.

**Background**

[3] The Applicant is citizen of Chad who arrived in Canada in August 2012 on a student visa. Following the refusal of his claim for refugee protection, he submitted an application for permanent residence from within Canada on H&C grounds.

[4] On June 1, 2020, the Officer refused the Applicant's H&C application.

**Decision Under Review**

[5] The Applicant's H&C application was based on his establishment in Canada, his medical condition, adverse country conditions, and the best interests of his nieces and nephews in Chad.

[6] Regarding establishment, the Officer considered the Applicant's employment, enrollment in English classes, his volunteer work at a mosque, and his friends in Canada. Although the Officer gave some weight to this ground, the Officer found that the Applicant's establishment was not exceptional. Further, with respect to his relationship with his friends and his community, the Officer concluded that "insufficient evidence was advanced to indicate that by virtue of returning to Chad, the applicant would sever bonds with those in Canada."

[7] With respect to his medical condition, the Officer found that "[t]he applicant does not indicate he would be unable to receive medical care in Chad nor does he state it would be severely inadequate."

[8] The country conditions and the hardship in returning to Chad were assessed by the Officer who noted that the Applicant was relying upon the same information that he relied upon in support of his denied refugee claim. The Officer concluded that "[n]otwithstanding the different legal tests involved in a claim for protection versus an application on humanitarian and compassionate grounds, facts for each are established on a balance of probabilities; in my view, the evidence at hand, such as a joining the Chadian Association of Victim Support, does not persuade me that the allegations previously determined to lack credibility are now likely credible and true."

[9] The Officer gave some weight to the negative country conditions indicating human rights abuses, violence and security issues, but found that "[t]he applicant has not provided sufficient evidence detailing how this will cause a hardship to him directly in Chad."

[10] On the best interests of his nieces and nephews in Chad, the Officer concluded that it would be in their interests to be reunited with their uncle.

[11] Overall, the Officer concluded:

> While it may be difficult for the applicant to return to Chad after spending a period of time in Canada, I note that the applicant's immediate family members, consisting his [*sic*] mother and siblings continue to reside in Chad […] The applicant has

> demonstrated that he is a resourceful and enterprising individual by resettling himself in Canada […] If this application was to be refused, the applicant would not be returning to an unfamiliar place, language, culture or place devoid of a familial network that would render re-integration unfeasible.

**Issue and Standard of Review**

[12] The sole issue is the reasonableness of the Officer's decision. Both parties agree that the standard of review is reasonableness. As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99, 441 DLR (4th) 1: "the reviewing court asks whether the decision 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" [Citations omitted.]

**Analysis**

[13] The Applicant argues that the Officer's consideration of the H&C factors was unreasonable on a number of grounds including: (i) by applying the wrong test for establishment; (ii) by failing to properly consider the Applicant's health condition; (iii) by improperly analyzing hardship; and (iv) by failing to reasonably consider the hardship of resettlement in Chad.

*General Principles*

[14] By virtue of subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), the Minister may grant relief to a foreign national seeking permanent resident status who is inadmissible or otherwise does not meet the requirements of the *IRPA*. The Minister may

grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations under the *IRPA*.

[15] The Supreme Court in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, 391 DLR (4th) 644 [*Kanthasamy*] noted that humanitarian and compassionate considerations refer to "those facts, established by the evidence, which would excite in a reasonable man [sic] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes 'warrant the granting of special relief' […]" (para 13).

*Establishment*

[16] The Applicant argues that the Officer erred by applying an "exceptional" establishment requirement instead of giving broad consideration to all of the relevant factors as noted in *Kanthasamy* (para 25). The Applicant notes that he has been in Canada since 2012. He further notes that through no fault on his part, it took over 6 years for his refugee claim to be decided. During this time, he points out that he furthered his education, and established strong ties to Canada through his employment, involvement with local Chadian communities, and volunteer work.

[17] The Applicant relies on *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813, 414 FTR 268 which states at para 21 that "[t]he Officer must not merely discount what they have done by crediting the Canadian immigration and refugee system for having given them the time to do these things without giving credit for the initiatives they undertook. The Officer must also

examine whether the disruption of that establishment weighs in favour of granting the exemption."

[18] The decision demonstrates that the Officer did not discount the Applicant's establishment efforts and in fact considered the factors raised by the Applicant. Although the Officer uses the word "exceptional" in relation to establishment, the decision demonstrates that the Officer did not apply an exceptional test to the Applicant's circumstances. Rather, the Officer considered all of the establishment factors, including the Applicant's work, friends, as well as his social media involvement as an anti-Chad advocate.

[19] The Applicant has not established that the Officer overlooked any of the establishment factors or disregarded evidence. Overall, the Officer's finding with regard to establishment is reasonable.

*Health Considerations*

[20] The Applicant has Hepatitis B and is followed by a specialist. The Applicant points to the medical reports indicating that he requires regular medical follow up. The Applicant argues that the Officer failed to properly consider the evidence that access to medical care in Chad would be severely inadequate.

[21] However, the Officer noted that the medical evidence indicates that the Applicant's on-going treatment requirements are ultrasounds and blood work. The Applicant did not provide the Officer with any evidence that he would be unable to access those services in Chad.

[22] Accordingly, the Officer's conclusion on the health issues raised by the Applicant is reasonable.

*Hardship*

[23] The Applicant argues that the Officer took a rigid and narrow approach in considering hardship and failed to perform a global assessment of all the relevant factors. The Applicant relies on *Li v Canada (Citizenship and Immigration)*, 2020 FC 848 at para 34 to argue that the Officer was obligated to conduct a global assessment of all the relevant H&C factors.

[24] Upon consideration of the full decision and the Applicant's evidence, I am satisfied that the Officer did take all of the relevant H&C factors raised by the Applicant into consideration but was not satisfied that H&C relief should be granted. As well, the Officer noted that the Applicant's reunification with his family in Chad was a positive factor.

[25] Generally, it has been recognized that there will inevitably be some hardship associated with being required to leave Canada, however, "[t]his alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1)" [Citations omitted] (*Kanthasamy* at para 23).

*Reestablishment in Chad*

[26] The Applicant argues that the Officer erred in assessing his reintegration into the community and society in Chad by wrongly assuming that his family will be able to assist him.

He argues that his family will not be in a position to assist him in reintegrating into the community. The Applicant also argues that the Officer erred in noting that the Applicant has not lived in Chad for 8 years when in fact it has been 14 years since the Applicant left Chad.

[27] With respect to his family assisting him in re-establishing himself, the Applicant appears to be focused on "financial" assistance and the fact that he has been providing financial assistance to his family from his employment in Canada. However, there is nothing in the Officer's reasons to suggest that the consideration of family support was limited to financial assistance.

[28] I acknowledge that the Officer's assessment regarding the Applicant's reintegration to Chad should have been on the basis of an absence of 14 years instead of 8 years. However, in my view, this single error does not impact the overall reasonableness of the Officer's decision. The Officer did weigh the evidence regarding the interests of the Applicant's family, including the best interests of his nieces and nephews, as well as the Applicant's employment prospects and access to healthcare.

[29] Overall, the Officer's treatment and consideration of the evidence was reasonable and it is not the role of the Court to reweigh the evidence.

**Conclusion**

[30] H&C relief is an exceptional and highly discretionary measure *(Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15, [2002] 4 FC 358). The

Officer weighed all factors and considered the evidence presented to him. Ultimately, the onus is on an applicant to present sufficient evidence to warrant the exercise of such discretion by the Officer *(Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5, [2004] 2 FCR 635).

[31] There is no basis for this Court to interfere with the Officer's decision. Therefore, this judicial review is dismissed.

**JUDGMENT IN IMM-2692-20**

**THIS COURT'S JUDGMENT is that:**

1. The terms of the Confidentiality Order are continued;

2. The application for judicial review is dismissed; and.

3. No question of general importance is proposed by the parties and none arises.

"Ann Marie McDonald"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2692-20 |
| **STYLE OF CAUSE:** | Y.A. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD VIA VIDEOCONFERENCE |
| **DATE OF HEARING:** | MAY 31, 2021 |
| **JUDGMENT AND REASONS:** | MCDONALD J. |
| **DATED:** | AUGUST 13, 2021 |

**APPEARANCES:**

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| Yusuf Khan | FOR THE RESPONDENT |

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