

Federal Court



Cour fédérale

Date: 20221017

Docket: IMM-2734-21

Citation: 2022 FC 1413

Ottawa, Ontario, October 17, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

**CAROL ELAINE MILLER (A.K.A. CAROL
ELAINE LEWIN)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Carol Elaine Miller (Ms. Lewin) asks this Court to set aside an immigration officer's (Officer) decision that refused her application for permanent residence made from within Canada. The Officer was not satisfied that humanitarian and compassionate (H&C) considerations warranted an exemption, under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 1991, c 27 [IRPA], from the requirement that applications for permanent residence must be made from outside of Canada.

[2] Ms. Lewin is 58 years old. She came to Canada in 2010 to be with her sick mother, extended her status twice, and since April 2013 has remained in Canada without status. After her mother passed away in 2014, Ms. Lewin struggled to support herself. She has worked intermittently and currently lives in a shelter. Also, Ms. Lewin's health has declined in recent years. Among other health concerns, she suffers from mental illness and uncontrolled type 2 diabetes that affects her eyesight, requiring regular eye injections to prevent blindness.

[3] Ms. Lewin asked to remain in Canada on H&C grounds. She fears she will not have access to the medications she needs if she is required to return to Jamaica. She also fears she will be unable to support herself, and risks becoming homeless and destitute with no one to turn to for help. Although she has siblings and a son in Jamaica, they are struggling financially.

[4] The Officer noted Ms. Lewin's reasons for not wanting to return to Jamaica and the alleged hardship that she would face, but concluded she had provided insufficient evidence to demonstrate hardship that would justify an exemption.

[5] The parties agree that the Officer's decision to refuse an H&C exemption is reviewable on a standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 17 [*Vavilov*]; *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 10, 44 [*Kanhasamy*]). The reasonableness standard of review is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court must focus on the decision actually made, including the reasoning process and the outcome, and consider whether the decision as a whole is transparent, intelligible, and

justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at paras 15, 83, 99. The party challenging the decision bears the burden of establishing sufficiently central or significant flaws to render the decision unreasonable: *Vavilov* at para 100.

[6] Ms. Lewin submits the Officer's decision cannot withstand a reasonableness review. She alleges the reasons do not demonstrate that the Officer considered the consequences of the decision and exercised their discretion in a manner consistent with the humanitarian and compassionate purpose of section 25 of the *IRPA*: *Vavilov* at para 135; *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at paras 66 and 74; *Kanthasamy* at para 21. While the reasons are lengthy, Ms. Lewin contends that the decision rests on unreasonable findings that are not supported by the evidence.

[7] Ms. Lewin's arguments focus on the Officer's assessments of hardship due to: (i) an inability to access medication and healthcare; and (ii) the risk that she would become homeless and destitute. On the first point, Ms. Lewin states the Officer ignored evidence that the medication she needs will not be available or affordable, and the risk that she will go blind without it. On the second point, Ms. Lewin challenges findings that she should be able to find work to support herself or rely on her family or social programs for support.

[8] The respondent does not dispute there are sympathetic factors in Ms. Lewin's case, but contends that it takes more than a sympathetic case to justify an exemption to *IRPA* requirements: *Shackleford v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1313 at para 16. The respondent contends the Officer was guided by the right principles and the decision

turned on onus. The Officer was not persuaded that the evidence supported the highest degree of hardship alleged, and the most likely outcome in Ms. Lewin's circumstances was insufficient for a positive H&C decision.

[9] For the reasons below, I find Ms. Lewin has established that the decision to refuse H&C relief was unreasonable because it rested on multiple findings that failed to account for important evidence in the record, and as a result, it was not justified in light of the facts: *Vavilov* at para 126.

[10] Turning first to the medical evidence, Ms. Lewin supported her H&C application with medical records and letters from her attending physicians about her diabetes, mental illness and other medical conditions, as well as an opinion from Dr. Tamika Haynes-Robinson, a Jamaican neuropsychologist, about the situation Ms. Lewin would face there if she returns. Among other things, Dr. Haynes-Robinson opined that Ms. Lewin would not be able to access the medications she needs, either because they are unavailable in Jamaica or because they would be unaffordable for her.

[11] The Officer found Ms. Lewin's evidence did not establish that medical treatment "is unavailable or inaccessible in her home country to the extent that an exemption from Canada's normal immigration processing requirements is warranted". In doing so, the Officer discounted Dr. Haynes-Robinson's opinion because it was "limited to a review of five (5) documents provided by [Ms. Lewin's counsel] rather than based upon an ongoing therapeutic relationship between herself and the applicant", and because Dr. Haynes-Robinson "does not indicate an

objective basis for her statements that the applicant will be unable to access required medications”. The Officer conducted a Google search with standard search terms and found that mental health treatment and medication is free in Jamaican public hospitals and in some clinics, private services are available for a fee, and prescription drugs and medical supplies for diabetes are subsidized by the government. The Officer also noted that: (i) Ms. Lewin received treatment in Jamaica that stabilized her mental well-being after the births of her children; (ii) her self-awareness of her physical and psychological troubles will have a positive impact on her ability to advocate for herself, and her Canadian medical records may assist to expedite treatment in Jamaica; and (iii) Jamaica has resources to assist her in completing the steps required to access social assistance.

[12] In my view, the Officer’s reasons for discounting Dr. Haynes-Robinson’s opinion and reaching a contrary conclusion are not justified or intelligible in view of the record.

[13] Ms. Lewin’s therapeutic relationship is with her attending physicians in Canada. Counsel provided their assessments to Dr. Haynes-Robinson, who considered whether Ms. Lewin would be able to access the specific treatments and medications her attending physicians say she needs. Dr. Haynes-Robinson’s report describes her qualifications and experience working in mental health care and studying community mental health care in the Caribbean, and explains her opinions. For example, she consulted the list of available medications maintained by Jamaica’s Ministry of Health to conclude that the eye injections and medicated eye drops Ms. Lewin needs to preserve the vision she has left are not available. She estimated the monthly costs of Ms. Lewin’s other medications, and explained the available government programs and subsidies in

Jamaica and the barriers to accessing them. The Officer did not address these points in the reasons. I note as well that Ms. Lewin gave evidence that her sister in Jamaica is going blind because she cannot get the diabetes treatment she needs.

[14] The record includes printouts of the websites the Officer consulted. It is not apparent how they support the Officer's findings about free and subsidized medication, or why the Officer preferred these sources over Dr. Haynes-Robinson's evidence about access to the specific medications Ms. Lewin needs. Similarly, I am unable to find support in the record for the Officer's findings that Ms. Lewin received adequate medical treatment when she lived in Jamaica, or that her self-awareness and Canadian medical records would mitigate the risk of hardship.

[15] Turning to the Officer's assessment of hardship based on a risk of poverty and homelessness, Ms. Lewin submits the Officer unreasonably dismissed her fears that she would not be able to support herself and would have nowhere to live. She contends the Officer speculated that she should be able to secure employment after a period of reintegration or alternatively rely on financial assistance through Jamaica's Programme of Advancement Through Health and Education, without addressing the evidence to the contrary. With respect to housing, Ms. Lewin contends the Officer relied on the possibility of living with her sister, brothers or son, or alternatively in temporary housing such as shelters, without addressing her evidence of why she cannot rely on her family—including that Ms. Lewin's sister abused her and her son is homeless. I agree that the Officer's findings on these points failed to account for important evidence in the record.

[16] Ms. Lewin argues that the Officer's entire approach was inconsistent with the humanitarian and compassionate purpose of section 25, as exemplified by the Officer's reasons regarding the challenges faced by people with disabilities in Jamaica. The Officer found such challenges to be "highly relevant" in view of Ms. Lewin's progressing visual impairment, but concluded she had not adduced sufficient evidence that "she would be unable to obtain mobility devices or the assistance of a sighted person to safely move from one location to another", a finding Ms. Lewin calls perverse.

[17] The respondent submits the Officer's decision is transparent and intelligible when it is viewed as an organic whole. The Officer assessed Ms. Lewin's application globally, and addressed all the issues with detailed reasons. The respondent suggests that the Officer did not speculate beyond what the evidence supports—for example, the Officer did not expect more than emotional support from the family.

[18] I disagree that the Officer globally assessed Ms. Lewin's application. Instead, the reasoning reflects a segmented approach that dismissed each factor individually, and failed to consider Ms. Lewin's circumstances as a whole: *Kanthisamy* at para 45. The result, in my view, is that the Officer did not properly consider and weigh the possibility of blindness as a hardship factor, particularly in the context of Ms. Lewin's circumstances as a whole.

[19] Furthermore, the Officer dismissed each factor without reasonably engaging with Ms. Lewin's submissions, and made multiple findings that were not supported by the evidence, as

noted above. These errors are sufficiently central and significant to render the decision unreasonable: *Vavilov* at para 100.

[20] In conclusion, this application for judicial review is allowed. The Officer's decision is set aside and the matter shall be returned for redetermination by a different officer.

[21] Neither party raised a question of general importance for certification. I find there is no question to certify.

JUDGMENT in IMM-2734-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The Officer's decision is set aside and the matter shall be redetermined by a different officer.
3. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2734-21

STYLE OF CAUSE: CAROL ELAINE MILLER (A.K.A. CAROL ELAINE LEWIN) v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 6, 2022

JUDGMENT AND REASONS: PALLOTTA J.

DATED: OCTOBER 17, 2022

APPEARANCES:

Toni Schweitzer FOR THE APPLICANT

Chris Ezrin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Parkdale Community Legal Services
Barrister and Solicitor
Toronto, Ontario FOR THE APPLICANT

General of Canada
Toronto, Ontario FOR THE RESPONDENT