Federal Court Cour fédérale

Date: 20230425

Docket: IMM-2638-22

Citation: 2023 FC 599

Ottawa, Ontario, April 25, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

MICHELLE LOU ANN OLLIVIERRE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of a senior immigration officer [Officer] dated March 7, 2022, refusing the Applicant's application for permanent residence. The application was based on humanitarian and compassionate [H&C] grounds under s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] The Applicant is a 50-year-old citizen of St. Vincent and the Grenadines [St. Vincent] and Barbados.

[3] She claims that she lived with her grandparents in St. Vincent until the age of nine when her mother brought the Applicant and her younger sister to Barbados to live with her mother and stepfather. There the Applicant suffered physical abuse at the hands of her mother; her stepfather did nothing to stop this abuse and occasionally also participated in it. On one occasion when the Applicant was 17, her stepfather attempted to sexually abuse her but she escaped and told a neighbour. The neighbour told the Applicant's mother, who responded by beating the Applicant. The Applicant claims that on two occasions she attempted suicide. Her sister also attempted suicide at age 15. The Applicant claims her sister died in 2011 and that it is her understanding that her sister was murdered by poison, but that no charges have been laid in connection with the death.

[4] When she was 14, the Applicant became involved with the Church of Jesus Christ of Latter Day Saints [LDS or the church] in Barbados.

[5] In February 2012, when she was 40 years old, the Applicant came to Canada on a student visa and worked as a caregiver—a job she obtained through fellow church members. The family that the Applicant worked for allegedly told her that they would sponsor her so that she would be able to get a work permit and, eventually, permanent resident status. However, after her arrival in

Canada it became apparent that the family did not intend to assist the Applicant and paid her only when they said they were able to do so.

[6] In August 2012, the Applicant began living with a member of the church, who did not charge her rent. During that time, she completed a diploma in a social work and addictions counseling program at Everest College. The church helped her with money and she also cleaned the homes of some church members. She also obtained a work permit and social insurance number.

[7] The Applicant's work permit expired in August 2014. On March 1, 2016, the Applicant left Canada and returned to Barbados. During her time in Barbados, the Applicant lived with her mother and worked sporadically as a cleaner.

[8] The church in Canada raised some money for the Applicant to visit and, in November 2018, the Applicant returned to Canada. While here she completed two training programs for live-in caregivers of vulnerable persons and, starting in March 2019, worked with various families as a caretaker.

[9] In May 2021, the Applicant submitted an H&C application, which was subsequently refused by the Officer.

Decision Under Review

[10] The Officer noted the Applicant's visa and work permit history and her background. They considered the Applicant's establishment, the best interests of the children, and the hardship the Applicant would endure if she returned to her country of nationality.

[11] As to establishment, the Officer considered that the Applicant had been in Canada since 2012, except for the time in 2016-2018 that she was in Barbados, and that during her time here she had completed study programs, worked as a caregiver, formed friendships, and was involved in church and volunteer work. The Officer noted that the Applicant had worked and studied after her permits to do so had expired. The Officer considered the evidence of the Applicant's connections with friends and fellow church members in Canada and accepted that she had formed bonds with them. The Officer placed some weight on the emotional hardship the Applicant may endure in departing Canada. Overall, the Officer found the Applicant to have established herself moderately in Canada.

[12] The Officer considered the best interests of the children with respect to the children that the Applicant has previously cared for and the child that she currently cares for through her work. The Officer found there was insufficient evidence that the best interests of the child who she currently cares for would be compromised by the Applicant's departure from Canada and gave this factor little weight.

[13] Finally, the Officer considered hardship and adverse conditions in the Applicant's country of nationality. The Officer noted the abuse suffered by the Applicant as a child but determined that there was insufficient objective evidence that emotional and psychological hardship would occur should she return to Barbados. Considering economic hardship, the Officer considered the Applicant's submissions that in Barbados she was only able to obtain low-paying, menial, and often hazardous work. The Officer noted that the purpose of s 25 of IRPA is not to make up for differences in standards of living between Canada and other countries. The Officer further noted that the Applicant's skills and financial resources gained in Canada would also mitigate hardship upon return. The Officer was not satisfied that the Applicant would face undue hardship resettling in Barbados.

Issues and Standard of Review

[14] While the Applicant identifies a number of issues in her submissions, they all fall within the overarching issue of whether the H&C decision is reasonable.

[15] In assessing the merits of the Officer's decision, there is a presumption that the reviewing Court will apply the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 25). Here, none of the circumstances warrant a departure from that presumption.

[16] On judicial review, the court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, 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" (*Vavilov* at para 99).

[17] The Applicant also asserts that the Officer erred in failing to address her alternative request that she be granted a Temporary Resident Permit.

The H&C Decision was Reasonable

[18] I first note that the Applicant has framed her first issue as whether the Officer failed to apply the "*Chirwa* approach" in assessing the Applicant's establishment. Within this, she bundles a number of other issues, which are largely discrete questions as to the reasonableness of the Officer's decision. In my analysis, I will segregate these concerns and address them individually.

i. Did the Officer fail to apply the "*Chirwa *approach" in assessing the Applicant's establishment?

Applicant's Position

[19] The Applicant submits that the Officer erred in not taking an approach grounded in empathy and compassion.

[20] In this regard, she asserts that the Officer failed to appreciate the nature and extent of her circumstances, which led them to conclude that she did not warrant special relief. In particular,

that the Officer diminished her establishment on the basis that she was working and studying without authorization for much of her time in Canada.

[21] The Applicant submits that in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], the Supreme Court of Canada endorsed the holding in *Chirwa v Canada (Minister of Citizenship and Immigration)*, (1970), 4 IAC 338 [*Chirwa*] that H&C considerations refer to "those facts, established by the evidence, which would excite in a reasonable man in a civilized community a desire to relieve the misfortunes of another—so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the Immigration Act".

Respondent's Position

[22] The Respondent submits that in *Kanthasamy*, the Supreme Court of Canada rejected utilization of the terms "unusual, underserved or disproportionate hardship" as a rigid test to be applied under s 25 of the IRPA and instead emphasized that officers are to conduct a comprehensive analysis, considering all relevant factors (*Kanthasamy* at para 25). To the extent that the language in *Chirwa* is incorporated in an analysis under s 25, it is considered in concert with the guidance offered in the Ministerial Guidelines and is further guidance for officers in determining whether H&C relief is warranted in a given case. *Kanthasamy* does not require an officer to explicitly set out the language of *Chirwa* in their decision, nor is that language a stand-alone test (*Kanthasamy* at para 30; *Roshan v Canada (Citizenship and Immigration)*, 2016 FC 1308 at paras 9-10).

[23] Further, the Officer's decision is consistent with the approach set out in *Kanathsamy* as the Officer considered the various H&C factors put forward by the Applicant and assessed these factors together. The fact that the Officer found that these factors and the Applicant's supporting evidence to be insufficient to warrant an H&C exception does not establish that the Officer applied the wrong test. The Respondent asserts that the Officer did not err in considering that the Applicant worked without authorization while in Canada as this was relevant in weighing the evidence of her establishment. Rather, the Applicant is merely disagreeing with the weighing of the evidence on this point.

Analysis

[24] Subsection 25(1) of the IRPA gives the Minister discretion to exempt foreign nationals from the ordinary requirements of the IRPA if the Minister is of the opinion that such relief is justified by H&C considerations relating to the foreign national, taking into account the best interests of any children directly affected. In this case, if warranted, an H&C exemption would permit the Applicant to obtain permanent resident status without having to leave Canada to apply, which is the normal route when an applicant is seeking to obtain this status (*Titova v Canada (Citizenship and Immigration)*, 2021 FC 654 at paras 20-21).

[25] In that regard, the jurisprudence establishes that an H&C exemption is an exceptional and discretionary remedy, which is intended to provide a flexible and responsive exception to the ordinary operation of the IRPA, or, a discretion to mitigate the rigidity of the law in an appropriate case. There will inevitably be some hardship associated with being required to leave Canada, but this alone will not generally be sufficient to warrant relief on H&C grounds under s

25(1). Nor is s 25 an alternative immigration scheme. Rather, s 25 is intended to offer equitable relief in circumstances that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at paras 13, 19, 21, 23; *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313 at paras 12, 15, 16; *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 [*Marshall*] at para 31; *Del Pilar Capetillo Mendez v Canada (Citizenship and Immigration)*, 2022 FC 559 at para 49).

[26] The onus of establishing that an H&C exemption is warranted lies with the applicant (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45). This means that the applicant must provide sufficient evidence to convince the officer to grant this exceptional remedy. What warrants relief will vary depending on the facts and context of each case, but officers making H&C determinations must substantively consider and weigh all relevant facts and factors before them (*Kanthasamy* at para 25).

[27] Upon review of the Officer's reasons, it is clear that the Officer considered all of the H&C factors proposed by the Applicant and weighed them in coming to their decision, as required by *Kanathsamy*.

[28] I also do not agree that the Officer lacked compassion. For example, when assessing the letters of support from the Applicant's friends the Officer accepted that she had formed bonds with them and placed some weight on the emotional hardship being separated from them may cause. With respect to the past abuse the Applicant claimed to have suffered as a child, the Officer stated that they empathized with the Applicant's position and acknowledged that the

abuse suffered by an individual is in and of itself a compassionate factor to consider and that returning to a place where they suffered abuse may be difficult. However, the Officer also appropriately considered the Applicant's submissions in the context of the sufficiency of the evidence and other relevant factors in coming to their decision.

[29] Finally, I do not agree that the Officer assessed the Applicant's submissions through a lens of hardship. The Officer stated that they considered the extent to which the Applicant, given her particular circumstances, would face hardship if she had to leave Canada. And, although there will inevitably be some hardship associated with being required to leave, that this alone will generally not be sufficient to warrant H&C relief under s 25 of the IRPA. Again, this approach in in keeping with *Kanathasamy*.

[30] Within this submission, the Applicant also asserts that the Officer used her lack of status to diminish her establishment in Canada. In my view, this is distinct from the Applicant's assertion that the Officer erred in "failing to apply the *Chirwa* approach" in assessing her evidence. In any event, while the Applicant refers to *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 [*Mitchell*], there the Court held that the officer reasonably accorded the applicant's work history in Canada little weight as he had submitted no evidence in support of his employment. However, the officer then ascribed negative weight to the work because it was undertaken without authorization. The Court noted that the respondent had referred to jurisprudence of this Court stating that self-sufficiency gained by working illegally may be discounted (citing, for example, *Serda v Canada (Citizenship and Immigration)*, 2006 FC 356 at para 21; *Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at paras 31-33) and found

that, in the case before it, the issue with the officer's treatment of the applicant's Canadian employment was that the officer first discounted his work history because he provided no documentation and then stated that any work done in Canada would have been without authorization gave negative consideration. The Court held that if the officer could not give the applicant's alleged work history any weight because it had not been established, it was unreasonable for the officer to then ascribe negative weight to any work he may have undertaken. That is not the situation in this matter.

[31] The Applicant also refers to *Garcia Balarezo v Canada (Citizenship and Immigration)*, 2020 FC 841 at paragraph 47 [*Garcia Balarezo*] in which the Court states: "An H&C decision maker should therefore assess the nature of the non-compliance and its relevance and weight in the context of the other H&C factors, and not simply invoke the non-compliance as an obstacle to the granting of relief". This is, in fact, consistent with *Rozgonyi v Canada (Citizenship and Immigration)*, 2022 FC 349, cited by the Respondent. There Justice McHaffie dealt with a similar argument as the Applicant makes here and held:

> [29] Finally, the family criticizes the officer's reference to their work without legal authorization and their comment that "this does not weigh in their favour." They point to *Fidel Baeza*, in which Justice O'Reilly concluded that "[i]t would not be fair to use evidence of steady employment against [the applicants] simply because work permits did not cover the entire period of their time in Canada": *Fidel Baeza v Canada (Citizenship and Immigration)*, 2010 FC 362 at para 16.
>
> [30] In my view, there is a balancing to be undertaken in these considerations. On the one hand, subsection 25(1) effectively presupposes a failure to comply with one or more provisions of the *IRPA* and is designed to provide relief from that non-compliance: *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 at para 23. On the other hand, this Court has recognized that evidence of establishment, including employment, may be considered in light of the circumstances giving rise to it, including illegality:

> *Aguilar Sarmiento v Canada (Citizenship and Immigration)*, 2017 FC 481 at paras 6, 15; *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at paras 46, 48; *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at paras 26–27. In my view, the officer's decision in this case reasonably undertook that balancing, finding the applicants' employment, friendships, and efforts "commendable," while still noting that work in Canada without legal authorization "does not weigh in their favour."

[32] I agree with this statement and, in my view, the Officer in this case undertook a similar and appropriate balancing and did not err by over-emphasizing the Applicant's non-compliance.

[33] The Officer acknowledged that the Applicant has integrated into Canadian society by forming friendships, completing her studies, volunteering, and engaging in employment. The Officer commended these establishment efforts but also noted that the Applicant has been engaged in employment without authorization for the majority of her stay in Canada. Significantly, however, having done so the Officer concluded, having examined her establishment in Canada as a whole, that the Applicant had moderately established herself in Canada. That is, the Officer did not negate in whole the Applicant's evidence of establishment because she worked and studied in Canada largely without authorization. Rather, the Officer weighed that evidence against the circumstances of the Applicant's employment and education and determined the Applicant was moderately established. The Officer did not "simply invoke the non-compliance as an obstacle to the granting of relief" (*Garcia Balarezo* at para 47). In my view, the Officer reasonably assessed the Applicant's evidence of establishment.

[34] Finally, the Applicant asserts that the Officer did not consider "the positive steps the Applicant was continuously taking to maintain status in Canada" and instead used this to negate

her positive establishment. However, the Applicant's history of visa and work permit applications was clearly set out in the decision and, for the reasons above, I do not agree that the Officer erred in their treatment of the Applicant's lack of status in the establishment analysis. I would also point out that while the Applicant sought an extension of her work permit, this was refused, but she elected to work and study without authorization.

ii. Did the Officer err in finding there was insufficient evidence regarding the Applicant's past hardships?

[35] The Applicant submits that the Officer diminished her submissions regarding hardship from her past in Barbados due to insufficient evidence. Relying on her affidavit filed in support of this application for judicial review (and was not before the Officer when they made their decision) she asserts, among other things, that just because she did not receive any psychological treatment while in Barbados it does not mean it was not traumatic to live there.

[36] In their reasons, the Officer acknowledged that the Applicant claimed that as children she and her sister were abused by their mother and stepfather, and referred to the Applicant's submissions which included her affidavit and several country conditions articles indicating child abuse is common in Barbados. The Officer noted that the Applicant did not indicate if she still fears her abusers or if she is still subject to the same abuse in Barbados. The Officer also quoted her counsel's submission stating that "…the Applicant ought not to be required to return to Barbados, where she has known nothing but pain and hardship her entire life. And requiring her to do so represents an extreme emotional and psychological hardship".

[37] The Officer stated:

> I empathize with the applicant and I acknowledge that abuse suffered by an individual is in and of itself a compassionate factor to consider. I also acknowledge that it maybe difficult for anyone to go back to a place where they endured abuse. However, the applicant has provided insufficient objective evidence to indicate that emotional and psychological hardship would occur in the country of origin. I note that the applicant departed from Canada in 2016 and she stated that she resided with her mother in Barbados until 2018. In the absence of contrary information it is reasonable to believe that she did not pursue any psychological help.

[38] The Officer also noted that there was little in the Applicant's submitted H&C materials to indicate that she is unable to relocate to a different part of the country to mitigate the negative emotional and psychological effects of her past abuse.

[39] I agree with the Respondent that the Applicant has not shown any error in the Officer's consideration of her evidence pertaining to her claim that she had faced abuse as a child in Barbados. The Officer referred to her evidence and the submissions made by her counsel, accurately describing those submissions which are found in the record before me. The Officer pointed out that the Applicant had not indicated that she still faces abuse in Barbados, that she continues to fear her abusers in Barbados, and did not put forward any objective evidence concerning the psychological hardship she would experience in Barbados. These are reasonable findings based on the evidence that was before the Officer.

[40] The onus was on the Applicant to provide documentation to support her assertion that she would suffer psychological hardship if returned to Barbados (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 22). As she failed to do so, the Officer reasonably found

that the Applicant had provided insufficient objective evidence to indicate that emotional and psychological hardship would occur in the country of origin. A finding of insufficient evidence does not "diminish" the Applicant's hardship submissions, it points out that she has not met her onus of providing evidence to support her application for s 25 exceptional relief.

[41] In that regard, it is of note that there was no evidence before the Officer concerning whether the Applicant had continued to live with her mother – and continued to suffer abuse – after she was no longer a child and until she came to Canada when she was 40 years old. Nor is there any evidence or assertion that she suffered abuse when she returned to Barbados and lived with her mother for two years from 2016 to 2018 or that, at anytime, she sought psychological care.

iii. Was the Officer's analysis of the Applicant's establishment reasonable?

Applicant's Position

[42] The Applicant submits that while the Officer acknowledged the bond between her and her friends in Canada, the Officer erred by finding that this was not sufficient to justify s 25 relief on the basis that the separations will not sever those bonds. She submits that the Officer's focus on hardship as the threshold against which to measure the Applicant's relationships in Canada suggests a way to ameliorate any potential hardship by way of overseas contact which is an error. Further, that the Officer sought to "flip" the Applicant's positive establishment in Canada, her Canadian education and demonstrated motivation to succeed, utilizing this positive evidence as establishment to rebut her hardship upon return. She also submits that the Officer

erred by speculating that the Applicant's friends and church community will support her if she is removed from Canada

Respondent's Position

[43] The Respondent submits that the Officer acknowledged the difficulty the Applicant would experience in separating from her friends and church community and gave this factor some weight. However, the Officer also noted the evidence did not suggest that the Applicant's friends would be unable to adjust to her departure and that she would be able to maintain contact with her friends by telecommunications and potential visits. Nor did the Officer err in noting the possibility that the Applicant's church community may be able to offer her some support upon her return to Barbados. This consideration was based on the Applicant's evidence that her church community had previously raised money to enable her to travel to Canada in 2018. Further, the Officer did not improperly flip her success in Canada into a negative consideration.

Analysis

[44] The Officer states in their reasons that in reviewing the letters of support from the Applicant's friends in Canada, they accepted that the Applicant formed bonds with her friends and her fellow churchgoers. The Officer acknowledged that the Applicant would miss her Canadian friends should she return to Barbados, however, the evidence before them did not support that her friends in Canada would be unable to adjust to her departure. The Officer also noted that there was little in her H&C materials that demonstrated the closeness of the Applicant and her friends in Canada that corroborated the claimed degree of involvement. The Officer

found that while a separation may be difficult for the Applicant and her friends in Canada, relationships are not bound by geographical locations. The Officer acknowledged that maintaining long-distance relationships may not be ideal, but found that there was little evidence to indicate that the Applicant could not maintain her relationships through means such as telecommunications and visits either in Canada or Barbados. The Officer found that the impact of physical separation could be offset, to a degree, by maintaining the relationships via these alternate modes of communication. Nevertheless, the Officer placed some weight on the emotional hardship the Applicant may endure from departing from Canada.

[45] In support of her assertion that the Officer erred by ameliorating her hardship by referring to the continuation of her friendships by telecommunication and potential visits, the Applicant refers to *Marshall*. There the applicant argued that the officer assessed every factor through the lens of hardship and in doing so applied the wrong legal test. The Court agreed, finding that the officer focused on hardship throughout their analysis. And, as the wrong test was employed, the correctness standard of review applied, no deference was owed to the officer and, their decision was set aside. In that context, the Court found that the officer gave weight to the close relationships the applicant formed in Canada but then immediately discounted this by observing the Applicant may maintain his Canadian friendships in a variety of ways.

[46] Here the Applicant is not asserting that the wrong test was applied, rather her submission appears to be that the *Kanathsamy* test was improperly applied. Further, the Officer in this case acknowledged that long distance relationships are not ideal but noted that that any hardship of separation can be lessened – not eliminated – by telecommunications and potential visits. The

Officer placed some weight on the emotional hardship the Applicant may endure from departing from Canada.

[47] In my view, what the Applicant is really challenging is the weight the Officer afforded to this factor. And, as the Respondent submits, the existence of close friendships alone is unlikely to be sufficient to warrant H&C relief. As indicated in *Davis v Canada (Citizenship and Immigration)*, 2022 FC 238:

> [37] The Officer simply concluded that although the Applicant has many close friendships, this alone is not enough to warrant H&C relief. As the Supreme Court noted in *Kanthasamy*, "[t]here will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s 25(1). Nor was s. 25(1) intended to be an alternative immigration scheme" (at para 23 [Citations omitted]). Indeed, it will be very rare that establishment "is so far reaching and profound, that it would be unreasonable for the Minister not to grant [relief] because disrupting such rich establishment excites a desire to relieve the misfortunes of another" (*Shackleford v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1313 at para 25 [*Shackleford*]).

[48] The Applicant has not demonstrated a reviewable error on this point.

[49] As to the Applicant's assertion that the Officer erred in speculating that she may receive support from her friends and church community in Barbados if she is returned there, the Officer noted that Applicant's evidence that while she was living in Barbados, the church in Canada was able to raise some money to send her for a visit here in November, 2018. The Officer recognized that the Applicant's Canadian church may not be able to support her for a prolonged period, but

found that there was little information or evidence indicating that the church would not offer any support, even on a short term basis, while the Applicant re-establishes herself in Barbados.

[50] The Applicant again relies on *Mitchell* to support her position. There the applicant was brought to Canada as a child, at age eight, remaining here until he was 24 at which time his H&C application was refused. The Court set out various errors in the officer's establishment analysis, including that:

> [29] In addition, the Officer's consideration of the hardships the Applicant will experience in returning to St. Lucia are unduly speculative having regard to the fact that he left the island when he was 8 years old. There is no evidence in the record that the Applicant's Canadian family and friends will be able to extend financial support to him in his attempts at reestablishment in St. Lucia, nor is there any evidence supporting the Officer's aspiration that the Applicant's return to St. Lucia may provide his extended family an opportunity to reconnect with him.

[51] Here the Applicant came to Canada as an adult and her evidence was that it was through the church that she had initially received a job offer in Canada and, when that went badly, a member of the church allowed the Applicant to live with her, rent free, while she went to school. Further, during that time her church was able to help her with money. When she returned to Barbados, her church raised funds for her to visit Canada in 2018. Thus, unlike *Mitchell*, there was evidence before the Officer of past financial support. And while there was no certainty that the church would provide short-term assistance to the Applicant while she re-establishes herself in Barbados, the Officer's finding was also not purely speculative given the Applicant's evidence of prior assistance (*Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 38). In my view, in these circumstances, this does not amount to a reviewable error.

[52] Finally, the Applicant asserts that the Officer "flipped" her positive establishment in Canada to uses it to rebut her claim of hardship.

[53] The Officer accepted that it would be a hardship for the Applicant to return to a country that she has been away from since 2018. However, the relevant factors were mitigated by her newly acquired knowledge, skills, and financial resources from employment in Canada. Further, there was little in her H&C materials to indicate that the Applicant is unable to relocate to a different part of the country to mitigate the negative emotional and psychological effects. The Officer noted that the Applicant resettled in a different country, thereby demonstrating an ability to adapt to new locations, differing cultures, and life changes.

[54] The Applicant submits that this line of thinking has been found to be unreasonable, relying on *Kolade v Canada (Citizenship and Immigration)*, 2019 FC 1513 [*Kolade*] at paragraph 23 and *Lopez Gallo v Canada (Citizenship and Immigration)*, 2019 FC 857 at paragraphs 18-19.

[55] However, unlike *Kolade*, the Officer did not "flip" the establishment analysis or fail to assess the degree of establishment of the Applicant. Rather, the Officer's remarks were made in the context of the hardship analysis conducted *after* having assessed the Applicant's establishment, assigning it positive though moderate weight. I agree with the Respondent that the Officer did not discount the Applicant's establishment arising from having acquired skills in Canada, rather, the Officer weighed this separately and considered the Applicant's skills and resources when considering her submission that she would face hardship if she returned to

Barbados. I recently considered similar argument in *Bettencourt v Canada (Citizenship and Immigration)*, 2023 FC 225 (at paras 76-86) and concluded:

> [87] In my view, the jurisprudence establishes that officers cannot use an applicant's resourcefulness and adaptability – which helped them to become established in Canada and may have enhanced the degree of that establishment – to diminish the weight to be afforded to that positive factor (establishment) or to turn a positive factor into a negative one. However, I am not persuaded that officers cannot consider those same attributes when separately assessing whether they will serve to mitigate an applicant's hardship on return. Ultimately, the officer must weigh and balance all of the factors in making the determination of whether the applicant's circumstances warrant an exemption under s 25(1) of the *IRPA* and I am not persuaded that in this case the Officer's reasons give rise to a reviewable error.

[56] I agree with the Respondent that it was not an error for the Officer, in that context, to consider whether the Applicant has transferable skills which would assist her in her re-integration (see: *B489 v Canada (Citizenship and Immigration)*, 2015 FC 1067 at para 19; *Davis v Canada (Citizenship and Immigration)*, 2022 FC 238 at para 40; *Zhou v Canada (Citizenship and Immigration)*, 2019 FC 163 at para 17).

iv. Did the Officer unreasonably ignore evidence, fail to engage with arguments, and make conclusions that were contradicted by the evidence?

[57] The Applicant submits that her H&C application spoke to the safety and security she feels in Canada and provided evidence that illustrated the high rates of violence against women and high unemployment rates in Barbados. She asserts that the Officer did not engage with this submission and that she would likely return to working dangerous, low-paying jobs. The Applicant submits that the officer's failure to engage with this evidence renders the decision unreasonable.

[58] The Respondent submits that the Officer's analysis did not err in their treatment of the evidence concerning the issues of child abuse and violence against women. The Applicant did not indicate a fear of violence in Barbados as an adult and the Officer reasonably considered her evidence in the context of supporting her submission that she had experienced abuse as a child. Further, the Officer acknowledged that the Applicant had submitted that she was likely to find less desirable employment upon her return but reasonably found that this is was not a sufficient basis for an exception under s 25 of IRPA.

Analysis

[59] The Officer explicitly acknowledged the submission by the Applicant's counsel that "[it] is also noteworthy that throughout her life in that country, she was only able to find menial, low paying and hazardous occupations, for example, cleaning a factory with industrial solvents". The Officer also acknowledged that different standards of living exist between countries but found that Parliament did not intend for s 25 of the IRPA to make up for these differences. The Officer noted that the hardship of return was mitigated by the Applicant's newly acquired knowledge, skills and financial resources from her employment in Canada.

[60] It is of note that the Applicant's submissions as to hardship made in her H&C application pertained to emotional and psychological hardships and, in that context, addressed child abuse and the lack of resources to assist victims of domestic violence and their children. The documentary evidence she relied on in support of those submissions on was concerned with only those issues.

[61] As to adverse country conditions, her H&C application submission states only that "[i]n addition to the severe emotional and psychological trauma of returning to Barbados, the Applicant spent a number of years in her life being unable to find gainful employment and being forced to work cleaning jobs, using industrial cleaners and solvents that wreaked havoc on her physical health and well being" and that this factor weighed in favour of granting her application. No reference was made to supporting documentary evidence pertaining to unemployment rates in Barbados. And, contrary to the Applicant's assertions, the affidavit she submitted in support of her H&C application states only then when she returned to Barbados in 2016 she worked sporadic jobs, cleaning condos and villas around the island. It does not support that she was unable to secure employment or that the only employment available to her was hazardous.

[62] The Applicant submits that even though her submissions to the Officer did not raise unemployment rates, the Officer should have referred to the documentary evidence she attached to her submissions and addressed this issue. However, the documentary evidence submitted is focused on child abuse in Barbados. While the Applicant now points, for example, to statistics contained in the documentary evidence, listing of the unemployment rates in 2016, 2017 followed by the statement "country comparison to the world:149", in her submissions to the Officer the Applicant did not connect this to her personal circumstances.

[63] Given the evidence that was before the Officer, their treatment of this aspect of the Applicant's claim of hardship on return was reasonable.

[64] In conclusion, the Officer considered all of the factors presented by the Applicant and reasonably concluded, based on the record before them, that sufficient H&C considerations did not exist to justify an exemption under s 25 of the IRPA.

[65] However, this still leaves the question of the Applicant's request for a TRP.

The Officer erred in failing to address the Applicant's alternative request for a TRP

[66] The Applicant submits that the Officer erred in providing no reasons for refusing her alternate request of a TRP. The Applicant submits that it was an error to reject her H&C application without consideration of her request for a TRP.

[67] The Respondent concedes that the Officer did not address the Applicant's alternative request for a TRP. The Respondent resiles from the position taken in its written submissions and submits that the matter of the TRP should be returned for determination.

Analysis

[68] The Applicant's request for TRP is found in the conclusion of the written submissions made by her counsel to the Officer. This requests that the Officer "relieve the applicant family of their misfortunes by approving this application for permanent residence. Alternatively, we respectfully request that they at least be issued temporary resident permits in the interim".

[69] The Officer can perhaps be forgiven for overlooking this alternative request or assuming that it was included in error as the Applicant did not make her application for H&C relief as part of a family.

[70] However, given that there is nothing in the Officer's reasons to indicate that they in any way considered the TRP application, I agree that this aspect of the decision must be returned for consideration (see *Mpoyi v Canada (Citizenship and Immigration)*, 2018 FC 251 at para 36; *Li v Canada (Citizenship and Immigration)*, 2020 FC 754 at paras 10-11; *Kassem v Canada (Citizenship and Immigration)*, 2023 FC 99 at para 13; *Shala v Canada (Citizenship and Immigration)*, 2021 FC 326 at para 68).

JUDGMENT IN IMM-2638-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed only on the discrete issue of whether a temporary resident permit should be granted. That undetermined issue shall be remitted back for determination by a different officer;
2. The application is otherwise dismissed;
3. There shall be no order as to costs; and
4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2638-22
STYLE OF CAUSE:	MICHELLE LOU ANN OLLIVIERRE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 13, 2023
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	APRIL 25, 2023

APPEARANCES:

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