

Federal Court



Cour fédérale

Date: 20231207

Docket: IMM-5156-22

Citation: 2023 FC 1651

Toronto, Ontario, December 7, 2023

PRESENT: Madam Justice Go

BETWEEN:

DAWN MARIAN CUNNINGHAM

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Dawn Marian Cunningham, is an elderly citizen of Jamaica with complex physical and mental health needs, a history of homelessness, and a victim of violence. In 2016, she came to Canada to stay with one of her daughters to escape her difficult situation in Jamaica. The Applicant experienced a psychiatric crisis during her stay, and ended up alone in Toronto and fell out of status. The Applicant was since diagnosed with psychosis,

Post-Traumatic Stress Disorder [PTSD] and a whole host of physical conditions including Polymyalgia Rheumatica [PMR] that affects her mobility and renders her immunocompromised.

[2] The Applicant submitted a first application for permanent residence on humanitarian and compassionate grounds [H&C] in 2018, which was refused in 2020. The Applicant submitted a second H&C application in October 2021. A Senior Immigration Officer [Officer] in a decision dated May 25, 2022, refused the H&C application [Decision].

[3] The Applicant seeks judicial review of the Decision. For the reasons set out below, I grant the application.

II. Issues and Standard of Review

[4] The Applicant raises a number of issues to challenge the reasonableness of the Decision. Specifically, the Applicant challenges: a) the Officer's conclusions with regard to the Applicant's ability to access government assistance, mental health treatment and support from her family in Jamaica; b) the Officer's failure to consider the decompression of the Applicant's mental health; c) the Officer's findings that she could work in Jamaica; and d) the Officer's finding that the Applicant's profile does not make her a target of crime.

[5] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[6] A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The onus is on the Applicant to demonstrate that the decision is unreasonable (*Vavilov* at para 100). To set aside a decision on this basis, “the reviewing court must be satisfied that 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).

[7] The Applicant also argues that the Officer failed to raise a doubt about the Applicant’s family ties in Canada, which is arguably an issue of procedural fairness. As I find that the Decision is unreasonable on other grounds, I need not address this particular argument.

III. Analysis

[8] I find the following two aspects of the Officer’s findings unreasonable, namely, a) the Officer’s failure to consider the decompression of the Applicant’s mental health upon her return to Jamaica, and b) the Officer’s finding that the Applicant could access the necessary mental health and medical healthcare.

A. *Officer’s failure to consider the decompression of the Applicant’s mental health*

[9] The Applicant submitted in her H&C application that her already precarious mental health status is at risk of decompression if returned to Jamaica. Citing from the Applicant’s

psychiatric history, the Applicant submitted that the threat of being returned to a situation of gender-based violence in Jamaica, and her traumatic pasts, weigh on her constantly.

[10] In her H&C application, the Applicant provided substantial evidence about her numerous physical and mental health conditions including, depression, PTSD, psychosis, paranoia, a benign brain tumour, diabetes, and PMR. According to the Applicant's treating physician, Dr. O'Brecht, the Applicant is on fourteen different medications, and her diagnosis requires regular monitoring through laboratory investigations. Dr. O'Brecht confirmed that the Applicant is currently being followed by neurosurgery and ophthalmology.

[11] In her letter in support of the Applicant's H&C, Dr. O'Brecht further noted that, without the treatment and investigations, the Applicant is at high risk of cardiovascular complications including stroke and heart attack. Further, Dr. O'Brecht noted that the Applicant's PMR – a chronic relapsing and remitting condition – may require intermittent need for medium-to-long term steroids which severely compromise the immune system. Dr. O'Brecht concluded:

It is my medical opinion that a disruption in [the Applicant's] medical care, particularly if she is unable to immediately access equivalent medication and treatment, would pose a threat to her life.

[12] The Applicant submits that the Officer erred by failing to consider the Applicant's submission and evidence on decompression of mental health.

[13] Having reviewed the Decision, I agree with the Applicant.

[14] Despite this being the key issue raised by the Applicant in her H&C application, there are just two paragraphs – as suggested by the Respondent – in the 17-page Decision that arguably could be interpreted as addressing the issue of mental health decompression. Even so, the Officer's analysis was non-responsive to either the evidence or the submission on this issue.

[15] In one paragraph, the Officer noted:

I am mindful that Dr. O'Brecht states that the [Applicant] is likely to experience a resurgence in her mental illness if she does not have access to medications. Counsel states [the Applicant's] anti-psychotic Quetiapine and her anti-depression Sertraline are only available at one pharmacy in Kingston. A third medication, Trazodone, is not at all available in Jamaica. Counsel states that as such, the [Applicant] will not be able to access all of her medications and will not be able to afford the others.

[16] The Officer then went on to consider country conditions evidence before concluding that sertraline and quetiapine are available at one pharmacy in Kingston, and that Dr. O'Brecht has not indicated that the Applicant could not consider an alternative to Trazodone.

[17] Further in the Decision, the Officer noted:

While I acknowledge separation from her ties would cause some hardship and I give this some weight, I also find the [Applicant] has a number of tools and advocates who could reasonably assist her to ensure a smooth transition to Jamaica. The [Applicant] could even consider her ability to obtain a supply of her medications to travel with to ensure she continues to have access to her medications until she has settled in. She could consider obtaining her medical records and information from Dr. O'Brecht that outlines follow-ups that may be needed to facilitate her transition.

[18] By looking only at what kind of medication that may or may not be available to the Applicant, but not the impact on the Applicant's mental health should she be asked to return to Jamaica, the Officer failed to consider mental health decompression, on its own, as an H&C factor.

[19] As noted by Justice Strickland in *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1349 at para 51: "Where a psychiatric diagnosis is not rejected, an officer must consider evidence as to the effect that removal from Canada would have on the mental health of the applicant; failing to do so is a reviewable error."

[20] Similarly, in *Connell v Canada (Minister of Citizenship and Immigration)*, 2023 FC 1316 at para 34, the Court found that the officer's failure to consider and assess the risk of decompression of the applicant's mental health as a hardship, in and of itself, rendered the decision unreasonable.

[21] I find the same error was committed by the Officer in this case.

B. *Access to Mental Health and Medical Healthcare*

[22] I also find that the Officer erred in their conclusion that the Applicant would be able to access the healthcare she needs if returned to Jamaica. The Office's conclusion was unreasonable for the following reasons.

[23] First, the Officer ignored extensive country conditions reports submitted by the Applicant about the inadequacy and unavailability of the medical care in Jamaica to those who are indigent, while relying on the state's descriptions of their efforts to provide subsidies to conclude that the needed medical care would be available to the Applicant. An example of this error was the Officer noting that there are subsidies for medications for a list of 17 chronic illnesses. But, as the Applicant points out, the Officer made no suggestions that PMR would be included, without such subsidies, the Applicant would be required to pay the complete cost of her PMR treatment.

[24] The Officer also found that the Applicant would be able to work as a seamstress or entrepreneur or other profession of her choosing to secure an income sufficient to meet her needs, in view of her past employment history. In so doing, I agree with the Applicant that the Officer completely ignored the present reality facing the Applicant, a person with complex mental health and physical health needs who has been found to be eligible to receive Ontario Disability Support benefits due to her disabilities. The Officer's unreasonable finding that the Applicant would be able to work to "meet her needs" informed their unreasonable conclusion that the Applicant would be able to afford the medications she needs should she return to Jamaica.

[25] Finally, with respect to the medication that is not available for PMR in Jamaica, the Officer concluded that the Applicant could find an alternative medication. The Officer is not a trained healthcare professional. This conclusion not only goes beyond the Officer's expertise, but more importantly, is not based on the evidence before the Officer.

[26] The Respondent submits that the Applicant is merely asking the Court to reweigh the evidence, and that reasonableness review is not a “line-by-line treasure hunt for error”: *Vavilov* at para 102.

[27] While that may be so, *Vavilov* requires that a decision-maker’s reasons meaningfully account for the central issues and concerns raised by the parties: *Vavilov* at para 127.

[28] In this case, the Applicant’s complex mental health issues, the impact on her mental health should she return to Jamaica, and her ability to access the medical care she needs, were all central to her H&C application. By failing to address the Applicant’s key concerns, and by making findings that were either not based on the evidence, or contradicted by the evidence, the Decision fails to meet the hallmark of intelligibility, transparency and justification.

IV. Conclusion

[29] The application for judicial review is granted.

[30] There is no question for certification.

JUDGMENT in IMM-5156-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5156-22

STYLE OF CAUSE: DAWN MARIAN CUNNINGHAM v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 23, 2023

JUDGMENT AND REASONS: GO J.

DATED: DECEMBER 7, 2023

APPEARANCES:

Annie O'Dell FOR THE APPLICANT

Allison Grandish FOR THE RESPONDENT

SOLICITORS OF RECORD:

Annie O'Dell FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario