Federal Court Cour fédérale

**Date: 20240524**

**Docket: IMM-10187-22**

**Citation: 2024 FC 794**

**Ottawa, Ontario, May 24, 2024**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**MOHAMED RUMI ADBUL HASSIAM**
**FATHIMA NAZREEN MOHAMED RUMI**

**Applicants**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicants seeks judicial review of a decision of a Canada Border Services Agency ("CBSA") officer (the "Officer") dated October 21, 2022, denying the Applicants' request for a deferral of removal. The Officer found that deferral was not justified and that the Officer had an

obligation to carry out the removals expeditiously under section 48 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Applicants submit that the Officer failed to engage with the medical evidence provided, and erred in the analysis of the best interests of the children ("BIOC"), the allegations of risk in Sri Lanka, and the Applicants' other humanitarian and compassionate ("H&C") considerations.

[3] For the following reasons, I find that the decision is reasonable. This application for judicial review is dismissed.

## II. **Analysis**

### A. *Background*

[4] In May 2019, the Applicants arrived in Canada as visitors and subsequently submitted a refugee claim. On April 8, 2022, the Refugee Protection Division ("RPD") refused their claim.

[5] In September 2022, the Applicants were scheduled to be removed from Canada. On October 13, 2022, the Applicants submitted a request to have their removal deferred. This Court stayed their removal in a decision dated October 25, 2022.

[6] In a decision dated October 21, 2022, the Officer was not satisfied that a deferral of removal was warranted in the Applicants' circumstances.

[7] The Officer first found that the Applicants had not submitted their H&C application (submitted October 13, 2022) in a timely fashion and that a decision on this application was not imminent, further finding that there was insufficient evidence that the Applicants' family in Canada could not visit them in Sri Lanka.

[8] The Officer nonetheless considered the BIOC of the Applicants' grandchildren, but found that there was insufficient evidence that the Applicants' children could not hire caregivers in the Applicants' stead. The Officer further found that the Applicants could remain in contact with their grandchildren and that the grandchildren would have the support of their parents in Canada. The Officer concluded that the evidence of the Applicants' relationship to their grandchildren did not warrant a deferral of removal.

[9] The Officer further found that the alleged risks the Applicants faced in Sri Lanka did not justify deferral of removal, the Applicants not providing evidence of personalized new risks of harm in Sri Lanka. The Officer further found they could not "assess the merits of a decision made by the RPD." Moreover, the Officer found that the Applicants had lived in Sri Lanka for most of their lives, could rely on extended family for help, knew the language, customs, and culture of Sri Lanka, and would face the same circumstances as other retirees in Sri Lanka.

[10] The Officer further acknowledged the evidence but found that the Applicants' medical and psychological conditions did not warrant deferral, as the evidence did not establish that care would be denied to the Applicants in Sri Lanka. The Officer further found that there was

insufficient evidence that the Applicants could not travel and further found that the Applicants had ample time to prepare for removal.

[11] For these reasons, the Officer found that the Applicants' circumstances did not warrant a deferral of removal.

B. *Issue and Standard of Review*

[12] This application for judicial review raises the sole issue of whether the Officer's decision is reasonable.

[13] The standard of review on the merits of the decision is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

C. *The decision is reasonable*

[16] The Applicants submit that the Officer speculated and erred with regards to the evidence of the possibility of receiving medical treatment in Sri Lanka. The Applicants further submit that the Officer did not meaningfully engage with the best interests of the grandchildren, and held the Applicants to an unduly high threshold by requiring personalized evidence of risk in Sri Lanka. Additionally, the Applicants submit that the Officer had jurisdiction to defer removal pending the Applicants' H&C application.

[17] The Respondent maintains that the Officer did not have to defer removal in light of the Applicants' H&C application, conducted a thorough analysis of the grandchildren's best interests, and reasonably found that the Applicants' medical evidence was insufficiently particular to their circumstances. The Respondent further submits that the Officer reasonably relied upon the RPD's decision and that there was no error in the Officer's analysis regarding the alleged risks upon return to Sri Lanka.

[18] I agree with the Respondent. The Applicants have not established that the Officer's decision is unreasonable (*Vavilov* at para 100). The Officer's decisions demonstrates that they were responsive to the Applicants' submissions regarding their grandchildren's short-term best interests, especially given that deferral officers "cannot engage in a full-blown H&C analysis" of children's best interests in deferral requests (*Vavilov* at paras 127-128; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 61).

[19] Furthermore, the Officer did not err by requiring the Applicants to establish that they themselves would face a risk in Sri Lanka that had not been previously assessed by the RPD. My colleague Justice Zinn has held that a deferral officer must consider an alleged risk "[i]f there is evidence of changed circumstances of an applicant or of changed conditions within the country to which the applicant is being removed, <u>such that the applicant faces a new or increased risk</u> that has not been previously assessed, or the protection of the state has been compromised" (*Toth v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 1051 at para 23 [emphasis added]).

[20] I read this finding as holding that an applicant's risk is one that they themselves will face. And reading the Officer's decision holistically, the concern was clear, in my view, that the Officer considered the RPD's decision and the evidence provided, and found that there was insufficient evidence provided that the Applicants themselves would face risk upon return to Sri Lanka. I do not find the Officer's mention of the Applicants failing to provide "personalized new evidence of risk" unduly elevated or misconstrued the threshold of finding a risk that the Applicants would themselves face.

[21] Moreover, contrary to the Applicants' contention that the Officer did not properly consider the evidence, the Officer was presumed to have considered the evidence (*Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 34, citing *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). I do not find that the Applicants have displaced this presumption.

[22] Lastly, the Applicants' submissions that the Officer erred in the treatment of their medical conditions and evidence simply amounts to a request that this Court reweigh and reassess the evidence, and make a conclusion the Court would have made instead of the Officer. That is not this Court's role on review (*Vavilov* at paras 15, 125).

## III. **Conclusion**

[23] This application for judicial review is dismissed. The Applicants have not established that the Officer's decision is unreasonable. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-10187-22**

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

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."

Judge

## FEDERAL COURT

## SOLICITORS OF RECORD

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| **DOCKET:** | IMM-10187-22 |
| **STYLE OF CAUSE:** | MOHAMED RUMI ADBUL HASSIAM AND FATHIMA NAZREEN MOHAMED RUMI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MARCH 13, 2024 |
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| **DATED:** | MAY 24, 2024 |

**APPEARANCES:**

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| Jake Boughs | FOR THE RESPONDENT |

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