

Federal Court



Cour fédérale

**Date: 20240627**

**Docket: IMM-3339-24**

**Citation: 2024 FC 1006**

**Calgary, Alberta, June 27, 2024**

**PRESENT: Justice Andrew D. Little**

**BETWEEN:**

**SEYEDEH SAKAR HOSSEINI  
KAMRAN MODARRESI  
KASRA MODARESI  
KARO MODARESI**

**Applicants**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants seek judicial review of a decision by an Inland Enforcement Officer that refused a request to defer their removal from Canada.

[2] I conclude that the application must be allowed.

[3] The applicants are citizens of Iran. The adult applicants (at least) also hold passports for Saint Kitts and Nevis.

[4] The applicants are a family – mother, father and two children. The family also includes two other children who live with them in Canada but are not applicants.

[5] The applicants unsuccessfully sought refugee protection in Canada. In autumn 2023, Canada Border Services Agency (“CBSA”) began steps for their removal from Canada.

[6] On December 6, 2023, the applicants filed an application for permanent residence with an exemption based on humanitarian and compassionate (“H&C”) factors under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27.

[7] The adult applicants met with CBSA for removal interviews on December 11, 2023, and on January 15 and February 8, 2024. At the latter meeting, CBSA provided them with a Direction to Report for removal from Canada to Saint Kitts and Nevis on March 16, 2024.

[8] By letter dated February 16, 2024, the applicants requested a deferral of their removal. They provided, *inter alia*, a detailed and comprehensive letter from their counsel in support, with extensive supporting materials that included an affidavit from the applicant father, a report and letters from medical and psychological professionals and a copy of their application for H&C relief.

[9] By letter dated March 5, 2024, with accompanying reasons in a memorandum to file (the “Deferral Decision”), the officer denied their deferral request.

[10] By order dated March 12, 2024, the Court (*per* Kane, J.) granted a stay of their removal until the earlier of the end of the current school year or the determination of their application for judicial review of the Deferral Decision. By subsequent order, the Court granted leave to apply for judicial review.

[11] On this application, the applicants seek to set aside the Deferral Decision. The standard of review is reasonableness, as described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 563. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 66. The onus is on the applicants to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

[12] Critical aspects of the evidence and the central parts of the parties' submissions may serve as constraints on an administrative decision: *Vavilov*, at paras 85, 90, 99, 101, 125-128; *Mason*, at paras 10, 66, 97, 98, 118. A reviewing court's ability to intervene arises if the reviewing court loses confidence in the decision because it was "untenable in light of the relevant factual ... constraints" or if the decision maker fundamentally misapprehended the evidence, failed to account for critical evidence in the record that runs counter to a material conclusion, or ignored evidence: *Vavilov*, at paras 101, 126 and 194; *Canada Post*, at para 61; *Mason*, at para 73; *Kahkewistahaw First Nation v. Canada (Crown-Indigenous Relations)*, 2024 FCA 8, at paras 56-57; *Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161, at

paras 122-123; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 F.C. D-53, [1998] FCJ No 1425, at paras 14-17; *Federal Courts Act*, RSC 1985, c F-7, paragraph 18.1(4)(d).

[13] The applicants submitted that the Deferral Decision was unreasonable because the officer did not reasonably assess the following issues raised in their request for deferral:

- a) The best interests of each of the two child applicants;
- b) The impact of the applicant mother's mental health on the best interests of the children;
- c) The economic harm to be suffered by the family from their removal because the father will have to sell his business;
- d) The family's fear of risks in Saint Kitts and Nevis; and
- e) The impact of their removal on their H&C application.

[14] A successful motion for a stay of removal does not necessarily lead to a successful application to set aside an underlying decision not to defer removal: see *Williams v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 274, [2011] 3 FCR 198, at paras 28-29; *Williams v. Canada (Citizenship and Immigration)*, 2018 FC 100, at para 80.

[15] In this case, the outcome of this application turns on one central issue, which Justice Kane identified when she granted the stay of removal. It is the best interests of the children and, in particular, the medical and mental health concerns related to one child (who I will call K).

[16] K is 11 years old. He is in Grade 4. His child psychologist in Iran found that he is on the autism spectrum and has ADHD: see letter from Dr Yousefi dated October 14, 2023. While in Iran, he was also under the care of a neurologist and had speech therapy. In Canada, he had occupational therapy in 2021 and tutoring.

[17] In April 2023, K's teachers in Canada advised that they had concerns about K's performance at school. The adult applicants took prompt steps to respond to the concerns, including seeking additional medical advice and assistance. Following a referral from their physician, pediatrician Dr Samarasinghe conducted testing and confirmed the diagnoses of K made in Iran. She also prescribed medicine for K whose dosage had to be titrated (monitored and calibrated) carefully and regularly over a 3-6 month period with follow-ups 3-4 times per year. She provided letters dated October 18, 2023, and January 18 and February 15, 2024.

[18] In addition, in December 2023, K was assessed by Dr Antczak, who prepared a lengthy Psychoeducational Education Report dated December 22, 2023.

[19] All of these letters and reports were filed with the applicants' request for deferral, together with counsel's written submissions.

[20] In the Deferral Decision, the officer recognized K's diagnosis and that he was starting a new medication that required titration by a doctor over 3-6 months, with the subsequent follow-ups. The officer also recognized that K had received assistance from professionals since the age of four in Iran. The officer mentioned the letters from Dr Samarasinghe dated January 18 and

February 15, 2024. The officer found that there was insufficient evidence that the titration of K's new medicine could not be done by a doctor in Saint Kitts and Nevis, rather than by Dr Samarasinghe, or that there would be a delay in finding a doctor in Saint Kitts and Nevis.

[21] The Deferral Decision also stated that K:

... has had to go through periods of transition in the past given his families [sic] extensive travel history and that for a person with his condition changes with routine can be challenging. Never the less the family and [K] have managed to transition through changes of moving countries and changing school in the past. [K] will continue to have the support he has always received from his family through these periods of time and the record indicates that despite some challenges he has successfully transitioned through significant changes since leaving Iran to [Saint] Kitts and then to Canada to make a refugee claim. Concerns regarding [K]'s disorder have not prevented the family from moving countries in the past and having a preference to stay in Canada due to perceived differences in quality of care and education are not sufficient to warrant a deferral of removal.

[22] The Deferral Decision found that there was insufficient evidence that K "would not transition to school in [Saint] Kitts and Nevis or that in the short term his education would be negatively impacted irreparably or that he would be forced to fail or lose his grade 4 by moving at this point in the school year".

[23] In some deferral cases, a narrow approach to concerns about an applicant's medicine could be reasonable and justified in light of the evidence and a party's submissions. Not here. The Deferral Decision ignored or failed to assess substantively the evidence related to K's autism and ADHD and specifically how K would react to changes in environment and routines and what the transition to Saint Kitts and Nevis would entail for him.

[24] Dr Samarasinghe observed in her October 18, 2023, letter:

This letter is to inform its reader that [K] is a 10-year-old male with Autism Spectrum Disorder who is in need of mental health support and services to help with the social communication and behavioral difficulties associated with this condition. He was recently also diagnosed with ADHD-Inattentive subtype by myself on October 18, 2023. He would benefit from the medical and mental health services offered in Canada to help him with his condition. Individuals with Autism and ADHD benefit from routines and experience distress with changes and transitions. As such, it would be in [K]'s benefit to maintain his current living environment in Canada thereby maintaining his current social settings and friendships, and supporting his mental health difficulties. [K]'s social deficits and overall mental health was impacted by his last move and, as such, could be affected again if he was to experience a significant move out of a country again.

[25] Dr Antczak's report dated December 22, 2023, stated:

In light of [K]'s diagnoses, it is crucial to consider the potential impact of removing him from his current environment. [K] has developed a routine and support system in Canada, including access to educational resources and a community that understands and accommodates his unique needs as a child with autism. Relocating to a new environment may disrupt the stability and familiarity he has built, leading to increased emotional dysregulation and potential setbacks in his ability to cope with change. Children with autism often thrive in consistent and structured environments, and any disruption to this stability can exacerbate their challenges. Furthermore, [K]'s learning disability necessitates targeted educational interventions and resources, which may not be readily available in a new setting. The loss of these resources could impede his academic progress and exacerbate feelings of frustration and inadequacy. Socially, [K] may encounter difficulties in forming connections and making friends due to his challenges in social interaction. The removal from a supportive community in Canada may further isolate him and hinder the development of essential social skills.

[26] Dr Samarasinghe stated in her letter dated February 15, 2024:

3. There is no direct evidence of this but evidence based medicine demonstrates that earlier intervention and treatment of neurodivergent conditions leads to optimal potential of their behaviour, development and mental health.

a. [K] can have worsening inattention, trouble focusing, trouble retaining information and applying concepts if his ADHD is not managed well. This can lead to academic difficulties and decline in academic performance.

b. Individuals with Autism do better with structure and routines in their day-to-day life. They struggle with changes in environment as this is seen as a major alteration in their routine. Significant changes, such as moving countries, can be very distressing for individuals with Autism, like [K], and can cause significant anxiety.

c. [K] can struggle with distress and anxiety secondary to the insistence on sameness associated with his Autism. If he does not get the same level of management for his ADHD, it is unclear whether his educational experience would be optimized. He also runs the risk of adverse effects of medication-induced hypertension and/or tachycardia, growth velocity restrictions and insufficient weight gain.

4. [In response to counsel's inquiry about what combination of supports was currently contributing to positive outcomes for K in light of his autism diagnosis:] Individualized educational plan directed to helping him at school with his Autism and ADHD symptoms impacting his learning experience.

a. Without these supports, [K] may experience increased difficulties with socialization with peers, which can lead to lower self-esteem, lower confidence and can increase symptoms of anxiety and depression as a result.

[27] The applicants' request for deferral submitted that, based on the country condition evidence from Saint Kitts and Nevis, there would be significant challenges in ensuring that K has adequate supports there.



[28] After referring at length to case law from this Court, their request for deferral concluded by connecting the evidence, including Dr Antczak's report, to the impact of removal during the school term on K while his medicine was being titrated:

In light of the letters from Dr. Samarasinghe on January 18, 2024 and February 15, 2024, Dr. Ewa J Antczak's report further underscores why it is important for [K] to have a smoother transition to Saint Kitts and Nevis. Being removed on March 16, 2024 will not allow for [K] to receive crucial medical care and it will not allow him to finish off the school year. For children with autism, this type of abrupt change can "disrupt the stability and familiarity he has built, leading to increased emotional dysregulation and potential setbacks in his ability to cope with change" given that children with ASD thrive in consistent and structured environments. These are serious issues that will lead to irreparable harm for [K] is [sic] he is removed from Canada on March 16, 2024.

[29] Applying a standard of reasonableness, the Deferral Decision is not measured against a standard of perfection. It did not have to include all of the reasoning one would expect from a court. See *Vavilov*, at paras 91, 128.

[30] In addition, I am conscious that the applicants filed a considerable volume of materials to support their deferral request. That said, the applicants' counsel filed comprehensive written submissions and commendably provided a detailed index to the materials filed. Counsel's also submissions expressly included the excerpts quoted above (other than Dr Samarasinghe's letter dated February 15, 2023).

[31] The applicants requested a deferral of their removal for at least six months. That implied a deferral from mid-February (the middle of the elementary school term) until past the end of the school year in June. The end of the school year coincided approximately with the anticipated

completion of the titration of K's medicine by Dr Samarasinghe. (Her letter dated January 18, 2024, advised that the titration would take 3-6 months – six months from her letter was mid-July.)

[32] In my view, the Deferral Decision had to engage, squarely and meaningfully, with the evidence and submissions on how K would likely react to removal from his environment and routines, given his diagnosed condition and the detailed comments from the medical professionals. It is self-evident that removal from Canada would change K's home, school, teachers, friends, physicians and his entire daily routine during the school term, at a time when his new medicine was being titrated. This concern was of central importance to the applicants' written request for deferral and found support in the father's affidavit. Unfortunately, apart from a passing reference ("for a person with his condition changes with routine can be challenging"), the Deferral Decision effectively ignored the medical and psychological evidence concerning his autism and ADHD and the related submissions. While the officer is presumed to have considered all the evidence and need not refer to every bit of it, the Deferral Decision made no reference to Dr Antczak's report and only mentioned Dr Samarasinghe's letters by date. A reasonable decision on this deferral request could not skate by with generic reasoning that K will have the support of his family and has successfully moved countries before, or conclusory remarks about insufficient evidence and non-irreparable effects on K. The Deferral Decision had to engage meaningfully with the evidence and the submissions on the merits and provide responsive reasoning related to the period of deferral requested by the applicants (described above) and the effects of changes to the environment and routines on K as a child diagnosed with autism and

ADHD. It did not do so. See *Cepeda-Gutierrez*, at para 17; *Mason*, at para 74; *Vavilov*, at paras 126, 127-128.

[33] Accordingly, the Deferral Decision was not justified in light of the factual constraints bearing on it in the evidence and in the applicants' submissions: *Vavilov*, at paras 101, 125-128, 194. These omissions were of sufficient importance to render the Deferral Decision unreasonable: *Vavilov*, at para 100.

[34] With respect to remedy: as a result of the Court's stay of removal, the applicants obtained most of what they requested. Their removal has been deferred until the end of the school year, which the parties confirmed is June 30, 2024. Counsel advised at the hearing that CBSA has not re-commenced the removal process. I understand that if the matter is referred back to another officer for redetermination, the applicants will be afforded an opportunity to update their position and evidence. They can also decide not to pursue a further deferral.

[35] In the circumstances, I will set aside the Deferral Decision and remit the matter for redetermination by another office on that basis.

[36] These reasons do not comment on the merits of the applicants' request for deferral filed in February 2024, nor the merits of any future request for deferral.

[37] The application will therefore be allowed. Neither party raised a question for certification and no question will be certified for appeal.

**JUDGMENT in IMM-3339-24**

**THIS COURT’S JUDGMENT is that:**

1. The application is allowed. The decision dated March 5, 2024, on the applicants’ request to defer their removal is set aside. The matter is remitted for redetermination by another officer in accordance with the Reasons for Judgment.
2. No question is certified under paragraph 74(d) of the *Immigration and Refugee Protection Act*.
3. There is no costs order.

“Andrew D. Little”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3339-24

**STYLE OF CAUSE:** SEYEDEH SAKAR HOSSEINI, KAMRAN  
MODARRESI, KASRA MODARES, KARO  
MODARES v THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** JUNE 19, 2024

**REASONS FOR JUDGMENT  
AND JUDGMENT:** A.D. LITTLE J.

**DATED:** JUNE 27, 2024

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