Federal Court  Cour fédérale

Date: 20150309

Docket: IMM-6162-14

Citation: 2015 FC 294

Ottawa, Ontario, March 9, 2015

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

MIRNA MAJDALANI AND TRACY HAWCHAR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. It challenges a decision (the H&C decision) rendered by a Senior Immigration Officer (the Officer) rejecting the applicants' application for an exemption on humanitarian and compassionate grounds under subsection 25(1) of the IRPA from the requirement to apply for permanent resident visas from outside Canada (the H&C application). Although I acknowledge the unfortunate circumstances of the situation and the

capable submissions of the applicants' counsel, the Court's intervention is not warranted and the application is dismissed.

I. **Context**

[2] The applicants, Mirna Majdalani (the applicant) and Tracy Hawchar, her now-adult daughter, are Lebanese citizens.

[3] The applicant arrived in Montreal on December 1, 2006 with her two daughters, Natacha and Tracy. At the time, Natacha was 16 years old and Tracy was 11 years old. The applicant claimed refugee protection based on a fear of persecution in Lebanon based on her Christian faith and violence in the region. During the refugee claim process, the applicant's oldest daughter, Natacha, returned to Lebanon. The applicant's refugee claim was rejected on December 31, 2009, and an application for leave and for judicial review was dismissed by this Court on April 22, 2010.

[4] In 2009, the applicant married a Canadian citizen, and she lived in Ontario with Tracy from 2009 to 2012. In 2010, she applied for permanent residence in the spousal category, but her spouse withdrew his sponsorship in 2011 due to a deterioration of the relationship which led to a divorce that was finalized in 2013.

[5] The applicants moved back to Montreal in March 2012, and they have been living there since that time.

[6] On March 23, 2012 the applicant filed an H&C application and on October 25, 2012, she submitted a Pre-removal risk assessment (the PRRA application).

[7] The grounds for the H&C application are the applicants' establishment in Canada, including the care that the applicant provides to her mother, Mrs. Gedeon, who is a Canadian citizen, the best interests of Tracy, and the risks the applicant may face in Lebanon as a Christian and as a single woman. In support of the application, the applicant filed documentary evidence including her own affidavit, a letter signed by Tracy, a letter signed by Mrs. Gedeon, a medical note signed on March 9, 2012 by Mrs. Gedeon's doctor, Dr. Juan-Francisco Asenjo, and documentary evidence regarding general country conditions.

[8] Both the PRRA and H&C applications were denied on April 30, 2014. The applicants now seek judicial review of the negative H&C decision.

[9] On August 6, 2014, the applicants were notified their removal to Lebanon was scheduled for September 8, 2014. On August 18, 2014, they requested an administrative deferral, which was then denied by a Law Enforcement Officer on August 22, 2014. To my knowledge, the applicants have not filed an application for leave and judicial review challenging the Law Enforcement Officer's decision.

[10] However, on August 26, 2014, they filed a motion with this Court for a stay of their removal, pending the determination of this application. On September 5, 2014, Justice Shore granted their motion for stay of removal, pending the outcome of this judicial review.

[11] With respect to irreparable harm, the applicants alleged they would face risks as Christian Lebanese females in the current geopolitical context in Lebanon, emanating from the spillover from the Syrian unrest, the insurgent advances made by the Islamist State of Syria and Levant (ISIL) militants, and the increasing tension between the religious communities. They filed

documentary evidence regarding the escalating tides of sectarian warfare and increased instability stemming from the political unrest in Syria. They also alleged the negative impact their removal would have on the applicant's mother due to the deterioration of her medical condition. In support of this allegation, the applicants filed a medical note from Dr. Asenjo, dated August 18, 2014, in which he provided an update regarding Mrs. Gedeon's condition and her need for assistance.

[12] In his Order, Justice Shore discussed the issue of irreparable harm and noted the unstable current situation in Lebanon, but he was not satisfied that the applicants would be in danger in Lebanon. However, he acknowledged the recent deterioration of Mrs. Gedeon's condition, and he granted the stay.

II. **The H&C decision under review**

[13] The Officer considered the applicant's occupational and financial situation in Canada, the applicant's family in Canada, more particularly the situation regarding her mother's health condition, the best interests of Tracy, including the allegation that she would not receive an appropriate education in Lebanon, the applicants' health issues, and the risk and adverse conditions in Lebanon. The Officer considered all of the applicants' submissions and numerous updates. She found that the applicants had not demonstrated they would face unusual and undeserved, or disproportionate hardship in Lebanon and that there were not sufficient humanitarian and compassionate grounds which would justify granting an exemption from obtaining a permanent resident visa outside Canada.

III. **Issues and standard of review**

[14] This application raises the following two issues:

1) Did the Officer breach her duty of procedural fairness by relying on information found on the Quebec Government website and on the Ministry of Education and Higher Education of Lebanon website without providing the applicants with the opportunity to respond to that information prior to rendering her decision?
2) Did the Officer err in her assessment of the applicants' evidence and circumstances?

[15] The standard of review for questions of procedural fairness is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339; *Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502). In this regard, I endorse the approach adopted by Justice Mosley when he states that the question is not really whether the decision was "correct", but rather whether the process followed by the decision-maker was fair (*Hashi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 154 at para 14, [2014] FCJ No 167; and *Makoundi v Canada (Attorney General)*, 2014 FC 1177 at para 35, [2014] FCJ No 1333).

[16] With respect to the second issue, the Officer's decision involves questions of mixed fact and law, and it is well established that these decisions are reviewable under the reasonableness standard of review (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18, [2009] FCJ No 713 [*Kisana*]; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at paras 81-84, [2014] FCJ No 472 [*Kanthasamy*]; *Nicolas v Canada (Minister of Citizenship and Immigration)*, 2014 FC 903 at para 23, [2014] FCJ No 924).

IV. **Preliminary issue – the evidence that was not before the Officer**

[17] The applicants submitted five documents that were not before the Officer. These documents fall into two categories: documents post-dating the H&C decision and documents submitted in support of the procedural fairness allegations. The respondent objects to their admissibility.

[18] The documents post-dating the H&C decision were also adduced in the context of the applicants' motion for a stay. These documents are as follows:

- A medical note from Dr. Asenjo dated August 18, 2014 providing an update regarding Mrs. Gedeon's health condition;
- A letter from the applicant's employer ("My Furnished Apartment") dated August 13, 2014 confirming that the applicant has worked continuously from 2012 to 2014;
- Paragraph 47 of the applicant's memorandum: a quotation from a news article dated July 13, 2014.

[19] The following documents were submitted in support of the applicants' allegations regarding procedural fairness:

- A print-out of the Lebanese Ministry of Education and Higher Education website;
- A report by the Protecteur du Citoyen, entitled *Chez soi: Toujours le premier choix?*

[20] It is trite law that evidence which was not before the decision-maker is not admissible on judicial review unless it falls within the recognized exceptions, for example, where the evidence provides context, is filed to support an allegation of breach of procedural fairness by the decision-maker, or where it is filed to demonstrate the absence of evidence (*Association of*

Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22 at paras 19-20, [2012] FCJ No 93 [*AUCC*]).

[21] The documents post-dating the Officer's decision are inadmissible. They serve as a supplement to the evidence submitted to the Officer in support of the applicants' H&C application, and they emphasize the applicants' personal circumstances. The applicants cannot bolster the evidentiary record which was before the Officer to support a claim that the Officer's decision was not reasonable. The reasonableness of the Officer's decision must be assessed in light of the evidentiary record that was put before her.

[22] The applicants argue that because these documents were before the stay judge, and the stay order is part of the respondent's record, they should now be considered as properly admissible. This argument has no merit. The circumstances at bar do not fit any of the exceptions noted in *AUCC*, above. Further, in the context of a stay motion, documents post-dating the decision being challenged in the underlying application can be admissible when, for example, they are provided to support the allegation of irreparable harm. The 2014 medical update regarding Mrs. Gedeon's condition and the documents regarding country conditions in Lebanon were relevant to the applicant's allegation of irreparable harm. This, however, does not render that evidence admissible in the context of the underlying application where the Court is tasked with determining whether the Officer's decision is reasonable in light of the evidence submitted to him.

[23] The two other documents, as noted in paragraph 19 above, are filed in support of the applicants' arguments regarding procedural fairness. The applicants submit them to respond to

the Officer's use of "extrinsic" sources and to counter the information the Officer found in the two websites she consulted. In this context, the Court declares these documents fall into one of the recognized exceptions and, they are admissible in the context of this judicial review.

V. **Analysis**

A. ***General principles***

[24] The Court must keep in mind the context of an H&C application when reviewing the Officer's decision. It is well established that subsection 25(1) of the IRPA offers an exceptional and highly discretionary remedy, as the general requirement is that people wishing to live in Canada as permanent residents must submit their application from outside Canada and qualify to obtain an immigrant visa prior to entering Canada. The statutory scheme of H&C decisions was well canvassed by Justice Shore in *Bhalrhu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 49 at paras 14-17, [2011] FCJ No 68:

> **Legislative Principles**
>
> 14 According to section 25 of the IRPA, a foreign national may be exempted from any applicable criteria or obligation of the IRPA if "the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the [person], taking into account the best interests of a child directly affected".
>
> 15 The existence of an H&C review offers an individual **special** and **additional** consideration for an exemption from Canadian immigration laws that are otherwise universally applied. Granting relief under section 25 of the IRPA is an "exceptional remedy" dependent on the Minister's discretion. An applicant is not entitled to a particular outcome, even if there are compelling H&C considerations present.
>
> 16 The Minister has the discretion to balance H&C considerations against public interest reasons that might exist for

> refusing to grant an exceptional remedy (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125, [2002] 4 FC 358, at paras 14-21).
>
> 17 The purpose of H&C discretion is to allow flexibility to approve deserving cases, not anticipated in the legislation. It cannot be "a back door when the front door has, after all legal remedies have been exhausted, been denied in accordance with Canadian law" (*Legault*, above at paras 21-23; *Rizvi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 463, [2009] FCJ No 582 (QL/Lexis), at para 17; *Mayburov v Canada (Minister of Citizenship and Immigration)* (2000), 183 FTR 280, 98 ACWS (3d) 885, at para 39).
>
> [See also *Kanthasamy*, above, at paras 40-43]

[25] It is trite law that the onus in an H&C application lies with the applicants (*Rizvi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 463 at para 21, [2009] FCJ No 582; *Kanthasamy*, above, at para 41) and they must establish that they would face unusual, undeserved or disproportionate hardship if they had to apply from outside Canada. It is also well established that an H&C officer has no obligation to highlight the weaknesses of an application or seek additional information from applicants when the evidence submitted is insufficient. In *Kisana*, above, at para 45, the Federal Court of Appeal reiterated these principles as follows:

> 45 It is trite law that the content of procedural fairness is variable and contextual (see: *Baker*, *supra*, para. 21; and *Khan v. Canada (MCI)*, 2002 FCA 413). The ultimate question in each case is whether the person affected by a decision "had a meaningful opportunity to present their case fully and fairly" (see: *Baker*, supra, para. 30). In the context of H&C applications, it has been consistently held that the onus of establishing that an H&C exemption is warranted lies with an applicant; an officer is under no duty to highlight weaknesses in an application and to request further submissions (see, for example: *Thandal v. Canada (MCI)*, 2008 FC 489 at para. 9). In *Owusu*, *supra*, this Court held that an H&C officer was not under a positive obligation to make inquiries concerning the best interests of children in circumstances where the issue was raised only in an "oblique, cursory and obscure way" (at para. 9). The H&C submissions in that case consisted of a 7-

> page letter in which the only reference to the best interests of the children was contained in the sentence: "Should he be forced to return to Canada, [Mr. Owusu] will not have any way to support his family financially and he will have to live every day of his life in constant fear" (at para. 6).

[26] Keeping these principles in mind, I now turn to the specific issues raised in this application.

B. ***Procedural fairness***

[27] The applicants allege that the Officer breached their right to procedural fairness by relying on information which the Officer gathered from two websites without informing them and giving them an opportunity to comment on that information before rendering her decision. With respect, I disagree for the following reasons.

[28] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 32, [1999] SCJ No 39, the Supreme Court of Canada established that a duty of fairness was owed to H&C applicants and that this duty was more than just minimal. The Court noted that procedural fairness is variable, flexible and contextual (*Baker* at paras 21-33) and that "[a]t the heart of this analysis is whether, considering all the circumstances, those whose interests were affected had a meaningful opportunity to present their case fully and fairly" (*Baker* at para 30; *Kisana*, above, at para 45). The Supreme Court did not dictate the content of procedural fairness, but it identified guiding factors to determine the content of the duty of fairness. These factors were summarized in *Congrégation des témoins de Jéhova de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48 at para 5, [2004] 2 SCR 650:

> 5 The content of the duty of fairness on a public body varies according to five factors: (1) the nature of the decision and the decision-making process employed by the public organ; (2) the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the party challenging the decision; and (5) the nature of the deference accorded to the body: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. In my view and having regard to the facts and legislation in this appeal, these considerations require the Municipality to articulate reasons for refusing the Congregation's second and third rezoning applications.

[29] The issue of the use of "extrinsic" evidence by administrative bodies and tribunals, and more specifically by H&C officers, and whether fairness requires that this evidence be disclosed to applicants has been raised on several occasions before this Court.

[30] One of the pre-*Baker* leading cases on this point is *Mancia v Canada (Minister of Citizenship)*, [1998] 3 FC 461 at para 22, [1998] FCJ No 565 (FCA) [*Mancia*], where Justice Décary stated that "fairness dictates that the applicant be informed of any novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case".

[31] In *Haghighi v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 407 at paras 27-28, [2000] FCJ No 854 [*Haghighi*], rendered after *Baker*, the Federal Court of Appeal discussed the issue of the use of documentary evidence not previously disclosed to applicants by H&C officers. In that instance, the evidence at issue was a risk assessment report. The Court determined the appropriate analytical framework no longer requires the Court to determine whether a piece of evidence could be characterized as "extrinsic evidence". The Court adopted a

contextual approach to determine whether the duty of fairness requires disclosure with a view to the nature of the decision involved and the possible impact of the evidence at issue on the decision. Justice Evans, writing for the Court, set out the contextual approach as follows:

> 27 Hence, in deciding whether disclosure of the PCDO's report is required, the Court must consider, *inter alia*, the factors identified by L'Heureux-Dubé J. for locating on the fairness spectrum the duties owed by the immigration officer in a subsection 114(2) case. The inquiry into what is required to satisfy the duty of fairness must be contextualised: asking, as *Shah*, *supra*, directed, whether the report can be characterised as "extrinsic evidence" is no longer an adequate analytical approach.
>
> 28 The contextual considerations relevant to determining whether the immigration officer was required by the duty of fairness to disclose the PCDO's report to the respondent for comment include the following:
>
> (a) Since an important function of the duty of fairness is to minimise the risk of incorrect or ill-considered decisions, one element of the calculus for determining the procedural content of the duty of fairness in a given case is the extent to which the procedural right claimed is likely to avoid the risk of error in making the decision or in resolving the particular issue in dispute. Another element is the seriousness of the impact of an erroneous decision on those affected by it.
>
> (b) Against these considerations must be balanced any costs likely to attend the recognition of the procedural right claimed, such as delays in the decision-making process and the diversion of resources that may be entailed by adding another procedural layer.
>
> (c) The characteristics of the decision-maker may also provide a clue to the procedural duties that can appropriately be imposed as a matter of fairness. A decision-maker with the trappings of an adjudicative body may more readily be expected to comply with procedures which, in their general design, resemble those of courts. On the other hand, where, as here, Parliament has conferred decision-making power on an officer of a government department, it is appropriate to shape the content of the duty of fairness applicable with an eye to the bureaucratic model of decision-making that is characterised by expertise, team work and the division of labour.

> (d) The location of the decision within the wider statutory scheme is also relevant. Here, subsection 114(2) confers an important element of discretion that enables immigration officers to take into account the personal circumstances of individuals who are not eligible for landing in other immigration categories for which more objective qualifications apply. While an integral component of a rule-oriented immigration regime, decisions made on humanitarian and compassionate grounds are discretionary and residual in nature and therefore do not attract the same degree of procedural protection as decisions that involve the determination of a person's legal rights.
>
> (e) To the extent that agency practice prescribes procedural propriety, it is relevant to note that, while immigration officers do not routinely disclose PCDOs' risk assessment reports so that subsection 114(2) applicants can respond, this is sometimes done.
>
> [Emphasis added]

[32] The principles set out in both *Mancia* and *Haghighi* have since been applied by this Court, occasionally with some nuances.

[33] In some cases, the Court has held that information publicly available, for example documents available on the internet originating from credible, reliable and well-known sources, is not considered "extrinsic evidence" or "novel and significant" information (*Sinnasamy v Canada (Minister of Citizenship and Immigration)*, 2008 FC 67 at paras 39-40, [2008] FCJ No 77; *Pizarro Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 623 at para 46, [2013] FCJ No 692).

[34] In other cases, the Court applied the "novel and significant" test, and it found the duty to disclose is triggered when the information contained in the document relied upon by the officer was not available and would not have been easily accessible to the applicant, or when the

evidence could not have been anticipated (*Jiminez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1078 at paras 17-19, [2010] FCJ No 1382; *Stephenson v Canada (Minister of Citizenship and Immigration)*, 2011 FC 932 at paras 35, 39, [2011] FCJ No 1156; *Adetunji v Canada (Minister of Citizenship and Immigration)*, 2012 FC 708 at para 38, [2012] FCJ No 698).

[35] In *Molina de Vazquez v Canada (Minister of Citizenship and Immigration)*, 2014 FC 530 at paras 27-28, [2014] FCJ No 548 [*Molina de Vazquez*], Justice de Montigny stressed that not all information available online can be considered as information publicly available. However, he found that the H&C officer was not required to disclose general information regarding the Argentinean school system even though he had gathered the information from an unorthodox website because it contained general information which was easily accessible elsewhere by the applicants:

> 27 I agree with the Applicants' assertion that not everything found online can be considered as publicly available. If it were otherwise, as I stated in *Sinnasamy v Canada (Minister of Citizenship and Immigration)*, 2008 FC 67 (at para 39), it "would impose an insurmountable burden on the applicant as virtually everything is nowadays accessible on line". An officer should therefore be prudent when considering and relying upon "materials that could not be described as the kind of standard documents that applicants can reasonably expect officers to consult" (*Mazrekaj v Canada (Minister of Citizenship and Immigration)*, 2012 FC 953 at para 12). […]
>
> 28 That being said, it is not the document itself which dictates whether it is "extrinsic" evidence which must be disclosed to an applicant in advance, but whether the information itself contained in that document is information that would be known by an applicant, in light of the nature of the submissions made: *Jiminez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1078 at para 19; *Stephenson v Canada (Minister of Citizenship and Immigration)*, 2011 FC 932 at paras 38-39. In the case at bar, while the particular websites consulted by the Officer might be

> considered somewhat unorthodox and are clearly not standard sources, they contained general information on the Argentinean school system which would have been reasonably accessible by the Applicants. They provide general information on the Argentinean school system that could have been found elsewhere by the Applicants, and that information can clearly not be characterized as "novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case", as stated by the Federal Court of Appeal in *Mancia*.
>
> [See also *Lopez Arteaga v Canada (Minister of Citizenship and Immigration)*, 2013 FC 778 at para 24, [2013] FCJ No 833 (J. Gagné); *Begum v Canada (Minister of Citizenship and Immigration)*, 2013 FC 824 at para 36, [2013] FCJ No 896 (J. Strickland).]

[36] Other judges have assessed the extent of the duty of H&C officers to disclose documents with a view to whether disclosure was required to provide an applicant with the opportunity to participate in a meaningful manner in the process. In *Priyanta Jayasinghe v Canada (Minister of Citizenship and Immigration)*, 2007 FC 193, [2007] FCJ No 275, Justice Shore expressed the following:

> 26 The discharge of a visa officer's duty of fairness must be assessed on a case-by-case basis. In cases, alleging a breach of duty of fairness, based on the failure to disclose reports which exist in the public domain, the question is whether the disclosure of the reports or references to specific passages of the report was required in order to provide the applicant with a "reasonable opportunity in all the circumstances to participate in a meaningful manner in the decision-making process". (*Haghighi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 854 (F.C.A.) (QL), at para. 26).

[37] However, in all instances the Court has recognized that to trigger the duty to disclose, the information must be important in the sense that it may have an impact on the outcome of the decision. In *Yang v Canada (Minister of Citizenship and Immigration)*, 2013 FC 20, [2013] FCJ

No 25, Justice Mosley discussed the necessity of the evidence to potentially impact on the decision:

> 17 Guidance in respect of the use of extrinsic evidence in administrative decisions related to immigration was offered by the Federal Court of Appeal in *Muliadi v Canada (Minister of Employment and Immigration)*, [1986] 2 FC 205 (FCA) and *Haghighi v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 407 (FCA). The question is whether meaningful facts essential or potentially crucial to the decision had been used to support a decision without providing an opportunity to the affected party to respond to or comment upon these facts.
>
> […]
>
> 25 The key question in the circumstances of this case is whether fairness dictated that the officer disclose the Xinhua report and invite further submissions because the content of the announcement was "novel and significant and [evidenced] changes in the general country conditions that may affect the decision" (*Mancia*, para 27).
>
> […]
>
> 29 In the result, I do not find that the officer breached procedural fairness by failing to disclose the news report and to invite further submissions. Even if I had reached a different conclusion on this question, I doubt that I would have found that it was material to the outcome. Any submissions that the applicant could have made about the source and quality of the information would not have displaced the officer's findings on the other evidence that he relied upon in reaching his decision.
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> [Emphasis added]
>
> [See also *Garnett v Canada (Minister of Citizenship and Immigration)*, 2012 FC 31 at para 31, [2012] FCJ No 28.]

[38] In the case at bar, the Officer accessed information online from two sources. First, she referred to information gathered from the Quebec Government website regarding home support services. Second, she referred to information found on the Ministry of Education and Higher Education of Lebanon website regarding the education system in Lebanon.

[39] In my view, the Officer did not breach her duty of fairness by not disclosing this information to the applicants.

[40] It is important to assess the Officer's duty of fairness in light of the applicants' allegations with a view to their evidentiary burden. The Officer's research online pertained to two of the applicants' main allegations.

(1) The applicant's presence is required to care for Mrs. Gedeon

[41] First, the applicant alleged she needed to remain in Canada to care for her elderly mother.

[42] In support of her allegation, she filed an affidavit which she signed on May 29, 2012. In her affidavit, the applicant declared that her mother is getting old, she has no other family in Canada and she needs her presence more and more as she is getting older. Further, she stated her mother can no longer travel as a result of her health condition and age, and her returning to Lebanon would involve a permanent separation from her mother.

[43] The applicant also submitted a letter from her mother, Mrs. Souheila Gedeon, dated April 24, 2012. In her letter, Mrs. Gedeon stated she is a Canadian citizen; she has been living in Canada for over 20 years. Also, she hopes that her daughter will be able to stay in Canada because her daughter is taking care of her and along with her granddaughter, is keeping her company. Mrs. Gedeon insisted that she has no other family members in Canada and that she relies on her daughter for various everyday basics.

[44] The applicant also submitted a medical note from Dr. Asenjo dated March 9, 2012. In his note, Dr. Asenjo indicated that Mrs. Gedeon has been his patient at the Pain Centre of the

General Hospital for 6 years. He stated that Mrs. Gedeon is over 80 years of age with severe-degenerative osteoarthritis of the spine, and she has had multiple surgeries in the lower extremities, as well as several procedures for pain control. Further, Dr. Asenjo indicated that Mrs. Gedeon is progressively becoming more dependent on help to perform her regular duties at home. He recommended she plan for someone, hopefully a relative, to live with her in order to remain in her own home.

[45] The Officer was not satisfied the applicant had established that her presence in Canada was required to care for Mrs. Gedeon. She considered the applicant's affidavit, Mrs. Gedeon's letter and Dr. Asenjo's letter, and she concluded that "these letters are not in and of themselves sufficient to demonstrate that the presence of the applicants' [*sic*] in Canada would be the sole option for the care of Mrs. Gedeon at the present time and that an exemption from the permanent resident visa requirement would be justified."

[46] She then noted that the applicant's siblings are Canadian citizens and that the incapacity or unwillingness of other family members to help Mrs. Gedeon was not established.

[47] It is clear from the decision that the Officer was of the view the applicant had not demonstrated that Mrs. Gedeon's medical condition was such that there was no alternative other than for the applicant to stay in Canada and care for her mother. The Officer found that the applicant had not established that in her absence Mrs. Gedeon would be left without the assistance and support that she needs. It was only after having reached her conclusion that the applicant's evidence was insufficient, that the Officer went further and noted other options that would be available for Mrs. Gedeon's care. She noted as examples the *Home Care Support*

Services and *Domestic Help Services*, and she referenced the Quebec Government website where information about these programs can be found.

(2) Tracy could not get an appropriate education if she were to return to Lebanon

[48] The applicants also alleged Tracy would not be able to get a proper education in Lebanon because she could no longer speak Arabic.

[49] In support of this allegation, the applicant submitted her own affidavit in which she stated that Tracy had done all of her secondary education in Canada, she is fully bilingual in English and French, but she no longer speaks Arabic with ease and fluency.

[50] The applicant also filed a letter from Tracy dated April 14, 2012. In her letter, Tracy stated she no longer speaks the national language, and therefore, she might not be able to get a proper education in Lebanon. She added only foreign students with foreign passports can be exempted from "the Arabic", which would not be her case. In her letter, Tracy also stated she is close to her grandmother and her grandmother needs someone to take care of her since she can no longer travel overseas, due to her health condition.

[51] In her decision, the Officer noted that no supporting evidence was submitted to demonstrate the Arabic curriculum is compulsory in Lebanon and that Tracy's education would be negatively affected if she were to return to Lebanon. The Officer was clearly of the view that the applicants had not met their evidentiary burden on this front. She then went further and added the following:

> Despite this, I consulted the *Ministry of Education and Higher Education of Lebanon's* website. According this [*sic*] public source of information, Lebanese students may request an exemption from the Arabic curriculum and pursue their studies in a different educational system.

[52] It appears from the Officer's decision that the information she obtained both from the Quebec Government website and the Ministry of Education and Higher Education of Lebanon's website did not influence her primary findings that the applicants had not provided sufficient evidence in support of their allegations. Therefore, I am of the view the information at issue was not significant, and it did not influence the Officer's decision.

[53] Further, I am also of the view that in both cases, the information came from standard and well-known public sources, and it would have been easily accessible to the applicants. Besides, in the context of the applicants' allegations regarding Mrs. Gedeon's needs and Tracy's education, the information referenced by the Officer is the type of information the applicants could have expected the Officer to consult.

[54] Both of these websites are official and widely available sources the applicants could reasonably be expected to know about. Moreover, there is nothing particularly novel or significant in the information, which is of public knowledge.

[55] The Officer named two home support services to substantiate her assertion that even though the applicant had not established that Mrs. Gedeon would be left without the support she needs if the applicant left Canada, she was convinced services exist to assist and support persons in Mrs. Gedeon's situation. She named the *Home Care Support Services* and the *Domestic Help Services*, and she did not discuss these services further, but she mentioned the Quebec Government website pages where information about those services is provided. It is common knowledge that services such as *Home Care Support Services* and *Domestic Help Services* exist in Canada, especially in Quebec, and it was incumbent on the applicants to establish that public services would not be available or would not suit Mrs. Gedeon's needs.

[56] The applicants submit a Report from the Protecteur du Citoyen to support an allegation related to the accessibility of the services to which Mrs. Gedeon would be entitled. In my view, this report does not really counter the Officer's general assertion that options are available for Mrs. Gedeon's care. Moreover, having claimed the applicant's presence was required to care for Mrs. Gedeon, the applicants had the burden of filing evidence to support a finding that no other options were available for Mrs. Gedeon's care. Furthermore, being satisfied that no breach of procedural fairness occurred from the non-disclosure of the existence of those programs, I do not see how the Report from the Protecteur du Citoyen can be of any use.

[57] Regarding Tracy's education, the applicant argues the Officer failed to take into account another page of the Lebanese government website which shows it might be difficult for Tracy to obtain an exemption from the Arabic curriculum. Having raised the issue of Tracy's language of education, the burden was on the applicants to demonstrate in their H&C application that Tracy was not eligible for such an exemption, and the Officer was not satisfied the applicants had provided sufficient evidence to support their allegation. Furthermore, the information gathered from the Lebanese Ministry of Education and Higher Education's website is certainly not novel, it was easily accessible to the applicants, and it should have been anticipated in light of the applicants' submissions. If the applicants are of the view there is information on the website which supports their assertion that Tracy would not be able to access a proper education in Lebanon, they should have submitted it to the Officer, along with their H&C application.

[58] In the context of this case, I conclude that the disclosure of the information stemming from the two websites was not required to allow the applicants to participate in a meaningful manner in the Officer's decision-making process.

[59] The circumstances in the case at bar are clearly distinguishable from those in *Bailey v Canada (Minister of Citizenship and Immigration)*, 2014 FC 315, [2014] FCJ No 352, where the H&C officer assessed whether the applicant, a quadriplegic, could access adequate medical care in Jamaica. In doing so, the officer relied on a website called "The Mustard Seed Communities of Jamaica", which described two organizations providing care to the disabled in Jamaica but did not even mention quadriplegics. Justice Russell found that this was "obscure information of dubious relevance" and an egregious breach of procedural fairness (para 70).

[60] The circumstances of this case have more similarity with those in *Molina de Vazquez*, above, at para 28 (quoted at paragraph 35 of these reasons), where Justice de Montigny held that the H&C officer did not breach his duty of fairness when he relied on information regarding the Argentinean school system that he obtained online without disclosing it to the applicant.

C. ***Reasonableness of decision***

[61] The applicants do not raise any serious challenge to the reasonableness of the Officer's decision. The Officer clearly applied the appropriate criteria, and she duly considered all of the evidence and the applicants' personal circumstances.

[62] With respect to the applicants' risks allegation, the Federal Court of Appeal in *Kanthasamy*, above, confirmed the interpretation to be given to the combination of subsections 25(1) and 25(1.3) of the IRPA:

> 73 In my view, that is a useful way of describing what must happen under section 25 now that subsection 25(1.3) has been enacted - the evidence adduced in previous proceedings under sections 96 and 97 along with whatever other evidence that applicant might wish to adduce is admissible in subsection 25(1) proceedings. Officers, however, must assess that evidence through

> the lens of the subsection 25(1) test - is the applicant personally and directly suffering unusual and undeserved, or disproportionate hardship?

[63] The Officer noted the test she would apply to assess the applicant's allegation of risk in the context of the H&C application. She indicated a risk assessment in the context of an H&C application has a broader scope and a different threshold than a risk assessment in the context of a claim for protection, and she would analyze the applicant's allegations in the context of hardship. The test enunciated by the Officer is clearly in line with the interpretation confirmed in *Kanthasamy*.

[64] Moreover, the Officer's decision is clear, detailed and coherent. The Officer considered all the circumstances and arguments advanced by the applicants, and she provided a thorough analysis of the evidence.

(1) Occupational and financial situation in Canada

[65] The Officer found the applicant had not demonstrated a significant degree of establishment in Canada. She also found the applicant had not established she had, or had been able to attain, a suitable degree of financial independence. The Officer noted the evidence with respect to the applicant's occupations in Canada was very limited and her letters and pay stubs only represented 6 months of employment out of the 88 months that she has been in Canada. The Officer found the applicant's income was insufficient to support herself and her daughter.

[66] The Officer reasonably assessed the evidence regarding the applicant's employment. The evidence showed various short periods of employment followed by long periods of

unemployment throughout the period of 2006 to 2014. The only update regarding her employment status was the November 12, 2012 update, which included an employment offer. This letter merely shows that the applicant had obtained full-time employment in October 2012. Nothing in this letter renders the Officer's decision unreasonable. As indicated earlier, the new letter from the same employer (dated August 13, 2014) post-dates the Officer's decision and is therefore, inadmissible on judicial review.

(2) Family in Canada

[67] The Officer considered the applicant's assertion and all of the evidence submitted by the applicant. This evidence is summarized in the section of these reasons dealing with procedural fairness and need not be repeated.

[68] The Officer's consideration of Mrs. Gedeon's situation was altogether reasonable. The Officer considered the evidence from Dr. Asenjo and from Mrs. Gedeon. Dr. Asenjo's medical note of March 9, 2012 was very general, and it did not support a finding that the applicant's presence was a necessity. He did not provide any detail as to Mrs. Gedeon's specific needs, nor did he state she would be unable to access public healthcare services. He simply recommended Mrs. Gedeon plan for someone, "hopefully a relative", to live with her in order to remain in her own home.

[69] At the time this medical note was written, the applicant had been living in Ontario since 2009, and had only moved back to Montreal in March 2012. This medical note, along with the applicant's affidavit and Mrs. Gedeon's letter was the only evidence before the Officer, and in my view, the Officer's determination based on this evidence was reasonable. It was reasonable

for the Officer to conclude the applicant had not established that no other options were available for the care of Mrs. Gedeon and that the evidence was insufficient to justify an exemption from the requirements of the IRPA. The onus lay with the applicant to establish that there existed no alternative except for her to stay in Canada to care for her mother. Nothing in the evidence submitted suggests that Mrs. Gedeon would be left without care if the applicant was to leave Canada. Further, other than the statements of the applicants and Mrs. Gedeon, there is no evidence to suggest that Mrs. Gedeon could not travel with them to Lebanon.

[70] The August 18, 2014 medical note from Dr. Asenjo provides an update on Mrs. Gedeon's condition. It is somewhat more detailed than the medical note of March 2012 as to her current condition, her specific needs, and the impact the applicant's removal would have on her. However, this evidence post-dates the Officer's decision, and as I indicated earlier, it cannot be considered in the assessment of the reasonableness of the Officer's decision.

(3) Best interests of the child

[71] The Officer was not satisfied a return to Lebanon would have a significant direct impact on the applicant's daughter, Tracy, who was a minor when the H&C application was filed. Tracy is now a young adult attending university.

[72] As previously noted, the Officer considered the applicant's allegation that in Lebanon, Tracy would not be exempted from the Arabic curriculum and, therefore, she would be unable to obtain a proper education as she no longer speaks Arabic with ease and fluency. She found the allegation was not supported by any evidence establishing the Arabic curriculum is compulsory in Lebanon and Tracy's education would be negatively affected.

[73] Moreover, the Officer noted that considering how well Tracy had adjusted after moving to Canada, the applicant had not demonstrated Tracy would be unable to adapt to the new environment in Lebanon.

[74] Tracy's letter was the only evidence provided to substantiate the applicant's allegation. This was clearly insufficient, and the Officer's conclusion on this point is reasonable.

(4) Risk and adverse conditions in Lebanon

[75] The Officer considered the applicant's allegation of risk, but she was not satisfied she had discharged her onus of establishing that she and Tracy would be exposed to such adversity in Lebanon because they are Christians and because she is a single women. She was not satisfied that they would face unusual, undeserved or disproportionate hardship if they were to return to Lebanon. The Officer's finding is reasonable, and it is based on several elements.

[76] The Officer noted the applicant reiterated facts and arguments which had already been addressed by the Refugee Protection Division of the Immigration and Refugee Board (RPD). She noted that the RPD found the applicant had not met the burden of establishing a risk, and she had admitted the possibility of relocating in a Christian area such as the Broumana region. The RPD also considered that the applicants could return to Mansourieh, another Christian area where the applicant's oldest daughter had voluntarily returned. The Officer noted she had not been provided with evidence which would establish the possibility no longer exists, for the applicants to live in regions like Broumana or Mansourieh.

[77] The Officer noted the applicant's allegation that the situation in Lebanon had since deteriorated due to the ongoing Syrian crisis, that Lebanon's immediate future was uncertain and

that she feared sectarian violence as a member of a religious minority. The Officer noted the documentary evidence provided by the applicant in support of her allegations, and while she recognized there were issues affecting the Lebanese population in general, she found the evidence submitted was general in nature and did not pertain to the applicant's particular situation. Further, she noted that the evidence denoted that the Syrian crisis may potentially impact Lebanese security and stability, disrupt a fragile balance between Sunnis, Shias and Christians, but she found that the evidence was speculative and insufficient to demonstrate a present and actual risk.

[78] The Officer also dealt with the applicant's allegation of gender-based hardship, but she was not satisfied the applicant would face significant direct hardship due to her status as a divorced woman. The Officer acknowledged that the situation of women in Lebanon is "not perfect". However, she found that the applicant failed to demonstrate how the situation would particularly affect her and her daughter. The Officer noted that the applicant was educated and had worked in Lebanon before moving to Canada, and that she had not demonstrated that she had been a victim of any acts of discrimination in the past. The applicant disagrees with the Officer's characterization of the status of women as "not perfect", however, the applicant did not rebut the Officer's finding that the applicant has not demonstrated how this situation would affect her personally. Further, the Officer considered and rejected the applicant's arguments that she would face undue hardship as a divorced woman with no male relative, or she would face a custody dispute with her ex-husband.

[79] The Officer also noted that the applicant alleges that her ex-husband in Lebanon was abusive, but she indicated that this allegation was not supported by any evidence. The Officer

also considered the applicant's allegation that her ex-husband would have greater custody rights than her in Lebanon, but this contradicts the divorce judgment from Lebanon, which grants the applicant full custody of Tracy. Finally, the Officer noted that the applicant was alleging that she would face hardship because she has no male family member to protect her, but does not elaborate on how this would cause hardship, nor does she submit corroborating evidence.

(5) Applicants' Health issues

[80] The Officer found that, despite the fact that the applicant and her daughter were prescribed medication in 2012, there was no recent evidence of ongoing treatment, nor was there evidence of their inability to receive treatment in Lebanon. This finding was clearly reasonable in light of the scarce evidence submitted.

[81] The applicants disagree with the Officer's conclusions, but this disagreement is not sufficient to warrant the Court's intervention. It is not for the Court to reweigh the evidence and the factors analyzed by the Officer. In the case at bar, the Officer's conclusion is a possible outcome which is defensible in respect of the facts and of the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Moreover, the Officer's decision is transparent, well-reasoned and intelligible.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Marie-Josée Bédard"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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