Federal Court  Cour fédérale

Date: 20150729

Dockets: IMM-2545-14
IMM-2546-14

Citation: 2015 FC 929

Ottawa, Ontario, July 29, 2015

PRESENT: The Honourable Mr. Justice Russell

Docket: IMM-2545-14

BETWEEN:

EMMANUEL ONESON ANIMODI
KEMMERY MARIA ANIMODI
LETICIA BAMISHE ANIMODI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

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JUDGMENT AND REASONS

I. INTRODUCTION

[1] There are two applications for judicial review under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] before the Court. Both decisions are dated February 17, 2014 and were decided by the same senior immigration officer [Officer]. In IMM-2545-14, the Officer rejected the Applicants' Pre-Removal Risk Assessment application [PRRA Decision]. In IMM-2546-14, the Officer rejected the Applicants' application for permanent residence from within Canada on humanitarian and compassionate grounds [H&C Decision]. Due to the similarities in the factual background, the decisions, and the legal arguments, one set of reasons will be provided and filed in both IMM-2545-14 and IMM-2546-14.

II. BACKGROUND

[2] The Applicants are citizens of Angola. They are a husband [Principal Applicant] and wife [Female Applicant], and their twenty-two-year-old daughter [Minor Applicant]. The Applicants also have two minor children who are Canadian citizens.

[3] The Applicants came to Canada in 1997 to seek refugee protection. They fear persecution at the hands of both the government and rebel groups. The female Applicants also fear a risk of harm due to their gender.

[4] The Principal Applicant says that he was kidnapped, detained and sentenced to death because the National Union for the Total Independence of Angola [UNITA] perceived him to be a political supporter of the government. While UNITA was transporting the Principal Applicant to the location where he says they planned to kill him, the military stopped the vehicle and arrested the UNITA members. The Principal Applicant was flown to a hospital to be treated for injuries that he sustained during the detention. The Applicants came to Canada after the Principal Applicant was released from the hospital.

[5] The Applicants' claim for refugee protection was denied in February 1998. The Applicants were found not credible. The Convention Refugee Determination Division [CRDD] said that even if it had accepted that the Principal Applicant was at a risk of harm from UNITA, there was no reason the family could not live in the government-controlled areas of Angola. This was particularly true in light of the fact that the military had intervened to save his life and had provided him with medical treatment. The Applicants were denied leave to judicially review the decision.

[6] In support of their PRRA and H&C applications, the Applicants claim that they face new risks. The Principal Applicant says that he has been placed on the People's Movement for the Liberation of Angola's [MPLA] "wanted list." He says that the MPLA believes he divulged

secret government information to his UNITA captors. The Applicants also say that the female Applicants were tortured and sexually abused by UNITA members. They have been told not to return to Angola.

III. DECISIONS UNDER REVIEW

A. *PRRA Decision*

[7] In assessing the Applicants' risk, the Officer first considered the documentary evidence. She found that the Applicants were not named in any of the general country condition articles and the articles did not enumerate the risks that the Applicants claimed to face upon return to Angola. The articles discussed risks that persons who are not similarly-situated to the Applicants face. The Officer said it is insufficient for a claimant to point to general country condition evidence without linking it to their personalized situation.

[8] The Officer considered a physician's note which says that the Female Applicant has scars on her back which she indicates come from an old injury that occurred in Angola. The Officer noted that the physician's note failed to indicate how long he had known the Female Applicant, how old the scars appeared to be, or how he thought the wounds were inflicted. The Officer said the note could not support the assertion that the Female Applicant and the Minor Applicant were tortured by UNITA.

[9] The Officer also considered a translated photocopy of a document issued by the Ministry of Justice. It indicates that the government has "blacklisted" the Principal Applicant because he

divulged information to UNITA during his 1996 detention. It provides that the Principal Applicant should be stopped for questioning upon entering Angola. The Officer said that the Applicants had not explained why the original document was not submitted. She noted that while the document was signed, its author was not named. The Principal Applicant did not say who the document came from or how he came to have it. In counsel's submissions, it was described as an arrest warrant; however, it does not say that the Principal Applicant should be arrested. The Officer said it did not appear to be an official document because: it provides no detail, for example, it does not indicate why the government believes the Principal Applicant disclosed information to UNITA; it makes statements that cannot be verified; it uses language like "blacklisted"; and it is unclear who the document was prepared for.

[10] The Applicants also submitted a photocopy of a declaration which says that the Principal Applicant was blacklisted by the government in 2004 for the disclosure of information in 1996. The affiant does not say how he came to have this knowledge, nor does he say what information was disclosed. There is also no information regarding how the affiant knows the Principal Applicant. The Officer found that the "warrant" and declaration were vague and unsupported by the documentary evidence.

[11] The Applicants also submitted a translated copy of the Principal Applicant's father's obituary. It did not support any allegations of risk.

[12] The Officer also considered a translated copy of a church registration from May 1988. It lists the Principal Applicant as the lead pastor. The Officer said it supported that the Principal Applicant was a pastor in Angola; however, it did not support any of the claimed risks.

[13] The Officer concluded that the documentary evidence did not establish that the Applicants will be at risk in Angola. The statements that the Applicants will be harmed upon return to Angola are speculative. The Officer said it was unreasonable that the Applicants would have remained persons of interest to either the Angolan government or UNITA members seventeen years after leaving Angola. The Applicants also failed to provide any objective documentary evidence to overcome the CRDD's findings.

[14] The Officer also considered the issue of state protection. She could not find any risks that had not already been considered by the CRDD. Angola is a democracy with a functioning judiciary and police force.

[15] The Officer concluded that there was less than a mere possibility that the Applicants would face any risk upon return to Angola.

B. *H&C Decision*

[16] The Officer said that her consideration of the Applicants' H&C application would include the following factors: discrimination or adverse country conditions in Angola which directly impact the Applicants; the Applicants' establishment in Canada including whether the severance

of personal and familial ties would constitute hardship; and, the best interests of the children [BIOC].

[17] The Officer said that the Applicants had not provided any submissions on the hardships they may face in Angola due to adverse country conditions. As a result, she considered their PRRA submissions. She concluded that the documentary evidence was general and did not describe the experiences of persons who are similarly-situated to the Applicants. The Officer reached the same conclusions, with the same analysis, regarding the "warrant," the affidavit, the obituary, the physician's note, and the church registration. She found that the evidence did not support that the Applicants face any hardship due to adverse country conditions in Angola.

[18] Regarding establishment in Canada, the Officer noted that both the Principal Applicant and the Female Applicant were educated in Angola. They have both completed employment-related courses in Canada. The Officer reviewed the Applicants' employment history, in addition to two charities and a business that they run. The Principal Applicant was charged with sexual assault in 2011, but the outcome of the charge was not indicated. The Female Applicant was convicted of fraud over $5000 in 1997. The Officer placed positive consideration on the Minor Applicant's academic achievements, good character and contribution to the community. She submitted many certificates of recognition for her scholastic achievements and community involvement. She was accepted to college but it was unclear whether she attended. She had completed one year of university.

[19] The Applicants have no family in Canada but foster and maintain friendships in the community. They submitted letters of support from community members but there was no information about how their departure would cause any hardship. There was also no evidence relating to the establishment of the two Canadian children. As the children are Canadian citizens, the Officer noted that whether they are removed will be a familial decision.

[20] The Officer said that the submissions regarding the minor children generally were minimal. She acknowledged that the children perform well at school and said that she assumed the children are involved in extra-curricular activities and friendships with their peers. However, the Applicants only submitted that the children would face hardship due to the adverse country conditions in Angola. The Officer said that while the children may enjoy better opportunities in Canada, there was no evidence to suggest that it would not be in the children's best interests to return to Angola with their parents. She said there was no evidence that the children would not receive an education and have their parents' love and support in Angola.

[21] The Officer said there were no impediments to the family's return to Angola. They have family members who continue to reside in Angola who can assist them in resettling. The Officer concluded that the Applicants had not demonstrated that their removal to Angola would constitute unusual and undeserved or disproportionate hardship.

IV. ISSUES

[22] The Applicants raise a plethora of issues in their submissions. In my view, the issues can be summarized as follows:

A. *PRRA Decision*

1. Whether the Officer's credibility findings are reasonable;
2. Whether the Officer's treatment of the evidence was reasonable;
3. Whether the Decision is reasonable;
    a. Whether the Officer's state protection analysis is reasonable;
    b. Whether the Officer erred in failing to consider whether the Applicants had established that they were at risk, notwithstanding her credibility findings; and,
4. Whether the Officer breached procedural fairness by failing to disclose her extrinsic research.

B. *H&C Decision*

1. Whether the Officer's treatment of the evidence was reasonable;
2. Whether the reasons are adequate;
3. Whether the Decision is reasonable;
    a. Whether the Officer's assessment of the BIOC was adequate; and,
4. Whether the Officer breached procedural fairness by failing to disclose her extrinsic research.

V. STANDARD OF REVIEW

[23] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the

reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[24] Neither party addresses the standard of review. The issues of procedural fairness will be reviewable on a standard of correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Exeter v Canada (Attorney General)*, 2014 FCA 251 at para 31. The Officer's credibility findings and her treatment of the evidence are reviewable on a standard of reasonableness: *Aguebor v Minister of Employment and Immigration* (1993), 160 NR 315 (FCA); *Singh v Minister of Employment and Immigration* (1994), 169 NR 107 (FCA); *Malveda v Canada (Citizenship and Immigration)*, 2008 FC 447 at para 19. The Officer's application of the law to a particular applicant's circumstances is reviewable on a standard of reasonableness in both a PRRA application (*Jainul Shaikh v Canada (Citizenship and Immigration)*, 2012 FC 1318 at para 16; *Singh v Canada (Citizenship and Immigration)*, 2014 FC 11 at para 20) and an H&C application (*Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 37). The adequacy of the reasons will be reviewed as part of the reasonableness review: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14-16.

[25] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": see *Dunsmuir*, above,

at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]. Put another way, the Court should intervene only if the Decisions were unreasonable in the sense that they fall outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[26] The following provisions of the Act are applicable in these proceedings:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the	25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de

foreign national, taking into account the best interests of a child directly affected.

l'enfant directement touché.

[…]

[…]

Non-application of certain factors

(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.

Non-application de certains facteurs

(1.3) Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

[…]

[…]

Public policy considerations

25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.

Séjour dans l'intérêt public

25.2 (1) Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.

[…]

[…]

Convention refugee

96. A Convention refugee is a

Définition de « réfugié »

96. A qualité de réfugié au

person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[…]

[…]

Application for protection

Demande de protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order

112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de

that is in force or are named in a certificate described in subsection 77(1).	renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).
[…]	[…]
Consideration of application	**Examen de la demande**
113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
[…]	[…]
(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

VII. ARGUMENT

A. *PRRA Decision*

(1) Applicants

[27] The Applicants submit that the Officer erred in her treatment of the evidence. For example, the Officer erred by focusing on what the physician's note did not say, rather than on what it does say: *Mahmud v Canada (Minister of Citizenship and Immigration)* (1999), 167 FTR

309; *Bagri v Canada (Minister of Citizenship and Immigration)* (1999), 168 FTR 283. She also erred by speculating about what should have been in the documentation: *Kaur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 873; *Ukleina v Canada (Citizenship and Immigration)*, 2009 FC 1292 [*Ukleina*]. Evidence cannot be rejected simply because it is self-serving: *BC v Canada (Minister of Citizenship and Immigration)*, 2003 FC 826.

[28] The Officer also erred in rejecting the warrant. Officers have no expertise in foreign documents: *Ramalingam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ no 10 (QL)(TD). It is an error to reject foreign documents without any evidence of their invalidity: *Halili v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 999; *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587; *Rojas v Canada (Citizenship and Immigration)*, 2011 FC 849. Before rejecting the document, the Officer should have asked the Royal Canadian Mounted Police [RCMP] to verify its authenticity.

[29] The Officer also failed to consider the evidence which contradicted her findings of state protection: *Simpson v Canada (Minister of Citizenship and Immigration)*, 2006 FC 970. The Officer is entitled to prefer certain evidence but must provide reasons for doing so in clear and unmistakable terms: *Karayel v Canada (Citizenship and Immigration)*, 2010 FC 1305; *Castro v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1165 at para 34; *Okyere-Akosah v Minister of Employment and Immigration* (1992), 157 NR 387 (CA). The Officer referred to only one source which not only was never disclosed to the Applicants but its publication date also post-dates her decision: *Ali v Minister of Employment and Citizenship* (1994), 80 FTR 115.

[30] The Applicants also submit that the state protection analysis was wrong. The Officer erred in relying on the general finding that Angola is a democracy: *Kadenko v Canada (Solicitor General)* (1996), 143 DLR (4th) 532 (FCA); *Katwaru v Canada (Citizenship and Immigration)*, 2007 FC 612 [*Katwaru*]; *Diaz De Leon v Canada (Citizenship and Immigration)*, 2007 FC 1307. The Applicants say that Angola is not truly a democracy or a functioning state. The Officer was also required to analyze the effectiveness of the state protection available: *Elcock v Canada (Minister of Citizenship and Immigration)* (1999), 175 FTR 116 at para 15; *Vigueras Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359. The Officer also failed to consider the Applicants' personal circumstances: *Cejudo Lopez v Canada (Citizenship and Immigration)*, 2007 FC 1341; *Tufino v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1690. She also ignored the fact that one of the sources of persecution is the Angolan government: *Chaves v Canada (Minister of Citizenship and Immigration)*, 2005 FC 193 at para 15; *Gallo Farias v Canada (Citizenship and Immigration)*, 2008 FC 1035.

[31] The Officer also erred in finding microscopic defects in the Applicants' credibility. She erred by focusing on the negative credibility determination and failed to consider whether the Applicants face risk notwithstanding her credibility finding: *Attakora v Minister of Employment and Immigration* (1989), 99 NR 168 (FCA); *Alexandre-Dubois v Canada (Citizenship and Immigration)*, 2011 FC 189.

(2) Respondent

[32] The Respondent submits that the bulk of the Applicants' submissions are vague references to errors but the Applicants fail to point to where these errors occur in the Decisions.

For example, the Applicants fail to show where the Officer speculated about what should have been in the physician's note, where its *bona fides* was questioned, or where the Officer rejected it for being self-serving. The Officer reasonably found that the physician's note did not corroborate the Female Applicant's torture allegation. A physician's statement that a scar exists cannot prove who put it there or under which circumstances: *Sanaj v Canada (Citizenship and Immigration)*, 2012 FC 744 at para 17.

[33] The Officer also does not require any expertise to note the warrant's limitations and oddities. The jurisprudence simply says that an officer must have valid grounds to doubt official documents. The Officer provided a number of reasonable explanations for not accepting the letter as evidence of its contents. Officers have no duty to send government letters to the RCMP to judge their authenticity: *Culinescu v Canada (Minister of Citizenship and Immigration)* (1997), 136 FTR 241; *Mohanarajan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 1846 (QL) at para 32 (TD).

[34] The Officer reasonably did not mention all of the articles she considered because they are unrelated to the Applicants' claim that the Principal Applicant will be targeted because the government suspects him of revealing secrets. It is irrelevant that one article post-dates the PRRA Decision given its low relevance.

[35] Finally, the Officer did not reject the Applicants' application due to a credibility assessment but rather because the Applicants failed to substantiate their claim of risk. The Officer reasonably relied upon the CRDD decision. The Officer did not ignore their particular

profile or personalized evidence. The Officer did not consider the Applicants' claim that the Angolan government will persecute the Principal Applicant because she rejected this claim. The Applicants have also failed to provide evidence to show that the Officer erred in finding that Angola is a democratic country.

(3) Applicants' Reply

[36] In reply, the Applicants reiterate their earlier submissions. They assert that their claim was rejected on a credibility determination because the Officer did not accept the *bona fides* of the arrest warrant or the physician's note.

(4) Respondent's Further Submissions

[37] The Respondent says there is no overt nor veiled credibility finding in the PRRA Decision: see *Liban v Canada (Citizenship and Immigration)*, 2008 FC 1252 at para 13; *Haji v Canada (Citizenship and Immigration)*, 2009 FC 889 at para 14. The Officer clearly laid out her reasons for rejecting the documentary evidence; she did not reject them because of the Principal Applicant's credibility problems before the CRDD. It is not the Court's role to reweigh the evidence: *Saadatkhani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 614 at para 5.

B. *H&C Decision*

(1) Applicants

[38] The Applicants submit that the Officer was unreasonably harsh and hypercritical in finding defects with their application: *Katwaru*, above; *Southam Inc v Canada (Minister of Employment and Immigration)*, [1987] 3 FC 329 (TD). She made improper speculations that were not rooted in the evidence: *Ukleina*, above; *Alvarado De Alvarez v Canada (Citizenship and Immigration)*, 2011 FC 1287 at para 53.

[39] The Officer breached procedural fairness in failing to disclose her extrinsic research and in denying the Applicants an opportunity to respond: *Kahin v Canada (Citizenship and Immigration)*, 2011 FC 1064; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817; *Yassine v Minister of Employment and Immigration* (1994), 172 NR 308 (FCA).

[40] The reasons for the H&C Decision are inadequate: *Javed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1458; *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 at paras 13-14; *Joseph v Canada (Citizenship and Immigration)*, 2013 FC 993 at para 29. Despite detailing the Applicants' positive establishment over seventeen years in Canada, she did not explain why she was not satisfied that removal would constitute hardship. The Officer failed to consider the Applicants' personal circumstances: *Mohacsi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 429. She did not assess the hardship that the Applicants will experience in trying to reintegrate in Angola after being away for more than seventeen years.

[41] The Officer also performed an inadequate analysis of the BIOC: *Arulraj v Canada (Minister of Citizenship and Immigration)*, 2006 FC 529 at para 16; *Canada (Minister of Citizenship and Immigration) v Hawthorne*, 2002 FCA 475. She imported an erroneous "adverse impact" requirement into her analysis. She also failed to consider the BIOC from the perspective of the children: *Alie v Canada (Citizenship and Immigration)*, 2008 FC 925; *Sylvester v Canada (Citizenship and Immigration)*, 2012 FC 17.

(2) Respondent

[42] The Respondent submits that the Applicants have failed to show how the H&C Decision is unreasonable. It is irrelevant that the Applicants can point to a list of factors that could have led to a favourable decision; the issue is whether the Decision is reasonable: *Dunsmuir*, above, at para 47.

[43] The Officer did not err in failing to disclose her independent country condition evidence because it did not affect the disposition of the case: *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461 (CA) [*Mancia*]. The H&C application was denied because the Applicants provided insufficient evidence of their hardship, not because of anything the Officer relied upon in her own country condition research.

[44] The Applicants have failed to show how the reasons for the Decision are inadequate: *Dunsmuir*, above. They have also failed to show what personalized evidence the Officer failed to consider.

[45] Similarly, the Applicants have failed to identify any case law which would support their argument that the Officer applied the wrong test in assessing the BIOC.

(3) Applicants' Reply

[46] In reply, the Applicants submit that it is clear that the Officer considered extrinsic evidence because she listed it in her list of cited resources.

(4) Respondent's Further Submissions

[47] In further submissions, the Respondent submits that the Officer's affidavit shows that her independent research did not affect the disposition of this case and did not need to be disclosed.

VIII. ANALYSIS

A. *PRRA Decision – IMM-2545-14*

[48] The Applicants have mounted a vigorous attack on the PRRA Decision and raised many grounds of review. However, much of what the Applicants have to say is wide of the mark because they neglect to address the true basis of the Decision. Also, much of what the Applicants have to say is bald, unsupported assertion that inaccurately describes the Decision. They also raise principles and cite extensive jurisprudence that is simply not relevant to this case. The claims were rejected on the simple ground that the Applicants had failed to provide sufficient evidence to support the forward-looking risks which they said they feared.

[49] The Officer found that the Applicants did not provide sufficient evidence to substantiate their alleged forward-looking risks if they return to Angola and so did not bring themselves within the meaning of either Convention refugees or persons in need of protection.

[50] The Applicants alleged that they were at risk of persecution or harm in Angola as a result of their political opinion and their membership in a particular social group. Specifically they said that members of UNITA regarded the Principal Applicant as a supporter of the government of Angola, but he had also been placed on a "wanted list" by the government of Angola who believe that, during the time the Principal Applicant was kidnapped and unlawfully imprisoned by UNITA, he had divulged secret government information to UNITA. So the Applicants claimed that they faced persecution and risk from both government forces and from rebel forces if they return to Angola.

[51] In addition, the Female Applicant and the Minor Applicant claimed they faced persecution and risk because of gender. They claimed to have been subjected to sexual abuse and torture at the hands of UNITA members in the past.

[52] The CRDD had earlier found that the Principal Applicant had not established that he faced persecution or risk from government forces (Certified Tribunal Record [CTR] at 10-11):

> *Credibility and well-foundedness of fear of persecution were the central issues in these claims. With respect to credibility, the claimant provided an account of his trip to Canada which was so manifestly implausible that the panel could only believe the claimant was misleading them.*
>
> *Although the documentary evidence is clear regarding the lengthy civil war in Angola and the human rights abuses which have been committed regularly on both sides, there was no reason to believe*

> *that the claimant, despite his subjective fears, would be persecuted by the government should he return to Angola. By his own admission, he did not have political views which could be suspect since he claimed to be 'neutral regarding the struggle between UNITA and government forces'. Although he allegedly suffered at the hands of UNITA forces for perceived pro government opinions, he had never personally been targeted by the government, although he feared the general violence which characterized the civil war in Angola.*
>
> *Even if the panel were to accept the claimant's account of torture and imprisonment by UNITA forces, there does not appear to be any valid basis for the claimant fearing persecution in the government-controlled areas of Angola, particularly the capital, Luanda, where he and his family lived for many years.*
>
> *In fact, far from being targeted by the government, the claimant's life was allegedly saved by government intervention after his capture by UNITA forces. He was flown to Luanda in a military helicopter; he was provided with free medical care at a government military hospital and was allowed to move about freely after his release. In view of this, the panel concludes that there is no serious possibility that the claimant would be persecuted in Luanda and other government-controlled areas of Angola.*

[53] To support new assertions of risk, the Applicants produced both general and specific documentation that was examined by this Officer.

[54] The Officer examined the general country condition documents but found that they did not refer to the Applicants and did not deal with the risks which the Applicants claim to face. The human rights situation in Angola might be problematic, but this does not mean that the Applicants are at risk from either UNITA or government forces and it does not mean that the Female Applicant and the Minor Applicant are at risk because of their gender. The Officer found that the general country documentation described "specific events and conditions faced by persons not similarly situated to the applicants." The Applicants have pointed to nothing that

suggests this finding was unreasonable. The finding has nothing to do with the credibility of the Applicants whose subjective fears were not questioned. The general documents simply do not support that their subjective fears are well founded.

[55] The Applicants have been away from Angola since 1997 and were found not to be at risk by the CRDD, so they needed to produce evidence to show that circumstances have changed and that they are now at risk. Some of the documents they produced – the obituary of the Principal Applicant's father and the 1988 church registration – did not support any forward-looking risk or substantiate anything of relevance that may have happened in the past.

[56] The Officer specifically addresses the two-line letter from Dr. Akeem Anifowoshe which related to the Female Applicant. The Officer dealt with this letter as follows (CTR at 11):

> Submitted as evidence is a two line letter dated 20 July 2011 from Dr. Akeem Anifowoshe. Dr. Anifowoshe states that he examined the FA on 20 July 2011. He states, "*Kemmery Animodi was examined today several scars was noted on her back. This is the result of an old injury from an incident that occurred when she lived in Angola.*" It is noted that Dr. Anifowoshe does not indicate how long he has been the FA's physician. He does not indicate how old the scars appear to be or how he believes they were inflicted on the FA. While not indicated it is reasonable to assume that this letter has been provided to support that the FA was "tortured" while in Angola by members of the UNITA. I do not find that this letter supports the FA or her daughter was tortured in UNITA. The doctor does not indicate that the scars were the result of torture by the UNITA. Further, the doctor's letter is not supported by additional corroborating evidence.

[57] It is difficult to see how this letter provides any evidence of forward-looking risk for the Female Applicant or the Minor Applicant. If these scars related to something that occurred before the CRDD decision, then they should have been placed before the CRDD. However, the

main point is that this letter, which refers to scars "from an incident that occurred when she lived in Angola," is not, after the passage of some seventeen years, evidence of a forward-looking risk. Even if the Female Applicant was tortured in the past, this does not mean that she and/or the Minor Applicant face torture or sexual assault if they return to Angola now. There is no credibility issue here. As the Officer found, the evidence is simply insufficient to support forward-looking risk.

[58] This left the photocopied document and the declaration from Mr. Capitao that the Officer identified and dealt with as follows (CTR at 12):

> The applicants provides [*sic*] a translated photocopy of a document entitled, Republic of Anogla [*sic*] Ministry of Justice, Department of Common Crimes. The document is dated 03 August 2011. It indicates that Emmanuel Oneson Animodi was captured and tortured by the UNITA in 1996 which led the PA to release information to members of the UNITA. It further informs that "*after the end of the war the government blacklisted his name on the list of his information released to the UNITA. Searching for him through Google in 2004 which shows his website…*" The document concludes by instructing that Pastor Emmanuel "*should be stopped immediately upon arrival in Angola for more questioning by the government for the disclosure of any information released to UNITA during the civil war.*" I have read this document. I note that it is a photocopy and the original document has not been provided, and there is no indication as to why. The document is signed however the name of the author has not been provided under the signature. The document does not appear to be an official document from the Ministry of Justice as it does not provide any detail or indicate why they believe the PA provided information to the UNITA. The document also makes absolute statements that cannot be verified and uses language such as "*blacklisted*" on an official record. In addition, there is no indication as to the audience for whom the document was written. The PA does not state how he came to receive the document and from whom. Counsel for the applicant indicates it is a warrant for the PA's arrest however, the document does not indicate that the PA should be arrested. The document states that the PA should be questioned. It is noted this document is accompanied by a

> translated photocopy of a declaration dated 09 August 2011 by Kinanga Nvunca Capitao. Mr. Capitao indicates that he "*declares*" that the PA was "*among the name the government blacklisted by the MPLA government in the year 2004. For the disclosure of some information released by the UNITA government during the civil war when he was severely tortured and imprisoned in 1996. The information was spread among the rumourmonger blacklisted names declaring him wanted after the war in 2004.*" I have read the declaration. Mr. Capitao does not indicate how he came to have knowledge of the information he is declaring in the document. He does not provide details regarding the information that the PA divulged during his imprisonment and how he came to know that the PA divulged information to the UNITA. He does not specify his relationship to the PA and how he personally was informed or came to learn that the PA was "blacklisted" by the government. I find that these documents are vague in detail and not supported by objective corroborating evidence.

[59] This document is really the only evidence of forward-looking risk to the Applicants which they produced. It is obviously intended to support the proposition that, upon return to Angola, the Principal Applicant will be arrested and tortured and/or killed by the Angolan government. The Officer provides an array of reasons for finding that the document is insufficient to establish the stated risk:

a) the original letter was not adduced;

b) no explanation was provided as to why only a photocopy was sent to the Officer;

c) the author of the letter was impossible to know as there was no name at the bottom of the letter, only an illegible signature;

d) the letter did not appear to be official as there were no reasons provided for suspecting the Principal Applicant, and colloquial language, such as "blacklisted," was used;

e) the letter was not addressed to anyone or any audience in particular;

f) the Principal Applicant did not disclose how or from whom he obtained the letter; and,

g) the letter only stated that the Principal Applicant was wanted for questioning and in no way appeared to be a warrant for his arrest, as alleged by the Applicants.

[60] It has to be remembered that before the CRDD the Principal Applicant failed to establish that he had been captured by UNITA rebels, so that this letter, as well as establishing future risk, had to be sufficient to overcome the CRDD's negative findings on this issue. It is, of course, possible to disagree with the Officer's reasons and conclusions about this document, but I do not think it can be said that they are not intelligible, transparent or justifiable, or that they do not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[61] Even if the document is taken at face value, it merely says that the Principal Applicant is wanted for questioning. It says nothing about any risks for the Female Applicant and the Minor Applicant, and it does not tell us whether there is any risk to the Principal Applicant associated with the questioning. I also see no problem with the reasons for questioning Mr. Capitao's declaration. Overall, the document is not sufficient *per se*, to establish forward-looking risk. Applicants' counsel asserted before me that the document was evidence that the Principal Applicant would be arrested on his return and tortured, but I think the Officer reasonably rejected this assertion and looked to the general country documents to determine if the Principal Applicant had the profile of someone at risk. The Officer's not unreasonable conclusion was that the general documentation did not address the risks enumerated by the Applicants and so did not establish that their subjective fears were well founded.

[62] In my view, the "warrant" and the declaration provide no evidence of risk. The warrant states that the Principal Applicant's name has been "blacklisted" and that he "should be stopped immediately upon arrival in Angola for more questioning by the government for the disclosure of

any information released to UNITA during the civil war." There is no indication of what being "blacklisted" entails, nor is there any indication of what kind of information the Principal Applicant may have released to UNITA. The CRDD said that the Principal Applicant claimed to have no political involvement at all: "By his own admission, he did not have political views which could be suspect since he claimed to be 'neutral regarding the struggle between UNITA and government forces.'" It is unclear to me what sort of government information someone who does not even have political views, never mind involvement, would have.

[63] The "warrant" and declaration are also inconsistent with the fact that the Principal Applicant told the CRDD that his "life was allegedly saved by government intervention after his capture by UNITA forces. He was flown to Luanda in a military helicopter; he was provided with free medical care at a government military hospital and was allowed to move about freely after his release." There is no explanation provided for why the government would then "blacklist" the Principal Applicant's name some seven years later, nor is there any explanation as to why some seven years after blacklisting his name, the government would issue a "warrant" saying that the Principal Applicant needs to be questioned.

[64] The Officer questioned whether the "warrant" was an official document because of the language, the fact that it was not clear who had written the document, and because it did not appear to have a particular audience. The Applicants provided no submissions on the warrant and the declaration. These documents were submitted about one month after their initial submissions with the comment that they were "additional evidence of support, for your review and consideration." I do not think it is unreasonable that the Officer did not put her concerns to the

Applicants because she said that even if the *bona fides* of the "warrant" was accepted, it did not speak of risk. The Applicants complain that the Officer cannot judge the validity of foreign documents, but I do not think she makes an actual finding that they are not a valid foreign document; rather, she simply calls attention to some of the document's failings or irregularities. The Applicants also say that the Officer should have sent the "warrant" to the RCMP for authentication, but it is not clear how the RCMP can be expected to authenticate a photocopy.

[65] In addition, the declaration largely just repeats the information contained in the "warrant." I do not see how the affidavit could be evidence of what it says when it does not say how the affiant came to have knowledge of the information he deposes to or how he came to have a photocopy of the "warrant."

[66] I think it was reasonable for the Officer to find that the warrant and declaration did not establish future risks.

[67] So the Officer's conclusion, after examining the evidence put forward by the Applicants was that the Applicants' claims are not well founded because of an insufficiency of evidence (CTR at 13):

> I find that the evidence before me does not rebut the findings of the CRDD, ultimately upheld by the Federal Court of Canada. I find that the evidence before me does not support that the government in Angola, the UNITA or others are interested in harming the applicants for the risks cited or for other reasons in Angola.

[68] The Officer then goes on to make an alternative adequate state protection finding. As the Applicants point out, this would have no relevance if the government of Angola intended to

persecute them, but the fact is that the state protection analysis only looks at general conditions in Angola. Any problems with the Officer's analysis do not assist the Applicants because their claim is rejected on the basis that their fears are not well founded because the evidence put forward does not support them. The Applicants did not establish that, objectively, they were at risk.

[69] The Applicants make two complaints about the Officer's use of the United States Department of State, *Angola 2013 Human Rights Report*, 27 February 2014 [US DOS Report] in the PRRA Decision. First, they say that the Officer erred in failing to disclose the report because it constituted extrinsic evidence. Second, they say that the Officer erred in apparently relying on a document that was published on February 27, 2014 when her decision was rendered on February 17, 2014.

[70] In my view, there is no merit to the Applicants' complaint that the US DOS Report constitutes extrinsic evidence which needed to be disclosed. The Officer has an obligation to check the most up-to-date evidence to assess the Applicants' risk: *Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 at para 18. The Applicants themselves rely on earlier versions of the US DOS Report in their submissions. The Applicants cannot complain about the Officer preferring a report that discusses risks in 2013 over the articles that the Applicants submitted (some of which date back to 2005). They also fail to say what exactly changed between the earlier reports and the version that the Officer relied upon, to render her reliance procedurally unfair. They also fail to say what they were prevented from submitting to the Officer in response to the most up-to-date version of the US DOS Report.

[71] The date issue certainly raises a question about how the Officer could have relied upon a document that was apparently published after she rendered her decision. It is not clear to me though that the date actually signifies the US DOS Report's publication date. The date does not appear on the actual report itself. It merely appears on the website where one can access the report. It also appears that there is a process by which the Secretary of State presents or submits all of the year's country reports to Congress. This happened to take place on February 27, 2014. While February 27, 2014 is the date that the report was officially submitted, that does not mean that it was not available on the website any earlier than that date.

[72] The Applicants do not point to any case law to suggest that this is a reviewable error. The Respondent says that the fact the report apparently post-dates the Decision does not "mean much by itself, considering its low relevance." I am inclined to agree with the Respondent. As discussed earlier, the Applicants' PRRA application was rejected because they failed to provide sufficient evidence of their claimed risks. The Officer's apparent reliance on this report appears in her state protection analysis. That state protection analysis was unnecessary for her decision.

[73] While the date is strange, I do not think it raises an issue of procedural unfairness. The Officer has an obligation to consider the most up-to-date country documentation to determine whether the Applicants face any risk in Angola. The Applicants fail to say what was different in the 2013 report (from their reliance on earlier versions of the report) that rendered the Officer's failure to disclose unfair.

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[74] In their written materials, the Applicants include a significant amount of *ad hominem* criticism of the Officer and Respondent's counsel. This kind of language is neither helpful nor persuasive and often obscures whatever point the Applicants are attempting to make.

[75] The Applicants clearly feel that they were entitled to a positive H&C decision and assert numerous factors which they believe support such a result. Unfortunately, they offer little more than bald assertions.

[76] It seems to me that a positive decision in this case would have been reasonable, but this does not, in itself, mean that the Officer's negative H&C Decision was unreasonable. The Officer is fixed with the power and responsibility of exercising a discretion after taking into account the usual factors as well as any specifics or anomalies that arise on the particular facts of this case. Provided that the Officer reasonably assesses each factor in a procedurally fair way and reaches a transparent and intelligible conclusion, it is not the role of the Court to re-assess and weigh the evidence and reach a conclusion that favours the Applicants. See *Khosa*, above, at para 59; *Delios v Canada (Attorney General)*, 2015 FCA 117 at paras 26, 28. This is the case even if the Court would have reached a different conclusion on the same facts and evidence.

[77] For example, in written argument, the Applicants provide their own reasons why a positive decision would have been reasonable (Applicants' Record at 347-348):

> **5.** It is respectfully submitted that there was **significant supporting** evidence before the Officer, upon which she could

reasonably have exercised her discretion in favour of the Applicants, as follows:

a. Previous, 'positive' Humanitarian and Compassionate Application almost 13 years ago on July 27, 2007 (First – Stage Approval);

b. Lengthy, over 17 – year continuous residence in Canada, since January 19, 1997;

c. Close family ties with their two Canadian-born minor children;

d. "Best interest of children" – dependency;

e. Significant Degree of establishment and integration into the community in Canada;

f. History of lengthy, stable, successful and gainful continuous employment ties with Canada;

g. History of successful Educational ties with Canada;

h. Multiple Scholastic Awards, Certificates and Degree issued to Applicants

i. History of strong and continuous involvement in the local community;

j. Various, strong letters of support from members of the local community;

k. History of sound financial management;

l. Significant degree of establishment and settlement in Canada so as to render disproportionate, unusual and 'undue hardship', in the event of removal to Angola;

m. Female co-Applicant spouse's medical issues (epilepsy);

n. Satisfactory evidence that they have been self-sufficient without recourse to public support for many years (since 1999).

6. Accordingly, as a result of the Officer's errors, her exercise of discretion was tainted in that she arrived at her **unreasonable decision** in a manner **contrary to law**.

> **7.** That is to say, such findings concerning the Applicants' ample humanitarian and compassionate factors are **replete** with **gross inattention and insensitivity, harsh and unreasonable adverse inferences, speculation and presumption,** which were neither justified, transparent nor intelligible and **not** based on the evidence that the Officer had the responsibility to weigh, given the relevant **Federal Court jurisprudence. Accordingly, on balance, the Officer's analysis leaves much to be desired as her findings were unacceptable, unreasonable and unsupported within the decision – making process.**
>
> [Emphasis in original, citations omitted]

[78] Lambasting the Decision in this hyperbolic way does not assist the Court. The Applicants do not say which, if any, of these factors the Officer overlooked. They simply assume they were entitled to a positive decision. A reading of the Decision shows that the Officer is alert to the factors identified by the Applicants, specifically mentions most of them, and recognizes that some of them weigh in favour of the Applicants. However, whether establishment factors should carry the day depends upon the whole context of the decision and, in the end, whether in the Officer's view the Applicants will suffer unusual and undeserved or disproportionate hardship. The Applicants, naturally, think they will, but so do all applicants, otherwise they would not make H&C applications. It is for the Officer to decide. There is no entitlement to a positive decision.

[79] I have examined the numerous heads of reviewable error put forward by the Applicants in detail. For the most, I do not see their assertions as tenable. In the end, the Applicants believe they have a strong case and disagree with the result. For example, the Applicants argue that the Officer set too high a standard. However, a reading of the Decision shows that the Officer applied the unusual and undeserved or disproportionate standard to the evidence before her.

What the Applicants appear to mean by too high a standard is that the Officer should have decided that the evidence they put forward met the required standard. This is simply disagreement with the end result. The Applicants also complain that the Officer's reasons are inadequate. Yet a reading of the Decision shows that the Officer looked at each factor and the available evidence and decided that, although hardship would certainly result if the Applicants are required to return to Angola, it would not amount to unusual and undeserved or disproportionate hardship. The Applicants say that the Officer was insensitive to their situation and should have provided more analysis of why the hardships they faced did not meet the usual and undeserved or disproportionate level. The analysis and the reasons are there to read. The hardships were not usual and undeserved or disproportionate according to the Officer because:

a) The Applicants did not provide submissions or adequate evidence related to the hardships they would face in Angola in the sense of any adverse country conditions that would directly impact them;

b) The evidence of ties and establishment in Canada had positive features but, in the end, they were not enough to create usual and undeserved or disproportionate hardship if they were required to relocate to Angola;

c) There was nothing to suggest that returning to Angola was not feasible for the Applicants even though they have been away from the country for many years. The Officer found that "the applicants have not established that the general consequences of relocating and resettling in their home country will have a significant negative impact on them or others which amounts to usual and undeserved, or disproportionate hardship";

d) The Applicants have been away from Angola for many years but they continue to have family members there; and,

e) The documentary evidence submitted by the Applicants on the children was "minimal" and amounted to little more than "over-all adverse country conditions of Angola." As the Officer points out, the Applicants have to do more than suggest that the children would be better off in Canada. This is generally assumed in every case. But the Applicants' submissions and the documentary evidence did not support that they would lack the education or the love and support they need to satisfactorily reach adulthood in Angola. The Officer found that the evidence from the Applicants and in the general documentation did not support a sufficiently adverse impact upon the children to warrant an exemption.

[80] In my view, these reasons for not finding usual and undeserved or disproportionate hardship are intelligible and transparent and, even though I think a positive result for the Applicants would not have been unreasonable, I cannot say that the Officer's negative conclusions fall outside the range of possible acceptable outcomes which are defensible in respect of the facts and the law. In the end, as the reasons make clear, the result had a lot to do with the lack of evidence from the Applicants on key points. The Applicants attack the Officer in an *ad hominem* way but say nothing about the gaps in their H&C application that are their responsibility.

[81] The Applicants also allege that the Officer's reliance on extrinsic documentary evidence from independent research was a breach of procedural fairness. They make the following points in their written submissions (Applicants' Record at 352):

> **15.** It is submitted that in the matter of the Applicants, it is **not** possible to know precisely from her Reasons, what the Officer considered and relied on, as a result of her **unknown "independent research"**, as **this evidence was not detailed, itemized or described, whatsoever**. Accordingly, as suggested in **Kahin (Supra)**, such "**independent research**" may well have been "**wrong, incomplete, open to explanation**" or even **misconstrued** by the Officer, without affording the Applicants or their counsel, the **reasonable opportunity to provide a meaningful response to any findings or concerns, on her part.**
>
> **16. More importantly**, however, neither the **Applicants** nor the **Court can** be satisfied that the **Officer's breach of natural justice and the duty to act fairly**, could not possibly have affected the outcome of the Applicants' H&C Decision, owing to her over-all manner and **vagueness**. Due to the **critical importance** of the Decision to the Applicants, in terms of its effects on their lives and their potential removal from Canada, the greater the care that the Officer / decision-maker should have taken to provide them with the opportunity to respond to any findings arising from her **unknown, non-disclosed and unspecified "independent research".**
>
> [Emphasis in original, citations omitted]

[82] The Respondent takes the position that the Officer's independent research involved country conditions and that this played no part in her assessment of hardship.

[83] The Applicants reject the Respondent's characterization of the evidence in question and assert that it was unknown and unspecified extrinsic evidence "which apparently, was particular to the Applicants." No evidentiary basis, however, is offered for this assertion.

[84] The matter has now been clarified by the Officer herself who, in an affidavit to the Court in this application, explains as follows (Affidavit of Lori Salvador, sworn March 12, 2015):

> 4. I wrote in my Reasons for Decision that I considered documentary evidence obtained through independent research. This statement was a reference to my usual practice of 'googling' a country of alleged hardship, to see whether there are any documented and obvious security/safety concerns or emergencies (such as a civil war) that would obviously hinder a return by an applicant(s) and that have arisen since an H&C application has been filed.
>
> 5. In the applicants' case, this was particularly important for me to do due to the relative paucity of the applicants' submissions concerning adverse country conditions as well as the little personalized and generalized country condition information on Angola included in the applicants' H&C submissions. I began to note this fact in my reasons when I wrote that, "the applicants did not provide submissions related to the hardship they may face upon return to Angola that related to adverse country conditions…"
>
> 6. It was also important for me to do my search as the applicants vaguely pointed to adverse country conditions in their submissions relating to the best interests of their children, without also clearly backing up this claim with specifically cited documentary evidence showing such. I did not want to take any chances that the applicants had missed anything obvious.
>
> 7. Nothing arose from my google search online, which would indicate to me at the time an obvious hindrance to the applicants' return to Angola. The search, as such, did not end up contributing towards my H&C decision. I know this now because, had the search raised in me a concern about the safety of the applicants' return to Angola, I would have noted it in my reasons or even rendered a positive H&C decision. Again, this is my practice.
>
> 8. I wish to confirm, therefore, that my findings on hardship arising from Angola rested and were based solely on the applicants' submissions. Thus, when I concluded in the *section of my reasons entitled "Adverse Country Conditions…"* that, "I find that the evidence before me does not support…", I was referring to the applicants' evidence, as well as my google search which came up empty-handed. Also, when I concluded in the *BIOC section*, "[t]he documentary evidence before me does not support…" I was referring to the applicants' documentary evidence and my google search which came up empty-handed.

[85] At the hearing before me, the Applicants backed off their written assertions and said that their case was really that the Officer failed to disclose the full record she relied upon to make the Decision and failed to disclose what it was in her Google search that supported her conclusions. In my view, the Officer's affidavit is an explanation of the record made in accordance with *Northwestern Utilities Ltd v Edmonton*, [1979] 1 SCR 684 at 709-710 and was made necessary by the Applicants' unsupported accusation that the Officer looked at extrinsic evidence "which apparently, was particular to the Applicants" (Applicants' Reply Memorandum at para 8). As the affidavit makes clear, the Google search did not yield any information that could be used to supplement the meagre documentation submitted by the Applicants. In other words, a search in itself is not extrinsic evidence. It could only have produced extrinsic evidence if it had yielded something that the Officer used in reaching her conclusion. When the Officer says she relied upon her Google search, she is telling us that the search yielded nothing. It was a search for evidence that yielded no evidence, extrinsic or otherwise, that affected the outcome of the case. See *Mancia*, above, at para 22 where the Federal Court of Appeal held that an applicant need only be informed of evidence which was not available at the time the applicant filed his or her submissions if the officer's research reveals "any novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case." In my view, there was no procedural unfairness in this case.

[86] There has been some debate at the Federal Court as to whether *Mancia* has any application when the extrinsic evidence consists of an officer's undisclosed internet research. See particularly *Zamora v Canada (Citizenship and Immigration)*, 2004 FC 1414 [*Zamora*].

[87] Others have held that while the fairness of undisclosed internet searches may not have been determined in *Mancia*, the "novel and significant" test developed by the Federal Court of Appeal still applies. See *Radji v Canada (Citizenship and Immigration)*, 2007 FC 835; see also *Lopez Arteaga v Canada (Citizenship and Immigration)*, 2013 FC 778:

> [24] The problem of documents unilaterally consulted on the internet by the decision-maker has already been raised before this Court. The general rule to be distilled from the jurisprudence is that when the documents relied upon contain "novel and significant" information that the applicant could not reasonably anticipate (which is generally the case when documents are retrieved and chosen from the vast pool of information available on the internet), fairness dictates that the applicant should have the opportunity to challenge their relevance or validity by making additional submissions (see *Zamora v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1414 at paras 17-25; *Radji v Canada (Minister of Citizenship and Immigration)*, 2007 FC 836 at para 25; *Davis v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1223 at paras 24-26 and *Gonzalez v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 153).

[88] In *Majdalani v Canada (Citizenship and Immigration)*, 2015 FC 294, the Court held that the principle to be distilled from all of the jurisprudence was that an officer's research must be disclosed if it was "important in the sense that it may have an impact on the outcome of the decision" (at para 37).

[89] While it is true that when *Mancia* was decided, the internet was not the resource it is now, the case remains the leading authority on whether an officer has an obligation to disclose extrinsic research. I think one thing that appears to be missing in the *Zamora* analysis is the fact that the Federal Court of Appeal in *Mancia* did not limit its analysis to documents that were available through the Immigration and Refugee Board documentation centres. The documents at

issue in *Mancia* "were 'in the public domain and available at any public library and/or the IRB Documentation Centre'" (at para 9). The volume available on the internet cannot be compared to that available in a public library, but a search at a public library in 1998 is fairly analogous to an internet search in 2014.

[90] Given the Officer's evidence that her search did not reveal any evidence that affected or could have affected her decision, I do not think there was a breach of procedural fairness. Whether relying on *Mancia*, or the cases which question *Mancia*'s application to internet research, the test remains whether there was anything "novel and significant" in the Officer's research that could have affected the outcome of her decision. She says there was not and that she only checked because the Applicants' submissions were so sparse. If the Applicants think there is information on the internet that is "novel and significant" and could have affected their H&C Decision, then presumably they would have run the search themselves and submitted that documentation.

[91] The Applicants also say that the Officer's BIOC analysis was "poor, inadequate and unfair" and that the Officer used an incorrect test. Once again, however, the Applicants offer little more than hyperbolic accusations of "gross insensitivity" and simplistic approach to support their case.

[92] The Officer's approach to the BIOC is well within the guidance found in the jurisprudence of this Court. The onus remains on the Applicants to provide an evidentiary basis and submissions that the Officer can examine and assess. In this case, as the Officer points out,

"[s]ubmissions regarding the hardships that the applicants' daughters may face in Angola are minimal."

[93] As she is entitled to do, the Officer takes it as given that the children would be better off in Canada than in Angola. See *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 12. The fact that Canada is a better place for the children does not mean, however, that this will outweigh all other factors. See *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 24. With minimal evidence from the Applicants, the Officer had to look at the objective documentary evidence to assess the BIOC. Her conclusion was that the evidence put forward does not suggest that the needs of these children for educational and family support to see them through into adulthood cannot be met in Angola. Had the finding been otherwise then, presumably, the needs of the children would have carried far greater weight in the final balance. As it is, and because it had not been shown by the Applicants that the children's needs cannot be met in Angola, the Officer concludes that the "documentary evidence before me does not support that having the applicants return to Angola will adversely impact the best interests of the children such that it warrants an exemption" (CTR at 14).

[94] The Applicants have not pointed to evidence that refutes this conclusion or renders it unreasonable. There is also nothing in the case law cited by the Applicants to suggest that the Officer's approach to, and analysis of, the BIOC was inappropriate or in error.

[95] All in all, I cannot say that the Applicants have raised a reviewable error with this Decision.

IX. Conclusions

[96] I can find no reviewable error in either decision.

[97] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application in IMM-2545-14 is dismissed;

2. The application in IMM-2546-14 is dismissed;

3. There is no question for certification for either IMM-2545-14 or IMM-2546-14; and,

4. A copy of this judgment should be placed in both files.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2545-14
STYLE OF CAUSE:	EMMANUEL ONESON ANIMODI, KEMMERY MARIA ANIMODI, LETICIA BAMISHE ANIMODI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-2546-14
STYLE OF CAUSE:	EMMANUEL ONESON ANIMODI, KEMMERY MARIA ANIMODI, LETICIA BAMISHE ANIMODI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 28, 2015
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	JULY 29, 2015

APPEARANCES:

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