Federal Court  Cour fédérale

Date: 20191010

Docket: IMM-384-19

Citation: 2019 FC 1285

Ottawa, Ontario, October 10, 2019

PRESENT: Madam Justice Walker

BETWEEN:

DARINE ALAMEDDINE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Darine Alameddine, the Applicant, seeks judicial review of a decision (Decision) of a migration officer (Officer) of Immigration, Refugees and Citizenship Canada in London, England, denying her application for permanent residence. The Officer concluded that Ms. Alameddine and her son, Karim, were not members of the family class by virtue of paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPRs). The Officer also denied Ms. Alameddine's request for humanitarian and compassionate

(H&C) relief pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] Ms. Alameddine does not contest her exclusion from sponsorship as a member of the family class by operation of paragraph 117(9)(d) of the IRPRs. Her application for judicial review focuses solely on the reasonableness of the Officer's H&C determination and whether the Officer respected her right to procedural fairness in the course of making that determination.

[3] For the reasons that follow, the application will be allowed.

I. Background

[4] Ms. Alameddine is a citizen of Lebanon. She lives in Saudi Arabia with her husband, Mr. Salhab, and their three children (Karim, a son, and two daughters). The family have lived in Saudi Arabia for over ten years on temporary resident permits which are dependent on Mr. Salhab's employment status.

[5] Mr. Salhab was born in Lebanon. He applied for permanent residence in Canada in April 2000 as a skilled worker. Ms. Alameddine and Mr. Salhab met and married in 2001. There is no issue as to the genuine nature of their relationship or marriage. Mr. Salhab came to Canada in May 2002 and became a permanent resident. He did not declare Ms. Alameddine or Karim (born in February 2002) as dependants in his record of landing. Mr. Salhab became a Canadian citizen on November 1, 2005. The family left Canada in April 2006.

[6] On June 2, 2017, Ms. Alameddine applied for permanent residence in Canada as a member of the family class with Mr. Salhab as sponsor. Ms. Alameddine also requested relief on H&C grounds from the operation of paragraph 117(9)(d) of the IRPRs in her application.

[7] Karim and the couple's elder daughter were included in Ms. Alameddine's application. The younger daughter was not as she is a Canadian citizen by virtue of Mr. Salhab's Canadian citizenship.

[8] By way of letter dated July 27, 2017, Mr. Salhab was advised that he was not eligible to sponsor Ms. Alameddine and Karim, as he had not declared them as dependants when he became a permanent resident in 2002. Ms. Alameddine's application was then transferred to the Officer for consideration of her request for H&C relief.

[9] The Officer sent a procedural fairness letter dated May 29, 2018 (Procedural Fairness Letter) to Ms. Alameddine advising her that she was an excluded family member and giving her an opportunity to "respond to this information, and to submit any additional information or evidence". Ms. Alameddine provided submissions in response on June 6, 2018.

II. Decision under Review

[10] The Decision is dated November 20, 2018 and consists of (1) a letter setting out the Officer's refusal of Ms. Alameddine's application for permanent residence; and (2) the Officer's Global Case Management System (GCMS) notes, which form part of the Decision (*Pushparasa v Canada (Citizenship and Immigration)*, 2015 FC 828 at para 15).

[11] In the Decision letter, the Officer concluded that Ms. Alameddine is a person identified in paragraph 117(9)(d) of the IRPRs and, as such, could not be considered a member of the family class and thereby eligible for sponsorship by Mr. Salhab. The Officer also concluded that Ms. Alameddine's H&C submissions did not justify an exemption from the requirements of the IRPA. In the GCMS notes, the Officer indicated that Karim too was excluded from the family class by virtue of paragraph 117(9)(d) (the elder daughter was not as she was born after Mr. Salhab became a permanent resident of Canada).

[12] The GCMS notes focus on the Officer's H&C analysis. The Officer summarized the H&C grounds raised by Ms. Alameddine as follows: (1) Mr. Salhab did not intend to mislead when he failed to declare Ms. Alameddine and Karim as dependants in 2002; (2) Mr. Salhab and Ms. Alameddine have had a genuine relationship since 2001 and have three children together; (3) Parliament's intention was to give considerable weight to family reunification; (4) the adverse and discriminatory country conditions facing Ms. Alameddine and her daughters in Saudi Arabia and Lebanon; (5) the parents' desire to provide their children a safe and free environment; and (6) the best interests of the children (BIOC).

[13] The Officer noted Mr. Salhab's statement in his affidavit included in Ms. Alameddine's application that he did not intend to mislead officials in omitting to list Ms. Alameddine and Karim in his record of landing. The Officer accepted that there was no obvious material benefit to Mr. Salhab's omission in terms of admissibility factors but stated that he may have had another unidentified reason for failing to declare them. As Mr. Salhab was married at the time he became a permanent resident, highly educated and spoke English, the Officer questioned how he

could omit to state that he was married. Therefore, the Officer was not satisfied that Mr. Salhab did not intend to mislead.

[14] The Officer addressed Ms. Alameddine's information regarding the country conditions in Saudi Arabia. The Officer stated that the family has lived in Saudi Arabia for 10 years and that Mr. Salhab has had continuous employment since 2011. He was, at the date of the Decision, employed as a senior project manager with a substantial salary. The Officer acknowledged that there is undoubtedly discrimination against women and restriction of freedom of expression in Saudi Arabia but stated that there was no evidence that the family had been affected any more than other foreigners . Regarding security issues in Lebanon (should the family be forced to leave Saudi Arabia), the Officer stated that there were issues in the country but found that there were areas in which the family could safely live.

[15] The Officer acknowledged that the BIOC analysis is key to an H&C application, although it is not the only consideration. The Officer recognized that it would generally be in the long-term best interests of most children to grow up in Canada as opposed to Saudi Arabia but, in the present case, the children had been living in Saudi Arabia for many years. They were at school in the country and little information had been provided regarding the nature of their education. The Officer noted that it might in fact be detrimental to Karim, then aged 16, to remove him from an education system with which he was familiar.

[16] The Officer addressed the issue of timing in weighing Ms. Alameddine's H&C evidence. The Officer noted that Ms. Alameddine stated that she and Mr. Salhab wanted to provide a safe

and secure environment for their children. If this were the case, it was not clear why they would have waited until June 2017 to submit the application for permanent residence.

III. Preliminary issues

1. *Jurisdiction of the Court*

[17] Ms. Alameddine does not contest her and Karim's exclusion from sponsorship by Mr. Salhab as members of the family class pursuant to paragraph 117(9)(d) of the IRPRs. Her application for judicial review rests solely on the Officer's H&C assessment. While the Officer's refusal to grant Ms. Alameddine's permanent resident application was subject to appeal to the Immigration Appeal Division (IAD) pursuant to subsection 63(1) of the IRPA, paragraph 72(2)(a) of the IRPA does not preclude her from bringing an application for judicial review of the Officer's exercise of discretion pursuant to subsection 25(1) (*Habtenkiel* v *Canada (Citizenship and Immigration)*, 2014 FCA 180). Otherwise, the combination of section 65 of the IRPA, which precludes the IAD from reviewing the Minister's H&C decision on appeal, subsection 63(1) and paragraph 72(2)(a) would prevent an applicant from contesting the Minister's exercise of discretion in any forum (*Habtenkiel* at paras 37-38):

> [37] One comes to the same conclusion when one considers the role of section 65 of the Act in the statutory scheme. The purpose of section 65 is to limit the extent to which the Minister's decision with respect to humanitarian and compassionate factors can be disturbed on review. The carve-out of humanitarian and compassionate considerations from the IAD's jurisdiction in the case of applicants who are caught by subsection 117(9)(*d*) of the Regulations leaves the Minister as the sole decision-maker in those cases. His decisions on the merits of the applicant's humanitarian and compassionate application cannot be overruled on the merits by the IAD.
>
> [38] However, the legality of the Minister's decision with respect to humanitarian and compassionate relief cannot be

> completely insulated from review. It is subject to review for the fundamental reason that discretion must be exercised within the perspective of the statute which confers the discretion: *Roncarelli v. Duplessis,* [1959] S.C.R. 121, at page 140. While the Court's ability to engage in such a review may be qualified, it cannot be suppressed without offending the principle of the rule of law: see *Dunsmuir v. New Brunswick,* 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraphs 27-28, *Crevier v. Quebec (Attorney Genreral),* [1981] 2 S.C.R. 220. As a result, the Minister's decision on humanitarian and compassionate considerations is presumptively subject to judicial review. For the reasons set out above, the apparent limitation on that right found at paragraph 72(2)(*a*) of the Act does not apply to an applicant who is excluded from membership in the family class by subsection 117(9)(*d*) of the Regulations.

[18] The Respondent acknowledges the jurisdiction of the Court to review the Officer's H&C determination but argues that, within the context of that review, Ms. Alameddine is precluded from raising procedural fairness arguments that relate to the paragraph 117(9)(d) determination.

[19] I agree with the Respondent that Ms. Alameddine cannot raise in this application procedural or substantive issues that relate to the Officer's decision that she is excluded from the family class. Nevertheless, Ms. Alameddine's procedural fairness argument centres on the Officer's assessment of her H&C request. She submits that the Officer breached her right to procedural fairness by failing to provide notice of the concern that Mr. Salhab had not been truthful in his explanation of his failure to declare her and Karim when he arrived in Canada and became a permanent resident. She makes the procedural fairness argument in the context of the Officer's H&C analysis and not the paragraph 117(1)(d) analysis. As a result, I will consider Ms. Alameddine's procedural fairness argument in this judgment.

2. *Hearsay statements in Ms. Alameddine's affidavit*

[20] The Respondent submits that the Court should place no weight on hearsay statements contained in Ms. Alameddine's affidavit (Rules 81(1) and (2) of the *Federal Courts Rules*, SOR/98-106; Rule 12(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22). Specifically, the Respondent argues that Ms. Alameddine has attempted to explain why Mr. Salhab failed to declare his dependants in 2002 but has not explained why Mr. Salhab himself is not available and did not submit his own affidavit to the Court. The Respondent also argues that it is improper for Ms. Alameddine to have attached her husband's affidavit as an exhibit to her own (*Zaman v Canada (Minister of Citizenship and Immigration)*, (1997) 131 FTR 54).

[21] Ms. Alameddine characterizes the Respondent's argument as technical in nature and without merit. She submits that her affidavit contains permissible hearsay evidence and that the information she deposes to is supported by Mr. Salhab's sworn affidavit included in her permanent resident application.

[22] I agree with the Respondent. Absent reasonable explanation, an applicant should not file an affidavit with this Court simply relying on information from a separate, sworn affidavit which is appended to the filed affidavit. The second affidavit should be filed with the Court.

[23] In the present case, Mr. Salhab's affidavit was before the Officer. It formed part of Ms. Alameddine's application and is contained in the Certified Tribunal Record. The Officer made reference to Mr. Salhab's affidavit in the Decision. In order to properly review the

Decision, I will consider Mr. Salhab's explanation of his omission to declare Ms. Alameddine and Karim in his record of landing in my analysis of the reasonableness of the Officer's H&C determination. I will not consider Ms. Alameddine's explanation of Mr. Salhab's statements.

IV. Issues

[24] Ms. Alameddine raises the following issues in this application:

1. Did the Officer breach Ms. Alameddine's right to procedural fairness?
2. Was the Officer's denial of Ms. Alameddine's application for relief on H&C grounds unreasonable?

V. Standard of Review

[25] I will review Ms. Alameddine's procedural fairness argument for correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). My review in this regard focuses on the procedure followed by the Officer in making the Decision and not on the substance or merits of the Decision.

[26] I will review the Officer's denial of H&C relief pursuant to subsection 25(1) of the IRPA for reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 (*Kanthasamy*); *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18 *(Kisana); Habtenkiel*, at para 43). The reasonableness standard is concerned with ensuring that the decision of a tribunal is justified, transparent and intelligible, and that the decision falls within a range of possible and acceptable outcomes which are defensible in respect of the facts and law applicable in the particular case (*Dunsmuir v New Brunswick*, 2008 SCC 9 at

para 47 (*Dunsmuir*)). In other words, the reviewing court must look at both the outcome and the reasons that are given for that outcome (*Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 27).

[27] Subsection 25(1) provides a mechanism to deal with exceptional circumstances. As a result, H&C decisions are highly discretionary and must be reviewed by this Court with considerable deference (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4).

VI. Analysis

1. *Did the Officer breach Ms. Alameddine's right to procedural fairness?*

[28] Ms. Alameddine submits that the Officer breached her right to procedural fairness by failing to make her aware of the Officer's key credibility concern regarding Mr. Salhab's explanation for his omission to list her and Karim as dependants when he became a permanent resident of Canada in 2002.

[29] I find that the Officer committed no breach of procedural fairness as Ms. Alameddine had every opportunity to fully and fairly present her case (*Kisana* at para 45). Ms. Alameddine and Mr. Salhab were aware that his omission would present a significant issue for Ms. Alameddine's permanent resident application, prompting their inclusion in the application of a request for H&C relief. Mr. Salhab explained in his affidavit that accompanied Ms. Alameddine's application that he did not intend to mislead Canadian immigration officials in his record of landing and that he had consistently stated that he was married in his subsequent immigration, citizenship and passport applications.

[30] The Procedural Fairness Letter was sent to Ms. Alameddine after the negative 117(9)(d) determination was communicated to Mr. Salhab and provided Ms. Alameddine another opportunity to explain Mr. Salhab's omission. The letter stated that neither Ms. Alameddine nor Karim had been declared when Mr. Salhab became a permanent resident of Canada and were excluded as members of the family class. The letter continued:

> I would like to provide you with the opportunity to respond to this information, and to submit any additional information or evidence. You are free to submit any relevant documentation that you would like to have considered as it pertains to your application and the information contained in this letter.

[31] Ms. Alameddine's response to the Procedural Fairness Letter acknowledged the Officer's concerns with regards to paragraph 117(9)(d) of the IRPRs but focussed on her H&C submissions. Her submissions referred the Officer to Mr. Salhab's affidavit and explained again that he had no intention to mislead when he incorrectly completed his landing form.

[32] Ms. Alameddine was required to substantiate her H&C application. An officer makes no error in deciding a case based on the information provided by an applicant (*Thandal v Canada (Minister of Citizenship and Immigration),* 2008 FC 489 at para 9). The Federal Court of Appeal has held that the question in each case is whether the applicant had a meaningful opportunity to fully and fairly present their case. An officer is not required to return to the applicant to raise weaknesses in the case once the officer has reviewed the information submitted (*Kisana* at para 45):

> [45] …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). …

[33] As part of the H&C analysis in the Decision, the Officer considered Mr. Salhab's affidavit and his explanation for his failure to include his spouse and child in his landing document when he came to Canada. The Officer did not accept the explanation in light of Mr. Salhab's level of education and understanding of English, and the clear instructions on the form. The Officer was not required to inform Ms. Alameddine of the adverse conclusion before issuing the Decision.

[34] I will review the reasonableness of the Officer's consideration of Mr. Salhab's explanation in the next section of this judgment.

2. *Was the Officer's denial of Ms. Alameddine's application for relief on H&C grounds unreasonable?*

[35] Subsection 25(1) of the IRPA permits the Minister to provide relief from the requirements of the IRPA to a foreign national outside Canada who applies for a permanent resident visa if the Minister is satisfied that "it is justified by humanitarian and compassionate considerations relating to the foreign national". The Supreme Court of Canada (SCC) comprehensively considered the purpose and proper application of subsection 25(1) in *Kanthasamy*. The SCC's guidance was recently summarized by my colleague Justice Norris as follows (*Mursalim v Canada (Citizenship and Immigration)*, 2018 FC 596 at para 25):

> [25] In *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]), the Supreme Court of Canada endorsed an approach to s 25(1) that is grounded in its equitable underlying purpose. The humanitarian and compassionate

> discretion enacted in the provision is meant to provide flexibility to mitigate the effects of a rigid application of the law in appropriate cases (*Kanthasamy* at para 19). Justice Abella, writing for the majority, approved of the approach taken in *Chirwa v Canada (Minister of Citizenship and Immigration)*, (1970), 4 IAC 338, where it was held that humanitarian and compassionate considerations refer to "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another – so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the *Immigration Act*" (*Kanthasamy* at para 13).

[36] Ms. Alameddine submits that the Officer's H&C analysis was unreasonable for three reasons: (1) the BIOC analysis was unduly focused on the status quo and the short-term interests of Karim, and failed to address the long-term interests of all three children in light of gender discrimination and increasing violence in both Saudi Arabia and Lebanon; (2) the Officer misapprehended Mr. Salhab's evidence regarding his omission of Ms. Alameddine and Karim from his permanent residence landing form; and (3) the Officer failed to engage with the relevant country condition evidence for Saudi Arabia and Lebanon.

[37] I have considered the Officer's H&C assessment in the Decision against the principles set out in *Kanthasamy* and, more generally, *Dunsmuir*. In my view, the Officer did not intelligibly assess Mr. Salhab's explanation and evidence regarding his omission to list Ms. Alameddine and Karim as dependants when he became a permanent resident. The Officer also failed to meaningfully engage with the country condition evidence for Saudi Arabia and Lebanon. As a result, I find that the Decision was not reasonable.

[38] The Officer began the H&C analysis by addressing Mr. Salhab's statement in his affidavit that he did not intend to mislead Canadian immigration officials in omitting reference to his wife and child in his record of landing. The Officer accepted that there was no obvious material benefit to Mr. Salhab in terms of admissibility by virtue of the omission and then stated:

> However, this is not to say that sponsor [Mr. Salhab] did not have another unknown reason for failing to declare them. It is a concern to me that sponsor maintains that he declared he was married "in each stage of the application", but yet he clearly did not do so in the record of landing. Section 14 of the record of landing asked him to list any accompanying dependants, in which he correctly listed that there were none. However, it also then asked him to list if he has any other dependants… to which he answered no. I can not see how it is possible that someone who maintains that he declared he was married at this stage of the process, and who is highly educated and speaks English, could have failed to list a wife and child in this section of this important document. Sponsor has therefore not satisfied me that he did not intend to mislead, for whatever purpose.

[39] There are two reviewable errors in the Officer's analysis. First, the Officer misunderstood Mr. Salhab's evidence. In his affidavit, Mr. Salhab acknowledged his omission from his record of landing and explained that he had begun his permanent resident application in 2000 before he was married and before the birth of Karim. Mr. Salhab then stated:

> 10. Nevertheless, in each of my applications - permanent residence card, citizenship and passport - I always declared that I was married. I never lied about my marital status.

[40] Paragraph 10 of Mr. Salhab's affidavit must be read in the context of the preceding paragraphs. Having explained the timing of his immigration process (2000), marriage (2001) and Karim's birth (2001), Mr. Salhab stated in paragraph 7 of the affidavit that he did not know that he could add his wife and child during the immigration process and, therefore, "I did not declare

them at that time". The Officer interpreted paragraph 10 as a statement by Mr. Salhab that he included Ms. Alameddine and Karim in every Canadian immigration application, including his landing form. I find that the Officer clearly misinterpreted the evidence. The Officer suggests that Mr. Salhab was lying in his affidavit when he was not.

[41] Mr. Salhab's statement in paragraph 10 that he included Ms. Alameddine and Karim in each of his applications was a reference to his subsequent Canadian immigration applications. Mr. Salhab listed those applications: permanent residence card, citizenship and passport.

[42] The Officer's misreading of the affidavit led the Officer to question the *bona fides* of Mr. Salhab's 2002 omission, despite the Officer's earlier acceptance in the GCMS notes that Mr. Salhab gained no material admissibility benefit through the omission. The Officer did not believe that an individual with Mr. Salhab's education and command of English would, without intending to mislead, omit such important information from a formal document. In my view, the Officer's refusal to accept Mr. Salhab's explanation was largely the result of a failure to accurately and reasonably consider the content of the affidavit. I am also of the view that the Officer's reference to Mr. Salhab's purported intent to mislead "for whatever purpose" was speculative and required an explanation.

[43] In summary, the Officer's conclusion was not consistent with the evidence and engaged in unexplained speculation. It is neither intelligible nor justified. The Officer's conclusion that Mr. Salhab may have intended to mislead immigration officials negated Ms. Alameddine's H&C argument that his misrepresentation in 2002 was inadvertent, a fact which should have

substantively mitigated its importance in the H&C process (*Mei v Canada (Citizenship and Immigration)*, 2009 FC 1044 at paras 4, 7).

[44] I also find that the Officer failed to substantively engage with the country condition evidence for Saudi Arabia and Lebanon. I preface my analysis by agreeing with the Respondent's submission that Ms. Alameddine did not submit that the family had been subjected to specific acts of discrimination, harassment or violence. Her arguments rested on generalized country condition evidence for Saudi Arabia and Lebanon which may or may not warrant H&C relief pursuant to subsection 25(1) of the IRPA (*Marafa v Canada (Citizenship and Immigration)*, 2018 FC 571 at paras 4-7), bearing in mind that the onus of establishing that an H&C exemption is warranted lies with Ms. Alameddine (*Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at paras 15-16). Nevertheless, the Officer was required to undertake a substantive analysis of her arguments against the country condition evidence. Having read the Decision as a whole, I cannot conclude that the Officer did so.

[45] The Officer acknowledged the discrimination against women in Saudi Arabia and the restrictions on freedom of expression but concluded that the fact Ms. Alameddine was precluded from working and that the children suffer some restriction of their after school activities was not sufficient to warrant H&C relief when weighed against their comfortable living situation and stable education. I find that the Officer made no reviewable error in assessing these elements of Ms. Alameddine's submissions against the personal information and general country condition evidence in the record. Ms. Alameddine's reliance on my prior decision in *Ramesh v Canada (Citizenship and Immigration)*, 2019 FC 778, is not persuasive. In *Ramesh*, the applicants had

presented evidence of ongoing ethnic and gender-based harassment and discrimination that affected their daily lives and that the decision-maker failed to consider.

[46] The Officer's analysis of Ms. Alameddine's safety and security submissions and evidence, however, consisted of generalized references and did not address her principal argument of escalating violence in both Saudi Arabia and Lebanon. In her June 6, 2018 response to the Procedural Fairness Letter, Ms. Alameddine pointed to missile attacks in Saudi Arabia and to the Canadian government's recent travel advisories on safety and security in the region.

[47] The Officer stated only that there had been some cross-border attacks into Saudi Arabia by militants but that the family had not been affected any more than other foreigners. With respect to Lebanon, the Officer acknowledged that there were "several issues" but found that they were localized in nature and that the Canadian government had only advised caution and not avoidance of the area. The Officer also made an adverse finding of delay by Ms. Alameddine in filing her permanent resident application in 2017. The Officer stated that, if she and Mr. Salhab had real concerns about raising their children in a safe environment, they would not have delayed the application. The Officer was of the view that the purported "Saudization" of the work force could not explain the delay. I find that the Officer erred in failing to consider Ms. Alameddine's argument that the escalating violence in the area prompted the application.

[48] The determinative errors in the Officer's H&C analysis are as set out above. I will only briefly address the Officer's BIOC analysis.

[49] In my view, while the BIOC analysis in the Decision is brief and focuses on Karim, it is not unreasonable in light of the evidence before the Officer. I have reviewed Ms. Alameddine's H&C submissions of May 31, 2017 and June 6, 2018. The submissions provide no detail regarding the children. Ms. Alameddine submits that she fears her daughters will be subject to discrimination in Saudi Arabia and Lebanon. In his affidavit, Mr. Salhab states that the children's activities are restricted and that they cannot participate in activities outside of the home or school. The Officer addressed both of these concerns.

[50] The Officer recognized that the children's best interests are a key consideration in an H&C application and acknowledged that it is generally in the best interests of most children to grow up in a safe and liberal country such as Canada. Ms. Alameddine emphasizes this finding in her arguments. However, the fact that a child's best interests may, in very general terms, be better served in Canada is not determinative of a BIOC analysis.

[51] The Officer noted that the children had been in Saudi Arabia for many years and were being educated there but stated that, "[f]ew representations have been made regarding the exact nature of their current education". The Officer's statement is consistent with the record. The Officer did consider Karim's situation and stated that it may be in his best interest to remain in Saudi Arabia at the age of 16 in an education system with which he is familiar. The Officer made no specific reference to the two daughters but, again, their circumstances were not set out in the H&C submissions.

VII. Conclusion

[52] The application is allowed.

[53] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-384-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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