Federal Court Cour fédérale

Date: 20200211

Docket: IMM-4035-19

Citation: 2020 FC 231

Ottawa, Ontario, February 11, 2020

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

**OGECHI MARYANN LUCY EGWUONWU,
PROMISE EBERE CHINEDU EGWUONWU,
UGWUMSINACHI TREASURE
EGWUONWU,
ORAJIMETOCHUKWU KIMBERLEY
EGWUONWU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the decision of an Immigration Officer [the Officer] dated May 8, 2019, which refused their application for permanent residence in Canada on humanitarian and compassionate [H&C] grounds pursuant to section 25 of the *Immigration and Refugee Protection Act* [the Act].

[2] For the reasons that follow, the Application is dismissed. The Officer's decision comprehensively addressed all the evidence presented and all the relevant factors. The Officer's reasons convey a rational and coherent analysis, which reflects the law and the application of the facts to the law. The decision bears the hallmarks of a reasonable decision. No error can be found in the Officer's decision that the exemption from the requirements of the Act was not justified on H&C grounds.

I. Background

A. *The Applicants' Claims*

[3] The Applicants are a mother (Ogechi), father (Promise) and their two children, who are citizens of Nigeria. The family also has a Canadian-born son. The Applicants claim that they are at risk in Nigeria from Promise's family. The Applicants claim that Ogechi is bisexual. The Applicants recount that Ogechi's sexual orientation was discovered by Promise's family only after her arrival in Canada with her daughters. The Applicants claim that Promise's family attribute the illness and death of his mother and the accidental death of his cousin to the 'abomination' of Ogechi's sexual orientation, which was not cleansed by the rituals demanded by the family.

[4] The Applicants recount that Ogechi and her two daughters came to Canada in May 2016 on a visitor's visa for a family vacation. Promise did not join them as planned because his mother became ill. The Applicants recount that after Promise's mother became ill, the village priest advised the family that the illness was caused by an abomination committed by a family member.

Promise's cousin then disclosed to the family that he had been told by Promise that, in her youth, Ogechi had engaged in sexual conduct with women. Promise's information about his wife was apparently based on Ogechi's account and not on any first hand knowledge. Promise's family then demanded that Ogechi and their two daughters return to Nigeria to undergo cleansing rituals, including female genital mutilation.

[5] The Applicants also recount that Promise's cousin, who had disclosed Ogechi's sexual orientation, was subsequently killed in a car crash. The Applicants claim that they were blamed for this accident. Promise then decided to come to Canada.

[6] Ogechi and their two daughters claimed refugee protection in July 2016 after being advised by Promise of the demands of his family. Promise arrived in Canada in May 2017 and claimed refugee protection on August 17, 2017. On the same day, the Applicants jointly made an application for permanent residence on H&C grounds.

B. *The decision of the RPD*

[7] The RPD rejected the refugee claim of Ogechi and her two daughters on October 6, 2016.

[8] The RPD found that the claimants did not face a serious possibility of persecution because the RPD did not believe that Ogechi was bisexual. The RPD further found that the claimants would have an Internal Flight Alternative within Nigeria.

[9] The RPD noted many examples of contradictory, implausible and embellished evidence, which were not consistent with common sense. Among other credibility concerns, the RPD noted that Ogechi's evidence about her time in Canada after her arrival, ostensibly on vacation, did not make sense, nor did her evidence about when she became afraid to live in Nigeria. The RPD found her evidence about how her sexuality was exposed to be inconsistent and implausible. Overall, the RPD found that the evidence did not "add up".

[10] The claimants appealed the RPD's decision to the RAD seeking to admit new evidence and alleging bias and erroneous credibility findings.

C. *The RAD decision*

[11] The RAD confirmed the RPD's decision. The RAD refused to admit the new evidence. The RAD conducted an independent assessment of the evidence on the record and confirmed the RPD's credibility findings. The RAD concluded that Ogechi was not bisexual and the family could safely return to Nigeria.

[12] The claimants' application for leave and for judicial review of the RAD decision was denied by this Court.

D. *Other Immigration proceedings*

[13] On August 18, 2017, Promise claimed refugee protection. He recounted that his family blamed him for his mother's death and his cousin's tragic accident and death because of

Ogechi's sexual orientation and his failure to produce Ogechi for the cleansing ritual. The RPD had not yet decided Promise's claim at the time the Officer made the H&C decision under review. Promise's refugee claim remains outstanding.

[14] As noted above, the Applicants, together as a family, made an H&C application on August 17, 2017. The Applicants also applied for a Pre-removal Risk Assessment [PRRA] on August 17, 2017. Promise's refugee claim is also dated August 17, 2017, although it may have been submitted a few days earlier and resubmitted with the applicable fee.

[15] The Applicants' PRRA was refused and leave for judicial review was dismissed.

[16] On May 8, 2019, the Applicants' H&C application was refused.

[17] On July 16, 2019, the Applicants were granted a stay of their removal to Nigeria pending the determination of the Application for Judicial Review of the H&C decision. In granting the stay, Justice John Norris noted that an issue had been raised with respect to Promise's outstanding refugee claim, which the Officer may not have considered in determining the H&C application.

II. The Decision Under Review

[18] The Officer's comprehensive 15-page decision canvassed the Applicants' submissions, documentary evidence and the relevant principles from the jurisprudence. The decision is

described in some detail given the findings below that the decision bears the hallmarks of a reasonable decision.

[19] The Officer assessed the Applicants' personal circumstances, their allegations of hardship, their medical reports, the country conditions in Nigeria, their establishment in Canada and the best interests of the children [BIOC]. The Officer noted that the Applicants' risk allegations were considered in the broader context of their hardship. The Officer considered and weighed all the relevant factors individually and cumulatively. The Officer concluded that an exemption from the requirements of the Act on H&C grounds was not warranted in the circumstances.

A. *The Officer noted the RPD and RAD's credibility findings*

[20] The Officer noted that the findings of the RPD and RAD – that Ogechi's claim to be bisexual lacked credibility – stand as fact. The Officer noted that she was not bound by the RPD and RAD findings, but that she gave these findings considerable weight because they were rendered by impartial, expert decision-makers who had considered documentary evidence and oral testimony and because the risk assessed by the RPD and RAD – that of Promise's family, society and the authorities due to Ogechi's sexual orientation and history – is the same concern presented as hardship in the Applicants' H&C application.

[21] The Officer considered new documents submitted by the Applicants, including email, affidavits, medical reports and Promise's Basis of Claim [BOC] Form.

[22] The Officer found that an email from Ms. Kosy Felix to Ogechi did not establish that Ogechi is bisexual. The email only indicated that Ms. Felix is bisexual and that homophobia persists in Nigeria.

B. *The Officer considered the reports of the psychologist and psychiatrist*

[23] The Officer considered the report of Dr. Elena Irina Nica-Graham, a psychologist, which describes Ogechi's mental health. The Officer also considered the report of Dr. J. Pilowski, a psychiatrist, which addresses Promise's mental health.

[24] The Officer noted that Dr. Nica-Graham's report states that Ogechi has post-traumatic stress disorder [PTSD] and major depressive disorder of moderate severity, that she will benefit most from living in a safe, predictable environment, that uncertainty about her immigration status perpetuates her symptoms, and that, should she return to Nigeria and face the issues that cause her such stress, her condition is likely to deteriorate.

[25] The Officer noted that Dr. Pilowski's report states that Promise also has PTSD and major depressive disorder of moderate severity, that he is tormented by the uncertainty about his immigration status, that he harbours guilt about his mother's death because he was blamed for it, that he wishes he could return to his past life, that he sometimes resents his wife because her sexual orientation led to their persecution, and that he does not feel that he could live safely anywhere in Nigeria because bisexuality and homosexuality are considered abominations.

[26] The Officer gave both reports little weight. The Officer noted that both reports were generated for the purpose of the H&C application and both doctors were provided with the respective applicants' affidavits, BOC forms and narratives. The Officer also noted that the reports were based on only one visit in 2017. The Officer observed that there was no evidence that either Ogechi or Promise sought any treatment for their conditions since their diagnosis and no evidence that treatment was not available in Nigeria. The Officer noted that neither doctor witnessed the events described by Promise and Ogechi as the cause of their conditions. The doctors had based their assessments only on the account they provided.

[27] The Officer stated that she respected the professional diagnosis, but because the accounts upon which the doctors had based their reports had been rejected by both the RPD and RAD due to lack of credibility, the reports had little weight.

[28] The Officer acknowledged that the uncertainty of the Applicants' immigration status would cause nervousness, anxiety and stress, but found that there was insufficient evidence that their return to Nigeria would cause any greater difficulties than those inherent in relocation. The Officer found that this stress and anxiety is not sufficient to establish hardship worthy of an H&C exemption.

C. *The Officer considered the country conditions*

[29] The Officer acknowledged that discrimination and hostility towards homosexual people persists in Nigeria. However, given the RPD and RAD findings that Ogechi is not bisexual, the Officer found that this would not cause them hardship. The Officer found that there was

insufficient objective evidence to support the contention that Ogechi is bisexual and that because her sexual past was revealed, the Applicants would face physical and psychological harm and discrimination by Promise's family, society and Nigerian authorities.

[30] Noting that an H&C application focuses on a global assessment, the Officer went on to consider the other factors, including the Applicants' establishment in Canada and BIOC.

D. *The Officer considered the Applicants' Establishment in Canada*

[31] The Officer noted that Ogechi and her two daughters and Canadian-born son had lived in Canada for three years, and Promise for two years. The Officer positively noted the letters of support from friends and church members regarding the Applicants' integration into the community. The Officer also noted that the Applicants have no immediate family in Canada, that Ogechi and Promise had lived most of their lives in Nigeria, that Ogechi and Promise are both well-educated, and, that Promise had a successful career in Nigeria. The Officer expressed doubt about the Applicants' self-sufficiency in Canada noting that Ogechi had only worked one month (in November 2017) and that, otherwise, they had both been unemployed since their arrival, despite having employment authorizations. The Officer noted that it was not clear how the Applicants supported themselves as no income tax receipts, rent receipts, utility receipts, bank statements or other financial information had been provided.

E. *The Officer considered the BIOC*

[32] In their submissions, the Applicants relied on their children's establishment in Canada, the impact of the country conditions on the children, the impact on the children's education and gender discrimination.

[33] The Officer found that the Applicants' concern that Promise's family will force their daughters to undergo female genital mutilation as a cleansing ritual to absolve Ogechi's bisexuality was unwarranted. The Officer relied on the conclusions of the RPD and RAD that Ogechi's claim to be bisexual is not credible.

[34] The Officer found that the Applicants had not provided sufficient objective documentary evidence that their daughters would suffer gender discrimination in Nigeria.

[35] The Officer acknowledged that the Applicants' daughters had started school in Canada and were doing well socially and academically. The Officer noted that the children likely enjoy well-balanced lives in Canada and that Canada is a richer and more stable country than Nigeria. However, the Officer noted that she must also consider how the children's lives would be impacted if they were to return to Nigeria.

[36] The Officer found that the Applicants had not provided sufficient evidence to demonstrate that the children could not continue their education in Nigeria. The Officer noted that both Ogechi and Promise received post-secondary education in Nigeria; that, as the children

are young, any adjustment to Nigeria's education system will not be detrimental; and, that given Promise's and Ogechi's past work history, they would be employed in Nigeria and would be able to support their children.

[37] The Officer concluded that she had not been provided with sufficient objective evidence that the children will not be able to rely on their parents for support or their remaining family members if they return to Nigeria, that they will not have access to education and health care, or that their well-being will be negatively impacted. The Officer concluded that while they would no doubt have a good life in Canada, their development and overall well-being would not be negatively impacted upon returning to Nigeria.

[38] The Officer found that the best interests of all three children were a strong factor in the H&C assessment, but that the BIOC do not outweigh all other factors in determining whether to grant the H&C exemption.

F. *Summary of H&C findings*

[39] The Officer then summarized the relevant considerations and findings, including that: returning to Nigeria will not expose the Applicants to any more hardship than is inherent in the removal process; that the children's relocation and reestablishment would be difficult, but would not be detrimental to their well-being and development; and, that it is reasonable to expect that the adult Applicants have relationships in Nigeria with people who can facilitate their return there. Ultimately, the Officer concluded that the Applicants had not demonstrated that their

personal circumstances justified the granting of permanent residence based on H&C considerations.

III. The Issues

[40] The issue is whether the decision is reasonable. This entails consideration of the issues raised by the Applicants:

1. Whether the Officer erred in her assessment of the BIOC;
2. Whether the Officer erred in her treatment of the psychological and psychiatric reports; and,
3. Whether the Officer erred in adopting the credibility findings of the RPD and RAD.

IV. The Standard of Review

[41] The presumptive standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 16, [2019] SCJ No 65 [*Vavilov*]).

[42] Prior to *Vavilov*, it was well-established that H&C decisions, which are discretionary decisions, are reviewed on the reasonableness standard (*Baker v Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817 at paras 57-62, 174 DLR (4th) 193 [*Baker*]; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 44, [2015] 3 SCR 909 [*Kanthasamy*]). This has not changed.

[43] In *Vavilov,* the Supreme Court of Canada provided detailed guidance for determining whether a decision is reasonable. The Court identified both the hallmarks of a reasonable decision and the pitfalls of an unreasonable decision.

[44] In *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 32, 312 ACWS (3d) 545, Justice Rowe succinctly captured the approach to reasonableness review pursuant to *Vavilov*:

> A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 (CanLII), [2012] 1 S.C.R. 5, at para. 13).

V. The Applicant's Submissions

A. *BIOC*

[45] The Applicants submit that the Officer erred in her assessment of the BIOC because she repeatedly relied on the erroneous presumption that the whole family would return to Nigeria together. The Applicants submit that this was a flawed presumption given that Promise's refugee claim remained outstanding. Although the Officer acknowledged that Promise's refugee claim remained outstanding, they claim that the Officer's erroneous presumption caused the Officer to ignore the impact of family separation on the children.

[46] The Applicants add that the Officer's reasons do not reflect the approach directed by the Supreme Court of Canada in *Vavilov*. Due to the Officer's erroneous presumption, there is a gap in the Officer's analysis. The Applicants submit that *Vavilov* (at paras 96-102) demands that the reasons show a logical and coherent chain of analysis.

[47] The Applicants also argue that the Officer erroneously concluded that they had provided insufficient evidence that their daughters would face gender discrimination in Nigeria. The Officer should have explained why the articles they had submitted were not sufficient proof.

B. *The Reports of the Psychologist and Psychiatrist*

[48] The Applicants argue that the Officer erred in her treatment of the doctors' reports because she discounted them due to the lack of follow-up treatment by Ogechi and Promise. The Applicants rely on *Jesuthasan v Canada (Citizenship and Immigration),* 2018 FC 142 at paras 39-45, 288 ACWS (3d) 739 [*Jesuthasan*], and submit that the present case is on "all fours". In that case, the Chief Justice noted the guidance of the Supreme Court of Canada in *Kanthasamy* at paras 47-48 and found that the Officer erred in dismissing the psychologist's report due to the lack of follow-up treatment and ignoring the opinion that returning to the home country would exacerbate the applicant's condition.

[49] The Applicants further argue that the Officer erred by discounting the reports because the doctors' findings were based on risks that the RPD and RAD had found not credible. The Applicants submit that in *Kanthasamy* (at para 49) the Supreme Court of Canada cautioned that

it was unrealistic to expect that there would be witnesses to a claimant's persecution or hardship and that medical reports should not be dismissed on this basis.

C. *Credibility*

[50] The Applicants further argue that the Officer erred in relying on the credibility findings made by the RPD and RAD. They submit that the Officer did not consider other credible evidence of the hardships they would face. The Applicants point to Promise's affidavit, which describes events that post-date the RPD and RAD decisions. They submit that the Officer erred in finding that Promise's account of events to Dr. Pilowski had been discredited by the RPD and RAD. They argue that Promise's credibility remains intact, as his refugee claim has not yet been determined.

[51] The Applicants further submit that the Officer erred in not providing reasons for her finding that their account was not credible (relying on *Magonza v Canada (Citizenship and Immigration),* 2019 FC 14 at paras 66-67, 301 ACWS (3d) 832 [*Magonza*]).

VI. The Respondent's Submissions

A. *BIOC*

[52] The Respondent submits that the Officer's assessment of the BIOC reflects the guidance of the Supreme Court of Canada in *Kanthasamy* that officers assessing an H&C application must consider the BIOC in light of all of the circumstances.

[53] The Respondent submits that the Officer did not err in failing to consider the impact of family separation. The Respondent notes that the Applicants did not make any submissions that their return to Nigeria could result in family separation or about the consequences of family separation. All four Applicants made the H&C application as a family. Although the Officer knew that Promise's refugee claim remained to be determined, the H&C application is a request to be exempted from other requirements of the Act, including a refugee determination. The Officer based her determination of the BIOC on the evidence presented by the Applicants and on the objective evidence.

B. *The Reports of the Psychologist and Psychiatrist*

[54] The Respondent submits that the Officer considered both reports, but reasonably gave them little weight because the doctors based their reports on accounts that were found not to be credible by the RPD and RAD. The Officer reasonably found that there was no evidence that the psychological conditions were based on the alleged risk or that their conditions would deteriorate.

[55] The Respondent submits that *Jesuthasan* is distinguishable. In *Jesuthasan*, the applicants submitted evidence that was sufficient to overcome the credibility findings of the RPD and RAD. In the present case, the Applicants have not provided any evidence to rebut the credibility findings.

C. *The Officer did not err in making credibility findings*

[56] The Respondent notes that the Officer considered Promise's affidavit and his BOC. The Officer noted that both Ogechi and Promise asserted that they fear that Promise's family will harm Ogechi and their daughters because of Ogechi's sexual orientation and history. The RPD and RAD found that this story lacked credibility. The Applicants have not provided any evidence to indicate otherwise.

VII. The Decision is Reasonable

[57] As a starting point in considering the reasonableness of the Officer's decision, it is important to note the purpose of section 25 of the Act.

[58] Section 25 provides that an exemption from the criteria or obligations of the Act – which, in this case, would otherwise require the Applicants to make their permanent residence application from Nigeria – may be granted on the basis of H&C considerations, "taking into account the best interests of a child directly affected". This exemption from the otherwise applicable legal requirements is highly discretionary and is often characterized as "exceptional".

[59] In *Kanthasamy,* the Supreme Court of Canada provided guidance to decision-makers in determining H&C applications. The Court explained that what will warrant relief under section 25 will vary depending on the facts and context of each case. Officers making such decisions must substantively consider and weigh all of the relevant facts and factors before them (at para 25). A key principle in *Kanthasamy* is the Court's clear direction to avoid imposing a threshold

of unusual, undeserved or disproportionate hardship and to “give weight to *all* relevant humanitarian and compassionate considerations in a particular case” (at para 33) [Emphasis in original].

[60] While the Court noted the need to consider all relevant H&C factors, it also acknowledged, at para 23, that the H&C process is not an alternative immigration scheme and that some hardship associated with leaving Canada is inevitable. The Court added that this hardship, on its own, will not generally warrant an H&C exemption.

[61] The jurisprudence has also established that the onus is on the H&C applicant to establish with sufficient evidence that the exemption should be granted (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45, 179 ACWS (3d) 181; *Liang v Canada (Minister of Citizenship and Immigration)* 2017 FC 287 at para 23, [2017] FCJ No 286 (QL)).

[62] In the present case, the Officer’s reasons convey that she considered all the relevant H&C factors and weighed each of them individually and cumulatively. Contrary to the Applicants’ submissions, the Officer’s reasons show her chain of analysis; each factor was considered, assigned weight, and all factors were cumulatively assessed to determine whether the exemption was warranted in the circumstances.

A. *BIOC*

[63] The Supreme Court of Canada's decision in *Baker* set out the basic principles regarding an officer's obligation to consider the best interests of the children when making H&C decisions (at para 75). These basic principles continue to apply:

> For the exercise of the discretion to fall within the standard of reasonableness, the decision-maker should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them. That is not to say that children's best interests must always outweigh other considerations, or that there will not be other reasons for denying an H & C claim even when children's interests are given this consideration.

[64] In *Kanthasamy*, the Supreme Court of Canada reiterated that officers must be alert, alive and sensitive to the best interests of a child. In the present case, the Officer's approach to the BIOC analysis reflects the guidance of the Court: to consider what is in the children's best interests; to determine the degree to which those interests would be compromised by one decision over the other; and, finally, to determine the weight that should be attached to the BIOC in the overall H&C application.

[65] In the present case, the Officer assessed the BIOC with reference to the Applicants' submissions regarding the children's establishment in Canada, their daughters' integration into school and church activities, the country conditions in Nigeria *vis a vis* children, and the impact of returning to Nigeria on the children's education.

[66] As described above, the Officer found that there was insufficient evidence presented that the children would not be able to reintegrate in Nigeria, pursue their education, access health care or that they would be otherwise negatively impacted.

[67] The Officer noted in several parts of the BIOC analysis that if the children returned to Nigeria they would be with their parents and would have the support of both parents. This was not an erroneous assumption or presumption given that the Applicants, as a family, sought the H&C exemption. The Applicants did not make any submissions or provide any evidence to even suggest that Promise would remain in Canada and allow his family to return to Nigeria without him. The submissions all refer to the Applicants as a family and not as individuals. The Applicants advocated that the best interests of their children were for all the Applicants to remain in Canada where the children would benefit from education, lack of gender discrimination and other advantages.

[68] The Officer acknowledged that Promise's refugee claim had not yet been determined. However, the Officer's task was to determine the Applicants' H&C application, of which Promise was an integral part.

[69] The Officer did not err in not considering issues that were not raised by the Applicants. As the Court noted in *Nicayenzi v Canada (Citizenship and Immigration),* 2014 FC 595 at para 16, 242 ACWS (3d) 176:

> Lack of evidence or omission of relevant information in support of a humanitarian and compassionate application is at the peril of the applicant (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 (CanLII) at para 5, [2004] FCJ No

> 158 (QL)). This means that the decision-maker is under no duty to assist applicants in discharging the burden of making their case or to highlight the cases' weaknesses and request further submissions to allow applicants to overcome them. In other words, the decision-maker is under no duty to make further inquiries so as to discover evidence that might be favourable to the case put forward by an applicant (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 (CanLII)] at paras 43 to 45).

[70] The Applicants' current argument that the Officer erred in presuming that Promise would return with his family to Nigeria and erred in not considering the best interests of the children in the context of Promise remaining in Canada is without merit and is troubling. First, as noted above, the Applicants – Promise, Ogechi, and their two daughters – jointly applied for an exemption from the requirements of the Act. Promise cannot now suggest that he is not part of this joint application for an exemption from the requirements of the Act. Second, the Applicants did not make any submissions to the Officer to suggest that Promise did not intend to stay with his family. Third, the Applicants' submission to the Officer advocated that the best interests of their children were to remain in Canada. If Promise and Ogechi are indeed committed to the best interests of their children, it is contradictory for them to now argue that Promise would seek to remain in Canada while his family returned to Nigeria and to now argue this, in an effort to find an error on the part of the Officer.

[71] I acknowledge the concern noted by my colleague Justice Norris in the context of the Applicants' motion for a stay of their removal, however, with the benefit of the complete record available on this Application for Judicial Review, I am unable to find any error on the part of the Officer.

[72] The Applicants' submission that the Officer ignored an article describing gender discrimination overlooks the Officer's finding of insufficient evidence of gender discrimination. The Officer is not required to specifically address every article or other document in the voluminous record.

[73] Moreover, the Officer found that the BIOC was a "strong factor", however, it was one of many important factors to be considered. The Officer correctly noted, in accordance with *Baker* and *Kanthasamy*, that the BIOC does not outweigh all other factors in an H&C determination.

B. *The Officer did not err in attributing low weight to the medical reports*

[74] The weight to attach to a psychological or psychiatric report is for the Officer to determine. The role of the Court is not to reweigh the evidence.

[75] The Officer did not dismiss the psychological or psychiatric report. The Officer assessed both reports and determined their appropriate weight. The Officer set out several reasons for giving the reports low weight including that: the reports were based on one visit and no updated report had been provided; the psychologist and psychiatrist had been provided with the BOC narrative and affidavits of Ogechi and Promise; the reports were based on the accounts provided by Ogechi and Promise, which had been found not to be credible; no follow-up treatment was noted; and, no evidence was provided that treatment was not available to them in Nigeria.

[76] The jurisprudence has cautioned that the recounting of events to a psychologist or a psychiatrist does not make these events more credible and that an expert report cannot confirm

the allegations of harm or risk (*Rokni v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 182 (QL) at para 16, 53 ACWS (3d) 371 (FCTD); *Danailov v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1019 (QL) at para 2, 44 ACWS (3d) 766 (FCTD); *Saha v Canada (Minister of Citizenship and Immigration)*, 2009 FC 304 at para 16, 176 ACWS (3d) 499); *Egbesola v Canada (Minister of Citizenship and Immigration)*, 2016 FC 204 at para 12, [2016] FCJ No 204 (QL))

[77] As the Court noted in *Bradshaw v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 632 at para 107, 294 ACWS (3d) 372, an officer does not err in discounting a medical report when it reiterates what an applicant tells the doctor are the reasons for their stress or anxiety or other condition and the doctor then reaches a medical conclusion that the applicant suffers stress or other symptoms for those reasons. In the present case, Dr. Nica-Graham diagnosed Ogechi with PTSD based on her account that due to her sexual orientation, her husband's family was threatening her. Dr. Pilowsky diagnosed Promise with PTSD based on Promise's account of the repercussions threatened by his family due to Ogechi's alleged sexual orientation. The account of Ogechi's sexual orientation was found completely not credible by the RPD and RAD and there was no other credible evidence that Ogechi was bisexual. The Officer would have been remiss in not scrutinizing the reports and not considering that the underlying account had been discredited.

[78] The Applicants' suggestion that *Jesuthasan* is "on all fours" overlooks the different factual context. In *Jesuthasan,* at para 42, the Chief Justice found that the officer erred by "appearing to reject the psychologists report solely on the basis that [the applicant] did not

adduce any evidence to demonstrate that she had sought any follow-up treatment." [Emphasis added]. In the present case, the Officer did not reject the reports, but attributed low weight to them and set out several reasons for doing so, only one of which was the lack of follow-up treatment.

[79] In *Jesuthasan,* the applicant had also provided additional evidence of her account of hardship. In the present case, the Applicants rely on the same evidence of the cause for their alleged hardship that was found not to be credible.

[80] The Applicants also rely on *Kanthasamy* at para 49 to argue that the Officer erred by discounting the medical reports because the doctors did not witness the events described and based their opinions on the accounts of Ogechi and Promise. In *Kanthasamy*, the Court cautioned:

> 49 […] Only rarely will a mental health professional personally witness the events for which a patient seeks professional assistance. To suggest that applicants for relief on humanitarian and compassionate grounds may only file expert reports from professionals who have witnessed the facts or events underlying their findings, is unrealistic and results in the absence of significant evidence. In any event, a psychologist need not be an expert on country conditions in a particular country to provide expert information about the probable psychological effect of removal from Canada.

[81] *Kanthasamy* does not stand for the proposition that discredited accounts can remain the basis or reasons for a diagnosed condition. In *Kanthasamy*, there was no concern about the credibility of Mr. Kanthasamy's account of his experiences in Sri Lanka or the possible hardship

he may face as a young Tamil man returning to Sri Lanka. This is unlike the present case where the Applicants' account of the cause of their alleged hardship in Nigeria was found not credible.

[82] Nor does *Kanthasamy* stand for the proposition that officers must accept psychological or psychiatric reports and accept the account provided to the doctor without careful scrutiny. *Kanthasamy* directs officers determining H&C applications to consider and weigh all the relevant facts and factors. This would include scrutinizing the evidence presented.

[83] The Officer stated that she respected the professional opinions of the doctors. The Officer did not reject the diagnosis *per se*; rather, the Officer reasonably rejected the alleged cause of the symptoms reported to the doctors as the basis for the diagnosis. The Officer noted that Ogechi and Promise could indeed be stressed and anxious due to the uncertainty of their immigration status. The Officer reasonably concluded that the reports did not establish that Ogechi and Promise would experience hardship greater than that inherent in the immigration and possible removal context and reasonably found that the evidence was not sufficient to warrant an H&C exemption.

[84] As an observation, it appears that many medical reports submitted in support of an H&C or other application for immigration status and submitted in support of applications for judicial review of negative decisions describe the claimant as exhibiting PTSD. It appears that PTSD varies in severity and symptoms. It also appears to be a frequent diagnosis based on one-time assessments. Decision-makers would be remiss in not scrutinising such reports, particularly those

based on one visit for the sole purpose of supporting a claim for immigration status in Canada and not for the purpose of getting the claimant the treatment needed to address their symptoms.

C. *Credibility findings*

[85] The Applicants' submissions that the Officer erred in relying on the RPD and RAD's credibility findings are without merit.

[86] The Applicants submit that the Officer erred because a separate credibility assessment was required, in particular regarding the new evidence submitted with respect to Ogechi's sexual orientation and Promise's affidavit. The Applicants' reliance on *Magonza*, at paras 66-67, does not support their argument. In *Magonza*, the Court noted:

> 66 […] PRRA officers may rely on adverse credibility findings made by previous decision-makers (*Perampalam* at para 20; *Ahmed* at para 36). However, this does not mean that PRRA officers may disbelieve every piece of evidence brought by an applicant for the sole reason that the applicant was found not to be credible by the RPD or RAD. If that were the case, the PRRA process would be rendered largely nugatory for a significant class of applicants (see, by analogy, *Chen v Canada (Citizenship and Immigration)*, 2015 FC 565 at para 16).
>
> 67. When importing credibility findings made in prior proceedings, PRRA officers must explain why those findings affect the evidence before them. In principle, the evidence presented to the PRRA officer must be different from that before the RPD and RAD. Thus, it would normally require a separate credibility assessment (*Perampalam* at para 42).
>
> [Emphasis added.]

[87] The Officer did not err in relying on the credibility findings made by the RPD and RAD. The Officer clearly explained that she was not required to do so, but that as the findings were

made by impartial expert tribunals that had considered all the evidence, which recounted the same events the Applicants reiterate, and because the RPD had the benefit of considering the oral testimony, she gave the credibility findings considerable weight. The Officer assessed the additional evidence provided and explained why she found it was not credible. The other evidence presented was the email from Kosy Felix, the doctors' reports, Promise's BOC narrative and affidavit, and the affidavit of Ogechi. The Officer found that the email from Kosy Felix did not describe Ogechi's sexual orientation. Promise's affidavit and the narrative to his BOC did not provide any new evidence regarding the basis of the Applicants' H&C application. The previous credibility findings, which discredited the underlying story that Ogechi was bisexual, reiterated in Promise's affidavit, would not make his account any more credible. Similarly, Ogechi's affidavit reiterated the same account found not to be credible.

[88] Contrary to the Applicants' submissions, the Officer did not err in finding that Promise's account was not credible. Although his refugee claim remains to be determined, his affidavit and narrative to his BOC (which are identical) attribute all his alleged family persecution to Ogechi's bisexuality, which was disbelieved by the RPD and RAD.

[89] In conclusion, the Officer reasonably found, based on all the evidence and all the relevant considerations, that an exemption from the requirements of the Act on H&C grounds is not justified.

JUDGMENT in file IMM-4035-19

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	TORONTO, ONTARIO
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