Federal Court  Cour fédérale

Date: 20220317

Docket: IMM-2466-21

Citation: 2022 FC 365

Vancouver, British Columbia, March 17, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

BATOUL HOSROM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Batoul Hosrom applied for permanent residence in Canada as a "dependent child" of her father, Mohammad. For years, he had tried to get approval for her to join him and her younger siblings here. Ms Hosrom's application was granted in early 2020. All she had to do was land in Canada.

[2] The COVID-19 pandemic repeatedly delayed her trip from Beirut to Vancouver. It was finally set for July 1, 2020, when the Beirut airport reopened.

[3] There was one more delay. Ms Hosrom, 19, wanted to see her friend Toufic Fayed before leaving. Mr Fayed was working in Dubai but was to arrive to visit his family on July 2, 2020. Ms Hosrom's father agreed to postpone her trip.

[4] Ms Hosrom and Mr Fayed became engaged to marry. At her father's insistence, they also got legally married in Lebanon on July 13, 2020, but without a religious ceremony or family celebration.

[5] Days later, Ms Hosrom flew to Vancouver to be reunited with her father and younger siblings. On arrival, she told border officers that she was married. They told her she no longer qualified for permanent residence in Canada as her father's "dependant child". She had to return to Beirut.

[6] Back in Lebanon, Ms Hosrom asked the Canadian government to grant her permanent residency with an exemption on humanitarian and compassionate ("H&C") grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*). The application concerned an exemption from the requirements of meeting the definition of a "dependent child" as defined in section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *"IRPR"*).

[7] By letter dated March 31, 2021, a migration officer at the Embassy of Canada in Beirut, Lebanon refused her request (the "Decision").

[8] This is an application for judicial review of that Decision.

[9] In my view, the Decision was unreasonable and must be set aside, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. A different officer will redetermine Ms Hosrom's application.

I. Facts and Events Leading to this Application

[10] The applicant is a citizen of Lebanon, born in 2001. Her parents subsequently divorced. Her father is Mohammad Hosrom. He had full custody of Ms Hosrom beginning in 2004. In 2006, he remarried to a Canadian citizen. In 2010, the couple had twins, who are Canadian citizens by descent. They all lived together in Beirut.

[11] In 2013, Mr Hosrom, his wife and their twins travelled to Canada. Ms Hosrom remained in Beirut with her grandmother and her aunt. Mr Hosrom initially planned to settle the family in Canada, then return to Lebanon, and apply for a family class sponsorship to obtain permanent residency for himself and Ms Hosrom (who was 12 years old at the time). Due to the deteriorating security situation in Lebanon, the plan changed. In 2014, Mr Hosrom decided to renew his visitor status in Canada and his wife applied to sponsor him and Ms Hosrom from within Canada.

[12] Unfortunately, Mr Hosrom's second marriage also failed. In 2015, his wife withdrew her sponsorship. Mr Hosrom's application for permanent residence, with Ms Hosrom as his dependent daughter, was closed.

[13] In May 2016, Mr Hosrom filed an application for permanent residence from within Canada seeking an exemption on H&C grounds. Mr Hosrom's application was successful. On December 13, 2018, Mr Hosrom became a permanent resident of Canada.

[14] In July 2018, Mr Hosrom had also attempted to add Ms Hosrom to his application. He learned in March 2019 that he could sponsor Ms Hosrom after he became a permanent resident.

[15] Following a month-long visit to Lebanon in the spring of 2019, Mr Hosrom applied to sponsor Ms Hosrom under the Family Class – Dependent Child provisions of the *IRPA* and *IRPR*. The application was approved in late January 2020. Ms Hosrom planned to complete her school year in Lebanon and then come to Canada.

[16] Mr Hosrom booked a flight for Ms Hosrom to travel to Vancouver on March 20, 2020. However, the Beirut airport closed on March 18, 2020, due to the COVID-19 pandemic. They attempted to rebook her flight several times until finally she had a ticket for July 1, 2020.

[17] On June 29, 2020, Ms Hosrom asked her father to postpone her flight to Canada for a few days. She wanted to visit with her close friend, Mr Fayed, who was working in Dubai and was coming to visit his parents in Lebanon. They wanted to become engaged while they were both in Lebanon. Mr Hosrom agreed to postpone her trip and to travel himself to Lebanon for the engagement. Father and daughter would then return to Canada together on July 21, 2020.

[18] The plan changed due to conditions in Lebanon and uncertainty about the pandemic. Ms Hosrom and Mr Fayed got engaged, but Mr Hosrom decided that they should sign a marriage contract immediately as well. On July 13, 2020, they did so, by signing "the book" in a small ceremony. However, there was no religious ceremony and no family celebration. According to the evidence, they were legally married in Lebanon, but were not considered married culturally and traditionally and could not live together as a married couple until they have a marriage ceremony.

[19] On July 17, 2020, Ms Hosrom travelled to Canada (without Mr Fayed) to join her father and siblings in British Columbia. On arrival at Vancouver airport, she presented her credentials for permanent residency, which would trigger on landing in Canada. She also declared that she was married. Border officials told her she no longer met the definition of a "dependent child" in the *IRPR* and could not enter Canada as a permanent resident.

[20] The term "dependent child" is defined in the *IRPR* as follows:

dependent child, in respect of a parent, means a child who	**enfant à charge** L'enfant qui :
(a) has one of the following relationships with the parent, namely,	a) d'une part, par rapport à l'un de ses parents :
(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or	(i) soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,
(ii) is the adopted child of the parent; and	(ii) soit en est l'enfant adoptif;

(b) is in one of the following situations of dependency, namely,	b) d'autre part, remplit l'une des conditions suivantes :
(i) is less than 22 years of age and is not a spouse or common-law partner, or	(i) il est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait,
(ii) is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition.	(ii) il est âgé de vingt-deux ans ou plus et n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents depuis le moment où il a atteint l'âge de vingt-deux ans, et ne peut subvenir à ses besoins du fait de son état physique ou mental. (dependent child)
[Underlining added.]	[soulignement ajouté]

[21] After several hours, Ms Hosrom was permitted to enter the country on the condition that she attend further examinations, which occurred on July 18 and 19, 2020.

[22] On July 20, 2020, she was "allowed to leave" and returned to Beirut.

[23] At this point, Ms Hosrom retained a lawyer in Canada. In October 2020, Ms Hosrom made an application for permanent residency even though she no longer met the definition of a "dependent child" because she was a spouse. She relied on the H&C provisions of the *IRPA*.

II. H&C Applications under *IRPA* subsection 25(1)

[24] Subsection 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of that statute and grant permanent resident status in Canada, if

the Minister is of the opinion that such relief is justified by humanitarian and compassionate considerations. Those considerations are to include the best interests of a child ("BIOC") directly affected. The H&C discretion in subsection 25(1) is a flexible and responsive exception to the ordinary operation of the *IRPA*, to mitigate the rigidity of the law in an appropriate case: *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, at p. 350; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909, at paras 14-15, 19 and 33.

[25] 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 [*IRPA*]": *Chirwa*, at p. 350, as quoted in *Kanthasamy*, at paras 13 and 21. The purpose of the H&C provision is provide equitable relief in those circumstances: *Kanthasamy*, at paras 21-22, 30-33 and 45.

[26] Under subsection 25(1), an officer may assess whether an applicant would experience "unusual", "undeserved" or "disproportionate" hardship on leaving Canada. Those words to describe hardship are instructive but not determinative, allowing subsection 25(1) to respond flexibly to the equitable goals of the provision: *Kanthasamy*, at paras 33 and 45.

[27] The discretion in subsection 25(1) must be exercised reasonably. Officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them: *Kanthasamy*, at paras 25 and 33.

III. The Decision under Review

[28] By letter dated March 31, 2021, the officer at the Embassy in Beirut denied Ms Hosrom's application. The officer also made notes in the global case management system ("GCMS"). Those notes form part of the officer's reasons for the Decision: *Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257, at para 35; *Thedchanamoorthy v Canada (Citizenship and Immigration)*, 2018 FC 690, at para 17; *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793, at para 19.

[29] The officer's notes set out some initial background and confirmed that the officer had reviewed the H&C submissions provided by counsel. Commendably, the officer set out the facts in considerable detail and often used the precise language of the source documents in reciting them.

[30] "Having reviewed all the documents", the officer turned to the analysis. The officer noted that the decision for Ms Hosrom to marry her husband was based on her father's recommendation and that she only wanted to be engaged and be committed to a future together with Mr Fayed. However, the officer noted that in order to meet the definition of a "dependent child", "one must be under 22 AND not a spouse or common-law partner". Because she was married prior to travelling to Canada to become a permanent resident of Canada, she was a "spouse" and no longer met the definition.

[31] The officer noted that Ms Hosrom had experienced a difficult childhood due to her parents' divorce and her father and siblings' departure for Canada in 2013. However, Ms Hosrom:

> is now an adult; she is 19 years old and is finishing her education in Lebanon ([she] states she is in her final year of studies).
>
> [Ms Hosrom]'s husband lives and works in Dubai. Although his current WP [work permit] is set to expire in June 2021, he should be able to have her join him in Dubai while he is there and this could possibly have been done last summer as well (after their marriage). [Ms Hosrom] has stated in her submissions that her husband (prior to marriage) has supported her through good and bad times; their mothers are good friends; she feels her best when around him; that he makes her safe and she does not feel like a burden on him; and that she spent a lot of time with him and trusts him. Furthermore, they always planned to be together in the future.
>
> I understand that the political and economic situation in Lebanon has been challenging and the explosion in August 2020 added to the challenges. However, [Ms Hosrom] does not appear to be experiencing challenges that others in Lebanon are not also experiencing given the situation. Furthermore, she has the option to join her husband and Dubai and start their married life together. There also does not appear to be any known reason that he will not be able to extend his work permit in Dubai after June 2021. Should [Ms Hosrom] wish to study overseas, there are other options to try and study as an international student, whether in Canada or elsewhere. [Ms Hosrom] and her husband can also consider future immigration opportunities for themselves as a family unit. Although I note [Ms Hosrom]'s desire to be near her family, they can all visit whether in Lebanon or another country in the future (current restrictions being temporary in nature). Although I note that a previous TRV [temporary resident visa] application for Canada was refused, there is nothing preventing [Ms Hosrom] from re-applying when her situation changes and she is able to satisfy an officer of her temporary intent for visits to her family. And it is not out of the ordinary for a person to choose to build their life with their spouse rather than stay in a different country with their parents and siblings after marriage.
>
> Based on the information before me, I am not satisfied that there are sufficient reasons for positive consideration on H&C grounds. Application refused.

IV. Standard of Review in this Court

[32] I agree with the parties that the standard of review of the Decision is reasonableness, as described in *Vavilov*. Reasonableness review entails a sensitive and respectful, but robust, evaluation of administrative decisions: *Vavilov*, at paras 12-13. In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15.

[33] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at paras 85 and 99. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision-maker: *Vavilov*, at paras 91-96, 97 and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-32.

[34] The court's review is both robust and disciplined. Not all errors or concerns about a decision will warrant intervention. To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep". The problem must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100. The Supreme Court in *Vavilov*, at paragraph 101, identified two types of fundamental flaws: a failure of rationality internal to the reasoning process in the decision; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it.

[35] The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

V. Analysis

[36] The applicant raised four arguments to challenge the reasonableness of the decision based on *Vavilov*:

a) The Decision ignored repeated statements in the evidence by Ms Hosrom and her father that she did not want to live with her husband and had only a future intention to do so. She was only 19 and her intent was to continue her education and build a career in Canada. The Decision disregarded what she is comfortable with at this time — which is not going to Dubai to live with her husband;

b) The Decision ignored or minimized the hardship on Mr Hosrom, who has spent more than eight years attempting to bring his daughter to Canada;

c) The Decision failed to assess the BIOC. The application expressly raised the BIOC of Ms Hosrom's two siblings in Canada, who have been separated from her for many years after living together for three years. The only reference to their interests during the analysis was an "off-hand mention" that all the family could visit together in Lebanon or elsewhere in the future; and

d) The Decision wrongly referred to and relied upon other solutions and alternatives for visa applications or family visits outside Canada. The officer also failed to consider whether those alternatives were realistic or feasible.

[37] The applicant also submitted that the present case has many parallels with the circumstances in *Reducto v Canada (Citizenship and Immigration)*, 2020 FC 511.

[38] The respondent Minister submitted that the Decision was reasonable. The Minister emphasized that Ms Hosrom made her application from overseas (i.e., outside Canada) and that she has never lived in this country. The circumstances were unusual because she had been fully approved for permanent residency but took herself outside the rules by getting married.

[39] The respondent essentially accepted the chronology of events as presented by the applicant, but took issue with the characterization of the marriage. The respondent emphasized the evidence that Ms Hosrom always planned to be engaged and be together with her husband. This was not a forced marriage by Mr Hosrom. The marriage was intentional, legally valid and registered in the Family Register in Lebanon.

[40] The respondent also emphasized that the officer made the Decision after a detailed recitation of the facts. The Minister submitted that the applicant did have many options to visit Canada and to apply for status in Canada with her husband. In essence, the applicant had made a decision to “start a new life” with her husband and in doing so, put herself outside the requirements for permanent residence as a “dependent child” of her father.

[41] The respondent did not argue that hardship to Mr Hosrom was irrelevant, but observed that the focus under *IRPA* subsection 25(1) is on the foreign national, not the sponsor. The respondent submitted that the BIOC must be reviewed in the context of the long-term separation

of the family and the other immigration categories and options open to them, all of which could be achieved without an H&C exemption. The respondent noted that the current situation continues the *status quo* for Ms Hosrom in Beirut and for her father and siblings in Canada. This is not a situation in which an applicant will be removed from Canada.

[42] The respondent sought to distinguish Justice Norris's decision in *Reducto* on its facts.

[43] For the reasons explained below, I agree with the applicant that the Decision was unreasonable and must be set aside.

[44] I begin by situating my analysis within the language and purpose of subsection 25(1) and the Supreme Court's reasons in *Kanthasamy*. The Supreme Court recognized that an H&C application is not an alternative immigration scheme: *Kanthasamy*, at paras 23-24 (Abella J) and at paras 63, 85 and 88-90 (Moldaver J). It does not provide a separate mechanism that may be used artfully or deviously to circumvent the rules and requirements set out by Parliament in the *IRPA* and *IRPR* in order to obtain permanent resident status. Rather, as noted already, the H&C application in subsection 25(1) is a "flexible and responsive exception to the ordinary operation of the Act, or … a discretion 'to mitigate the rigidity of the law in an appropriate case'": *Kanthasamy*, at paras 13-14.

[45] Subsection 25(1) concerns the Minister's ability to grant a foreign national "an exemption from any applicable criteria or obligations" of the *IRPA*. On its very words, subsection 25(1) is "limited to situations where a foreign national applies for permanent residency but is

inadmissible or does not meet the requirements of the [*IRPA*]": *Kanthasamy*, at para 20 (*per* Abella J) and para 94 ("applicants who do not fall strictly within the rules governing the admission of foreign nationals to Canada": *per* Moldaver J).

[46] There are four reasons that lead to the conclusion that the officer's Decision must be set aside.

[47] First, in my view, the officer's reasons for the Decision employed a flawed reasoning process that adopted an assumption or premise for the H&C assessment that ran contrary to important evidence from Ms Hosrom. The officer's approach gave undue primacy to the rule from which the applicant sought an exemption under *IRPA* subsection 25(1), which in this case undermined a lawful exercise of the discretion under that provision.

[48] Ms Hosrom provided a signed statement to support her H&C application, which included the following relevant content:

- "I have always wanted to reunite with my father and siblings and pursue my education in Canada."
- "It had been seven years waiting to reunite with my father and my siblings. I was dreaming to grow up with them. It was a long time waiting for my simplest dream to come true."
- "Finally, I got my immigrant visa on January 28, 2020. I postponed my travel until summer so I could complete the academic year at the Debs Institute, where I was studying."
- "While we did 'sign the book', we saw this as an extension of our engagement, and we have not yet started (nor did we intend to start) our married life together. I need to pursue my education and find my career path."

- Prior to July 2020, Ms Hosrom and Mr Fayed "had always planned to get engaged and spend our future together, but we never had any concrete plans. Nothing was figured out when we would get engaged or married, or where we would live. We knew that we did not have a future in Lebanon, and he didn't mind moving to Canada, as long as we were finally together."

- "Toufic and I did not have the intention to live in Lebanon or live like a married couple. In our mind, the paperwork was a sign of our commitment to each other in the future, not the beginning of a marriage. We did not live together after the signing of the book. We cannot do so religiously until we have our wedding ceremony and are married in the eyes of our community."

- "In my opinion (and religion) I am engaged and not married, as there has been no official marriage ceremony."

- "Since returning from Canada, I have been depressed and sad, especially when I remember what [it] was like to leave my family again. All my dreams were shattered."

- "On August 4, 2020, I was at home (which is less than 5 km from Beirut seaport area) when there was a massive explosion. The sound of the explosion is still in my ears and the scene of the windows in our apartment shattering. I'm not able to overcome the fear that the explosion left in me."

- "I am in my last year of interior design, studying online."

- "It is hard, even for men, to get jobs in Lebanon and make enough money to survive. There is no financial stability or safety in Lebanon. Toufic could not find a good job in Lebanon, how will I?"

- "Being a woman in Lebanon always means being inferior. I feel vulnerable and unsafe going out. It is impossible for me to walk freely, to find a job, to feel settled and safe."

- "I wish to return to Canada and live with my father. He is 50 years old and leads a lonely life, as he is now divorced from my stepmother. If he had known that me 'signing the book'

> would have resulted in my losing my Canadian visa, he would never had recommended doing it."
>
> - "I want a fresh start, I want to do something for myself and focus on my future. I want to feel happy again. The best thing would be to be with my dad and my siblings. Canada is the best country. I want it to be my home. I had everything planned for Canada. I have been researching colleges and institutes. I had my projects on a USB to apply when I got to Canada."
> - "I suffered a lot from my father's unintentional wrong decision, and I am still paying for that."

[49] The officer's analysis contained an assumption about what Ms Hosrom, as a 19-year old woman, should do with her life upon being legally married — namely, to start to live with her husband as a married couple in Dubai. The officer referred twice to her doing so, and added a concluding comment that "it is not out of the ordinary for a person to choose to build their life with their spouse rather than stay in a different country with their parents and siblings after marriage".

[50] The applicant characterized this aspect of the officer's analysis as "misguided and frankly somewhat grotesque on the facts of this case". The applicant likened the officer's comments to an error made by an officer in *Reducto*, which Justice Norris addressed at para 52:

> Second, the officer's assessment of the crux of this case – the prospect of John Cedrick being left behind in the Philippines – is tainted by unfounded generalizations and paternalistic assumptions. The officer appears to be of the view that John Cedrick is old enough to be on his own now. After all, it is "not unusual" and even "normal" for young adults to be establishing independent lives at his age. The officer offers no evidence to support these claims. In fact, the officer's assumptions run counter to the rationale for raising the maximum age for a dependent child back to 22 – namely, "the underlying socio-economic trend that

> children remain at home longer with their parents, particularly those studying for lengthier periods" and the fact that "[w]hen families are able to remain together as an economic household unit, their integration into Canada and their ability to work and contribute to their communities all improve" (see paras 38-40, above). But even if it were the case that young persons around John Cedrick's age typically start to establish independent lives, the officer's analysis fails to consider why, in the particular circumstances of this case, John Cedrick has not done so. The officer also fails to consider whether the impact of the separation of an older child from his or her family might be entirely different if it is forced rather than chosen freely.
>
> [Emphasis added.]

[51] I do not go as far as the applicant's characterization. I agree that there are common features and parallels between the two officers' approaches, although *Reducto* focused on the age of the individual (who was already 22 and therefore no longer a "dependent child") and the present case concerns a younger individual who married and was therefore outside of the *IRPR* definition.

[52] In this case, the officer's H&C analysis assumed that the applicant's marriage a few days earlier had transformed her from a 19-year-old daughter who wanted to live with her father and siblings in Canada, pursue her education and her career, and be with her husband in the future, into a 19-year-old wife who should go and live with her husband in Dubai. Even accounting for paragraph (*b*)(i) in the *IRPR* definition of "dependent child", the officer's reasoning effectively assumed away key evidence supporting the H&C application while suggesting that the applicant should start to live in accordance with the rule from which she requested an exemption – in Dubai, with her husband.

[53] The officer's assumption displaced central evidence from Ms Hosrom at the core of her H&C application, without explaining why her evidence should have no weight or effect. The officer's approach eclipsed any consideration of the evidence of what Ms Hosrom was comfortable or ready to do, and what she wanted to do, which was not to live as a married couple with Mr Fayed in Dubai, but to be in Canada with her father and younger siblings and pursue her education and career. That was her stated priority and it was an essential point in the H&C application for an exemption from the strict application of the "dependent child" requirements. As the officer recognized, Ms Hosrom intended to sponsor Mr Fayed to come to Canada after she landed in Canada as a permanent resident. On her evidence, however, she did not choose (or make the "adult" decision) to "start a new life" with her husband in Dubai in lieu of joining her father and siblings in Canada.

[54] While the applicant's evidence did not mandate a particular outcome to the application for H&C relief, in my view the officer could not employ such internally flawed reasoning under subsection 25(1) of the *IPRA*. Given the central importance of her evidence to the request for H&C relief, the officer could not assume it away without explanation. The officer's premise, including the comment that it would not be "out of the ordinary" for her to join her husband in Dubai now that she was married, ignored the essence of the H&C application, the applicant's evidence and the history of Mr Hosrom's attempts to reunite his family.

[55] Second, through much of the analysis, the officer relied upon other immigration pathways perceived by the officer to be open to the applicant and other purported options for the family to

visit together. The officer's comments raise concerns about a failure to abide by the legal and evidentiary constraints that applied to the Decision.

[56] The officer's analysis opened by referring to Mr Hosrom's decision that Ms Hosrom should marry Mr Fayed, that the applicant was now a "spouse" and an adult aged 19, and that she was no longer a "dependent child" by definition. These statements appeared to lead to the officer's assertion that the applicant could and should go to live with her husband in Dubai. Recognizing that Mr Fayed's work permit was set to expire in June 2021, the officer referred three times during the analysis to the applicant herself moving to Dubai (and that she already could have done so during the summer of 2020). The officer also stated that there were "other options" for Ms Hosrom "to try and study as an international student, whether in Canada or elsewhere". The officer stated further that the family could "all visit whether in Lebanon or another country in the future".

[57] This Court has held that to rely exclusively or unduly on compliance with the statutory rules or requirements for immigration (or refugee status) as a basis not to grant an exemption on H&C grounds renders the exercise of H&C discretion empty and hollow: see *Aboubacar v Canada (Citizenship and Immigration)*, 2014 FC 714, at para 20; *Bhalla v. Canada (Citizenship and Immigration)*, 2019 FC 1638, at para 12. Such an analysis may be inconsistent with the *Chirwa* standard that must be applied under subsection 25(1), as confirmed in *Kanthasamy*.

[58] In my view, the same kind of concern may arise if an officer relies exclusively or excessively on possible alternative immigration streams to the exclusion or undue minimization

of the H&C factors raised on the application: *Luciano v Canada (Citizenship and Immigration)*, 2019 FC 1557, at paras 43-44, 55-56 and 58. Doing so may distract or derogate from the necessary focus of an exercise of discretion under subsection 25(1) — to provide equitable relief by way of an exemption from the ordinary operation of the *IRPA* on humanitarian and compassionate grounds — and may suggest a failure to abide by the legally required constraints and considerations described in *Kanthasamy*. An officer may consider whether an applicant already holds an existing visa permitting entry to Canada, as it may be relevant to the H&C assessment (e.g. of hardship arising from separation) in some cases: *Patel v Canada*, 2021 FC 1178, at para 32; see also the discussion in *Gangji v Canada*, 2021 CanLII 95670. However, in other cases, an officer's reliance on alternative immigration streams may be excessive or unjustifiable, for example if the purported alternatives are legally or factually unavailable. The individual may not already hold a visa and one is not available to them: *Luciano*, at paras 55 and 58; *Torres v Canada (Citizenship and Immigration)*, 2017 FC 715, at para 9. Or, on the evidence, the immigration alternatives may not be financially available or the applicant may not otherwise meet the requirements: see *Luciano*, at paras 45-47; *Torres*, at para 9.

[59] In this case, the officer made statements about (i) Ms Hosrom's ability to emigrate or move to Dubai while her husband was on a work visa there; (ii) her ability to study elsewhere than Canada; and (iii) all the family's ability to visit together somewhere other than in Canada. The officer did not refer to any evidence to support these comments, or to an existing visa possessed by any individual (other than Mr Fayed's work visa in the UAE that was to expire within a few months). The officer's reasons do not claim any specific expertise on immigration laws applicable to Dubai. The officer also did not address the evidence in the record that might

seriously prevent or inhibit such international travel, such as the need to obtain permission from the twins' mother to allow them to travel or the family's financial resources.

[60] The officer's repeated and unsupported reliance on these purported immigration alternatives and options for international study and reunification was undoubtedly material to the overall outcome of the Decision. The undue focus on alternative immigration streams without reference to the evidence, particularly when coupled with what else the officer failed to consider (as discussed below), causes me to lose confidence in the reasoning used to justify the Decision, owing to a failure to focus on the language and purpose of *IRPA* subsection 25(1) and the requirements in *Kanthasamy*: *Vavilov*, at paras 105-106 and 194.

[61] Third, the officer's analysis did not consider the BIOC. Parliament has expressly required in *IRPA* subsection 25(1) that the best interests of a child directly affected must be taken into account in an H&C application. There are many cases that use mandatory language to describe this aspect of subsection 25(1): see e.g., *Kanthasamy*, at para 10; *de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436, [2006] 3 FCR 655, at para 105; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 FC 358, at paras 11-12; *Appiah v Canada (Citizenship and Immigration)*, 2021 FC 1309, at para 25; *Yu v Canada (Citizenship and Immigration)*, 2021 FC 1236, at paras 23-24. The officer must always be must be "alert, alive and sensitive" to the interests of the children: *Kanthasamy*, at para 38.

[62] In this case, the applicant's written H&C submissions expressly requested that the BIOC of Ms Hosrom's twin siblings be considered. The respondent did not argue that the twins were

not directly affected by the application as contemplated by subsection 25(1). The officer was aware of the twins but conducted no analysis of their best interests. It is the officer's responsibility to conduct that assessment and to determine the weight to be attached to the evidence. It was an error not to do so.

[63] Fourth, the reasons for the Decision did not consider the hardship experienced by Mr Hosrom. At the hearing, the respondent did not go so far as to argue that the sponsor's circumstances were irrelevant to the H&C application, but did submit that the circumstances of the foreign national should be the focus of the analysis (as compared with the circumstances of the sponsor). I agree that it is the foreign national, not the sponsor, who may be granted the exemption under subsection 25(1) on H&C grounds and that therefore, the H&C circumstances affecting the applicant foreign national are at the centre of the application. However, at minimum, circumstances of hardship to the sponsor may affect the applicant, and thus be relevant to the Minister's assessment under subsection 25(1). In this case, the hardship affecting Mr Hosrom should have been expressly considered in the officer's analysis. As with other factors, it is up to the officer to assess the evidence and determine its weight.

[64] The analysis of these four points leads to the conclusion that the Decision must be set aside as unreasonable, applying the principles set out in *Vavilov*. The officer's assessment showed a flawed reasoning process and a failure to respect the factual and legal constraints bearing on the Decision under *IRPA* subsection 25(1) and the Supreme Court's reasons in *Kanthasamy*.

VI. Conclusion

[65] For these reasons, the application is allowed. Neither party proposed a question for certification and none will be stated.

JUDGMENT in IMM-2466-21

THIS COURT'S JUDGMENT is that:

1. The application is allowed. The decision of the migration officer dated March 31, 2021 is set aside. The matter remitted for redetermination by a different officer in accordance with these Reasons. The applicant shall be permitted to update her application and make additional submissions, if so advised.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2466-21
STYLE OF CAUSE:	BATOUL HOSROM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	DECEMBER 2, 2021
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	MARCH 17, 2022

APPEARANCES:

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