

Federal Court



Cour fédérale

Date: 20220608

Docket: IMM-6495-20

Citation: 2022 FC 856

Ottawa, Ontario, June 8, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

JUNAID AKHTAR

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Akhtar, a citizen of Pakistan, has lived in Canada for approximately 20 years. He applied for permanent resident status on humanitarian and compassionate grounds (“H & C Application”), principally on the basis of the following: his physical and mental health concerns, his establishment in Canada, discrimination he would face as a Shia Muslim in Pakistan, and the best interests of his children, who are permanent residents in Canada. On

December 1, 2020, Mr. Akhtar's H & C Application was refused by a Senior Immigration Officer ("Officer"). He is challenging the refusal in this judicial review.

[2] Mr. Akhtar raised a number of challenges to the decision. In my view, the determinative issue is the Officer's assessment of Mr. Akhtar's mental illness. I find the Officer's treatment of Mr. Akhtar's extensive medical documentation to be narrowly fixated on looking for deficiencies in each report instead of evaluating the evidence as a whole. The Officer also failed to assess the objective country condition evidence filed in relation to the treatment of people with mental health issues in Pakistan. Lastly, contrary to the guidance of the Supreme Court of Canada in *Kanhasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanhasamy*], the Officer focused on the lack of evidence to establish that treatment was unavailable to Mr. Akhtar in Pakistan and failed to consider the evidence that the deportation itself would have a significant impact on his mental health.

[3] Based on the reasons set out below, I grant the judicial review.

II. Background Facts

[4] Mr. Akhtar is a citizen of Pakistan. He arrived in Canada in 2002 with his then wife and three children. The family made a refugee claim. This was refused in 2005. The following year, after the birth of their fourth child in Canada, the family filed an H & C Application. This application was approved in principle but then refused at the second stage of processing because of medical inadmissibility concerns due to Mr. Akhtar's kidney condition at that time.

[5] In 2012, the family filed another H & C Application. There are allegations against Mr. Akhtar of physical and emotional abuse of his then wife. Mr. Akhtar's wife separated from him in August 2015 and wrote to Immigration, Refugees and Citizenship Canada to sever her H & C Application from that of her husband. The applications were severed. The rest of the family were ultimately approved as permanent residents on H & C grounds but Mr. Akhtar's application was refused. He learned of this refusal in March 2018. Mr. Akhtar challenged this refusal. Justice Diner granted the judicial review based on a breach of procedural fairness and sent it back to be redetermined by a different officer (*Akhtar v Canada (Minister of Citizenship and Immigration)*, 2019 FC 123).

[6] Mr. Akhtar's H & C Application was redetermined and refused a second time on December 1, 2020. This last refusal is the subject of this judicial review.

III. Issue and Standard of Review

[7] As noted above, the key issue in this judicial review is the Officer's evaluation of Mr. Akhtar's mental illness. In reviewing the decision of the Officer, I applied a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[8] In *Vavilov*, the Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the starting point of the analysis

begins with the decision-maker's reasons (at para 13). A decision-maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103).

[9] The Court described a reasonable decision as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Administrative decision-makers, in exercising public power, must ensure that their decisions are "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

[10] The underlying decision is about whether Mr. Akhtar, who has lived the last 20 years in Canada, can continue to live here permanently. The interests at stake for Mr. Akhtar are significant (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 31 [*Baker*]). The Supreme Court of Canada explained that the impact of a decision on an individual is a relevant contextual consideration in evaluating the reasonableness of a decision-maker's reasons: "Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (*Vavilov* at para 133).

IV. Analysis

[11] Foreign nationals applying for permanent residence in Canada can ask the Minister to use their discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because of humanitarian and compassionate factors (s 25(1)). The Supreme Court of Canada in *Kanthasamy*, citing *Chirwa v Canada (Minister of Citizenship and*

Immigration) (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is “to offer equitable relief in circumstances that ‘would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another’” (at para 21).

[12] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case”, there is no limited set of factors that warrant relief (*Kanthisamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them” (*Kanthisamy* at para 25; *Baker* at paras 74-75).

[13] A key relevant factor raised by Mr. Akhtar in his H & C Application was his diagnosis with severe depression, severe generalized anxiety disorder and frequent suicidal ideation. Mr. Akhtar asked the Officer to consider the impact of his removal to Pakistan on his mental health. I find that there are numerous deficiencies in the Officer’s analysis of this issue, including the Officer’s evaluation of the medical evidence and their assessment of the availability of treatment in Pakistan.

A. *Assessment of the medical evidence*

[14] Mr. Akhtar included a number of medical reports and letters from medical professionals in his application, including from his long-term clinical psychologist and a psychiatrist. The Officer reviewed each document and noted various shortcomings of the evidence. Mr. Akhtar’s

counsel argued that the Officer's treatment of this medical evidence was an example of an approach that lost the forest for the trees. In my view, not only did the Officer fail to consider the complete picture apparent from the various medical reports, they also overzealously reviewed each for deficiencies. Though the Officer made lengthy comments on each medical report and letter, the Officer's overall conclusions and analysis of Mr. Akhtar's medical condition is unintelligible because it is unclear which parts, if any, of Mr. Akhtar's medical condition the Officer accepted.

[15] There are numerous examples of the Officer's overzealous search for deficiencies in the medical documentation. For example, the Officer noted several times that the psychiatrist had not provided a CV with his report and therefore there was no information "describing where he obtained his education and his specializations." The report indicated Mr. Akhtar was examined and the report was prepared by a practicing psychiatrist in Canada, with the doctor signing it as a MD, FRCPSC (Fellow of the Royal College of Physicians and Surgeons of Canada), and psychiatrist. It is unclear how further evidence of his credentials, such as where he was trained, would have impacted the Officer's review of the report, particularly given the assessment was not in relation to a specialized area of psychiatry but matters that psychiatrists are regularly called to assess — depression, anxiety and suicidal ideation.

[16] Another example of the Officer's overzealous review was their insistence on objective testing even when there was a great deal of support for the diagnosis reached in the record. The Officer criticized the report of Mr. Akhtar's clinical psychologist at a healthcare facility, who had been seeing him on at least a monthly basis for almost two years, because he did not include

any objective testing in his report to explain how he reached his diagnosis of Mr. Akhtar. The clinical psychologist also referred to two other consultations with psychologists and psychiatrists within the Mental Health and Addiction Program Mood Disorders Service at the same health facility, who came to the same diagnosis for Mr. Akhtar. The Officer did not comment on the consistent diagnosis of Mr. Akhtar over many years by different medical professionals, but instead noted that these other consultations, referenced by the clinical psychologist, had not been provided with the H & C Application. This is another example of the Officer taking a narrow view of the medical evidence, noting deficiencies without explaining how it affected their overall assessment, and ultimately failing to evaluate the evidence before them.

[17] There was also evidence in the record of objective testing having recently been done and reaching the same conclusion about Mr. Akhtar's diagnosis. The Officer criticized this testing noted in the psychiatrist's report because it "did not describe how he arrived at his findings through an accepted scientific method." Again, it is not clear how this further information about the scientific method used in the objective testing method the psychiatrist selected to test for depression and anxiety would have affected the Officer's review of the psychiatrist's report. Did the Officer doubt the consistent diagnosis Mr. Akhtar had received for a number of years by various healthcare professionals?

[18] The psychiatrist reviewed Mr. Akhtar's history of mental illness, his current symptoms, and conducted tests to measure anxiety and depression levels. He confirmed Mr. Akhtar's diagnosis: persistent major depressive disorder at a severe intensity and severe generalized anxiety disorder. Mr. Akhtar had been taking high dosage anti-depressant medication for

approximately a year and a half when the psychiatrist wrote their report. There was evidence in the file that he had been admitted to a hospital psychiatric ward in 2018 and had an urgent mobile crisis team come to his home after two suicide attempts. The Officer did not identify any valid basis to doubt this diagnosis.

[19] The Officer also claimed that there were contradictions in the psychiatrist's report where there appears to be none. The Officer noted that the psychiatrist had stated at the outset of the report that Mr. Akhtar was at "low risk of imminent harm" but later on stated he was at "moderately high risk of suicide." The second notation was made specifically in relation to the psychiatrist's assessment of the impact of deportation to Pakistan on Mr. Akhtar; the first was clearly about the present moment and only related to imminent harm. The Officer's conclusion that the psychiatrist's findings were contradictory is not supported by the evidence.

[20] The Officer also noted their concern that given the serious nature of the problems identified, it was inconsistent that the psychiatrist did not make follow-up appointments with Mr. Akhtar or arrange for other professionals to do so. This too is an unreasonable conclusion to draw based on the psychiatrist's report. Mr. Akhtar was already receiving care from multiple professionals, including a family doctor, a nephrologist and a clinical psychologist. The psychiatrist asked that Mr. Akhtar's family doctor modify his medication with an increase in dosage and with suggestions for changing the medication to alternative ones if that was not successful. The follow-up plan also noted that Mr. Akhtar should continue with the therapist he was seeing so that his conditions would not worsen. Mr. Akhtar was also provided resources on risk management, including information on the crisis line, and was advised to go to the

emergency department if he was in crisis. The Officer's conclusion about the lack of follow-up plan with other professionals is not supported by the evidence, and is another example of a fundamental misapprehension of the evidence.

[21] Overall, the medical reports provided consistently describe Mr. Akhtar as a person living with severe depression, severe anxiety and frequent suicidal ideation. This is consistent with Mr. Akhtar's medication, his visits to the hospital in moments of crisis, previous suicide attempts and his description of his symptoms. The Officer did not provide a valid basis to doubt these diagnoses.

[22] The Officer's conclusion on Mr. Akhtar's mental health is unintelligible. On the one hand, the Officer reviewed the medical evidence, noted numerous deficiencies and stated that little weight would be accorded to the evidence; on the other hand, the Officer seemed to accept that Mr. Akhtar had a mental illness. The Respondent's counsel argued that the Officer accepted that Mr. Akhtar had a mental illness but doubted the extent of it. I find that the Officer's conclusion was not stated as clearly as that; the Officer failed to articulate the aspects of the various reports that were accepted in relation to Mr. Akhtar's diagnosis. The Officer stated:

Information from the applicant's mental health professionals in Canada informs that the applicant should be considered at increased risk to act on his suicidal ideations if his legal status in Canada is not secured. I accept that it may be emotionally difficult for [the] applicant to return to Pakistan due to his desire to remain in Canada; however, while not perfect, the objective evidence demonstrates that mental health treatment is available in Pakistan for the applicant's diagnoses.

[23] The Officer's conclusion that it will be "emotionally difficult" for Mr. Akhtar to relocate to Pakistan minimizes Mr. Akhtar's health concerns and demonstrates a fundamental misapprehension of the evidence. The evidence before the Officer describes a man grappling with significant mental health issues over a number of years who, according to his long-term clinical psychologist and a psychiatrist, would likely experience serious decompensation in his mental health and is at risk of suicide if removed to Pakistan.

B. *Assessment of the availability of treatment in Pakistan*

[24] A further problem with the Officer's assessment of the mental health factor was their evaluation of the availability of treatment for mental illnesses in Pakistan. There are two concerns with the Officer's analysis on this point. First, the Officer provided no assessment or response to Mr. Akhtar's counsel's submissions and evidence filed in relation to the poor availability of treatment for those living with mental illnesses. There is no mention of this evidence or these submissions. This too renders the analysis unreasonable as the Officer failed to meaningfully grapple with a central issue raised and evidence which contradicted the Officer's findings (*Vavilov* at paras 125-128; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17; *Martinez Mendez v Canada (Minister of Citizenship and Immigration)*, 2022 FC 816 at para 30).

[25] Second, the Officer focused heavily on the premise that there were treatment options available in Pakistan to find that Mr. Akhtar's mental health would not pose him a hardship. As explained by the Supreme Court of Canada in *Kanthasamy*, the availability of treatment is not the only relevant factor to assess. Like in *Kanthasamy*, there was evidence that Mr. Akhtar's

mental health condition would worsen because of the deportation (*Kanthansamy* at para 48). The Respondent argued that Mr. Akhtar's case was different because unlike in *Kanthasamy*, the Officer here did not accept the diagnosis. As noted above, at the hearing, the Respondent's counsel acknowledged that it seemed that the Officer accepted that Mr. Akhtar had a mental illness but disputed its severity. As already discussed, I do not find the Officer's reasons to be transparent on that central point. I also have discussed that the Officer's identified alleged deficiencies and contradictions in the medical reports are not supported by the evidence and are indicative of an overzealous search for faults in the evidence.

[26] In any case, the Officer's criticism of the clinical psychologist's and psychiatrist's view that Mr. Akhtar's condition would worsen upon deportation was based on the Officer's view that these doctors had not evaluated the availability of treatment in Pakistan. In my view, this misses the point. Regardless of whether there could be ways to mitigate the decompensation in his mental health, the Officer did not acknowledge as a relevant factor that Mr. Akhtar's mental health would worsen because of the deportation itself. The Supreme Court of Canada has held that it is unreasonable not to take this factor into consideration and a failure to do so applies an unduly narrow approach to the assessment of the applicant's circumstances (*Kanthasamy* at paras 45, 48; *Natesan v Canada (Minister of Citizenship and Immigration)*, 2022 FC 540 at paras 39-40).

V. Conclusion

[27] There are "sufficiently serious shortcomings" in the Officer's analysis of Mr. Akhtar's mental health, "such that it cannot be said to exhibit the requisite degree of justification,

intelligibility and transparency” (*Vavilov* at para 100). I do not find that this central factor in Mr. Akhtar’s request for H & C relief was adequately assessed and therefore the decision cannot stand. As I indicated at the outset, I did not find it necessary to address the other grounds of review raised by Mr. Akhtar as I have found that the manner in which the Officer addressed his mental illness to be dispositive of the judicial review.

[28] The application for judicial review is granted and sent back to a different officer to redetermine. Neither party requested that a question of general importance be certified under s 74(d) of *IRPA* and I agree that none arises.

JUDGMENT IN IMM-6495-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The decision of the Senior Immigration Officer dated December 1, 2020 is set aside and the matter is remitted for redetermination by a different decision maker;
3. No question for general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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