

Federal Court



Cour fédérale

**Date: 20220630**

**Docket: IMM-4855-21**

**Citation: 2022 FC 975**

**Ottawa, Ontario, June 30, 2022**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**ZAHRA JAFARI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, a citizen of Afghanistan, seeks judicial review of the decision of a Senior Immigration Officer [Officer] dated June 17, 2021 refusing her application for permanent residence from within Canada based on humanitarian and compassionate [H&C] grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] In support of her H&C application, the Applicant provided submissions regarding her establishment in Canada, the best interests of her nieces and nephew, health issues and adverse country conditions. After reviewing the evidence and submissions, the Officer concluded that the Applicant had failed to demonstrate that her situation was sufficient to warrant the exemption on H&C considerations.

[3] The Applicant asserts that the Officer's decision was unreasonable on the basis that: (a) the Officer's reasons for decision relating to the temporary suspension of removal to Afghanistan are confused and contradictory, based largely on the speculative conclusion that the temporary suspension of removal will be lifted in the future; (b) the Officer was not alive and sensitive to the best interests of the Applicant's nieces and nephew in that the Officer failed to appreciate the significant role played by the Applicant in their lives, which was not akin to that of a daycare worker; (c) the Officer's assessment of the Applicant's establishment in Canada was unreasonable as: (i) in considering the Applicant's financial independence, the Officer failed to give any credit to the Applicant's sister and brother-in-law for supporting the Applicant since 2017 and instead gave this factor no weight because they had not submitted their own financial statements when it was the Applicant who was being assessed; and (ii) the Officer gave no weight to the Applicant's volunteer activities at the mosque because the Officer found the letter from her cousin to be "self-serving" and there was no letter from a representative of the mosque or other third party to attest to her community involvement.

[4] 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 H&C considerations. An H&C determination under section 25(1) of the *IRPA* is a global one, where all the relevant considerations are to be weighed cumulatively in order to determine if relief is justified in the circumstances. Relief is considered justified if the circumstances would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another [see *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 13, 28; *Caleb v Canada (Citizenship and Immigration)*, 2020 FC 1018 at para 10].

[5] The granting of an exemption for H&C reasons is deemed to be exceptional and highly discretionary and therefore “deserving of considerable deference by the Court” [see *Qureshi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 335 at para 30]. There is no “rigid formula” that determines the outcome [see *Sivalingam v Canada (Citizenship and Immigration)*, 2017 FC 1185 at para 7].

[6] The applicable standard of review of an H&C decision is reasonableness [see *Kanhasamy, supra* at para 44]. In conducting a reasonableness review, the Court’s focus is on “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 83]. The Court must ask itself whether the decision bears the hallmarks of reasonableness – namely, justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision [see *Vavilov, supra* at para 99]. The burden is on the party challenging the decision to show that it is unreasonable and the Court “must

be satisfied that any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable” [see *Vavilov, supra* at para 100].

[7] While a number of issues were raised on this application, I find that the Officer’s errors in the assessment of the Applicant’s community involvement in Canada, which was considered as a component of the establishment factor, render the Officer’s decision unreasonable.

[8] On the issue of community involvement, the Officer’s reasons provide:

The applicant states that she goes to the mosque with her family and that she helps out in the mosque by greeting people entering and serving them tea. She also teaches the children Dari and recites to the children from the Koran. In the letter of support from the applicant’s cousin, Masoumeh Hashemi, she indicates the applicant attends the weekly Holy Quran recitals at the Mosque named Al-Faftima Islamic Centre. She also states the applicant helps clean and decorate the mosque based on the programs taking place. The applicant has not provided sufficient evidence to demonstrate strong ties to her community. While the letter of support from Masoumeh has been noted, it is granted little weight as it is self-serving coming from a family member. The applicant has not provided a letter from the mosque outlining what services she assisted them with and how regular her assistance was needed, the frequency in which she attends the mosque, or whether she’s a volunteer.

[9] I find that the Officer’s reasons exhibit a failure to properly engage with the evidence before them regarding the Applicant’s involvement at the mosque. Specifically:

- A. The Officer’s reasons begin by noting that the Applicant “states” that she undertakes a variety of activities at the mosque. However, the Applicant provided a sworn affidavit attesting to her activities at the mosque, not merely a letter or other unsworn statement. The Officer’s reasons leave me to question whether the Officer properly appreciated the nature of the evidence before them and the fact that it

benefits from the presumption of truth [see *Dirieh v Canada (Citizenship and Immigration)*, 2018 FC 939 at para 28].

- B. The Officer found that the letter from the Applicant's cousin attesting to her involvement at the mosque should be given little weight because "it is self-serving coming from a family member", noting that the Applicant did not provide a letter from a representative of the mosque itself. While the Officer may have preferred to have received a letter from a representative of the mosque, I find that it was unreasonable for the Officer to accord little weight to the cousin's letter solely because it came from a relative [see *Ugalde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 458 at para 28; *Haq v Canada (Citizenship and Immigration)*, 2015 FC 380 at para 11].
- C. The Officer found that the Applicant had failed to provide sufficient evidence to demonstrate strong ties to her community. However, in making this determination, there is no mention in the Officer's reasons of the additional evidence supporting the Applicant's involvement at the mosque – namely, the sworn affidavits of the Applicant's sister and brother-in-law and a letter from a second cousin. The Officer's failure to refer to this additional evidence leads the Court to question whether this evidence was properly considered by the Officer.

[10] Further, in conducting an H&C analysis, an officer must determine whether to assign a positive, negative or neutral weight to each factor raised by an applicant. Where a positive or negative weight is assigned, the officer must also determine the amount of weight to assign, often expressed as "significant", "some" or "little" weight. The officer must then conduct a global

assessment, where all of the relevant considerations are to be weighed cumulatively in order to determine if relief is justified in the circumstances. However, in this case, the Officer's reasons are silent as to what weight, if any, was ultimately assigned to the Applicant's community involvement in the assessment of her establishment in Canada, which prevents the Court from knowing whether a proper global assessment was conducted.

[11] Having found that the aforementioned errors render the Officer's decision unreasonable, the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination.

[12] Neither party proposed a question for certification and I agree that none arises.

**JUDGMENT in IMM-4855-21**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The decision of the Senior Immigration Officer dated June 17, 2021 refusing the Applicants’ application for permanent residence based on humanitarian and compassionate grounds is set aside and the matter is remitted to a different officer for redetermination.
3. The parties proposed no question for certification and none arises.

“Mandy Ayles”  
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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4855-21

**STYLE OF CAUSE:** ZAHRA JAFARI v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 30, 2022

**JUDGMENT AND REASONS:** AYLEN J.

**DATED:** JUNE 30, 2022

**APPEARANCES:**

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