

Federal Court



Cour fédérale

**Date: 20220725**

**Docket: IMM-234-21**

**Citation: 2022 FC 1099**

**Ottawa, Ontario, July 25, 2022**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ABDULLAH ABDULKARIM A ALZAHER**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The officer who rejected the Applicant’s application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds considered his establishment and hardship.

[2] When assessing establishment, the officer gave “some small weight” to his education and English language skills, “some positive weight” to his relationships in Canada, “some small

weight” to his employment history, “small positive weight” to his savings, and “significant negative weight against establishment” for the Applicant’s “disregard for Canadian immigration rules and regulations” [emphasis added]. The officer concluded that “[t]he applicant has presented an insufficient level of establishment significant enough to overcome the negative aspects associated with this application.”

[3] When assessing hardship, the officer accepted that the Applicant “could face some small hardship on his return to Saudi Arabia” [emphasis added]. The officer concluded that:

the conditions in the country of return do not present an exceptional difficulty given the:

- Applicant’s level of education and ability to support himself without status; [and]
- Significant presence of family in Saudi Arabia.

[4] I agree with the Respondent that it is the officer’s job to determine the appropriate weight to be accorded to the relevant factors. It is not the role of this Court to re-examine the weight given by the officer to the relevant factors (see *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 11; *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*] at para 37).

[5] However, this does not mean that an officer has free rein to assign whatever weight the officer wishes. As the Supreme Court of Canada stated in *Suresh* at para 37, the officer is “obliged to give proper weight to the relevant factors and none other.” [emphasis added] At paragraph 39, the Supreme Court of Canada affirmed that “[t]he court may not reweigh the factors considered by the Minister, but may intervene if the decision is not supported by the

evidence or fails to consider the appropriate factors.” In that regard, the Supreme Court of Canada provides instructions to reviewing courts in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 99,

A reviewing court must develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks 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.

[emphasis added, citations omitted].

[6] In the case at bar, I find that the officer’s decision on both establishment and hardship are not justified in relation to the facts before the officer and the legal constraints imposed by this Court in previous decisions.

#### *Establishment*

[7] The only negative consideration assessed by the officer was the Applicant’s “disregard for Canadian immigration rules and regulations.” That disregard is described by the officer to be that the Applicant “did not depart from Canada after the expiry of his visa and has remained in Canada for approximately six months without status.”

[8] What are the facts?

[9] The Applicant came to Canada on August 23, 2011, on a temporary resident visa. After obtaining a study permit in 2014, he completed a degree at Cape Breton University. The

Applicant was then issued a work permit and worked as an Assistant Manager at Topper's Pizza. The Applicant's work permit was set to expire in May 2019. He applied for an extension, which was rejected on July 23, 2019. As a result, he lost his status in Canada and stopped working. The Applicant applied for permanent residence on H&C grounds on November 4, 2019. He subsequently applied for another work permit, which was rejected.

[10] The Applicant was only out of status for 3.5 months. Subsection 183(5) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 extends temporary resident status to persons who have applied for an extension. Paragraph 186(u) allows a temporary resident with a work permit to continue working while their application for an extension is being processed. As such, the Applicant's legal status in Canada ended when his work permit extension was rejected. This is confirmed by the letter rejecting his extension, which states, "your temporary resident status expires on July 23, 2019."

[11] The facts are that the Applicant fully complied with Canadian immigration law for 95 months (August 23, 2011, to July 23, 2019) and was without status for 3.5 months prior to filing the H&C application (July 23, 2019, to November 4, 2019). When the Applicant's work permit expired, he stopped working, as is required by the law. His minor breach attracted "significant negative weight against establishment."

[12] This Court has held that a decision attaching significant negative consideration to relatively minor breaches of Canadian immigration law may render the decision unreasonable (see e.g. *Fidel Baeza v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 362 and

*Trach v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 282, both cases involving applicants who worked in Canada for brief periods without a work permit).

[13] While the Applicant could have made an H&C application before his work permit expired, it was reasonable for him to expect or hope that it would be renewed, rendering such an application unnecessary. The Court notes that he appears to have moved promptly and with haste to gather the required information for the application. It appears to have been filed as quickly as possible in the circumstances.

[14] Accordingly, I find the officer's analysis of establishment and, in particular, the significant negative weight accorded to the minor breach of status, to be unjustified and unreasonable.

#### *Hardship*

[15] The Applicant submitted in his H&C application that he would face hardship returning to Saudi Arabia due to being a Shia Muslim. With his written submissions, he included two country condition reports: one from Amnesty International and one from Freedom House.

[16] The officer references only the report from Amnesty International (which the officer mistakenly describes as being from Human Rights Watch). The officer states that it writes about the issues that Shia Muslims face in a "general manner and provides few specific details." I agree. However, the other report from Freedom House provides the detail the officer seeks. It is not referenced in the decision.

[17] The officer writes about the general nature of the information provided as follows:

The documents provided do not corroborate the applicant's claim of employment discrimination towards people from Alawamiyaa City, nor do the documents support his statement that he will be unable to participate in his community in Saudi Arabia or dress the same way he does here in Canada. I accept that the applicant would face some discrimination on his return to Saudi Arabia, yet I am unable to give that discrimination any more than some small weight towards hardship on account of a lack of information provided by the applicant.

[18] This analysis is unreasonable when one contrasts it with the following specific information provided in the documents, as summarized by the Applicant in his memorandum:

- a. “the religious police enforce rules governing gender segregation and personal attire”
- b. “the authorities severely restricted the rights to freedom of expression, association and assembly”
- c. “discrimination against the Shi a minority remained entrenched”
- d. the authorities “harassed, arrested and prosecuted government critics, academics, clerics, members of the Shia minority and human rights defenders ...”
- e. “Shi’a Muslims continued to face discrimination because of their faith, limiting their right to express religious beliefs and access justice, as well as the right to work in a number of public sector professions and access state services”
- f. “Saudi Arabia’s absolute monarchy restricts almost all political rights and civil liberties”
- g. “Women and religious minorities face extensive discrimination in law and in practice”
- h. “the government has long sought to suppress Shiite religious and cultural identity...”
- i. “systemic discrimination” against the Shiite community

- j. “the score declined from 0 to -1 due to the physical destruction of a Shiite neighbourhood as part of a broader government effort to suppress dissent and unrest among the marginalized Shiite minority”
- k. “Shiites, who make up 10 to 15 percent of the population, face socioeconomic disadvantages, discrimination in employment and underrepresentation in government positions and the security forces”
- l. “the religious police enforce rules governing gender segregation and personal attire”

[19] Lastly, the officer states that “[t]he applicant has also provided little information on his experiences with discrimination in Saudi Arabia, or those of his family members who are present there” without explaining how this is relevant in the face of country condition documents describing the widespread discrimination of persons like the Applicant.

[20] For these reasons, the decision under review lacks justification and is unreasonable.

[21] No question was posed to be certified.

**JUDGMENT in IMM-234-21**

**THIS COURT'S JUDGMENT is that** the style of cause is amended with immediate effect to name as Respondent, Minister of Citizenship and Immigration, this application is allowed, the decision under review is set aside, the Applicant's humanitarian and compassionate application is to be determined by a different officer, and no question is certified.

"Russel W. Zinn"

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Judge



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

**DOCKET:** IMM-234-21

**STYLE OF CAUSE:** ABDULLAH ABDULKARIM A ALZAHER v  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 7, 2022

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** JULY 25, 2022

**APPEARANCES:**

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