

Federal Court



Cour fédérale

**Date: 20230217**

**Docket: IMM-2471-20**

**Citation: 2023 FC 240**

**Ottawa, Ontario, February 17, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**SAUNDRA EBANKS**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant seeks judicial review of a decision made on April 28, 2020 by a Senior Immigration Officer rejecting her Humanitarian and Compassionate (H&C) application for permanent residence from within Canada [the Decision].

[2] The Decision was a redetermination of a second H&C decision that was sent back on consent due to possible ineffectiveness of counsel.

[3] For the reasons that follow, this application is dismissed because the Applicant has come to Court with unclean hands.

## II. **Background Facts**

[4] At the time of her first H&C application, the Applicant was a 66-year-old Jamaican citizen with an adult daughter and two grandchildren in Canada.

[5] The Applicant entered Canada on April 27, 2009 using a Temporary Resident Visa. She has resided in Canada ever since her arrival in 2009.

[6] On September 30, 2010, the Applicant's status expired. She requested an extension, which was rejected on December 3, 2010.

[7] The Applicant then filed a Refugee claim on February 29, 2012.

[8] The Applicant submitted her first H&C application on June 29, 2012.

[9] It was rejected on August 16, 2012.

[10] On March 1, 2013, the Applicant's refugee application was rejected.

[11] In February 2014, the Applicant filed a stay motion, which was dismissed.

[12] On February 27, 2014, the Applicant failed to appear for removal.

[13] On November 27, 2017, the Applicant's second H&C application was submitted. It was refused on September 30, 2019 then that decision was set aside on consent on February 5, 2020.

[14] As of the date of the hearing of this application, a warrant for the Applicant's arrest is still outstanding.

### III. Issues

[15] The Respondent submits this Application should be dismissed for two reasons.

[16] First, because the Applicant failed to report for her removal on February 27, 2014 and did not present herself to the Canadian Border Services Agency. As a result, the Applicant has come to this Court with unclean hands.

[17] Second, the Respondent notes that the Applicant has not provided a personal affidavit in support of this application, which means her disregard for Canadian immigration laws and this Court's authority are left unexplained.

[18] I also note in her submissions to the H&C Officer that the Applicant explained that she did not report for removal because of her fear of her in-laws. However, as this information is unsworn, the Court cannot accept it as true.

[19] As I am dismissing this application due to unclean hands, there is no need for a standard of review analysis of the Decision.

#### IV. **Lack of a personal affidavit**

[20] The Court is entitled to dismiss the application or give the supporting affidavit (sworn by an employee of the Applicant's counsel) little weight: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, 10(2) and 12(1) [*Federal Courts Rules*].

[21] In *Debbaneh v Canada (Citizenship and Immigration)*, 2019 FC 865 [*Debbaneh*], when dismissing the application due to the lack of a personal affidavit, Justice Shore, at paragraph 9, cited and agreed with the opinion of Mr. Justice Martineau in paragraph 5 of *Fatima v Canada (Citizenship and Immigration)*, 2017 FC 1086:

[5] First, no affidavit establishing the facts reported in support of her application for judicial review was filed by the applicant in accordance with subsection 10(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. The affidavit dated July 27, 2017, from a lawyer who works at the former law firm that represented the applicant is insufficient. Since the application for leave was granted by the Court on September 14, 2017, no motion has been brought forth by the applicant or her former counsel to replace the lawyer's defective affidavit with an affidavit by the applicant. This is a fatal flaw (see for example *Metodieva v Canada (Minister of Employment and Immigration)* (1991), 132 NR 38, 28 ACWS (3d) 326 (FCA); *Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at

paras 4–10; and case law cited in those decisions). The Court therefore has no other alternative than to summarily dismiss this application for judicial review.

[22] A review of the supporting affidavit, sworn by a legal assistant, clarifies the reason behind the lack of a personal affidavit. As it does not make any claims that were outside the assistant's personal knowledge, I do not find the absence of a personal affidavit is fatal in this instance.

#### V. **Unclean Hands**

[23] In *Samaroo v Canada (Citizenship and Immigration)*, 2011 FC 1460 [*Samaroo*], Justice Zinn, after noting that the applicant had abused the immigration process on more than one occasion, dismissed an application for judicial review where the applicant failed to comply with a removal order.

[24] In *Samaroo*, the warrant for the applicant's arrest had been issued less than a year before the Court's decision. In *Debbaneh*, the arrest warrant had been issued less than two years before the Court's decision. Here, by contrast, the warrant for the Applicant's arrest has remained unexecuted for eight years. In other words, the Applicant has spent a substantial amount of time flouting Canadian law.

[25] The Applicant claims that she did not report for removal because of a legitimate fear of her in-laws. The RPD considered the Applicant's claims about her in-laws in 2013, finding them contradictory and ultimately not credible.

[26] As the Canadian authorities have already considered and rejected the Applicant's argument that her in-laws present a risk to her, it does not constitute a sound basis for the Applicant's decision not to report for removal.

[27] I find that the Applicant's lack of a legitimate explanation for her failure to report for removal and her failure to present herself to the CBSA for nearly a decade establishes a clear disregard for Canadian immigration law and immigration authorities. Her actions are an example of "unclean hands".

#### VI. **The Applicant's Reply**

[28] It is unclear from the Applicant's Reply whether she is making a "bootstrap" argument against the Respondent in relation to the personal affidavit argument or to the unclean hands argument, or both.

[29] In any event, contrary to the Applicant's argument, the Respondent's "unclean hands" and "absence of personal affidavit" arguments do not amount to attempts to "bootstrap" the Officer's decision.

[30] The Respondent is not urging the Court to supplement or bolster a deficient decision with new arguments. Instead, the "unclean hands" and "affidavit arguments" take the position that the Court should not undertake a judicial review of the Decision at all because of the Applicant's misconduct and failure to comply with the *Federal Courts Rules*, respectively. These claims do not represent attempts to "prop up" an unreasonable decision.

[31] The Applicant's alternative position that the Court should use its discretion to hear the judicial review is unconvincing.

[32] In *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14 at paragraph 10 the Federal Court of Appeal instructs that, where an applicant comes to the Court with unclean hands, the Court should consider various factors to determine whether the application should be heard regardless:

[33] The factors to be taken into account in this exercise include: the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in question, the need to deter others from similar conduct, the nature of the alleged administrative unlawfulness and the apparent strength of the case, the importance of the individual rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand.

[34] As stated above, the Applicant's misconduct is serious because of her failure to leave Canada at the end of her authorized period of stay, her failure to report for removal after this Court's rejection of her stay motion and the length of time she has spent avoiding Canadian authorities after the issuance of an arrest warrant.

[35] The fact that the Applicant submitted her H&C application after failing to report for removal establishes a clear connection between her misconduct and the present application for judicial review. The need to deter others from engaging in similar conduct is a key consideration here.

VII. **Conclusion**

[36] The Applicant's Record and the Certified Tribunal Record are sufficiently complete to permit the Court to examine the errors asserted by the Applicant on the face of the record: *Ling v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1198 at paras 12-14.

[37] Having done such an examination, I find the apparent strength of the Applicant's case is dubious.

[38] The individual rights at issue and the likely impact on the Applicant are important considerations, as noted by the Applicant. However, in light of the very serious illegal activities carried out by the Applicant as noted above, they are not sufficient to overcome her unclean hands.

[39] Accordingly, this application is dismissed.

[40] No question was posed for certification.



**JUDGMENT in IMM-2471-20**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. There is no question for certification.

"E. Susan Elliott"

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Judge

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

**DOCKET:** IMM-2471-20

**STYLE OF CAUSE:** SAUNDRA EBANKS v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 3, 2022

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** FEBRUARY 17, 2023

**APPEARANCES:**

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