

Federal Court



Cour fédérale

**Date: 20240807**

**Docket: IMM-488-23**

**Citation: 2024 FC 1236**

**Toronto, Ontario, August 7, 2024**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**LINTON SMITH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant is a citizen of Jamaica, who has lived and worked in Canada for many years. He seeks judicial review of a decision refusing his Pre-Removal Risk Assessment [PRRA] application. The PRRA officer [the Officer] determined that the risk the Applicant faced in Jamaica, as an older, disabled returnee, did not warrant refugee protection in Canada under s.96 and s.97 of the *Immigration and Refugee Protection Act* [IRPA].

[2] While I sympathize with the Applicant's situation, I believe this application should be dismissed. It was reasonable for the Officer to conclude that the Applicant would not face mistreatment upon return to Jamaica amounting to either a) a serious possibility of persecution, or b) a personalized risk of torture, risk to life, or risk of cruel and unusual punishment. It was also reasonable for the Officer to conclude that the Applicant had failed to rebut the presumption of state protection.

## I. BACKGROUND

### A. *Facts*

[3] The Applicant, Linton Smith, is a 55-year-old Jamaican national who has spent the better part of the last 25 years as a Temporary Foreign Worker in Canada. Mr. Smith first came to Canada in 1996 on a work permit and worked for six weeks. He continued in this pattern of temporary work, until he last entered Canada in April 2017. The Applicant filed a first application for Permanent Residence based on Humanitarian and Compassionate Considerations [H&C] in 2017, and alleges he was under the impression that he retained his immigration status while the H&C application was being considered. However, the Applicant's status expired in 2018.

[4] In May 2019, the Applicant suffered a stroke that left him with physical impairments. Immediately after his stroke and hospitalization, he was fired from his job. This also resulted in his removal from the bunkhouse where he was living, as part of his employment. His H&C application was subsequently refused.

[5] Mr. Smith testifies that after his stroke and his termination from work, his medical insurance was cancelled and he was left without healthcare. He was unable to follow the recommended rehabilitation treatments and as a result, he has impaired motor functions, particularly in the use of his hands, and he has impaired speech. He has no spouse or children and no immediate family in Jamaica, other than siblings.

[6] The Applicant made a second H&C application, which was also refused in February 2021.

[7] Mr. Smith was arrested by CBSA in December 2021, while attempting to report a crime to the OPP branch in Leamington. He was offered a PRRA in May 2022.

[8] In September 2022, the Applicant submitted his third H&C application, which has yet to be determined. The Applicant received a Direction to Report for his removal in January 2023; he filed a motion to stay his removal in February 2023, which was granted.

[9] In the Applicant's PRRA application, he alleged that he faces a personalized risk of harm in Jamaica due to his profile as an older person with a disability, seeking to rejoin the workforce, and as a returnee from overseas after several years living in Canada.

B. *Negative PRRA Decision*

[10] The Applicant's PRRA was refused in a letter dated January 4, 2023. The Officer determined that while country conditions in Jamaica were not perfect, these conditions were general and applied to all residents, not to the Applicant particularly. The Officer concluded that

there was insufficient evidence to conclude that the Applicant would be singled out for treatment substantially different from other residents, based on his personal circumstances.

[11] The Officer cited extensively from the country conditions evidence, finding that although individuals with disabilities face societal discrimination, the government of Jamaica is taking serious steps to address it. The Officer also found that the discrimination against persons with disabilities does not rise to the level contemplated by s.96 and s.97 of the IRPA.

[12] The Officer additionally considered country conditions evidence, and determined that the Applicant would likely not be targeted due to his perceived wealth from overseas employment. They found that documentary evidence did not suggest that returnees from overseas are more likely to become victims of crime and violence than the general population of Jamaica.

[13] The Officer finally found that the Applicant had not rebutted the presumption of state protection. While acknowledging that gang-related violence and corruption remain problems in Jamaica, it is an electoral democracy with law enforcement and a functioning judiciary. Serious efforts are being made to reduce corruption in the police force and adequate state protection would be available to the Applicant. The Applicant did not adduce sufficient evidence to suggest that there is a broader state policy not to extend state protection to his ‘target group.’

[14] As a result of this analysis, the Officer concluded that there is a) no serious possibility of persecution for any reason should the Applicant be returned to Jamaica; and b) insufficient evidence to show, on a balance of probabilities, that the Applicant would face a personalized, probable risk to his life, a risk of torture, or a risk of cruel and unusual punishment in Jamaica.

## II. ISSUES

[15] The Applicant raises two issues, both of which, he argues, undermine the reasonableness of the Officer's decision. These are:

1. Did the Officer fail to apply the test of operational adequacy in assessing state protection?
2. Did the Officer misconstrue the individualized risk profile of the Applicant as a person with his disabilities?

## III. STANDARD OF REVIEW

[16] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

[17] Reasonable decisions are those that are based on an “internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain a decision-maker” (*Vavilov* at para 85). Judicial review of administrative action remains focused on three primary considerations in the decision-making process: intelligibility, transparency, and justification – with a focus on both the decision and the reasons for it: *Vavilov* at para 15. Moreover, *Vavilov* reminds us that these considerations must be considered not in the abstract, but in respect of the individuals who are subject to the administrative decision: *Vavilov* at para 95.

[18] The stakes associated with PRRA proceedings are profound, as they may directly implicate the life, liberty, and security of those seeking protection. *Vavilov* is also clear (at para 133) that, in this context, the reasons provided in support of a decision – the justification for that

decision – must reflect those stakes. This is the principle of responsive justification introduced in *Vavilov* (at para 133).

#### IV. ANALYSIS

[19] The Officer's Decision was reasonable. The Officer considered the documentary record and reasonably found that the Applicant had not rebutted the presumption of state protection. It was also reasonable for the Officer to conclude, based on the documentary record, that the discrimination the Applicant might face as an older person with disabilities, returning to Jamaica from overseas, did not constitute personalized risk under s.96 and s.97 of the IRPA.

##### A. *The Officer's assessment of state protection was reasonable*

[20] The Applicant submits that the Officer did not apply the correct test for assessing state protection because the decision focuses primarily on Jamaican efforts to improve protection, while the test requires consideration of the operational adequacy of such protection.

[21] The Applicant further submits that, in relying on initiatives by the Jamaican government to reduce discrimination and violence against people with disabilities, and on efforts to reduce police corruption, the Officer applied the wrong legal test, which constitutes a reviewable error. As one example, the Applicant submits that the *Disabilities Act* of 2022 and the Disabilities Rights Tribunal, relied upon by the Officer, have not led to substantive results and thus do not properly demonstrate operational adequacy.

[22] I do not agree with the Applicant that the Officer's analysis was limited to efforts, or that the Officer erred in failing to apply the operational adequacy test.

[23] It is true that the Officer discussed the efforts of the Jamaican government to improve rights protection for people with disabilities. But this, in itself, does not establish an error. Efforts are generally a precursor to effective operational change. To this extent, while not in itself sufficient, it is often relevant for a decision-maker to discuss state efforts. The Officer's analysis of state efforts does not, on its own, indicate a failure to properly apply the operational adequacy standard, and I find that the Officer did go further in their analysis by also considering the effect of those efforts.

[24] Further, it was reasonable for the Officer to determine that the Applicant had not provided sufficient documentary evidence to rebut the presumption of state protection. For example, the Officer cited documentary evidence establishing that Jamaica has made "significant strides" in implementing several policies to promote the rights of persons with disabilities, including the *Disabilities Act* of February 2022. The *Act* incorporated codes of practices addressing education and training; employment, health care and health facilities; and brought into existence the Disabilities Rights Tribunal to hear and settle breaches of the Act.

[25] The Applicant argues that the same documentary evidence suggests that the Disabilities Rights Tribunal is not yet active, calling into question whether the Officer assessed the application through the prism of operational adequacy. I disagree with this argument for two reasons: first, the argument related to the Tribunal was put to the PRRA officer, who reasonably rejected it, noting that the reason it was not active was simply that it had not yet received any

complaints. The Applicant may disagree with this finding, but it was reasonably open to the Officer, based on the documentary record.

[26] Second, the Applicant's argument essentially seeks to reverse the onus of the state protection test: *Camargo v. Canada (Citizenship and Immigration)*, 2015 FC 1044; *Magonza v. Canada (Citizenship and Immigration)*, 2019 FC 14; *Rstic v. Canada (Citizenship and Immigration)*, 2022 FC 249; *Galamb v. Canada (Citizenship and Immigration)*, 2016 FC 1230; *Cervenakova v. Canada (Citizenship and Immigration)*, 2021 FC 477; *Majlat v. Canada (Citizenship and Immigration)*, 2014 FC 965.

[27] The Applicant bore the burden of establishing that the Jamaican state efforts to protect persons with disabilities would not be effective in his case. I find that the Officer reasonably concluded that the Applicant had not discharged this burden. There was a rational chain of analysis connecting the evidence to the Officer's conclusions and the Officer's reasons were intelligible, transparent and adequately justified.

[28] Third, when read globally and in context, it is clear that the Officer properly considered the issue of operational adequacy, noting both the improvements and shortcomings in the Jamaican disability rights regime. This Court has held that acknowledging the shortcomings in a government's state protection efforts may indicate that an officer considered and applied the operational adequacy test through a balanced assessment of the evidence: see *Go v. Canada (Citizenship and Immigration)*, 2016 FC 1021 at para 13; and *De Lourdes Gonzalez Duran v. Canada (Citizenship and Immigration)*, 2011 FC 855 at para 17.



[29] This was the case here. The Officer noted that Jamaica has mechanisms in place to investigate and address incidents of discrimination against persons with disabilities; and that Jamaican law prohibits discrimination on the basis of disability, but also acknowledged that the law has not been *fully* implemented and does not mandate accessibility standards. On the whole, I find the Officer's assessment of the evidentiary record to be balanced and reasonable.

B. *The Officer's risk analysis was reasonable*

[30] The Applicant submits that the Officer made another reviewable error in failing to properly consider his risk profile as an older person with disabilities and a returnee to Jamaica from overseas.

[31] The Respondent submits that the Officer considered the Applicant's full risk profile and reasonably determined that his personal circumstances did not subject him to a risk substantially different from the general Jamaican population. The Respondent further argues that the Officer reasonably concluded that while the Applicant might experience some discrimination in Jamaica, he had not established that it would rise to the level of treatment as described in sections 96 and 97 of the IRPA. The Respondent submits that the Applicant's arguments simply amount to asking this Court to reweigh the evidence. I agree.

[32] It is well established that Officers are generally required to assess risk cumulatively, and intersectionally, on the basis of an Applicant's whole profile: see for example *Virk v. Canada (Citizenship and Immigration)*, 2024 FC 399 at paras 36-39; *Rodriguez Ramos v. Canada (Citizenship and Immigration)*, 2022 FC 41 at para 21; *Kundukhashvili v. Canada (Citizenship*

*and Immigration*), 2022 FC 1081 at para 50-52; *Magoya v. Canada (Citizenship and Immigration)*, 2023 FC 516 at para 37; *Go v. Canada (Citizenship and Immigration)*, 2016 FC 1021 at paras 22-23; *Djubok v. Canada (Citizenship and Immigration)*, 2014 FC 497 at paras 18-25.

[33] In this case, I find that the Officer appreciated the key aspects of the Applicant's profile, and undertook the risk assessment on this basis. The Officer considered the Applicant's risk as a person with disabilities. The Officer additionally assessed the Applicant's risk as someone who would return to Jamaica after a prolonged period of absence from the country. These were the principal bases on which the Applicant asserted a risk of harm. When read globally, I find that the Officer adequately considered these risk factors, and reasonably concluded that the Applicant had adduced insufficient evidence to demonstrate that his personal circumstances would attract the kind of mistreatment contemplated by sections 96 and 97 of the IRPA.

[34] It is trite law that courts are to exhibit deference in reviewing a decision-maker's core findings of fact. Here, the Officer adequately evaluated and referred to the country conditions evidence in determining that the Applicant would not face the kinds of harm, upon return to Jamaica that attract protection under sections 96 or 97 of the IRPA.

## V. CONCLUSIONS

[35] For the above reasons, I dismiss this application for judicial review. While I have the utmost sympathy for the Applicant's situation, I have concluded that the underlying decision in this matter contains no reviewable errors that warrant the intervention of this Court. This does not detract from the compelling circumstances of Mr. Smith's case, which I trust will be

considered in his pending application for permanent residence in Canada on humanitarian and compassionate grounds.

[36] The parties did not propose a question for certification in this matter, and I agree that none arises.

**JUDGMENT in IMM-488-23**

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

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Angus G. Grant"

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Judge

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

**DOCKET:** IMM-488-23

**STYLE OF CAUSE:** LINTON SMITH v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 4, 2024

**JUDGMENT AND REASONS:** GRANT J.

**DATED:** AUGUST 7, 2024

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