Federal Court Cour fédérale

Date: 20240821

Dockets: IMM-10882-22
IMM-10883-22
IMM-10884-22
IMM-10565-22
IMM-10518-22

Citation: 2024 FC 1300

Ottawa, Ontario, August 21, 2024

PRESENT: The Honourable Mr. Justice Ahmed

Dockets: IMM-10882-22
IMM-10883-22
IMM-10884-22

BETWEEN:

PJETAR DEDVUKAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-10565-22

AND BETWEEN:

LULA DEDVUKAJ
PALO DEDVUKAJ
BESA DEDVUKAJ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-10518-22

AND BETWEEN:

ZEF DEDVUKAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This matter is complex. Crossing countries and continents, it spans decades of judicial and administrative proceedings involving jurisdictions and governmental actors both domestic and international. It bears violence, tragedy, and crime, to be sure, but also endurance. Yet for all its distinctiveness, it reveals a story common to the migrant experience: The cycle of flight, journey, separation, and reunification. This matter is, above all else, one involving a family.

[2] The Applicants seek judicial review of five decisions of a senior decision maker (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), refusing three humanitarian and compassionate ("H&C") applications, a pre-removal risk assessment ("PRRA") application (the "PRRA Decision"), and a criminal rehabilitation application (the "Rehabilitation Decision") under the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). These matters have been consolidated by this Court to be heard in a single application.

[3] The Applicants maintain that the Officer committed several errors in the decisions that warrant this Court's intervention, requesting that the Court quash the Officer's decisions and grant judicial review for the five decisions.

[4] The Court accepts this request in part. For the following reasons, I find that the Rehabilitation Decision and the PRRA Decision are reasonable. I find that the H&C decisions are not. These H&C decisions are quashed and remitted to a different officer for redetermination.

II. **Facts**

A. *The Applicants*

[5] The Applicants are a family of six.

[6] Mr. Pjetar Dedvukaj (the "Principal Applicant"), is a 56-year-old citizen of Montenegro. Ms. Lula Dedvukaj (the "Associate Applicant"), is a 46-year-old citizen of the United States of America. She and the Principal Applicant were married in 1994. The eldest son, Mr. Zef Dedvukaj ("Zef"), is 29 years old. The eldest daughter, Ms. Suzanna Dedvukaj, is 26 years old. The youngest children, Palo and Besa, are 19 years old, and 10 years old, respectively. The children are all citizens of the United States. The Applicants do not have permanent resident status in Canada.

B. *The Principal Applicant*

[7] The Principal Applicant stated that he grew up in Malesia as an Albanian Catholic. He stated that in 1984, he arrived in the United States. He claimed refugee protection, but withdrew this claim upon submitting a sponsorship application with the Associate Applicant.

[8] On December 13, 1994, a man was shot inside a gas station convenience store in Detroit (the "December 1994 affair"). The Principal Applicant became the prime suspect, allegedly having been present at the convenience store when the victim was shot. He left the United States and returned to what was at the time Serbia/Montenegro.

[9] In 1996, the Principal Applicant travelled to Australia using his brother's passport. In September 2000, the Principal Applicant was apprehended in Australia. In 2001, he was extradited to the United States.

[10] On September 14, 2001, the Principal Applicant was convicted and sentenced in a jury trial to two years' imprisonment in Michigan for the December 1994 affair. He was acquitted of first-degree murder, but received a felony firearm conviction (the "felony firearm conviction").

[11] On March 5, 2005, the Principal Applicant was deported from the United States to Montenegro. The Associate Applicant and children remained in the United States.

[12] The Principal Applicant stated that, owing to his time in the United States, he began speaking about "freedom, equality and respect for human rights" to his community members once back in Montenegro.

[13] On September 9, 2006, the Principal Applicant and a number of other individuals were arrested in Montenegro for being "implicated in unconstitutional acts." The case came to be known as "The Eagle's Flight case."

[14] The Principal Applicant stated that on the eve of September 9, 2006, his home was raided by masked officers carrying weapons. The Principal Applicant stated that the home was ransacked, and that the Principal Applicant, as well as his cousin and two brothers, were forced from their home and put in police cars. The Principal Applicant further stated that his elderly father was pushed over by the raiding police.

[15] The Principal Applicant stated that he was subjected to torture in detention, including officers beating him, denying him food and water, and forcing him to drink urine. In one

incident, he was beaten until he was unconscious, awaking in a pool of blood. He states that he was abused for days, before being brought to court and accused of being a terrorist. It bears noting that in a decision dated November 23, 2015, the European Court of Human Rights ("ECHR") found that the Principal Applicant had been subject to torture within the meaning of Article 3 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* (the "ECHR Decision").

[16] The Principal Applicant stated that on December 9, 2006, three months after his initial arrest, he was charged with "associating for the purposes of anti-constitutional activities" and "preparing actions against the constitutional state."

[17] On August 5, 2008, nearly two years after initially being arrested, the Principal Applicant was convicted for "association for the purposes of committing unconstitutional activity and preparing acts against constitutional order and security of Montenegro." He was sentenced to three years' imprisonment, including time served.

[18] On August 17, 2009, the Principal Applicant was released from prison. He stated that after his release, and owing to his fear of living in Montenegro, he eventually travelled to Germany to stay with his sister. He stated that once his visa expired, and upon considering where he could seek protection, he decided to travel to Canada. At this time, his family was living in the United States.

[19] On May 3, 2010, the Principal Applicant entered Canada. On May 17, 2010, the Principal Applicant claimed refugee protection. Between May and June 2010, he was detained, and then reported and found to be inadmissible under the *IRPA* for serious criminality. On July 23, 2010, he was released from detention. On April 28, 2011, he obtained his first work permit.

[20] On April 30, 2012, the Principal Applicant submitted an H&C application.

[21] On February 13, 2013, the Principal Applicant's refugee claim was deemed ineligible due to his inadmissibility under the *IRPA*. On February 28, 2014, he submitted a PRRA application.

[22] In September 2015, the Principal Applicant was arrested for assault under the *Criminal Code of Canada*, RSC 1985, c C-46 ("*Criminal Code*"). He stated that the altercation occurred with his business partner, with both men sustaining injuries from the event. The Principal Applicant provided that he and the man reconciled. On January 12, 2016, the charges were formally withdrawn.

[23] In December 2014, the Principal Applicant applied for rehabilitation under the *IRPA*. From 2016-2021, the Principal Applicant's applications were put forward to one delegated decision maker, and from 2021-2022, the Principal Applicant provided updated submissions and attended a hearing for his applications.

C. *The Associate Applicant and the family*

[24] The Associate Applicant is a United States citizen of Albanian heritage. She stated that she returned to the United States with Suzanna and Zef when the Principal Applicant was imprisoned in the United States and Montenegro, and has resided in the United States ever since.

[25] Since the Principal Applicant arrived in Canada in 2010, the Associate Applicant and her family have attempted to make or have made many visits to Canada. They spent a great deal of time in Canada, the Officer at one point remarking that: "[a] note was entered indicating that [the Associate Applicant] was crossing the border on nearly a daily basis." On August 7, 2018, the Associate Applicant and Zef submitted H&C applications, the decisions thereof being subject to review before this Court. On September 9, 2019, a Canada Border Services Agency ("CBSA") report revealed that Zef had not disclosed that he had been arrested three times in Michigan. He was therefore reported for misrepresentation.

D. *The Rehabilitation Decision*

[26] In a decision dated October 5, 2022, the Officer refused the Principal Applicant's application for rehabilitation under the *IRPA*.

[27] The Officer's decision was based in particular on the Principal Applicant's "failure to acknowledge his role in the [December 1994 affair], the absence of proof of completion of any formal rehabilitative programming such as anger management programs, his actions between

1994 and 2000, in addition to the 2015 incident where he resorted to violence during an interpersonal conflict."

[28] The Officer began by considering the December 1994 affair.

[29] The Officer acknowledged that the Principal Applicant was convicted for the December 1994 affair under section 750.227b of the *Michigan Penal Code*, Act 328 of 1931 ("*Michigan Penal Code*"), which reads:

> (1) A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, 227, 227a, or 230, is guilty of a felony and shall be punished by imprisonment for 2 years. Upon a second conviction under this subsection, the person shall be punished by imprisonment for 5 years. Upon a third or subsequent conviction under this subsection, the person shall be punished by imprisonment for 10 years.

[30] In the decision finding the Principal Applicant ineligible to make a refugee claimant, the equivalent offence in Canada for the above law was found to be section 85 of the *Criminal Code*, which provides:

> 85 (1) Every person commits an offence who uses a firearm, whether or not the person causes or means to cause bodily harm to any person as a result of using the firearm,
>
> (a) while committing an indictable offence, other than an offence under section 220 (criminal negligence causing death), 236 (manslaughter), 239 (attempted murder), 244 (discharging firearm with intent), 244.2 (discharging firearm — recklessness), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault), subsection 279(1) (kidnapping) or section 279.1 (hostage taking), 344 (robbery) or 346 (extortion);

> (b) while attempting to commit an indictable offence; or
>
> (c) during flight after committing or attempting to commit an indictable offence.
>
> (…)
>
> (3) Every person who commits an offence under subsection (1) or (2) is guilty of an indictable offence and liable
>
> (a) in the case of a first offence, except as provided in paragraph (b), to imprisonment for a term not exceeding fourteen years and to a minimum punishment of imprisonment for a term of one year; and
>
> (b) in the case of a second or subsequent offence, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of three years.

[31] The Officer found that the Principal Applicant had committed an underlying felony in relation the felony firearm offence, and that the jury had convicted him of felony firearm "in relation to [the Principal Applicant's] role in the shooting of [the victim]."

[32] Specifically, the Officer acknowledged that the Principal Applicant's US conviction was based on a jury trial without written reasons, and that the Court of Appeal decision did not specify the findings of fact put to the jury or how they were instructed. Acknowledging that the Principal Applicant had maintained his innocence, there was therefore no specific evidence from the trial decision or appellate decision about whether the Principal Applicant had committed an underlying felony in relation to the death of the victim in the 1994 affair, and no conviction for murder or any other violent crime.

[33] The Officer further acknowledged a letter from an American lawyer stating that the underlying felony in the felony firearm conviction was carrying without a license. However, the Officer rejected this opinion for various reasons:

- The Officer found that the *Michigan Penal Code* provided that carrying a firearm without a license could not be the underlying offence in the felony firearm conviction;

- A decision from the Supreme Court of Michigan provided that commission or attempt to commit a felony is an element of a felony firearm conviction, and provided that a jury can render a conviction for a felony-firearm offence without the underlying felony conviction; and

- A finding that the lawyer who provided the letter was not independent and that the lawyer's opinion was "impossible" according to the statute.

[34] The Officer concluded that the jury had found that the Principal Applicant had committed an underlying felony, even if they did not convict him for the specific underlying felony for which he was charged.

[35] The Officer conducted a further independent analysis of the evidence, acknowledging:

- That there was no physical evidence linking the Principal Applicant to the shooting;

- Two witness statements implicating the Principal Applicant in the shooting, with one witness having vague recollections of the December 1994 affair and one witness not being called by the prosecution; and

- The Michigan Court of Appeal decision upholding the conviction, in which one of the witness statements and the Principal Applicant's flight from the United States were grounds of appeal.

[36] From this evidence, the Officer found that it was "reasonable to assume" that the Principal Applicant's lawyer made submissions about the above grounds of appeal because the evidence was relevant to the jury's findings. Additionally, the Officer found that the fact the sentencing judge asked if anyone wished to provide a victim statement supported the inference that the Principal Applicant's conviction was in linked to the death of the victim. The Officer found that "clearly, [the Principal Applicant] was found guilty of felony-firearm in connection with the shooting of [the victim]."

[37] Turning to the Principal Applicant's conviction in Montenegro, the Officer acknowledged the circumstances of the Montenegrin High Court's conviction and sentencing, as well as the Principal Applicant's "mistreatment" at the hands of the police and the ECHR Decision. The Officer found that the ECHR did not "invalidate the conviction itself as the fairness of the trial was not contested," and that counsel's assertion that the conviction had been internationally denounced was inaccurate. However, considering the evidence, the Officer gave this conviction little weight.

[38] On factors for rehabilitation, the Officer first considered the type of criminal conviction and whether it formed part of a pattern of criminality. The Officer disputed counsel for the Principal Applicant's claim that the Principal Applicant was not viewed as a danger to American society upon being released from prison, noting that there were several other factors that could have influenced the American authorities' decision to release him before deporting him.

[39] The Officer further acknowledged that decades had passed since the commission of the crime in the United States, but found that the Principal Applicant fleeing the United States and using a false identity to enter and live in Australia both "involved deceit for personal gain and a failure to accept responsibility and face the consequences of his actions." The Officer further found that the Principal Applicant's violent altercation with a business partner in 2015 bore similarities to the December 1994 affair, namely, "a verbal dispute followed by violence."

[40] Moreover, the Officer acknowledged that the CBSA had concerns about the Principal Applicant being involved with a money laundering offence, based on a Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") report. The Officer found that the FINTRAC report contained details about the Principal Applicant and his associates' money transfers and currency exchanges, which were found to be suspicious, as well as reference to the Principal Applicant's assets and a Windsor Police Service Criminal Intelligence report alleging that the Principal Applicant was "possibly very high up in the Albanian underworld."

[41] However, the Officer found that there was insufficient information to conclude that there were reasonable grounds to find that the Principal Applicant was engaged in illicit organized crime. He determined that, although the Principal Applicant's "rate of acquiring assets… has been exceptional," with the Principal Applicant's net worth being over $5,000,000, the FINTRAC report simply demonstrated that the Principal Applicant's financial transactions in Canada "have been of concern as they may be indicative of money laundering."

[42] Considering the Principal Applicant's responsibility for his criminal conviction, the Officer found that the Principal Applicant had continued to maintain his innocence in the December 1994 affair and accepted "no responsibility" for his conviction in the US. The Officer found he had mislead the Officer about not owning a gun while living in the United States, and that his account of the December 1994 affair was similarly not credible. The Officer found that the Principal Applicant's account did not explain how he knew the events had occurred and the police were looking for him, and his statements that he did not know who testified against him or what evidence was presented in court were not truthful. The Officer found that "[t]hese issues must have been discussed with him at length by his criminal lawyer at the time."

[43] The Officer further acknowledged the transcript from an oral hearing conducted with the Principal Applicant and found that he had "refused to supply even a general idea of the evidence against him." The Officer acknowledged his lack of education, as well as his memory deficits, but nonetheless found that the Principal Applicant was "deliberately uncooperative" when asked for information about his conviction.

[44] Considering the Principal Applicant's remorse, the Officer found that the Principal Applicant's "feigned contrition has no real context. He apologizes only for carrying a firearm yet he was convicted of much more than that." The Officer further acknowledged counsel's submissions regarding the Principal Applicant's regret for having fled the United States, but found that regret was not the same as remorse, as the Principal Applicant "may regret his actions for the simple reason that they did not serve him well personally."

[45] The Officer concluded that there was no evidence of the Principal Applicant taking responsibility for or exhibiting any remorse about the December 1994 affair, this factor weighing heavily against allowing his application for rehabilitation.

[46] On the passage of time, the Officer found that it had been decades since the Principal Applicant's United States conviction, but only seven years since his last violent altercation. The Officer found that the passage of time was "generally" a factor in favour of rehabilitation. However, the passage of time between the 1994 and 2015 incidents exhibits a lasting tendency towards violence in the Principal Applicant's character that remained unchanged and untreated.

[47] On family, the Officer acknowledged the Principal Applicant's immediate family, as well as family living abroad. The Officer acknowledged the letters of support written by the Principal Applicant's family members, but also noted the various periods of separation between the Principal Applicant and his family, with co-residence occurring primarily from 2018-onwards. The Officer further noted that the Principal Applicant's marriage and children did not appear to prevent the Principal Applicant from offending.

[48] On establishment, the Officer acknowledged the Principal Applicant's businesses, community events, taxes paid, economic establishment, and other letters of support speaking to his stature in the community as a businessperson. The Officer acknowledged his establishment in the Albanian-Canadian community, as well as the church community, and overall concluded that his establishment was generally positive. The Officer nonetheless noted that the Principal Applicant was in the restaurant business during the December 1994 affair, and that "logically,

the fact that he is a successful business person now would not necessarily influence [the Principal Applicant's] likelihood of reoffending as this factor has been more or less consistent over the last 30 years."

[49] For all of these reasons, the Officer concluded that overall, the Principal Applicant was neither remorseful for his actions nor rehabilitated, and that there was insufficient evidence of change such that he was unlikely to reoffend. The Officer thus refused his application for rehabilitation.

E. *The PRRA Decision*

[50] In a decision dated October 5, 2022, the Officer refused the Principal Applicant's PRRA application. The Officer found that the Principal Applicant was excluded from refugee protection for the commission of a serious non-political crime and that he was not a person in need of protection pursuant to section 97 of the *IRPA*.

[51] The Officer first acknowledged, per the Rehabilitation Decision, that the equivalent offence for the Principal Applicant's conviction in the United States was section 85 of the *Criminal Code*, which carries a maximum penalty of 14 years in prison. The Officer further acknowledged that the Principal Applicant had already been found to be ineligible for refugee protection in 2014 and inadmissible for serious criminality in 2010. The Officer thus found, considering the Principal Applicant's circumstances pursuant to the Rehabilitation Decision, that the Principal Applicant was excluded from refugee protection for having committed a serious non-political crime owing to his involvement in the December 1994 affair.

[52] Turning to whether the Principal Applicant was a person in need of protection under section 97 of the *IRPA*, the Officer acknowledged the "mistreatment" that the Principal Applicant faced in Montenegro at the hands of police in 2006. The Officer further acknowledged evidence provided by the Principal Applicant denying any wrongdoing and alleging the arrests and prosecution were persecutory.

[53] However, the Officer found, based on the ECHR Decision, that the Principal Applicant had not challenged the fairness of his trial at the ECHR. The Officer had several credibility concerns with the Principal Applicant's account of the Montenegrin state's reasons for prosecuting him and why he would be mistreated in Montenegro. The Officer found that the Principal Applicant was not mistreated after his imprisonment in Montenegro and that the Montenegrin government was not seeking to retaliate against him.

[54] The Officer further acknowledged the Principal Applicant's positive 2016 risk opinion, wherein an officer concluded that the Principal Applicant had provided sufficient evidence to establish he would face a risk if returned to Montenegro. The Officer nonetheless found that he was justified in giving no deference to this assessment due to several errors contained within it, including a statement that the Principal Applicant's refugee claim had been refused on the basis of Article 1F(b) of the *Refugee Convention* (rather than a finding of ineligibility), an apparent failure to conduct independent research, and the absence of an exclusion analysis and a disclosure package from the CBSA.

[55] Turning to the Principal Applicant's submissions and the evidence provided regarding the risk the Principal Applicant would face upon returning to Montenegro, the Officer found that some documents provided context to the Eagle's Flight case, but others provided by Albanian sources were less objective, focussing "on what they believed to be the unfounded nature of the accusations against the detained men."

[56] The Officer acknowledged evidence provided by an attorney, who stated that "he believes the Eagle's Flight case was a political trial based on hearsay and fabricated evidence." The Officer gave this evidence little weight, finding that the lawyer was a part of the team of lawyers defending the Principal Applicant and was therefore partial. The Officer similarly gave little weight to evidence provided by a lawyer who had represented the Principal Applicant before the ECHR.

[57] The Officer also gave little weight to two reports prepared by a retired professor making numerous allegations about the corrupt nature of the Montenegrin government, finding that it was apparent that the professor had not been provided with the ECHR Decision and that, consequently, "the whole of his rationale ... is out of context."

[58] Furthermore, the Officer acknowledged the evidence provided regarding the co-accused in Montenegro and their current situations, and gave significant weight to the fact that the Principal Applicant did not mention that his brother (a co-accused) was not experiencing issues in Montenegro at the time. The Officer acknowledged another individual had made a refugee

claim in Switzerland, but found that the evidence did not show whether that individual had been granted refugee status or disclosed his criminal conviction in Montenegro.

[59] Moreover, the Officer gave little weight to evidence from another co-accused who had alleged harassment from the Montenegrin police and the government, as this individual reiterated he had been tortured despite the ECHR Decision finding that he had not. The Officer also noted that this individual had been pursuing claims against the Montenegrin government, despite his alleged fear of them. Finally, the Officer rejected the claim that the Principal Applicant would be at greater risk at the hands of the government owing to the finding that he was tortured by them in the ECHR Decision. The Officer found that "it is reasonable to assume [Montenegro] would be warry [sic] of [the Principal Applicant] as they would not want to have their reputation challenged a second time and thus treat him especially cautiously."

[60] The Officer then considered objective country condition documents regarding Montenegro. The Officer found that the evidence established that there were concerns about the justice system and corruption, and that torture and ill treatment continued at the hands of the police.

[61] The Officer further found, however, that the evidence did not establish that Albanians feared persecution from Montenegrin authorities. The Officer found that there were references in some reports to discrimination against Albanians, but that those same reports noted positive developments for Albanians. The Officer concluded that the country condition evidence did not establish that Albanians activists would likely face persecution, or that the Montenegrin

government "manufactures evidence to dispense with people similarly situated to [the Principal Applicant]… by having them arrested, maliciously prosecuted and jailed or otherwise mistreated."

[62] The Officer considered the "compelling reasons" exception under section 108(4) of the *IRPA*, but found that the Principal Applicant would not have met the requirements under sections 96 or 97 "at any time." The Officer found that the Principal Applicant would have been ineligible for refugee protection after his conviction in the December 1994 affair, and that before 1994, he had made asylum claims in the United States and Australia, and that he returned to Montenegro after fleeing the United States in 1994 without issue.

[63] The Officer further found that while the Principal Applicant had been "mistreated" by Montenegrin authorities, the evidence did not establish further injury whilst in Montenegro, and thus the Officer was satisfied that the Montenegrin authorities themselves had stopped any further physical abuse. The Officer found that the evidence did not establish that the Principal Applicant had been subject to an unfair trial, and that other evidence did not corroborate his allegation that his injuries were more severe than reported by the physician who observed his injuries at the hands of the Montenegrin police.

[64] The Officer further found that physicians in Canada who examined the Principal Applicant for his persistent headaches, including those caused by the head trauma sustained under torture, could not independently verify how these conditions arose and developed. The Officer noted that these reports did not acknowledge the Principal Applicant's head injury in

2015 following the altercation with his business partner, and that the ECHR Decision mentions only those injuries provided in the report made by the physician who attended to the Principal Applicant after he had been tortured.

[65] The Officer thus found that the Principal Applicant would have not have been a Convention refugee or person in need of protection upon arriving in Canada in 2010, "the issue of ineligibility/ exclusion aside," and thus that the "compelling reasons" exception did not apply under section 108(4) of the *IRPA*.

[66] For these reasons, the Officer concluded that the Principal Applicant would not face a risk as defined in section 97 of the *IRPA* and refused the Principal Applicant's PRRA application.

F. *The Principal Applicant's H&C Decision*

[67] In a decision dated October 5, 2022, the Officer found that the Principal Applicant's circumstances did not warrant relief pursuant to section 25(1) of the *IRPA*.

[68] The Officer first acknowledged the Principal Applicant's inadmissibility, noting its discussion in the Rehabilitation Decision.

[69] Considering the Principal Applicant's family and the best interests of the children ("BIOC"), the Officer acknowledged that the Principal Applicant had moved to Windsor to be close to the family in Detroit. The Officer found that, while the Principal Applicant stated that

his wife and children represented strong ties to Canada, most of them had not consistently lived in Canada, and none of them had status in Canada.

[70] The Officer acknowledged the Associate Applicant's history of visiting Canada, acknowledged Zef's issues with travelling to Canada, the other younger children's visitor history and lack of status in Canada, and the Principal Applicant's other family all residing outside of Canada. The Officer found that while there had been difficult years for the Principal Applicant's family, "the fact remains that [the Associate Applicant] has not been respectful of immigration laws, though counselled at the border many times on not being authorized to reside in Canada she has insisted on remaining in this country beyond the period authorized for a visitor and she therefore bears some responsibility for having put her family in the situation where they face a forced removal and all the attendant difficulties of relocating her children."

[71] The Officer further found that the BIOC did not justify an H&C exemption. The Officer acknowledged the eldest two children's circumstances, finding that their best interests favoured an exemption, but that the hardship faced by Suzanna and her child could be mitigated by maintaining contact through visits or phone/internet, and that Zef could either move to Montenegro or return to the United States.

[72] Considering the two minor children's interests, the Officer further found that while relocation could present difficulties, Palo would be approaching an age where he could be independent, and that Besa could continue to live with her parents in Canada, the United States, or Montenegro. The Officer acknowledged that there was no indication that either of them did

not speak Albanian, and while there could be a transition period while Besa learned Albanian, living abroad "could be an enriching experience" for her.

[73] The Officer found that it was necessary to consider whether the Principal Applicant could return to the United States to determine whether the family could live together in the same country. The Officer acknowledged the evidence of the steps the Principal Applicant would have to take and found that he and the Associate Applicant could pursue the process to immigrate to the United States, stating that he "may have a greater chance of success than his application to remain [in Canada]." The Officer nonetheless did not give significant weight to the possibility of the Principal Applicant's return to the United States.

[74] The Officer then considered whether the Principal Applicant could re-establish in Montenegro. The Officer acknowledged that the family would have to decide whether to move to Montenegro as a family unit, and that, although the Principal Applicant stated the family would not return to Montenegro together, it would be a "realistic option" for the family to relocate there together. The Officer found that it would not be ideal for Palo or Besa for the family, save for the Principal Applicant, to remain in the United States, but that there were no "real obstacles" to the family moving to Montenegro together.

[75] On establishment, the Officer acknowledged the evidence of the Principal Applicant's considerable business ties, as well as his community, financial ties, his assets, and his paid taxes. The Officer found that despite being "very well established," it would be reasonable to assume the Principal Applicant could sell his businesses and live off their proceeds.

[76] On mental and physical health issues, the Officer gave little weight to a psychologist's report about the Principal Applicant's depression and post-traumatic stress disorder, finding that the psychologist, at times, went beyond her area of expertise and acted as an advocate for the Principal Applicant, did not appear to "have all the facts" regarding the Principal Applicant's criminality in the United States, and saw the Principal Applicant only in connection with immigration proceedings.

[77] The Officer found that it appeared that there would be a support system in Montenegro for the Principal Applicant, and that counsel had not raised barriers to mental and physical care in Montenegro. The Officer further acknowledged the Associate Applicant's affidavit stating that the Principal Applicant was in good health.

[78] Regarding the Associate Applicant's mental health, the Officer acknowledged her affidavit evidence stating she had been depressed and on anti-depressant pills. The Officer accepted that the Associate Applicant "would be very disappointed" and that the Principal Applicant's removal from Canada would "take a toll on her mental health," but that there was insufficient evidence that the Principal and Associate Applicants' mental health "is currently so fragile that they would be unable to cope with an adverse decision."

[79] Considering the Principal Applicant's risk upon return to Montenegro, the Officer largely relied on the findings from the PRRA Decision. The Officer noted that the documents provided contained few references to discrimination against Albanians in Montenegro but did report positive developments. The Officer acknowledged the expert evidence regarding discrimination

Albanians face in Montenegro, and found there were tensions between Serbian Montenegrins and Albanians, but nevertheless found that improvements had been made in access to education and services in Albanian. The Officer found that when the Principal Applicant was returned to Montenegro in the 90s and in 2005, he re-integrated, and that there was no reason he would seek to work in the government or that he would have insufficient funds to support himself (given that he could sell off his Canadian businesses).

[80] The Officer further found that the Principal Applicant would not be a particular target owing to having been part of the Eagle's Flight case. The Officer found that the Principal Applicant had a "great deal of support" in Montenegro from the Albanian-American community, and that his identity as an Albanian "appears to be very important to him." The Officer concluded that the Principal Applicant could "integrate quite easily" into the Albanian community and was "not likely to face any real hardships."

[81] For these reasons, the Officer concluded that the Principal Applicant's circumstances did not warrant an H&C exemption. For the same reasons, the Officer denied the Principal Applicant's request for a temporary resident permit ("TRP").

G. *The Associate Applicant's H&C Decision*

[82] In a decision dated October 5, 2022, the Officer found that the Associate Applicant's circumstances did not warrant H&C relief.

[83] The Officer found that the Associate Applicant sought to stay in Canada primarily to reside with the Principal Applicant, whose attempts to remain in Canada had all been denied. The Officer acknowledged the Associate Applicant's history of immigrating to Canada, including her exclusion orders. On establishment, the Officer found that the Associate Applicant had not been authorized to assist the Principal Applicant with helping his business, and that while she had presented evidence of establishment in the community, she had not expressed any desire to live in Canada should the Principal Applicant be removed. The Officer found it reasonable to assume that her ties in the United States were stronger than in Canada. The Officer relied upon the BIOC analysis in the Principal Applicant's H&C Decision, concluding that the family could live together in Montenegro, or that the Associate Applicant and the children could return to the United States. The Officer concluded that the Associate Applicant's circumstances did not warrant an H&C exemption, and refused her TRP request.

H. *Zef's H&C Decision*

[84] In a decision dated October 5, 2022, the Officer found that Zef's circumstances did not warrant an H&C exemption. The Officer acknowledged Zef's work experience in the United States, high school education, past visits to Montenegro, as well as past legal troubles in the United States. The Officer acknowledged the letters of support written for Zef, as well as the fact that he was dating someone in Canada. The Officer nonetheless concluded that Zef's primary reason to stay in Canada was to be with his parents and siblings, and that this reason no longer existed in light of the decisions regarding the Associate and Principal Applicants. The Officer therefore rejected Zef's H&C application, as well as his TRP application.

III. **Preliminary Issue**

[85] The Applicants submit that the Officer committed an abuse of process, unfairly departing from previous positive decisions about the Principal Applicant, ignoring positive factors in the decisions, delaying the applications, and acting in bad faith "in respect of the decision making in all of the applications."

[86] The Respondent submits that the Officer made reasonable findings based on the evidence, that the Officer was not bound by previous decisions, and that there is no evidence to substantiate claims of bad faith.

[87] I agree with the Respondent. First, abuse of process is "a question of procedural fairness" (*Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 38, citing *Blencoe*, at paras 105-7 and 121, G Régimbald, *Canadian Administrative Law* (3rd ed 2021), at 344-350, and P Garant, with P Garant and J Garant, *Droit administratif* (7th ed 2017) at 766-67). Both the issue of whether the Officer was bound by previous positive assessments that were never formally rendered as decisions and the Applicants' submissions regarding the Officer's consideration of positive factors are questions of the merits of the decision, rather than the procedure followed to render it. These questions will be addressed below. Finally, the Applicants provide no evidence to substantiate the claim that the Officer acted in bad faith. There has not been a breach of procedural fairness.

IV. **Issue and Standard of Review**

[88] The sole issue in this application for judicial review is whether the Officer's decisions are reasonable.

[89] The standard of review for the merits of the Officer's decisions is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[90] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[91] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent

exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

V. **Analysis**

[92] The Applicants submit that the Officer committed several reviewable errors across the decisions. I agree in part. While the Rehabilitation and PRRA Decisions are reasonable, the H&C decisions are not.

(1) Equivalency/ Serious Non-Political Crime

[93] The Applicants submit that the Officer erred by finding that the Principal Applicant's United States conviction under section 750.227b of the *Michigan Penal Code* was equivalent to section 85(1) of the *Criminal Code*, rather than section 91(1) of the *Criminal Code* (*i.e.*, unauthorized possession of a firearm). The Applicants maintain that, since the Principal Applicant's constitutional rights are engaged and the equivalency to section 85(1) of the *Criminal Code* is "simply wrong," *Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 ("*Tapambwa*") must be revisited. The Applicants submit that the Officer did not state that they were bound by the Immigration Division ("ID") finding regarding the Principal Applicant's inadmissibility and engaged in their own equivalency analysis.

[94] The Applicants further submit that the Officer erred in fact by finding that the Principal Applicant used a weapon in the December 1994 affair, that the Officer erred by finding that the Principal Applicant was convicted for a felony involving shooting a firearm, and that the Officer

was required to conduct a distinct legal analysis for exclusion under section 98 of the *IRPA* rather than inadmissibility under section 36(1) of the *IRPA*.

[95] The Respondent submits that the Officer reasonably relied on the ID's inadmissibility finding that the Principal Applicant's conviction under the *Michigan Penal Code* was equivalent to section 85(1) of the *Criminal Code*. The Respondent further submits that the Officer reasonably found the Principal Applicant to be excluded under section 98 of the *IRPA* for committing a serious non-political crime outside of Canada. The Respondent submits that the Officer reasonably dismissed the Applicants' submission that the Principal Applicant's conviction should be equivalent to section 91(1) of the *Criminal Code* (*i.e.*, unauthorized possession of a firearm) and that the Officer considered the relevant factors for determining that the Principal Applicant had committed a serious non-political crime and was excluded under section 98 of the *IRPA*.

[96] I agree with the Respondent.

[97] A PRRA officer cannot reverse an inadmissibility finding (*Tapambwa* at para 49). The Officer in this matter was therefore bound by the previous determination that the Principal Applicant was inadmissible to Canada, with his United States conviction confirmed to be equivalent to a conviction under section 85(1) of the *Criminal Code*.

[98] Furthermore, the Applicants do not elaborate on how the Principal Applicant's constitutional interests have been engaged. Their reference to *Canada (Attorney General) v*

Bedford, 2013 SCC 72 ("*Bedford*") does not assist them. The Federal Court of Appeal decided *Tapambwa*, and this Court is bound to apply *Tapambwa* to the facts of this case (*R v Comeau*, 2018 SCC 15 at para 26). The Applicants' arguments fail to raise a new legal issue or establish a change in circumstances or evidence, and therefore do not justify departing from the binding precedent in *Tapambwa* (*Bedford* at para 42, affirmed in *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 44).

[99] Consequently, whether or not the decision that the Principal Applicant's United States conviction is equivalent to section 85(1) of the *Criminal Code* is "wrong," the Officer could not revisit that inadmissibility finding. I further note that there is no evidence that the Applicants challenged this inadmissibility finding on judicial review when the decision was initially made.

[100] Moreover, the Applicants have not established that the Officer erred with respect to the exclusion and inadmissibility analyses. Inadmissibility and exclusion analyses are separate (*Gurbuz v Canada (Citizenship and Immigration)*, 2018 FC 684 at para 29). However, I find that the Officer's exclusion analysis does not collapse the distinction between these analyses. As required by the exclusion analysis, the Officer assessed whether there were serious reasons to consider whether the Principal Applicant committed a serious non-political crime (*Jain v Canada (Citizenship and Immigration)*, 2023 FC 539 at paras 25-29). The Officer's analysis of the circumstances of the Principal Applicant's conviction led to the conclusion that the jury was satisfied that the Principal Applicant had committed an underlying felony in the felony firearm offence, based on the evidence before the Officer. As will be seen below, I do not find that this analysis was unreasonable.

(2) The Rehabilitation Decision

[101] The Applicants submit that the Officer committed several reviewable errors in the Rehabilitation Decision. The Applicants submit that the Officer erred by finding that the Principal Applicant's conviction in the United States included a felony in connection with the shooting of the victim in the December 1994 affair, thereby erring with respect to the nature of the offence and the Principal Applicant's lack of remorse in the rehabilitation analysis. The Applicants further submit that the Officer erred by rejecting the Principal Applicant's release from detention as a positive factor in the Rehabilitation Decision, as well as erring with respect to the other rehabilitation factors. Additionally, the Applicants submit that the Officer erred by discounting the Principal Applicant's memory issues with respect to the Principal Applicant's answers about his United States criminal conviction and speculated about what the Principal Applicant's lawyer would have told him about his criminal case.

[102] The Respondent maintains that the Applicants' submissions regarding the Officer's rehabilitation analysis amount to a request that this Court reweigh and reassess the evidence.

[103] I agree with the Respondent.

[104] Rehabilitation applications consider a variety of factors, including "the nature of the offence, the circumstances under which it was committed, the length of time which has lapsed and whether there have been previous or subsequent offences" (*Lau v Canada (Citizenship and Immigration)*, 2016 FC 1184 ("*Lau*") at para 26, citing *Aviles v Canada (Minister of Citizenship*

and Immigration), 2005 FC 1369 at para 18). Likelihood of re-offending is the most important consideration (*Lau* at para 24, citing *Thamber v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 177 at para 16).

[105] The Officer found that the Principal Applicant's conviction in the December 1994 affair included committing a felony related to having a role in the shooting of the victim.

[106] This finding from the Officer is an inference. Decision makers may draw inferences "where the primary facts underpinning the inference have been established and the inference can be reasonably and logically drawn from those established primary facts. Where the primary facts have not been established or the inference cannot logically and reasonably be drawn from the primary facts any attempt to draw an inference will be nothing more than impermissible speculation" (*Ayalogu v Canada (Citizenship and Immigration)*, 2017 FC 1055 ("*Ayalogu*") at para 19 [citation omitted]). That said, a decision must be justified in relation to its factual constraints, and a "decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at paras 99, 125). From these propositions, certain inferences will not withstand reasonableness review.

[107] Furthermore, decision makers are presumed to have considered all of the evidence, absent evidence to the contrary (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 ("*Basanti*") at para 24, citing *Florea* v *Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). It is generally not open to the Court on judicial review to

interfere with factual findings, and the Court must refrain from reweighing and reassessing the evidence (*Vavilov* at para 125).

[108] In my view, the Applicants mischaracterize the Officer's decision. The Officer did not find that the Principal Applicant possessed a firearm "when committing the offence of shooting and killing" the victim. The Officer found that the Principal Applicant had committed an underlying felony in relation the felony firearm offence, and that the jury had convicted him of felony firearm "in relation to [the Principal Applicant's] role in the shooting of [the victim]."

[109] Reviewing the Officer's findings and the evidence, I do not find that the Officer made any inferences that impermissibly treaded into the realm of speculation (*Ayalogu* at para 19), especially considering the evidence available to the Officer about the facts of the conviction and the relevant legal landscape in Michigan. Indeed, the decision shows a careful review of this evidence. The Applicants have not rebutted the presumption that the Officer considered all of the evidence, and this is not an exceptional circumstance where the Court can interfere with the Officer's factual finding (*Basanti* at para 24; *Vavilov* at para 125).

[110] Given my conclusion on the circumstances of the offence, the Applicants fail to show that the Officer's conclusions on the Principal Applicant's responsibility and remorse for the December 1994 affair are unreasonable.

[111] I find no issue with the Officer's treatment of the evidence showing that the Principal Applicant was evasive and did not provide any general evidence about what had transpired

during the December 1994 affair, especially considering that the Principal Applicant admitted to having lied to the Officer about having a firearm in Michigan. The Officer acknowledged that the Principal Applicant regretted fleeing the United States, as well as the attendant circumstances for the Principal Applicant's flight. However, the Officer also noted that the Principal Applicant had not taken responsibility for any involvement in the December 1994 affair. This was the main conclusion on the Principal Applicant's lack of remorse and responsibility for his role in the December 1994 affair. I do not find the Officer noting that the Principal Applicant "may" regret his actions solely because they did not serve him personally strikes at the Officer's conclusion about the Principal Applicant's lack of remorse.

[112] Furthermore, the Officer explicitly acknowledged evidence of the Principal Applicant's memory issues, but also acknowledged that the Principal Applicant did not hesitate in answering questions at the hearing stating that he did not know or did not recall.

[113] The Applicants suggest that the Officer did not ask for a "general idea of the evidence against [the Principal Applicant]." However, the decision shows the Officer explicitly asked general questions about the trial, including, for example, about a witness who saw the Principal Applicant shoot the victim and about the identity of the victim. The Applicants' request amounts to a request to reweigh and reassess the evidence. Again, this is not permitted when reviewing a decision for its reasonableness (*Vavilov* at para 125).

[114] Additionally, I do not find that the Officer's inference that the Principal Applicant would have spoken to his lawyer in the United States "at length" about witnesses testifying against him

or what evidence was presented at court to tread into the realm of speculation. The Primary Applicant had a lawyer for these United States proceedings, and I do not fault the Officer for inferring that the Principal Applicant would have spoken with that lawyer at some length about the case, especially considering the Principal Applicant specifically stated that he "spoke to [his] lawyer about what was going on" (*Ayalogu* at para 19).

[115] On the time elapsed and the Principal Applicant's actions between 1994 and 2020, the Officer acknowledged the Principal Applicant's attempt to avoid prosecution in the United States by fleeing the country and using his brother's identity to make a refugee claim in Australia, the altercation with his business partner in 2015, and the FINTRAC report about the Principal Applicant's finances.

[116] Many of the Applicants' submissions on this rehabilitation factor are further requests for the Court to reweigh evidence, do not account for the presumption that the Officer considered all of the evidence, or do not raise reviewable errors with the Rehabilitation Decision.

[117] This includes the Applicants' submissions that the Officer: ignored evidence of conditions in Montenegro when the Principal Applicant fled the United States and travelled to Australia; had no evidence that the Principal Applicant could have secured his release pending extradition should he have challenged extradition; failed to consider that the events occurred 30 years ago; ignored the Principal Applicant's honesty at the Canadian border when applying for his refugee claim; and erred by taking issue with the Principal Applicant's claim that he did not know how he was identified by Australian authorities.

[118] First, there is nothing in the decision to suggest that the Officer was unaware of conditions in Montenegro when the Principal Applicant fled the United States and travelled to Australia, and the Officer specifically considered that the Principal Applicant did not "voluntarily" return to the United States.

[119] Second, the Officer specifically acknowledged that some of these events occurred decades ago, including the US conviction and the death of the victim in the December 1994 affair.

[120] Third, I do not find that the Officer erred by failing to mention that the Principal Applicant was honest at the Canadian port of entry. The Officer relied upon the Applicant's use of a fraudulent Australian identity in the context of determining that the Principal Applicant showed a lack of respect for the law. The Principal Applicant's compliance with the law at the Canadian port of entry is not evidence that contradicts this finding from the Officer.

[121] Fourth, the Officer was not "vaguely suggesting" that the Principal Applicant was engaged in organized criminality with respect to the FINTRAC report. The Officer specifically noted that no criminal charges had been laid, nor inadmissibility determinations made. The Officer found that "there does not appear to be sufficient information before me which would support a finding of reasonable grounds to believe that he has been involved in organized crime in Canada." The Officer merely noted that some of the Principal Applicant's financial transactions have been of concern and "may be indicative of money laundering." While perhaps

unclear and irrelevant to the analysis, I do not find that the Applicants have raised an issue with the Officer's finding which would render the decision unreasonable.

[122] Finally, contrary to the Applicants' submissions, the Officer did not take issue with the Principal Applicant's claim that he did not know how he had been identified by Australian authorities. The Officer found that "I accept that it is plausible that [the Principal Applicant] did not know how his identity was discovered by the authorities in Australia, but note simply that it was in the context of a police investigation in Melbourne."

[123] That all said, I do acknowledge the Applicants' concerns with the Officer's finding that the Principal Applicant had a "tendency towards violence." The Officer, with this finding, was implying that the Principal Applicant played a violent role in the December 1994 affair. However, ultimately this was not what the Officer found. The Officer determined that the Principal Applicant had committed a felony in the felony firearm offense in relation to the death of the victim in the December 1994 affair. In context, the Officer found that the passage of time was "generally" a factor in the Principal Applicant's favour. Thus, once more, the Applicants are attempting to find errors with particular, discrete aspects of the Officer's decision, rather than establishing that the decision as a whole is unreasonable (*Vavilov* at para 100).

[124] To summarize, the Applicants have not established that the Rehabilitation Decision is unreasonable (*Vavilov* at para 100). They have not established that the Officer fundamentally misapprehended the evidence (*Vavilov* at para 125). Instead, they ask this Court to reweigh and reassess the evidence, as well as embark on a "line-by-line treasure hunt for error" (*Vavilov* at

paras 100, 125). This the Court will not do when reviewing whether the Officer's decision, as a whole, is reasonable.

(3) The PRRA Decision

[125] The Applicants submit that the Officer committed several reviewable errors in the PRRA decision. I disagree. The PRRA Decision is reasonable.

(a) *The Principal Applicant's Mistreatment*

[126] The Applicants maintain that the Officer erred by finding that the Principal Applicant had been "mistreated" whilst imprisoned in Montenegro, rather than tortured. The Applicants further submit that the Officer misapprehended the medical evidence regarding this incident and erred by absolving the Montenegrin state of fault for torturing the Principal Applicant.

[127] The Respondent submits that the Officer considered all of the evidence and accepted that the Principal Applicant had been physically mistreated whilst imprisoned in Montenegro.

[128] I agree with the Respondent.

[129] I am troubled that the Officer acknowledged evidence stating that the Principal Applicant had been tortured but then labelled this torture as "mistreatment." However, I do not find that this insensitive descriptor renders the decision unreasonable. Contrary to the Applicants' submissions, I do not find that the Officer failed to see the "import" of the torture the Principal

Applicant was subjected to in Montenegro. The Officer was clearly aware of what had occurred to the Applicant.

(b) *The Officer's Reference to the Co-Accused's Evidence*

[130] The Applicants further submit that the Officer made numerous erroneous findings with respect to evidence from the co-accused in the Eagle's Flight case. The Applicants submit that the Officer erred by finding that the Principal Applicant's brother, Mr. Gjon Dedvukaj ("Gjon"), did not face mistreatment in Montenegro and that the Officer erroneously rejected the other co-accused's evidence of facing problems in Montenegro. The Applicants submit that the Officer erred by impugning the co-accused's credibility and speculated by finding that the Principal Applicant and the co-accused's ability to mobilize support for their case in Montenegro would act as a deterrent against further abuse from the Montenegrin government.

[131] The Respondent does not respond to these specific arguments. However, the Respondent does submit that overall, the Applicants are requesting that this Court reweigh and reassess the evidence, which the Court is not permitted to do.

[132] I agree with the Respondent. The Applicants' arguments amount to "unreasonableness by a thousand cuts," failing to account for the fact that reasonableness review is the review of the decision as a whole.

[133] I do not find that the Officer overlooked evidence of Gjon's alleged mistreatment. The Officer found that there was no evidence to establish that Gjon had been mistreated, despite the

Officer acknowledging a statement from Gjon where Gjon stated that that he had been mistreated. The Officer also acknowledged a statutory declaration from the Principal Applicant referring to Gjon's mistreatment, as well as the ECHR finding that Gjon's complaint was unfounded. The Officer afforded significant weight to the fact that the Principal Applicant did not mention Gjon had been experiencing problems in Montenegro currently.

[134] Given that Gjon's letter was not a sworn affidavit, and that the Principal Applicant's sworn affidavit did not provide any additional corroborating evidence regarding Gjon's alleged mistreatment, I find that the Applicants' submission about the Officer's treatment of Gjon's evidence amounts to a further request for the Court to reweigh the evidence (*Vavilov* at para 125). While the Officer's statement that there was "no evidence" that Gjon was being mistreated is not accurate *stricto sensu*, the reasons plainly show that the Officer acknowledged the evidence regarding this mistreatment. Thus, the Applicants' submission that the Officer ignored this evidence fails.

[135] Furthermore, I do not agree with the Applicants that the Officer erred with respect to the evidence of other co-accused individuals in the Eagle's Flight Case; specifically, that of Mr. Anton Sinishtaj ("Mr. Sinishtaj") and Mr. Zef Berisa ("Mr. Berisa"), as well with respect to the finding that the Principal Applicant could mobilize support to deter potential harm from the Montenegrin government.

[136] Plausibility findings should be made only in "the clearest of cases" (*Valtchev v Canada (Minister of Citizenship and Immigration),* 2001 FCT 776 at para 7, cited with approval in the

PRRA context in 2020 FC 498 at para 111). As noted above, inferences must be reasonably and logically drawn from established facts. Otherwise, such inferences are impermissible speculation (*Ayalogu* at para 19).

[137] The Officer made a number of plausibility findings and inferences. In my view, they do not amount to errors such that the PRRA decision as a whole must fall.

[138] The Officer discounted the evidence of Mr. Berisa's refugee claim in Switzerland because the Officer found the documentation did not substantiate on what basis Mr. Berisa was accorded protection, or whether the Swiss were aware of Mr. Berisa's conviction in Montenegro. While it is perhaps problematic for the Officer to have inferred that the Swiss were unaware of Mr. Berisa's conviction in Montenegro, as such an inference is not borne from the fact of Mr. Berisa's refugee protection, this finding is not particularly serious given that the Officer also found that it was unclear on what grounds Mr. Berisa received refugee protection. A needless finding, perhaps, but not one that would render the PRRA Decision unreasonable.

[139] Additionally, I have reservations about the Officer's finding that because the Montenegrin government had once been found guilty of misconduct by the ECHR, it would be reasonable to assume they would treat the Principal Applicant "cautiously" to avoid a second challenge to their reputation. However, it is important to note that this finding was made in the context of challenging counsel's submission that the Principal Applicant would be more likely to face harm from the Montenegrin government owing to the outcome of the ECHR decision, despite there being no evidence that Montenegrin authorities had mistreated Gjon and evidence

that Mr. Sinishtaj does not fear the Montengrin authorities. Indeed, this finding shows responsiveness to the Applicants' submissions, my reservations notwithstanding (*Vavilov* at paras 127-128), and is not a sufficiently serious error to warrant the decision being quashed (*Vavilov* at para 100).

[140] Moreover, the Officer made a plausibility finding by stating that Mr. Sinishtaj bringing an action against the Montenegrin state showed that Mr. Sinishtaj did not fear the Montenegrin government. One more, however, this finding must be placed in its context. The Officer discounted Mr. Sinishtaj's evidence not because of this plausibility finding, but because Mr. Sinishtaj's statement contained no details and reiterated claims that had been deemed to be unfounded in the ECHR Decision. Thus, while I caution decision makers in making plausibility findings except in the clearest of cases, this implausibility finding from the Officer is not an error that renders the decision unreasonable as a whole (*Vavilov* at para 100).

(c) *The Expert Evidence*

[141] The Applicants further submit that the Officer erred by rejecting the expert statements from the Principal Applicant's lawyers in the Eagle Flight's Case and Professor Fischer. The Applicants maintain that it was an error to find the lawyers were partial experts and that Professor Fischer was unaware of the ECHR decision.

[142] I disagree. I have ruled, in the context of support letters, that it is incorrect to characterize evidence as self-serving and dismiss it solely on that basis (*Nagarasa v Canada (Citizenship and Immigration)*, 2018 FC 313 ("*Nagarasa*") at para 24, citing *Mata Diaz v*

Canada (Citizenship and Immigration), 2010 FC 319 at para 37, *Singh v Canada (Citizenship and Immigration)*, 2015 FC 1210 at para 12, *Varon v Canada (Citizenship and Immigration)*, 2015 FC 356 at para 37). This approach has been extended to other evidence where an individual has a "vested interest" in the outcome of proceedings (*Tong v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 625 at paras 24-25).

[143] My colleague Justice Zinn has held, however, that individuals with a personal interest in a matter may have the evidence they provide examined for its weight, "because typically this sort of evidence requires corroboration if it is to have probative value" (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 ("*Ferguson*") at para 27). Moreover, Justice Mosley has held that administrative tribunals can decide whether to admit expert evidence and what weight to assign it; however, these tribunals must have "valid grounds for rejecting or discounting it" (*Smith v Canada (Citizenship and Immigration)*, 2012 FC 1283 ("*Smith*") at para 42, citing Donald JM Brown and John M Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Canvasback Publishing, 2012), §10:5450 "Expert and Opinion Evidence" at 10-69-10-70).

[144] In this matter, the Officer gave little weight to the evidence provided by the lawyers solely because "there can be no expectation that [the lawyers] would deviate from the narratives they presented to the Montenegrin Court or the ECHR in terms of [the Principal Applicant's] innocence, the mistreatment of the detainees and the fabricated nature of the case against the Eagle's Flight group." The Officer stated that one of the lawyers could not be objective, and that he was an advocate for the Principal Applicant.

[145] In my view, I do not find that the Officer erred with respect to this evidence. The Officer was entitled to characterize the lawyers as "advocates" for the Principal Applicant, and thus view the evidence as self-serving and the lawyers as having a personal interest in a matter (*Nagarasa* at para 24; *Ferguson* at para 27).

[146] Without more, this could be seen as erroneous. But the Officer pinpointed exactly which evidence was being discounted—namely, evidence of the Principal Applicant's innocence, the mistreatment of the members of the Eagle's Flight case, and the "fabricated nature" of their case. It must be recalled that earlier in the PRRA Decision, the Officer had already found that the evidence established that the Principal Applicant had been mistreated, that the ECHR Decision found the convictions were based on fair proceedings, and that the evidence did not establish that the case had been fabricated against the men involved in the Eagle's Flight case.

[147] With these evidentiary findings in mind, in my view the Officer therefore had valid grounds to discount the weight of the lawyers' evidence (*Smith* at para 42). As held often throughout this decision, the Applicants request that I engage in a line-by-line hunt for error and reweigh the evidence as they wish it to be weighed. I do not accept this request (*Vavilov* at paras 102, 125).

[148] Furthermore, the Officer did not err by finding that "the whole of [Professor Fischer's] rationale… is out of context." The Officer found that it was evident Professor Fischer had not been provided the ECHR Decision, given that Professor Fischer did not mention the ECHR Decision and that the ECHR Decision allegedly contradicted his statement that media reports and attorneys had reported that the accused men in the Eagle's Flight Case had been tortured.

[149] This is a sound inference based on statements made in Professor's Fischer's evidence. Professor Fischer states that he was provided with the "statement of facts presented to the [ECHR] describing the applicant's experiences in Montenegro." In my view, it was logical for the Officer to infer, from this primary fact, that Professor Fischer was not provided with the ECHR Decision (*Ayalogu* at para 19)—a decision, the Officer notes, that directly contradicts evidence in Professor Fischer's report. Thus, the Officer provided valid grounds for discounting Professor Fischer's expert evidence (*Smith* at para 42). This is not an instance of fundamentally misapprehending evidence (*Vavilov* at para 126); rather, it is one of weighing the evidence. The Court will not reweigh this evidence when determining if the PRRA Decision is reasonable (*Vavilov* at para 125).

(d) *Remaining Issues*

[150] The Applicants further maintain that the Officer erred by impugning the Principal Applicant's credibility regarding his fear of returning to Montenegro, as well as by refusing the previous positive risk assessment issued for the Principal Applicant in 2016, relying on the ECHR Decision as evidence, and failing with respect to the "compelling reasons" analysis under section 108(4) of the *IRPA*.

[151] The Respondent submits that the Officer reasonably found that the Principal Applicant lacked credibility with respect to his claim that the Montenegrin authorities had fabricated the Eagle's Flight Case against him and that the Officer was not bound by the previous risk assessment.

[152] I agree with the Respondent.

[153] The line separating credibility and sufficiency findings is not always clear. Credibility is an issue of evidence's reliability (*Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 ("*Garces Canga*") at para 40). It asks whether the source of the evidence is to be believed. Sufficiency, however, is an issue of evidence's probative value (*Garces Canga* at para 40). It asks whether there is enough evidence to meet a burden of proof.

[154] From these propositions, evidence that is credible will not always be sufficient to establish the facts alleged (*Garces Canga* at para 41, citing *Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305 at paras 17–18). My colleague Justice Gascon has held, in the context of refugee claims, that the presumption of truth afforded to refugee claimants' statements "cannot be taken as a presumption that the evidence is satisfactory and sufficient" (*Garces Canga* at para 41, citing *Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (FCA)).

[155] After acknowledging the potential for the Principal Applicant's PTSD and memory issues to have affected his recollection, the Officer found that the Principal Applicant had not provided any details in a further declaration to support his statement that he feared returning to Montenegro because of the retaliation he would face from the Montenegrin government. The Officer found his statements to be "vague and unsubstantiated," and concluded that "on a balance of probabilities, [the Principal Applicant] did not face any problems in Montenegro after

his release from prison and there is insufficient evidence to suggest that the government was planning to retaliate against him for complaining of his treatment while detained."

[156] In my view, and reading the decision carefully, I find that this is an issue of sufficiency, rather than credibility *per se*.

[157] The Officer did not accept the Principal Applicant's statement that the Montenegrin government would persecute him upon return. On its face, this appears to turn on believing the source of the evidence (*i.e.*, being a credibility finding). However, the reason the Officer did not accept the Principal Applicant's statement was because there was not enough evidence to establish the facts alleged (*Garces Canga* at para 41). The crux of this issue is therefore a sufficiency finding. I do not find, given the Officer's analysis and treatment of the evidence, that the Officer erred with respect to this sufficiency finding. The Officer's reasons for finding the evidence to be insufficient to establish the facts alleged are, in my view, rational and logical (*Vavilov* at para 102).

[158] I also disagree with the Applicants that the Officer erred by rejecting the previous risk assessment. The Respondent rightly points out that the Officer did not have to agree with the risk assessment (*Ruz v Canada (Citizenship and Immigration)*, 2018 FC 1166 at para 86, citing *Placide v Canada (Citizenship and Immigration)*, 2009 FC 1056 ("*Placide*") at paras 63-64 and *Muhammad v Canada (Citizenship and Immigration)*, 2014 FC 448 ("*Muhammad*") at para 84). The Court has held that "the PRRA Officer's risk assessment is merely advice or a suggestion which does not bind the Minister's Delegate, who is permitted to make her own decision with

reasons" (*Muhammad* at para 77, citing *Placide*). The Applicants' submissions that the Officer erred by not following the previous risk assessment therefore fail.

[159] The Applicants' other submissions are similarly meritless.

[160] My colleague Justice McHaffie has noted that this Court has warned against reliance on factual findings of other decisions with respect to, for example, findings about country conditions and "particular issues such as state protection and the risk of persecution" (*Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 ("*Pascal*") at para 65, citing *Smith v Canada (Citizenship and Immigration)*, 2009 FC 1194 at paras 54-61; *Pathmanathan v Canada (Minister of Citizenship and Immigration)*, 2009 FC 885 at paras 35-43; *Shahzada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1176 at paras 5-6). As Justice McHaffie put it, "[a] finding that a particular event occurred on a particular day, or that an organization exists, is of a different nature than a finding that, for example, state protection is available in a given country" (*Pascal* at para 66). Decisions of the Court themselves are also not "new evidence" (*Bossé v Canada (Attorney General)*, 2017 FC 336 at para 14).

[161] The Officer was entitled to rely on the ECHR Decision as relevant evidence (*Kovacs v Canada (Minister of Citizenship and Immigration) (F.C.)*, 2005 FC 1473 ("*Kovacs*") at para 10). The Officer was not bound by the ECHR Decision, and the Officer had to conduct an independent analysis to reach the Officer's own conclusions (*Kovacs* at para 10).

[162] I do not find that the Officer here, as claimed by the Applicants, placed "undue emphasis" on the ECHR Decision "to the exclusion of other particularized evidence before" the Officer, or that the Officer was "hyperbolizing, or at a minimum misinterpreting, the content of [the ECHR Decision]." In my view, the Officer relied on the ECHR Decision as evidence pertaining to the Principal Applicant's claim that the Montenegrin government had fabricated the case against him without any "real evidence." The Officer found that certain features of the ECHR Decision and the Principal Applicant and Montenegrin government's actions before and after this Decision contradicted the Principal Applicant's claim that he had been unjustly arrested and prosecuted. This determination does not engage the cautions put forth by the Court (*Kovacs* at para 10; *Pascal* at para 65) and was solidly within the Officer's ambit to make.

[163] Finally, I do not agree with the Applicants' submission that "[h]ad the officer not erred in respect of her conclusions on admissibility and the evidence before her relating to risk, particularly her treatment of his torture, her conclusion that there were no compelling reasons arising out of previous persecution might have been different."

[164] As noted above, I do not find that the Officer erred with respect to the inadmissibility finding. The Officer thus did not err by finding that, owing to this inadmissibility, the Principal Applicant would have been ineligible for status under sections 96 or 97 of the *IRPA*. The Applicants' submission that the Officer erred with respect to the evidence of the Principal Applicant's asylum claims in Australia and the United States is peripheral to the Officer's conclusion (*Vavilov* at para 100). Additionally, the submission that there was evidence of the torture before the Officer that the Principal Applicant has continued to face is simply a request

for the Court to reweigh the evidence and ask the Court to decide the issue itself (*Vavilov* at paras 83, 125).

(e) *Conclusion*

[165] When reviewing a decision for its reasonableness, the Court must have deference towards decision maker's factual findings; the Court must not reweigh and reassess evidence (*Vavilov* at para 125). Decisions must also be justified with regard to the relevant legal constraints that bind them (*Vavilov* at para 105).

[166] The Applicants have made numerous submissions regarding the Officer's treatment of the evidence in the PRRA Decision. They are meritless. I do not find that the Applicants have established that the PRRA Decision is unreasonable (*Vavilov* at para 100).

(4) <u>The H&C decisions</u>

[167] The Applicants submit that the Officer committed several reviewable errors in the H&C decisions. I agree. The Officer's H&C decisions are unreasonable.

(a) *Exceptionality*

[168] The Applicants first submit that the Officer applied an erroneous "exceptionality" lens to the H&C decisions.

[169] The Respondent submits that this Court has held that H&C applications are exceptional, and that there is a high threshold to establish that this form of relief is warranted.

[170] I disagree with the Applicants. It is true that the H&C remedy is "exceptional" insofar as it is an "exception" to the normal operation of the law. It is an error to require an individual demonstrate that their circumstances are "exceptional" (*Henry-Okoisama v Canada (Citizenship and Immigration*), 2024 FC 1160 at paras 29-47). Here, the Officer applied the correct standard, noting in the Associate Applicant and Zef's H&C decisions that H&C relief is an "exceptional measure." The Officer did not require that the Applicants' circumstances be "exceptional."

(b) *Breaches of immigration laws*

[171] The Applicants further submit that the Officer unduly focussed on evidence of the Associate Applicant's breaches of Canadian immigration law in finding that her circumstances did not warrant H&C relief. The Applicants submit that the Officer mischaracterized the Associate Applicant's "choices" about her children and failed to consider that the Applicants sought to avail themselves of immigration avenues, that IRCC bears some blame for delaying the applications, that the Associate Applicant's fault for the situation of the family is on the lower end of the wrongdoing scale, that the CBSA's decision-making exacerbated the stress and uncertainty of the children, and that the children bear no responsibility for their parents' decisions.

[172] The Respondent submits that the Officer did not unduly focus on the Associate Applicant's breaches of Canadian immigration laws, as the Officer did not rely upon them to find that the Associate Applicant's circumstances warranted H&C relief.

[173] I agree with the Respondent.

[174] There is no merit to the Applicants' allegations that Canadian government officials are to blame for the Applicants' immigration status, which are made without reference to evidence or law. Moreover, I agree that the children do not bear responsibility for the parents' decisions. And while I take some issue with the Officer finding that the Associate Applicant bore some of the blame for "having put her family in the situation where they face a forced removal and all the attendant difficulties of relocating her children," I do not find that such a finding constitutes an error that would render the H&C decisions unreasonable. I would, however, caution officers from making such comments.

[175] Regarding an individual's non-compliance with Canadian immigration laws and lack of status, I rely on my colleague Justice Zinn's recent holding that "it is a given that applicants of H&C applications are in contravention of the [*IRPA*]. While a decision-maker may assess the nature and severity of an applicant's non-compliance, they must not discount positive H&C factors solely on the basis of that non-compliance. To do so would be contrary to the entire purpose of assessing H&C applications" (*Shah v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 398 ("*Shah*") at para 44 [citations omitted]).

[176] I do not find that the Officer discounted the Associate Applicant's positive H&C factors solely on the basis of her non-compliance with Canadian immigration laws. Indeed, as the Respondent points out, her history of non-compliance was simply documented by the Officer in the Associate Applicant's H&C Decision: It does not appear whatsoever in the Officer's reasoning. The Applicants do not raise a reviewable error with this aspect of the H&C decisions.

(c) *Establishment in the Associate Applicant and Zef's Decisions*

[177] The Applicants further submit that the Officer erred in finding that the Associate Applicant and Zef were not established in Canada because they had not worked whilst in Canada. The Applicants submit that this failed to account for the other support they provided the Principal Applicant and that the Officer should not have narrowed the establishment analysis to only economic establishment.

[178] The Respondent submits that there is no merit to the Applicants' submission that the Officer applied an erroneous establishment standard to the Associate Applicant's circumstances. The Officer reasonably considered both the Associate Applicant's economic and community establishment in Canada, as well as the evidence that the Associate Applicant would not live in Canada should the Principal Applicant be removed.

[179] I agree with the Respondent.

[180] The Officer was entitled to find that the Associate Applicant and Zef were not economically established in Canada given that they did not have work permits. The Officer

specifically acknowledged evidence of the Associate Applicant and Zef's desire to assist the Principal Applicant with his businesses in Canada, and the Applicants do not point to any evidence that shows the Officer misapprehended the facts regarding the Associate Applicant and Zef's economic establishment in Canada, and specifically their assistance with the Principal Applicant's business (*Vavilov* at para 125).

[181] Additionally, the Associate Applicant and Zef's H&C Decisions clearly show that the Officer acknowledged other evidence of establishment. For the Associate Applicant, that includes evidence of her establishment in the Windsor community. For Zef, that includes previous work experience, education, letters of support speaking to his good character, and the fact he has a girlfriend in Canada. The Applicants have not established that the Officer failed to account for other aspects of the Associate Applicant and Zef's establishment in Canada. Rather, they request the Court itself to decide the issue of establishment. That, the Court will not do (*Vavilov* at para 83).

(d) *BIOC*

[182] The Applicants submit that the Officer erred by finding that the BIOC and the family unit could relocate to Montenegro together. The Applicants further submit that the Officer erred with respect to finding that Suzanna and her son could visit the Principal Applicant in Montenegro.

[183] On Palo's BIOC, the Applicants maintain that the officer failed to account for the "crux" of Palo's claim (*i.e.*, that separation had been difficult for him), erroneously found that Palo was of an age where "greater independence from one's parents is often the norm," and erred by

finding that Palo had other options for relocation, including to Montenegro, the United States, or getting a study permit in Canada.

[184] On Besa's BIOC, the Applicants maintains that the Officer erred by finding that Besa could move to Montenegro, failed to analyze whether relocation was in her best interests, and erred by noting Montenegro's candidacy in the European Union ("EU").

[185] On both Palo and Besa's BIOC, the Applicants maintain that the Officer erred by assuming the two children could speak Albanian, failed to account for whether they could seek English education in Montenegro, made an inconsistent statement regarding it being in the two children's best interest to be with their father in Canada, erred by finding the family had experience dealing with separation, and never assessed whether the family could reside in Canada together.

[186] The Respondent submits that the Officer reasonably found that remaining with their parents would be in the BIOC, and also considered the possibility of the family living together in a country other than Canada. The Respondent submits that there is no merit to the allegation that the Officer erred by not assessing the possibility of remaining in Canada together as a family. The Respondent further submits that the Officer reasonably found that there were no "real obstacles" to the family living together in Montenegro and that if the Associate Applicant and the children remained in the United States, the family could remain in contact with the Primary Applicant through other forms of communication and visits.

[187] I agree with the Applicants.

[188] In BIOC analyses, it is fundamental that an officer be alert, alive, and sensitive to the particular children's needs, and that the BIOC be a "significant" component of the H&C analysis (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*") at paras 34-41). I am also guided by my colleague Justice Norris's holding that it is the "antithesis" of the compassion required under section 25(1) of the *IRPA* to adopt an approach focussing on whether children are resilient and can adapt to life's difficulties (*Reducto v Canada (Citizenship and Immigration)*, 2020 FC 511 ("*Reducto*") at para 53). Furthermore, "a lack of hardship cannot serve as a valid substitute for a BIOC analysis" (*Sheorattan v Canada (Citizenship and Immigration)*, 2022 FC 1366 ("*Sheorattan*") at para 34, citing *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 ("*Singh*") at para 30).

[189] In my view, the Officer's analysis of Palo and Besa's interests does not meet the required standards of a BIOC analysis. Given the prime significance that the BIOC has in an H&C analysis and the severity of the Officer's errors, I am of the view that these errors are sufficient to render the Principal Applicant's H&C decision unreasonable as a whole (*Vavilov* at para 100).

[190] As noted above, the Officer found that Palo and Besa's best interests favoured granting the Principal Applicant H&C relief. For Palo, the Officer found that he was at an age where "greater independent from one's parents is often the norm." For Besa, the Officer stated that she was at an age where "children are often more adaptable to new surroundings" and that relocating to Montenegro could be a "transition… but also an enriching experience in the long term." The

Officer further found that there was no evidence that these children did not speak Albanian, that Besa would have to learn Albanian, and that a private institution may be found with English instruction in Montenegro.

[191] The Officer's approach to Palo's best interests was not alert, alive, and sensitive to his needs. Palo provided, in an articulate statement provided in support of the application, that:

> My family has come a long way here in Windsor and I can only hope that we are able to continue our life here in this beautiful country. When my father came to Canada, that was the first time in many years my family has been reunited, we finally felt complete after many years of separation.

[192] Rather than acknowledge whether Palo's needs included staying with his family in Canada, the Officer made a statement inflected by the Officer's own understanding of what children are meant to do at specific ages, including when they are or will be independent from their family. This finding lacks intelligibility (*Vavilov* at para 99). I further find that the Officer's summary of Palo's options for relocation (*i.e.*, staying in Canada to study, moving to Montenegro, or moving to the United States) demonstrates a focus on the lack of hardship Palo would face upon the family being separated, rather than on Palo's specific interests. In my view, this is a serious error in the Officer's BIOC analysis (*Kanthasamy* at paras 34-41; *Sheorattan* at para 34).

[193] This error, however, is less egregious than the Officer's treatment of Besa's needs. The Officer found that Besa could adapt to an environment that was completely unfamiliar to her, despite acknowledging that Besa likely had no memory of living anywhere other than Canada.

The Officer speculated as to whether Besa spoke Albanian, finding that she could nonetheless learn a new language or be put in a private English institution. This is not an analysis of Besa's needs. It is an appraisal of what an eight-year old child could adapt to and the hardship she could endure. It is the antithesis of the required analysis (*Kanthasamy* at paras 34-41; *Sheorattan* at para 34; *Reducto* at para 53). It renders the decision unreasonable.

[194] Additionally, I am mindful that the Officer failed to consider the children's BIOC in relation to one-another, having been raised by the Applicants and as borne out by the evidence of their relationship to one-another (see *e.g.*, *Hosrom v Canada (Citizenship and Immigration)*, 2022 FC 365 at para 62).

[195] These errors, in my view, justify finding the Principal Applicant's H&C Decision to be unreasonable as a whole. The errors are significant, leaving the decision bereft of the requisite sensitivity to Palo and Besa's needs. Given that the Officer primarily relied on the BIOC analysis in the Principal Applicant's H&C application for the Associate Applicant and Zef's H&C applications, the Officer erred in the H&C analysis in the Associate Applicant and Zef's H&C applications. The H&C decisions must be quashed and remitted for redetermination by a different officer.

(e) *The Remaining Factors in the H&C decisions*

[196] The Applicants submit that the Officer erroneously discounted the Principal Applicant's establishment in Canada, erred with respect to the conditions in Montenegro as they relate to the Principal Applicant and the rest of the family, and drew a number of "unwarranted conclusions

about the medical and psychological evidence." The Applicants further submit that the Officer engaged in circular reasoning with respect to the H&C applications, and once more submit that the Officer placed undue emphasis on breaches of Canadian immigration laws, as well as the Applicants' lack of status. The Applicants submit that the Officer made multiple errors in Zef's H&C Decision, including with respect to how family separation affected him, his past contact with the police, the support letters, Zef's purpose to immigrate to Canada, and Zef's girlfriend in Canada.

[197] The Respondent submits that the Officer did not engage in circular reasoning and that the Officer did not wrongly assume that the Applicants' desire was to remain in Canada as a family unit. The Respondent further submits that the Officer did not err in failing to assess the risk the Associate Applicant and the children would face upon removal to Montenegro, as the refused H&C applications would not lead to their involuntary removal to Montenegro. The Respondent submits that the Officer acknowledged the relevant evidence in Zef's H&C decision, and reasonably found that Zef's main reason for wishing to permanently remain in Canada no longer existed once the other applications had been refused.

[198] I agree with the Applicants. In my view, the Applicants raise a number of issues with the Principal Applicant's H&C Decision that, when coupled with the findings above regarding the BIOC analyses, are sufficient to render the decision unreasonable as a whole.

[199] "Establishment," this Court has held, "means establishment in Canada" (*Cardoso Vaz v Canada (Citizenship and Immigration)*, 2022 FC 1703 ("*Cardoso Vaz*") at para 31). An officer

must focus on whether an applicant's establishment in Canada weighs in favour of their claim, rather than whether this establishment can mitigate the hardship they would face if removed (*Cardoso Vaz* at para 29, citing *Singh, Li v Canada (Citizenship and Immigration)*, 2020 FC 848 at para 22, *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 35, *Jeong v Canada (Citizenship and Immigration)*, 2019 FC 582 at para 53, and *Lopez Bidart v Canada (Citizenship and Immigration)*, 2020 FC 307 at para 34). Moreover, as my colleague Justice Diner fittingly put it, "[t]o turn positive establishment factors on their head is unreasonable. The officer cannot… use the Applicants' shield against them as a sword" (*Singh* at para 23). I must add, "[o]ne would expect that the message has been received at this point" (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 1142 at para 37).

[200] The Officer acknowledged the evidence of the Principal Applicant's significant economic establishment, as well as his establishment in the Albanian-Canadian community and his membership in a church community. The Officer concluded that the Principal Applicant was "very well established in the Windsor business community and that this is a consideration in his favor." However, the Officer continued the analysis by finding that it was "reasonable to assume" that if the Principal Applicant left Canada, he could liquidate his assets and live off the proceeds to support his family. The Officer made a number of speculations about what the Principal Applicant could do with his Canadian businesses, and that in any event, he would "remain a wealthy man."

[201] In my view, this shows the Officer using the Principal Applicant's establishment as a sword, rather than a shield (*Singh* at para 23). The Officer concluded the analysis by turning to

how the Principal Applicant's establishment could mitigate the hardship he would face if removed to Montenegro, rather than focusing the establishment analysis on the Principal Applicant's establishment in Canada and whether it weighed in favour of his claim (*Cardoso Vaz* at paras 29, 31). I acknowledge that the Officer concluded that the Principal Applicant had a high degree of establishment in Canada. However, I cannot ignore the Officer's determination that this degree of establishment factored against the Principal Applicant. This is an error in the Officer's decision.

[202] Furthermore, I agree with the Applicants that the Officer erred with respect to how the conditions in Montenegro would affect the rest of the family. Specifically, I agree with the Applicants that the Officer erred by failing to consider how the move to Montenegro would affect Palo and Besa, for the reasons provided above regarding the BIOC analysis.

(f) *Conclusion on the H&C Decisions*

[203] I agree with the Applicants that the Officer's BIOC and establishment analysis in the Principal Applicant's H&C Decision contained several serious errors, errors that in my view are sufficient to render the decision unreasonable as a whole (*Vavilov* at para 100). The Principal Applicant's H&C decision is quashed. As noted above, the Officer therefore erred in the BIOC analyses in the Associate Applicant and Zef's H&C applications. Given the severity of these errors, the H&C decisions are quashed and remitted to a different officer for redetermination.

VI. **Conclusion**

[204] The application for judicial review is allowed in part.

[205] In my view, the Rehabilitation and PRRA Decisions are reasonable. However, the H&C decisions are not.

[206] I am mindful that a single delegated officer was chosen to handle all of these decisions. I commend the Officer for their efforts. While I find that the H&C decisions are unreasonable, the Officer had a voluminous record and difficult legal questions to navigate. The Officer did not render these decisions in an unfair or abusive manner, despite the Applicants' baseless allegations otherwise.

[207] I nonetheless find that the H&C decisions must be quashed and remitted to a different officer for redetermination.

[208] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-10882-22, IMM-10883-22, IMM-10884-22, IMM-10565-22, and IMM-10518-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed in part.

2. The decisions subject to review in Court file numbers IMM-10883-22 and IMM-10884-22 are reasonable.

3. The decisions subject to review in Court file numbers IMM-10518-22, IMM-10565-22, and IMM-10882-22 are quashed and remitted to a different officer for redetermination.

4. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-10882-22, IMM-10883-22, IMM-10884-22, IMM-10565-22, AND IMM-10518-22
STYLE OF CAUSE:	PJETAR DEDVUKAJ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION LULA DEDVUKAJ, PALO DEDVUKAJ AND BESA DEDVUKAJ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION ZEF DEDVUKAJ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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