

Federal Court



Cour fédérale

**Date: 20170706**

**Docket: IMM-3893-16**

**Citation: 2017 FC 657**

**Ottawa, Ontario, July 6, 2017**

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

**BETWEEN:**

**WAJEEHA ZEHRA HAMEED  
MAZAHIR MUHAMMAD HAMEED**

**Applicants**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Ms. Wajeeha Zehra Hameed and her son, Mazahir Muhammad Hameed are the Applicants in this matter. They first came to Canada in June 2001 and obtained permanent residence status upon landing. Two weeks later they returned to Pakistan. In 2013 the Applicants returned to Canada on a temporary residence visa.

[2] In August 2013, they initiated an appeal before the Immigration Appeal Division [IAD] as a result of the loss of their permanent resident status for failing to meet the residency requirements. In February 2016 the appeal was denied and in May 2016 the Applicants submitted a Humanitarian & Compassionate [H&C] application seeking consideration of their application for permanent residence from within Canada. A Senior Immigration Officer [Officer] denied the H&C application. It is that Officer's decision that is before me for review.

[3] The Applicants argue that the Officer erred by failing to identify and outline the test to be used in assessing the best interests of a child [BIOC] and unreasonably applied the test. They further argue that the Officer unreasonably assessed the hardship the Applicants would face upon return to Pakistan. In reply, the Respondent submits that an H&C decision of an Officer is a very fact-driven discretionary decision owed considerable deference. The Respondent further argues that the BIOC analysis is highly contextual, that no one specific test must be followed, and that the Officer's BIOC and hardship conclusions were reasonable.

[4] The Application raises the following issues:

- A. Did the Officer fail to give adequate consideration to Mazahir's best interests?
- B. Did the Officer reach an unreasonable conclusion in assessing hardship?

[5] Having considered the parties submissions, I am unable to identify any reviewable error on the part of the Officer that would warrant my intervention. The Application is dismissed for the reasons that follow.

## II. Standard of Review

[6] The Applicants rely on *Kastrati v Canada (Citizenship and Immigration)*, 2008 FC 1141, 172 ACWS (3d) 180, to advance the position that the correctness standard should be adopted when considering the alleged failure of an Officer to articulate and apply the correct BIOC test, being the test as set out in the Supreme Court of Canada's decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 [*Kanthasamy*]. I disagree.

[7] The consideration of a child's best interests "is highly contextual" because of the "multitude of factors that may impinge on the child's best interests" (*Khantasamy* at para 35 citing both *Canadian Foundation for Children, Youth and the Law v Canada (AG)*, 2004 SCC 4 at para 11, [2004] 1 SCR 76 and *Gordon v Goertz*, [1996] 2 SCR 27 at para 20, 134 DLR (4th) 321). The best interests principle is to be applied in a manner that reflects each child's particular circumstances (*Khantasamy* at para 35 referencing *AC v Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at para 89, [2009] SCR 181). "A decision under s. 25(1) will therefore be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered" (*Khantasamy* at para 39 referencing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75, 174 DLR (4th) 193).

[8] In reviewing an officer's BIOC analysis, a reviewing court is concerned with the substance of the analysis in light of the principles enunciated in the jurisprudence, and not whether the decision-maker has articulated or set out those principles prior to engaging in that analysis. The issue is one of sufficiency, being whether the consideration of the child's best

interests in the context of the child's circumstances was sufficient, and is to be reviewed on a standard of reasonableness. In this regard, I agree with Respondent's position that the issues raised for consideration in this Application all engage questions of mixed fact and law and are reviewable on the reasonableness standard.

[9] In undertaking this review it is also worthwhile noting that H&C relief pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] is intended to provide a safety valve to address exceptional cases based on a holistic consideration of all of the humanitarian and compassionate grounds and circumstances identified in the application (*Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 15, 43 Imm LR (4th) 20; and *Kanthisamy* at paras 30 – 33). The determination of an H&C application engages the exercise of the decision-maker's discretion in applying subsection 25(1) of the IRPA to the facts disclosed in the application. That exercise of discretion is reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*]). Where a reviewing court is to determine whether a decision is reasonable it "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process" as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

[10] A reviewing court is to show "respectful attention to the reasons offered or which could be offered in support of a decision" (*Dunsmuir* at para 48 citing David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", *The Province of Administrative Law* ed by

Michael Taggart (Oxford, UK: Hart Publishing Ltd, 1997), 279, at 286). It is not for a reviewing court to reweigh the evidence.

III. Analysis

A. *Did the Officer fail to give adequate consideration to Mazahir's best interests?*

[11] The Applicants argue that the Officer's BIOC analysis is flawed in that the Officer: (1) did not assess the reality of the extent and nature of the hardships that Mazahir will face if he were to return to Pakistan with his mother; (2) made an inconsistent finding; (3) failed to identify Mazahir's interest; and (4) failed to determine whether it was in his best interests to remain in Canada or return to Pakistan.

[12] In the decision, the Officer undertook an assessment of the following interests that would be impacted by Mazahir's return to Pakistan:

- A. The alleged tumultuous relationship between his parents including the allegation that his father was abusive. The Officer noted a prior IAD decision questioning the credibility of the abusive relationship allegations and concluded that the evidence did not establish that Mazahir would be exposed to an abusive or controlling household if he returned to Pakistan given the earlier credibility finding;
- B. Education. The Officer noted that Mazahir was doing well in school, and that the attributes that allowed him to perform well in Canada would also assist him to

perform at a similar level in Pakistan. The Officer noted that the education system in Pakistan was weaker than that in Canada but that Mazahir had attended private school in Qatar as noted in the earlier IAD decision, and that there was no indication that this option would be unavailable in Pakistan. The Officer also noted that his mother and two sisters had accessed a quality education in Pakistan;

- C. Involvement in extracurricular activities, including the sport of tennis. The Officer noted that the evidence did not indicate these activities would be unavailable or inaccessible in Pakistan;
- D. Established friendships in Canada. The Officer noted there were means for Mazahir to maintain contact with his current friends and that his demonstrated social skills would assist him in establishing new friendships in Pakistan;
- E. The high rate of poverty in Pakistan. The Officer noted these conditions while also taking into account that Ms. Hameed's education, experience and resourcefulness, would likely allow her to obtain employment and be self-supporting on return to Pakistan. The Officer also noted that monthly financial support was being provided by Ms. Hameed's husband and that on this basis the poverty in Pakistan was unlikely to adversely impact Mazahir; and
- F. Health risks to children in Pakistan, including risks arising out of disease and violence in society. The Officer concluded that the evidence indicated it was unlikely that Mazahir would experience a direct negative impact as a result of these conditions.

[13] In this case the Officer did identify and assess Mazahir's interests. In conducting that assessment the Officer identified the relevant evidence and weighed it in respect of each of the interests identified.

[14] The Applicants rely on *Duhanaj v Canada (Citizenship and Immigration)*, 2015 FC 416, [2015] FCJ No 397 (QL) [*Duhanaj*], where Justice Anne Mactavish held that the Officer in that case erred in failing to weigh the detriment to a child being forced to complete their education in a substandard education system against the benefit of continuing their education in Canada.

[15] In my opinion *Duhanaj* is of little assistance to the Applicants. Unlike *Duhanaj* the Officer in the present case did not conclude that a direct negative impact would not be experienced by Mazahir simply because the sub-optimal education conditions and health and safety risks were common to all children. Rather the Officer acknowledged the weaker education system and risks to health and safety. The Officer then noted that the evidence indicated that a quality private education had been previously provided to Mazahir in Qatar, that his sisters had received quality education in Pakistan that allowed them to be accepted into post-secondary programs in other countries, that there was no evidence to indicate a similar education would be unavailable to Mazahir, and that he possessed the personal qualities to attain a high level of education in Pakistan.

[16] In concluding it was unlikely Mazahir would be directly impacted by poverty, disease and violence the Officer noted that it was likely Ms. Hameed would be self-supporting and that the financial support of his father would continue. The Officer's analysis considered the impact

of the conditions on children in Pakistan and did not conclude these were unimportant factors because all other children were subject to them but rather that Mazahir would likely not be directly impacted due to his individual circumstances. In short, the Officer considered the factors impacting upon Mazhid and undertook a contextual analysis of those factors. The conclusions reached were reasonably available to the Officer.

[17] The Applicants submit that the Officer's conclusion "that it would likely be in Mazahir's best interests not to be in a country where [the issues of poverty, disease and violence] are occurring" is inconsistent with the ultimate conclusion reached in the Officer's decision. Again I disagree. The Officer's ultimate conclusion was reached after a balanced and reasonable consideration of the evidence with the Officer noting that the BIOC assessment is but one element in the overall H&C application, an element that is not determinative but must be weighed amongst the many relevant factors considered in an H&C application (*Duhanaj* at para 4).

B. *Did the Officer reach an unreasonable conclusion in assessing hardship?*

[18] The Applicants argue that the Officer erred in two respects in assessing hardship: (1) there was a failure to consider the hardship that Ms. Hameed would face as a result of her gender, and her progressive political beliefs; and (2) Ms. Hameed was expected to demonstrate a direct and negative impact with respect to the ongoing issue of violence against women in Pakistan when such a direct link was not required.



[19] There are circumstances where an applicant seeking H&C relief may rely on country conditions to support a reasoned inference of the risks faced on return (*Aboubacar v Canada (Citizenship and Immigration)*, 2014 FC 714 at para 12, 460 FTR 84). However that inference must, in my view, be drawn from a holistic consideration of the evidence. An applicant still has the burden of establishing they would “likely be affected by adverse conditions” (*Kanhasamy* at para 56).

[20] In this case the Officer considered numerous factors and weighed each of them in light of the circumstances of this particular case. The Officer considered the material provided by the Applicants, their family members and friends, as well as country conditions documents. The Officer concluded that there was little evidence to support a conclusion that Ms. Hameed would likely experience on return to Pakistan, or that she had ever previously experienced, any direct negative impact with respect to legal or economic discrimination by gender. The Officer reasonably concluded that Ms. Hameed would likely be able to find employment and that she would likely continue to receive financial support from her spouse. In the context of all of these circumstances the Officer concluded that the allegations of hardship did not warrant H&C relief.

[21] The Applicants do not take issue with these findings but rather argue that the Officer imposed too high a burden on them. I disagree. The Officer did not require Ms. Hameed to demonstrate a direct negative impact as a result of the generalized risk of gender violence. The documentary evidence recognized that a number of factors impact on how individual women are treated in Pakistan. These factors include social positioning, economic independence and education, factors that were considered and addressed by Officer. When this evidence is

considered as a whole it was not unreasonable for the Officer to find that Ms. Hameed had failed to establish that she was likely to be exposed to hardship arising out of gender based violence.

[22] In seeking to have this Court interfere with that determination the Applicants are in effect asking that I engage in a reweighing of the evidence. As noted above this is not the role of the Court on judicial review.

#### IV. Conclusion

[23] The Officer's conclusions are justified, transparent and intelligible. The outcome falls within the range of reasonable possible outcomes based on the facts and the law. The Application is dismissed.

[24] The parties have not identified a question of general importance for certification and none arises.

**JUDGMENT IN 3893-16**

**THIS COURT'S JUDGMENT is that** the Application is dismissed. No question is certified.

"Patrick Gleeson"

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Judge

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

**DOCKET:** IMM-3893-16

**STYLE OF CAUSE:** WAJEEHA ZEHRA HAMEED, MAZAHIR  
MUHAMMAD HAMEED v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

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