

Federal Court



Cour fédérale

**Date: 20180103**

**Docket: IMM-2481-17**

**Citation: 2018 FC 2**

**Ottawa, Ontario, January 03, 2018**

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

**BETWEEN:**

**KIRK NICHOLAS JACK**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review by Kirk Nicholas Jack (the “Applicant”) pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, c 27 (“IRPA”). The Applicant applied for permanent residence from within Canada on humanitarian and compassionate (“H&C”) grounds, which was denied by a Senior Immigration Officer (the “Officer”) by way of a decision (the “Decision”) dated May 30, 2017.

[2] In denying the claim, the Officer considered three H&C factors: establishment, the best interest of the child, and risk should the Applicant return to his native Saint Vincent and the Grenadines (“St. Vincent”). The Applicant contends that the Officer erred with respect to the third factor by failing to consider the totality of the evidence about the risk and hardship that he would face should the Applicant return to St. Vincent.

## II. Facts

[3] The Applicant is a 42 year old man and citizen of St. Vincent. In 1998, he was involved in a motor vehicle accident that seriously injured “Nicholas,” a notorious gang member. Nicholas demanded that the Applicant pay compensation for the accident, and when he refused to pay, Nicholas began threatening the lives of the Applicant and his family. For instance, one day in 2000, Nicholas showed up at the Applicant’s mother’s home and girlfriend’s home with a gun, threatening the Applicant’s life should he fail to pay. In December 2004, Nicholas threatened the Applicant at his workplace. The Applicant reported the threats to the police on multiple occasions, but to no avail. The police indicated that they could not act because no actual harm was done to the Applicant or his family members.

[4] As a result of the threats, the Applicant sent his common law partner and young son to Canada. The Applicant came to Canada shortly thereafter, arriving in May 2005.

III. Issues

[5] Did the Officer err in assessing the totality of the evidence with regard to the hardship the Applicant will face if returned to St. Vincent?

IV. Analysis

A. *Standard of Review*

[6] The Officer's finding is reviewable upon a standard of reasonableness. As the Supreme Court of Canada explained in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 62, where the appropriate standard of review is established in jurisprudence, a full analysis of the standard is unnecessary. This Court has found that H&C determinations by immigration officers are normally reviewable upon a standard of reasonableness: *Ahmad v Canada (Citizenship and Immigration)*, 2008 FC 646 at para. 11. I shall adopt this standard in the case at bar.

[7] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 15, the Supreme Court of Canada affirmed that a reviewing court may examine the record to assess the reasonableness of a decision.

[8] The Respondent, relying upon *Persaud v Canada (Citizenship and Immigration)*, 2012 FC 274 (*Persaud*), notes that judicial review should not involve a microscopic analysis of the country context evidence in search of evidence to support the Applicant's case. Conversely, the Applicant relies upon *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*,

[1998] FCJ No 1425 (QL) to illustrate the circumstances in which a decision-maker will be found to have made a finding of fact without regard to the evidence. In *Herrera Andrade v. Canada (Citizenship and Immigration)*, 2012 FC 1490 at para. 9, Justice Gleason provides useful insight into how these cases are to be interpreted:

As Justice Hughes stated in *Persaud*...Justice Evans' decision in *Cepeda-Gutierrez* does *not* stand for the proposition that failure to analyze evidence that runs contrary to a tribunal's conclusion necessarily renders a decision unreasonable. Rather, in *Cepeda-Gutierrez* Justice Evans held that failure to consider specific evidence must be viewed in context and will lead to a decision's being overturned only where the non-mentioned evidence is critical, contradicts the tribunal's conclusion and the reviewing court determines that its omission means that the tribunal did not have regard to the material before it.

[Emphasis in original]

[Citation omitted]

B. *Consideration of the Evidence*

[9] In the Decision before me, the Officer concludes that the Applicant provided “insufficient evidence” that the family had approached the authorities with respect to Nicholas’ threats, and “insufficient objective evidence” that the authorities would not be forthcoming in providing assistance should the need arise (Decision, p. 5). In order to know whether this conclusion is reasonable, it is necessary to review the evidence before the Officer.

[10] As a preliminary matter, I wish to note that the Officer considers “the risk [the Applicant] would face in returning to St. Vincent” as a factor in granting H&C relief (Decision, p. 3). Throughout the Decision, the language of both “risk” and “hardship” appear to have been used interchangeably to consider how country conditions in St. Vincent will be a source of hardship

for the Applicant, specifically as it relates to the threats by Nicholas. Therefore, the analysis that follows proceeds with the understanding that the Officer employed the term “risk” in a general sense, but actually analyzed the *hardship* that the Applicant faces due to the “risk” associated with Nicholas’ threats.

[11] First is the sworn affidavit of the Applicant. Unless there are reasons to doubt its truthfulness, the affidavit is presumed to be true: *Maldonado v Canada (Minister of Employment and Immigration)*, [1979] F.C.J. No. 248 at para. 5. The affidavit speaks of threats that the Applicant received beginning in 2000, as well as threats against his mother and girlfriend. The affidavit furthermore stipulates that the Applicant contacted the police on multiple occasions and that no assistance was forthcoming. Finally, it states that the Nicholas threatened the Applicant at his workplace in December 2004.

[12] Next are six letters that discuss the nature of the threats against the Applicant. The Honourable Selmon Walters, Minister of Rural Transformation, Information, The Postal Services and Ecclesiastical Affairs for St. Vincent, writes that Nicholas went to visit him at his office in 2002, and that Nicholas threatened to kill the Applicant should he fail to be compensated (Certified Tribunal Record (“CTR”) at p. 55). Mr. Walters furthermore stipulates that he subsequently met with the Applicant and his mother to discuss the threats. Constable Vandy Bruce, who was with the Applicant at the time of the 1998 accident, provides a letter that describes the accident and subsequent threats against the Applicant, his girlfriend and his mother (CTR, p. 57). Levi Shallow’s letter affirms that Nicholas was actively looking for the Applicant, and that Nicholas was prepared to rob Mr. Shallow at gunpoint after he failed to provide

information on the Applicant's whereabouts (CTR, p. 58). Totsy Jack, the Applicant's mother, writes about the motor vehicle accident, a 2004 incident in which Nicholas attacked the Applicant to the point that he was hospitalized, and threats made in 2014-2015 which forced Ms. Jack to flee her home (CTR, p. 60). Kenson Matthews, the Applicant's cousin, writes of a threat he personally witnessed in 2004 and subsequent attack that left the Applicant hospitalized. More importantly, this letter also confirms that the case was reported to the police (CTR, p. 62). Finally, Allison Bullock, a family friend who the Applicant has known since childhood, wrote a letter relaying her knowledge of the motor vehicle accident, as well as threats made by Nicholas against the family as recently as the summer of 2014 which forced Ms. Totsy Jack to stay away from her home (CTR, p. 64).

[13] Finally, there is the objective documentary evidence. The US State Department report provides a general overview of the human rights situation in St. Vincent; two paragraphs of the entire report are devoted to the role of the police and security apparatus, and there are no references to gang violence. Conversely, there are two Responses to Information Requests ("RIRs"). One provides detailed information about gangs in St. Vincent and the extent to which the government is able to protect those targeted by gang violence. The other is exclusively about victims of death threats in St. Vincent. I wish to highlight a few passages of the RIRs that appear particularly relevant to the Applicant's circumstances:

If gang members cannot find the persons they are looking for, they will seek out the families of people they are "after," and may kill them. [...]

[CTR, p. 68]

The [St. Vincent and the Grenadines Human Rights Association, ("SVGHRA")] stated that "Vincentians targeted by gang members, shot at or threatened are provided no protection by the state" and

usually stay silent and do not even tell their family and friends for fear of “possible threat” on their lives or those of persons associated with them. [...]

[CTR, p. 70]

[...] The SVHGRA representative added that there is “risk” in reporting crimes to the police, as victims would be “marked” and “wanted” by the perpetrator and his associates.

[CTR, p. 70]

The Assistant Superintendent indicated that the police go to see the person who made the threats...According to the representative of the SVGHRA, the police sometimes act as an intermediary and issue warnings to people who make threats...The Assistant Superintendent indicated that if there is enough evidence against the person making threats, he or she is arrested and taken to court.

[CTR, p. 73]

The Representative of the SVGHRA stated that authorities typically do not prosecute people who make threats if there is no bodily harm to the victim. She expressed the opinion that authorities do not attach the appropriate level of seriousness to complaints of death threats. [...]

[CTR, p. 73]

[14] The Applicant’s documentary evidence also contains a newspaper article, as well as an excerpt from a book that provides general information about gangs in the Caribbean.

[15] I have substantial concerns about the Officer’s consideration of the evidence available on the record. Let me begin with the letters. I am unable to identify any portion of the Decision that substantively analyzes the letters as they relate to risk and hardship to the Applicant. Other than acknowledging their existence, the Officer makes no reference to them. Faced with this silence, I am left to wonder whether they were contemplated at all and, if they were, what weight they were afforded. Considering that the Officer raised no credibility issues, in conjunction and the

serious, corroborative elements they evoke, these letters constitute substantial evidence that appears to have been disregarded by the Officer. For the reasons provided, I find that the evaluation of the aforementioned letters was conducted in reviewable error.

[16] I also have concerns about the treatment of the documentary evidence. The Officer claims to have "...reviewed that documents (sic) provide (sic) by counsel in addition to conducting me (sic) own independent research on country conditions in St. Vincent as they relate to the applicants (sic) personal circumstances" (Decision, p. 5). The Officer then makes specific reference to a single report – the US Department of State Report – and on this basis finds that St. Vincent has a "... functioning government, is in control of its territory, has a police force and an independent judiciary system that are capable of protecting its citizen's (sic) criminal violence" (Decision, p. 6). The Decision makes no mention of the RIRs, despite the fact that they contain information that pertains directly to the Applicant's circumstances as a target of gang violence. Instead, the Officer appears to have passed over this evidence in favour of the information in the US Department of State report. How was all of the documentary evidence, taken together, weighed by the Officer in order to reach the conclusion that the police would be forthcoming in providing assistance should the need arise? How was this documentary evidence balanced against the Applicant's sworn affidavit and letters provided by family members and friends, which affirm that the incidents were reported to the police, but nevertheless led the Officer to the opposite conclusion? On the basis of the reasons provided in the Decision, one has to only wonder! As I am unable to follow the line of analysis between the evidence on the record and the Officer's conclusion, I find the Decision to be unintelligible.



[17] In conclusion, I find that the Decision is deficient in its consideration of the totality of the evidence. The Applicant's sworn affidavit and letters from family and friends are left unanalyzed. My review of the Applicant's materials did not require a microscopic analysis of reams of country condition evidence; on the contrary, a reading of the salient provisions of the RIRs – which, in their entirety, are no more than 8 pages combined – reveals information that not only largely corroborates the Applicant's experience with the gang member Nicholas and the St. Vincent police, but plainly runs contrary to the Officer's conclusion that assistance would be forthcoming should the Applicant report to the police. While the Officer was entitled to reach his or her own conclusions on the basis of the evidence, the Officer was also bound to provide reasons for those conclusions. In this case, the Officer's failure to do so suggests that the totality of the evidence was not considered which constitutes a reviewable error.

V. Certification

[18] Counsel for both parties was asked if there were questions requiring certification, they each stated that there were no questions arising for certification and I concur.

**JUDGMENT in IMM-2481-17**

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

1. The decision under review is set aside and the matter be referred back for redetermination by a differently constituted.
2. There is no question to certify.

"Shirzad A."

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Judge

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

**DOCKET:** IMM-2481-17

**STYLE OF CAUSE:** KIRK NICHOLAS JACK v THE MINISTER OF  
IMMIGRATION, REFUGEES AND CITIZENSHIP  
CANADA

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** DECEMBER 14, 2017

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** JANUARY 3, 2018

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