Federal Court  Cour fédérale

Date: 20200408

Docket: IMM-3941-19

Citation: 2020 FC 504

Ottawa, Ontario, April 8, 2020

PRESENT: Mr. Justice Russell

BETWEEN:

SEONHEE LEE A.K.A. YOUNGLAN LEE, SEONWOO JUNG A.K.A. JINWOO LEE AND JUNPIL JUNG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the decision of an Immigration Officer [Officer] dated June 3, 2019 [Decision] wherein the Officer denied the Applicants' application for permanent residence on humanitarian and compassionate [H&C] grounds.

II. BACKGROUND

[2] The Applicants are a mother, father, and son who are South Korean citizens. The mother, Ms. Lee, was born in 1983 in North Korea. At the age of 19, she fled North Korea for China. Meanwhile her parents and three siblings continued to reside in North Korea where they remain today.

[3] Ms. Lee was misled by the smuggler who helped her leave North Korea for China, and she was forced to marry a Chinese man. In 2003, she gave birth to a daughter Bing Lee; however, in 2005, she decided to depart China without her daughter to escape her violent husband. She was smuggled into Mongolia and later flew to South Korea. Ms. Lee was later unsuccessful in moving her daughter to South Korea, and the daughter remains in China.

[4] Ms. Lee arrived in South Korea in December 2005 and became a citizen. She found work at a restaurant where she met her eventual husband, Mr. Jung, who was the son of the restaurant's owners. The couple were married in 2007 and, in 2008, the couple's son Seonwoo Jung was born.

[5] Ms. Lee has outlined her mistreatment by her in-laws (Mr. Jung's parents). The in-laws disapproved of their marriage because of her North Korean background. Her mother-in-law feared she was a North Korean spy. Ms. Lee moved in with Mr. Jung and his parents, and Ms. Lee was expected to do all the cooking and cleaning in addition to working unpaid at the

family restaurant. In 2009, when Ms. Lee finally told her mother-in-law that she had a child in China with another man, she was kicked out of the house.

[6] Ms. Lee had been issued an apartment by the South Korean government when she first arrived in South Korea and she went to live there when she was kicked out of her in-laws' home. Mr. Jung continued to work at his parents' restaurant and to live at his parents' house, but would visit Ms. Lee and their son about once a month.

[7] Mr. Jung's parents eventually hired a divorce lawyer and Ms. Lee spoke to North Korean friends who told her she might be able to claim refugee status in Canada because she is North Korean. So she decided to move to Canada. When she told Mr. Jung about her plans to come to Canada with their child, he agreed to come with her rather than lose his wife and child.

[8] The Applicants entered Canada on December 14, 2011 and Ms. Lee made a refugee claim on January 3, 2012. Ms. Lee lied about her identity on the initial claim. She did not reveal that she and Seonwoo had dual North Korean and South Korean citizenship and she did not reveal the true identity of her husband, who did not make a refugee claim.

[9] The Immigration and Refugee Board of Canada accepted this falsified claim on November 1, 2012. However, Ms. Lee later admitted her true identity which led to the revocation of her refugee status.

[10] The Applicants submitted an H&C claim on May 22, 2018. Ms. Lee and Mr. Jung both submitted an affidavit and the Refugee Law Office made submissions on H&C factors including establishment in Canada, the discrimination Ms. Lee would face upon return to South Korea, and the detrimental effects that return would have for Seonwoo.

III. DECISION UNDER REVIEW

[11] On June 3, 2019, the Officer rejected the H&C application. The Officer reviewed the Applicants' background and then examined the factors of establishment, the best interests of the child [BIOC] and the adverse country conditions in South Korea. After weighing these factors, the Officer refused the application and found the Applicants had not justified an exemption based on H&C grounds.

A. *Establishment*

[12] The Officer noted some factors that supported the Applicants' establishment in Canada, but found that they would be able to carry on their work in South Korea where both parents were previously employed in the restaurant industry. The Officer observed that Ms. Lee is not employed in Canada. Mr. Jung was employed as a chef but the Officer found he could find similar employment in South Korea. The Officer gave "some positive consideration" to the Applicants' membership with the World Mission Society in Toronto and further noted that they had submitted letters of support from friends. However, the Officer concluded there was "insufficient evidence" that they could not maintain the friendships they had developed from outside Canada by using telephone or email.

[13] The Applicants have been in Canada since 2011; however, the Officer noted they would be familiar with South Korean culture due to Mr. Jung's upbringing in South Korea and the six years Ms. Lee had spent there. The Officer found that this "could mitigate any initial difficulties" of relocation. The Officer then noted that Ms. Lee had moved to China, South Korea, and Canada and had demonstrated "adaptability and flexibility" in new places.

B. *BIOC*

[14] The Applicants argued that their then-10-year-old son Seonwoo would experience bullying in South Korean schools for having a mother of North Korean descent. However, the Officer found "insufficient evidence" that teachers would not intervene if this occurred. The Officer cited the Ministry of Education's website which indicated that bullying is being addressed in South Korea. While Seonwoo is presently attending school in Canada and cannot write Korean, the Officer observed that he can speak the language and "will be able to build his written skills after a period of adjustment."

[15] The Applicants also put forward evidence about the high suicide rates of children in South Korea due to bullying and the highly competitive nature of the school system, but the Officer noted that there was little indication Seonwoo had "suicidal ideations" and there was insufficient evidence that his best interests would be compromised as a result of bullying. The Officer concluded that, since Seonwoo is young and will have his parents' support, there was insufficient evidence that his "basic needs" would go unmet in South Korea.

C. *Adverse Country Conditions*

[16] With regard to adverse country conditions, the Officer considered the argument that the Applicants would be discriminated against because Ms. Lee is a North Korean defector. The Officer noted the articles showing the challenges faced by North Koreans living in South Korea; however there were also reports of the efforts being made by South Korea to assist North Koreans. This included financial assistance, employment support, and educational support. Between these programs and Ms. Lee's "ability to secure two positions in South Korea" in the past, the Officer was unconvinced that she would experience discrimination as a defector from North Korea. Since Ms. Lee had acquired South Korean citizenship, the evidence showed she was less likely to encounter problems using employment or civic services than North Koreans who lacked South Korean citizenship.

[17] The Officer also rejected the argument that North Korean spies presented a direct threat to Ms. Lee as a defector residing in the south, or to her family in North Korea. She had been living in South Korea for six years previously without issue, and there was no evidence that her family remaining in North Korea had been targeted.

[18] Considering the housing situation if the Applicants were returned to South Korea, the Officer acknowledged the hostile history between Ms. Lee and her in-laws, and noted the Applicants may be unable to live with the in-laws in South Korea. However, the Officer found the Applicants were able to move to Canada and secure housing and there was little evidence they could not secure suitable accommodation if returned to South Korea. Furthermore, since

mobility is not limited by the South Korean state, the Applicants could choose to live in a different city in South Korea to distance themselves from Mr. Jung's parents if they wished.

[19] These factors suggested a lack of hardship if the Applicants were returned to South Korea. The Officer concluded by stating "I have made a global assessment of all the factors raised by the applicant, and find that collectively, these factors are not sufficient to warrant an exemption based on humanitarian and compassionate grounds."

IV. ISSUES

[20] The issues put forward by the Applicants are:

1. Did the Officer use the wrong test to assess the best interests of the child, or apply the test unreasonably?
2. Did the Officer conflate establishment with adaptability and hardship?
3. Did the Officer unreasonably minimize the discrimination the Applicants would face in South Korea?
4. Did the Officer perform an unreasonable global assessment?
5. Did the Officer fail to consider the Applicants' request for a temporary resident permit [TRP] in the event that their H&C application was refused?

V. STANDARD OF REVIEW

[21] This application was argued after the Supreme Court of Canada's recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. The parties' submissions on the standard of review, however, were made under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] framework. This Court's judgment was taken under reserve. Given the circumstances in this matter, and the Supreme Court of Canada's instructions in *Vavilov* at para 144, this Court found that it was not necessary to ask the parties to make additional submissions on the standard of review. I have applied the *Vavilov* framework in my consideration of the application and it does not change the applicable standards of review in this case nor my conclusions.

[22] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[23] There is nothing to rebut the presumption that the standard of reasonableness applies in this case. The application of the standard of reasonableness to these issues is also consistent with the existing jurisprudence prior to the Supreme Court of Canada's decision in *Vavilov.*

[24] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov*, at para 89 citing *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]). Contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90). Put in another way, the Court should intervene only when "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker's reasoning process; and (2) untenability "in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, at para 101).

[25] The parties agree that the standard of review is reasonableness for all of the issues except for two issues where the Applicants request a correctness review.

[26] The Applicants suggest the standard of review is correctness for "the application of the legal test" in the BIOC analysis. They rely on *Conka v Canada (Minister of Citizenship and Immigration)*, 2014 FC 985 at para 9 [*Conka*] which held that "the question of whether the Officer applied the wrong legal test is a question of law which attracts the correctness standard." *Conka* has not been followed in other H&C cases where the question is whether the officer applied the appropriate BIOC test. Furthermore, the question of whether the Officer misapplied the BIOC test does not meet any of the exceptions articulated in *Vavilov* and so the BIOC issue will be reviewed using a reasonableness standard.

[27] For the fifth issue – the failure to consider the request for the temporary resident permit – the Applicants also request a correctness review. On this issue, the question is framed as whether the Officer was required to consider the request for a TRP when refusing the H&C application. This is a question of procedural fairness. Some courts have held that the standard of review for an allegation of procedural unfairness is "correctness" (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Khosa* at paras 59 and 61). The Supreme Court of Canada's decision in *Vavilov* does not address the standard of review applicable to issues of procedural fairness (*Vavilov*, at para 23). However, a more doctrinally sound approach is that no standard of review at all is applicable to the question of procedural fairness. The Supreme Court of Canada in *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 74 stated that the issue of procedural fairness:

> …requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation.

VI. STATUTORY PROVISIONS

[28] Subsection 25(1) of *IRPA* states:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché

VII. ARGUMENTS

A. *Applicants*

[29] The Applicants argue the Officer erred by: (1) applying the wrong test for the BIOC and unreasonably assessing the BIOC; (2) conflating establishment with adaptability and hardship; (3) minimizing the hardship of discrimination; (4) performing a cursory global assessment; and (5) failing to consider the Applicants' request for a TRP in the H&C refusal.

(1) BIOC

[30] The Applicants suggest there were several errors with the BIOC analysis. First, they say the Officer failed to identify the correct legal test. The Officer focused on whether the child's "basic needs" would be met, but did not meaningfully consider the status quo and whether the best interests might be served by the status quo. They say the Officer did not analyze the child's life in Canada and, in fact, made only brief mention of Seonwoo's experience in Canada.

[31] The Applicants argue that, even if the correct legal test was applied, the analysis was unreasonable as the Officer was not alert, alive and sensitive to the child's best interests. The Officer ignored several specific difficulties Seonwoo would face if returned to South Korea. First, the Applicants claim the Officer dismissed the hardships Seonwoo would face by pointing to the child's adaptability and youth. They say that such an approach renders a BIOC analysis meaningless. Second, the Applicants say the Officer dismissed the high occurrence of bullying in South Korea on the grounds that the government takes the issue seriously, which is an

unreasonable way to analyze the realities facing a child. Third, they argue the Officer ignored evidence about the highly pressurized school culture and the way a child of a North Korean parent would be treated in that environment. Fourth, the Applicants say the Officer minimized the linguistic difficulties Seonwoo would face in South Korea: he was three years old when he came to Canada and possesses "extremely limited" Korean reading and writing skills. The Applicants suggest each of these factors would hamper their son's ability to adapt in a South Korean school. Yet this was something the Officer did not analyze.

(2) Establishment

[32] The Applicants say the Officer erred by minimizing their establishment and by conflating establishment with adaptability. The Officer noted that Ms. Lee was able to adjust to life in Canada, but the Applicants say it is unreasonable to treat establishment in Canada as proof of adaptability. The ability to adapt to Canada should weigh in the Applicants' favour, not against them, according to the cases cited by the Applicants. Furthermore, the Applicants say the assessment of Ms. Lee's life in South Korea as someone who was "gainfully employed in the restaurant industry" was unreasonable in light of the unpaid nature of her employment and her reliance on abusive in-laws.

[33] In addition to these arguments about adaptability, the Applicants say the Officer conflated establishment with hardship. They say the Officer dismissed positive signs of establishment such as the Applicants' friendships by noting that they could continue their friendships from abroad, and that their familiarity with Korean culture would help mitigate the

hardship. The Applicants say establishment is distinct from hardship upon return, and yet the Officer conflated the two concepts.

[34] Additionally, the Applicants say the analysis of the level of establishment was unreasonable. Specifically, the Officer failed to determine how established the Applicants are in Canada and what kind of weight that should be assigned. The Officer also did not address the fact that Ms. Lee taught herself English and is now completely fluent.

(3) Discrimination

[35] Next, the Applicants take issue with the way the Officer assigned little weight to the stigma faced by North Koreans residing in South Korea. The Officer found that the state was making efforts to combat these issues, but the Applicants say it is an error to negate hardship on this basis without considering the "adequacy" of these government efforts. The Applicants further suggest that the Officer focused too heavily on the fact that they are citizens of South Korea, which merely means they would face less trouble accessing "employment or civic services." The Applicants say this was not a sufficient grappling with the level of discrimination that they may be exposed to upon returning to South Korea, which is a broader, separate question. They also point to the Officer's comment about Ms. Lee having found employment in South Korea to suggest that she would not face discrimination, and they criticize this because Ms. Lee did unpaid work for her abusive in-laws.

(4) Global Assessment

[36] Beyond these individual errors with regard to the BIOC, establishment, and discrimination, the Applicants say the Officer failed to perform a proper global assessment. There was one boilerplate sentence and, aside from the comment that their membership with the World Mission Society was given "positive consideration," there was no explicit attempt to weigh the factors. The Applicants say this renders the decision unreasonable.

(5) TRP Request

[37] Finally, the Applicants say the Officer failed to consider their clear request "that temporary resident permits be issued for all three members of this family to allow them to remain in Canada" (page 15 of written submissions to the Officer). The Applicants cite *Shah v Canada (Minister of Citizenship and Immigration),* 2011 FC 1269 and other cases which suggest it is an error for an officer to fail to consider a TRP request when one is made in tandem with an H&C application.

B. *Respondent*

[38] The Respondent argues the Decision to reject the H&C application was reasonable.

(1) BIOC

[39] As regards the BIOC analysis, the Respondent argues that some hardship upon leaving Canada will be inevitable. The Respondent points to several factors noted in the BIOC analysis

including insufficient objective evidence of the negative impact of returning to South Korea, Seonwoo's ability to learn to write in Korean, and insufficient evidence that the child will be bullied or at risk of suicide. The Respondent says there was limited substantive evidence that the child's needs would not be met in South Korea and the Applicants have not shown the BIOC analysis was unreasonable.

(2) Establishment

[40] The Respondent claims the establishment analysis was reasonable. The Officer considered the evidence and found establishment to be a positive factor but also found it to be insufficient to warrant an exemption. The Respondent points out that Ms. Lee does not work in Canada and Mr. Jung works as a chef, and they could find similar positions in South Korea. The Respondent argues the Officer did not use their establishment against them but, instead, noted that their employment situation in Canada was similar to their previous employment situation in South Korea.

(3) Discrimination

[41] On discrimination faced by people of North Korean origin in South Korea, the Respondent says the Officer accepted that there was some discrimination against North Koreans, but then considered programs and services available to help North Koreans. Since Ms. Lee had obtained employment and access to housing in the past, the Officer found there was insufficient evidence of hardship.

(4) Global Assessment and TRP Request

[42] The Respondent made no written arguments on the global assessment or the TRP request but concedes the TRP request was not dealt with by the Officer.

VIII. ANALYSIS

A. *Introduction*

[43] The Applicants express many subjective fears about the consequences of a return to South Korea. Generally speaking, of course, subjective fear is not enough to establish that they will face hardship or discrimination upon return, and the jurisprudence is clear that the onus is upon the Applicants to establish that their fears have an objective basis (*Damte v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1212 at para 31).

[44] Generally speaking, South Korea cannot automatically be considered as an objectionable location, especially for people such as the Applicants who have spent a significant portion of their lives there.

[45] In their written and oral submissions, the Applicants are quite scathing of the Decision and characterize it as being "dismissive" of their submissions. This is neither an accurate or fair assessment. In fact, except for one matter that I shall come to, I find the Decision to be well within the bounds of *Vavilov* reasonableness.

B. *BIOC*

(1) The Wrong Test

[46] The Applicants say that the Officer failed to apply the correct BIOC test and failed to actually identify what was in the best interests of Seonwoo in this case. Relying upon Justice Martineau's decision in *Conka* at para 21, the Applicants say that the Officer did not determine what would be in Seonwoo's best interests, but rather evaluated whether his basic needs would be met in South Korea.

[47] It is true that the Officer does not actually say that it would be in Seonwoo's best interests if the status quo was preserved and the family remained in Canada. However, the Officer also does not say that it is in Seonwoo's best interests for the family to return to South Korea.

[48] I think it can be assumed that, in the case of failed refugee claimants, the best interests of any child are best served if the family remains in Canada. However, unless the best interests of the child trump all other factors – and the jurisprudence remains that it does not (see *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 28) – then the main task for officers in most H&C applications is to assess what will happen if the application is denied. As Justice Pentney recently pointed out in *Francois v Canada (Citizenship and Immigration)*, 2019 FC 748 at para 15, the "analysis must also involve a consideration that goes beyond the status quo and considers the best interests of the child on the basis of the situation that will follow a denial of the application…."

[49] In the present case, it seems to me that it is obvious that Seonwoo's best interests are that the family remain in Canada. The issue for the Officer to assess was whether Seonwoo's best interests would be negatively impacted if the family returns to South Korea and are required to apply for permanent residence from outside Canada. The Applicants had put forward various ways in which they would be negatively impacted, and the Officer was obliged to consider them.

[50] The Officer concluded that there was insufficient evidence to demonstrate that "Seonwoo's basic needs will go unmet upon departing Canada." However, as the Decision reveals, the Officer considered much more than Seonwoo's basic needs and addressed specific areas of concern to decide whether his "best interests would be compromised…" if the family returns to South Korea. Such a comparison would make no sense unless the Officer was assuming that Seonwoo's best interests are to remain with his family in Canada.

[51] I think that if we look at what the Officer actually does in the Decision, it is obvious that the Officer assumed Seonwoo's best interests lie in the family remaining in Canada, but then also examined the alleged disadvantages of retuning to South Korea. I do not think it can be said that the Officer's approach to the BIOC analysis amounts to a failure to apply the correct BIOC test or to identify the best interests of the child. Nor does it amount to a failure to be alert, alive and sensitive to Seonwoo's particular circumstances. The Applicants assert that a BIOC must be conducted in a particular way, using particular words, but it is the substance of the analysis that matters.

(2) Unreasonable Assessment of Impact of Removal

[52] The Applicants say that the Officer "systematically dismissed the difficulties Seonwoo would experience if returned to South Korea." I do not think the Officer "dismissed" anything. Dismissal is a failure to consider. The Officer obviously turns his/her mind to the factors raised by the Applicants in their H&C submissions.

(a) *Hardship Dismissed and Ignored*

[53] The Applicants say that the Officer "dismissed" or "ignored" certain important factors relevant to Seonwoo's best interests by focusing on his adaptability and youth. However, the Officer did not dismiss Seonwoo's best interests, and acknowledged the move will "cause some difficulties" for Seonwoo. The Officer concluded that "there is insufficient evidence" to establish that his "basic needs" will not be met in South Korea, or that his "best interests will be negatively impacted."

(b) *Bullying*

[54] When it comes to specifics, the Applicants say that, with regard to bullying, "the Officer dismissed the incredibly high occurrence simply because bullying happens in other places, and because it is a phenomenon the government takes seriously."

[55] As the Decision makes clear, there is no such dismissal. The Applicants alleged that Seonwoo would be bullied, but the Officer points out that bullying is taken seriously in

South Korea by the government and by teachers. The Officer does not "dismiss" bullying as a phenomenon in South Korea. The Officer finds that, given the objective information, there is "insufficient evidence" to establish that a school or teachers would not intervene to protect Seonwoo.

[56] In other words, the onus was on the Applicants to establish, not that bullying occurs in South Korea, but that Seonwoo would be bullied. The Officer found that the Applicants had failed to discharge that onus. The Officer felt that, given the protections in place in South Korean schools to deal with bullying, the Applicants had failed to establish that Seonwoo would be bullied. This is not a dismissal of the issue. The Applicants' fears of bullying are entirely understandable, but they had to do more than establish subjective fear to demonstrate that Seonwoo would likely be bullied.

(c) *High Pressure Schools*

[57] The Applicants say that the Officer "ignored evidence about the highly pressurized school culture and the discrimination against the children of North Koreans." Their written arguments in full on this point are as follows:

> 36. Third, the Officer ignored evidence about the highly pressurized school culture and the discrimination against the children of North Koreans. The Officer should have considered the nature of the South Korean education system as put forward by the Applicants, but never turned his mind to it. As described by counsel in her submissions:
>
> > As Younglan attests, according to the documentary evidence, the South Korean school system is fiercely competitive, with extreme pressure both to conform and to excel. Children who fall behind are subject to ridicule and to bullying. This repressive

> atmosphere is a contributing factor to extremely high youth suicide rates and widespread unhappiness amongst Korean school-aged children: suicide is the leading cause of death among 10 to 19 year olds in South Korea. [citations omitted]
>
> 37. The descriptions of South Korean schools were supported by the objective evidence submitted by the Applicants. However, this factor was never directly considered by the Officer in assessing how a child with poor Korean language skills would adapt in South Korea.
>
> 38. The Officer also neglected to consider how a child of a North Korean would be specifically treated in that environment, as suggested by the Applicants. There was ample evidence before the Officer to suggest that North Koreans, and children of North Koreans, do face discrimination, often in the form of bullying.
>
> 39. The Applicants submitted numerous objective documents to support their position that Seonwoo is likely to be bullied in South Korea, all of which was ignored by the Officer in his reasons. Instead, the Officer relied on extrinsic evidence from a government webpage detailing programming to address bullying and drop-out rates. He also suggested that if Seonwoo is bullied, "this could be brought to the attention of school officials". This is contrary to the evidence, which described situations of school non-involvement, situations where teacher involvement made the circumstances worse, and even school cover-ups. While the Officer was allowed to prefer their evidence over that of the Applicants, it is an error to ignore material evidence which contradicts the Officer's findings.
>
> [Footnotes omitted.]

[58] Counsel's H&C submissions to the Officer emphasized fierce competition, extreme pressure to conform and excel, ridicule for those children who fall behind, and the risk of suicide.

[59] The Officer specifically addresses bullying, Seonwoo's writing abilities, and the risk of suicide. But, in the end, the Officer concludes that there is insufficient evidence to establish that

bad things will happen to Seonwoo in the sense either that his basic needs will not be met or that his best interests will be negatively impacted.

[60] The evidence relied upon by the Officer was not "extrinsic," and nor did the Officer ignore material evidence which contradicts his finding. The Officer does not find that bullying does not occur, or that some schools do not get involved or cover the problem up. The Officer's finding was that there was *insufficient evidence* to demonstrate that Seonwoo's basic needs cannot be met in South Korea or that his best interests would be negatively impacted. The Applicants may disagree with the Officer's assessment of the evidence but it was not ignored.

(d) *Linguistic Difficulties*

[61] The Applicants say that the Officer unreasonably minimized the linguistic difficulties Seonwoo would face in South Korea and:

> 41. Finally, even if Seonwoo could quickly gain the language skills, the Officer should have considered how these linguistic challenges would have affected his ability to succeed in a "highly competitive" education system as a child of a North Korean woman. These three cumulative factors would have compounded his ability to adapt in a South Korean school, something the Officer did not analyse.

[62] There are many variables that go to the issue of how Seonwoo will fare in South Korea. The onus was upon the Applicants to provide sufficient evidence (not just their own fears) that his basic needs could not be met or that his best interests would be negatively impacted. The Officer found they had not been able to do this.

(e) *Conclusions on BIOC*

[63] In their BIOC submissions, the Applicants made detailed submissions and provided significant evidence of the difficulties that would be faced by Seonwoo in the South Korean school system:

> *a. The competitive nature of South Korean education*
>
> As Younglan attests, according to the documentary evidence, the South Korean school system is fiercely competitive, with extreme pressure both to conform and to excel. Children who fall behind are subject to ridicule and to bullying. This repressive atmosphere is a contributing factor to extremely high youth suicide rates and widespread unhappiness amongst Korean school-aged children: suicide is the leading cause of death among 10 to 19 year olds in South Korea.
>
> Seonwoo speaks little Korean and cannot read or write in his native tongue. In Canada he is an average student; in Korea he will enter school far behind other students, and starting with such disadvantage in South Korea's fiercely competitive system is unlikely to catch up. On the contrary, it seems almost certain that if he is returned to South Korea, Seonwoo will remain behind and this, together with his North Korean heritage is indeed likely to make him a prime target for bullying.
>
> Nor would there be any realistic opportunity for Seonwoo to opt out of the public school system as a means of mitigating the risks of academic failure and bullying in the public school system. This is because although South Korea does have special schools for North Korean children, as a child born to a South Korean father, Seonwoo will not be eligible for such schooling. As for international schools, these would not be accessible to Seonwoo as Seonwoo's parents do not have sufficient financial means to pay the high tuition fees required.
>
> *b. Bullying in South Korean schools*
>
> According to the documentary evidence, bullying of school-aged children is a serious problem in schools in South Korea, with approximately 10% of South Korean students reporting that they have suffered from various forms of violent bullying. The problem is so widespread that insurance companies in South Korea have

started offering anti-bullying policies. Although bullying has in the past been sometimes seen as an ordinary part of growing up, such attitudes belie the reality that being bullied can have long-term repercussions including an increased likelihood that those subject to it will end up developing mental health disorders. Cross sectional as well as longitudinal studies on four continents reveal that being bullied is consistently associated with depression, loneliness, social anxiety, school phobia and low self-esteem. In South Korea, severe bullying has also lead to a disproportionate number of child suicides; these suicides are typically hushed up in the schools where they occur. Even when confronted with instances of clear bullying in schools, unfortunately, school teachers in South Korea tend to be passive about the problem, simply hoping that it will go away on its own.

One of the reasons bullying thrives in South Korea, is that South Korea is a highly homogenous society, where difference is seen as inherently problematic. The outcome of this is that foreigners who are inherently different and seen as such, are often the targets of such bullying. In fact bullying of foreign students in South Korea is so pervasive, that an astonishing four out of five foreign teenagers in South Korea report not attending school because of harassment and bullying.

Within this paradigm, bullying of North Koreans children in the South Korean school system is known to be widespread, reflecting the fact that despite the fact that citizens of the two countries both speak Korean, a linguistic and cultural chasm has developed between citizens from the two countries. North Korea follows a command economy, South Korean a staunchly capitalist one. North Korea is under a dictatorship while South Korea is a democracy. North Korea is an economic disaster whereas South Korea is flourishing. These differences make North Korean children particularly vulnerable to bullying in homogenous South Korean schools.

The problem of bullying of North Korean children in South Korea is sufficiently widespread that the UN Committee on the Rights of the Child has expressed concern about it. The problem is so severe that, for some North Korean children, the prospect of facing a South Korean classroom is perceived as even more daunting than the flight from the North Korea war, as the following accounts from a *New York Times* article indicate:

> One October evening, when the student had gone camping and stayed up late, Moon Sung-Il, a 14-year-old North Korean, brought tears to the South

> Koreans' eyes when he recounted his two and a half year flight with other defectors that took him through China, Myanmar and a refugee camp in Bangkok. But he stunned them when he said that none of this was as daunting as a South Korean classroom.
>
> "I could hardly understand anything the teacher said," he said. "My classmates, who were all a year or two younger than I was, taunted me as a 'poor soup-eater from the North.' I fought them with my fists."

Other North Korean children have openly stated that bullying problems are so severe that they regretted ever having left North Korea.

As the child of a North Korean mother and as a student who does not read and write Korean and who will thus face profound academic challenges in South Korea, it is almost certain that Seonwoo will be cast as an outsider and a social outcast, and as a result, it is almost inevitable that he will be exposed to bullying if returned to South Korea.

It is a fundamental human right for a child to feel safe in school, and to be spared the oppression, and repeated humiliation implied in peer victimization or bullying. Put another way, freedom from bullying is a fundamental human right. The likelihood that Seonwoo will be bullied at school, if forced to return to South Korea, is thus it is submitted, a sufficient reason in itself to warrant granting this humanitarian and compassionate application.

[Footnotes omitted.]

[64] The Officer's BIOC analysis, in full, reads as follows:

> **BIOC**
>
> I will now turn my attention to the best interests of the applicant's son, 11 year old is Seonwoo who is currently attending school in Canada. Mrs. Jung and her husband submit that if the applicants were required to depart to South Korea, their son's education would suffer as he cannot write Korean and he would be bullied for having a mother of North Korean descent.

I note that the factor of bullying in schools isn't unique to South Korea, as parents would be concerned of bullying in any country. Nonetheless, I find the applicants have provided insufficient evidence to demonstrate that the schools or teachers would not intervene in a situation of bullying. According to the Ministry of Education website,

> Korea addressed "school violence" as one of the four negative influences, and endeavors to create a happy and safe environment. At the school-level, the Wee project is launched to promote collaborative activities, violence prevention activities, experience-based learning. The government also provides care for victimized students for the fast recovery from the memory of violence as well as support programs for students considered teen assailants. Schools are to resolve factors that can stimulate school violence from the perspective of CPTED, and create a school environment that is safe by assigning school police officers, student guards, and so forth. Furthermore, evaluations to examine students' cognitive and social/emotional health are promoted along with an obligatory education that teaches students to respect life in order to identify students at risk of committing suicide for intensive and systematic care.

As objective information demonstrates, the South Korean school system takes bullying as a serious issue and has implemented remedies to assist students who find themselves in such situations. According to the Ministry of Education, primary education in South Korea is free and compulsory. This source also indicates that the enrollment rate is 99.9%. I note that the English language is also a part of the curriculum.

The applicants state their son's education will suffer as he cannot write Korean, but can only speak it. I accept that Seonwoo's writing abilities may be weaker than other students residing in South Korea, however given that he already has a foundation of the language as he speaks it, and as is still of a young age, I find he will be able to build his written skills after a period of adjustment. I also note as Mr. Jung's native language is Korean, he could reasonably assist his son in furthering his writing abilities. Furthermore, Seonwoo would have the assistance of the school and teachers.

> I note the applicants submit that suicide for their son is a concern they share. They have submitted various articles pertaining to the high suicide rates in South Korea. I note these articles speak to suicide by bullied teens and students. I have addressed the steps taken by the school system and Ministry of Education in tackling the issue of bullying in South Korean schools. I note that if Seonwoo was being bullied this could be brought to the attention of school officials. Furthermore, I note there is little indication that Seonwoo has ever reported having suicidal ideations or has ever attempted suicide.
>
> I find insufficient evidence before me to demonstrate that Seonwoo's best interests would be comprised as a result of bullying or weaker language skills in South Korea.
>
> I note that Seonwoo is of a young age and as such an international move will cause some difficulties for him. I note he will reasonably miss his friends and school in Canada. However, I note he will continue to have his parents for love and support during his re-integration to South Korea. I find there is insufficient evidence before me that the Seonwoo's basic needs will go unmet upon departing Canada. I find the information before me does not support that if the applicants were required to apply for permanent residence from outside of Canada, Seonwoo's best interests would be negatively impacted.

[65] The Officer relies upon official reports that the Korean authorities are aware of the problems in schools and have put policies and facilities in place to address bullying problems. However, good intentions are not enough and government policy does not necessarily translate into effective change, particularly in a society as traditional and homogenized as South Korea is described to be in the evidence.

[66] The evidence that speaks to the passivity of teachers and the pervasiveness of the bullying of foreign students suggests that government policies and initiatives are not necessarily adequate at the operational level and that Seonwoo could face severe hardship in this regard.

[67] In the face of this evidence, more was required of the Officer to assess what Seonwoo actually faces and whether there are adequate safeguards to protect him. Without this kind of analysis, the Decision is inadequate and unreasonable.

C. *Establishment*

[68] The Applicants say that the Officer minimized their establishment by conflating it with adaptability and with hardship, and erred by using their ability to establish themselves in Canada as proof of adaptability in South Korea.

[69] It is true that, as part of the Officer's consideration of establishment, he/she refers to their prospects in South Korea. But the purpose of this comparison is clearly to point out that the Applicants have very little to support any kind of establishment in Canada that is substantial and that cannot be replaced in South Korea.

[70] For example, employment is usually an important factor when considering establishment in Canada. Ms. Lee is not employed, so no weight can be given to this factor in her case. Mr. Jung indicated that he had been a dishwasher but has worked his way up to becoming a chef. This, of course, demonstrated some establishment, but its weight is undermined by the fact that the nature of his job does not provide any kind of significant establishment in Canada that could not be replaced in South Korea.

[71] By pointing out that both adult Applicants have, in some way, been gainfully employed in South Korea in the past, the Officer is commenting upon the fact that Ms. Lee has done little to establish herself in Canada as far as employment is concerned.

[72] The Officer also makes it clear that he/she gives some weight to their social establishment in Canada. Ms. Lee's involvement with her church is hardly proof of exceptional establishment in Canada and, once again, it is not something she cannot do in South Korea.

[73] There is also nothing unreasonable, or conflationary, in the Officer pointing out that, although the Applicants have been in Canada since 2011 (obviously the length of time in Canada has to be considered and given some weight), Mr. Jung previously resided in South Korea for over 20 years. The Officer is making the point that, whatever employment or cultural connection Mr. Jung may have established in Canada, they can be no more than he has in South Korea where he lived and worked in the past for over 20 years.

[74] H&C relief is exceptional relief (see *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 63) and there is nothing in the evidence to suggest that the Applicants have established themselves in Canada in any way that is exceptional or that would give rise to any kind of significant hardship if they were to re-locate to South Korea. In my view, that is all the Officer is saying.

[75] The Officer does not use the Applicants' establishment in Canada as a reason to send them back to South Korea. Nor does the Officer conflate or confuse establishment with hardship.

Before me the Applicants have not pointed to any evidence that would suggest that their establishment in Canada is significant or exceptional. They have been here since 2011, Mr. Jung has a job and they have some friends and a membership with the World Mission Society in Toronto that are given "positive consideration" by the Officer.

D. *Discrimination*

[76] The Applicants say that, while acknowledging a level of stigma faced by North Koreans residing in South Korea, the Officer did not assign any weight to this hardship and simply focussed on the state's efforts to combat these issues as a means of minimizing the difficulties Ms. Lee would face upon return.

[77] This is a complex issue and the Applicants argue in detail as follows:

> 59. Furthermore, the Officer minimized the anti-North Korean discrimination the family would experience because the Applicants are citizens of South Korea:
>
> > I accept that societal discrimination against North Korean defectors is an ongoing issue in South Korea. On the other hand, I note that research submits that those lacking South Korean citizenship encounter more problems related to employment or civic services. I note that according to the same report, the state continues to accept North Korean defectors and by law they are entitled to citizenship. I do not find that the applicants before me are without South Korean citizenship.
>
> 60. Even following the Officer's own logic, it does not support the suggestion that North Koreans do not face hardship in the form of discrimination. Perhaps they encounter less discrimination in accessing "employment or civic services", but that does not adequately grapple with the level of hardship they may be exposed to upon returning to South Korea.

61. Finally, the Officer repeated the same distortion of the Applicant mother's employment history in South Korea to support the finding that she should be able to find work:

> I note that Mrs. Lee's ability to secure two positions in South Korea, contradicts her statements that she would be unable to find employment in South Korea based on her North Korean background.

62. Again, this reinterpretation of the Applicants' history is not supported by the evidence. The Applicant mother's employment in South Korea was unpaid labour at her in-laws' restaurant. Additionally, although she was eventually able to find work, it does not discount her account of the discrimination she experienced in her searches. From her affidavit:

> Finding employment in South Korea was very difficult. There is a lot of discrimination in South Korea against North Koreans, because North Korea and South Korea are enemies of each other. Also, North Koreans and South Koreans as a people are now culturally very different from each other. North Koreans are raised under a communist system promoting a collectivist ideology whereas South Koreans operate under a capitalist system promoting individualistic ideology. As a consequence of these divergent ideologies, and the fact that North Korea is far behind South Korea in terms of economic development, South Koreans not only don't trust North Koreans, but they also commonly view North Koreans as lazy and backward. These prejudices makes it difficult for North Koreans to find social acceptance and gainful employment in South Korea as often South Koreans shun North Koreans.
>
> I searched and searched for a job, but the only job I was eventually able to find was a job as a dishwasher in Korean restaurant.

63. For the above reasons, the Officer's assessment of hardship was unreasonable.

[Emphasis in original; footnotes omitted.]

[78] The Officer provides an extensive analysis of this issue and fully acknowledges and accepts that discrimination against North Koreans occurs in South Korea. But the issue here is whether Ms. Lee is likely to face hardship as a result of discrimination and, if so, to what extent.

[79] The onus was upon the Applicants, not just to demonstrate that discrimination against North Korea does occur in South Korea, but also that Ms. Lee is likely to personally suffer hardship by way of discrimination. This is why the Officer says that, in relation to articles put forward by the Applicants to support their case "I note none of these articles make personal mention of the applicants and report on general conditions in South Korea."

[80] The Officer also refers to the evidence of government initiatives to combat discrimination against North Koreans and makes the point once again, because the onus to demonstrate the likelihood of discrimination rests with the Applicants, that "there is little evidence before me that Mrs. Lee did not benefit from these efforts made by the state."

[81] The Officer repeatedly makes the point that Ms. Lee has not demonstrated that she is likely to suffer a hardship as a result of discrimination:

> I note that Mrs. Lee's ability to secure two positions in South Korea, contradicts her statements that she would be unable to find employment in South Korea based on her North Korean background. I also note the state assists women in obtaining employment. According to the 2016 Human Rights Practices Report, from the USDOS,
>
> > Nationwide there were 150 New Work for Women Centers that provided employment support and vocational training for women. As of September, more than 287,000 women requested assistance from MOGEF in finding employment; among them, 11,000 received vocational training, More than

> 112,000 women subsequently obtained jobs after receiving training or other assistance from the ministry. MOEL maintained an affirmative action program for public institutions with S0 or more employees and private institutions with 500 or more employees. The program requires these institutions to comply with a hiring plan devised by the ministry if they do not maintain a female workforce greater than or equal to 60 percent of the ratio of female workers compared with total workers in relevant occupations. When the Public Procurement Service evaluates submitted bids, it gives more weight to businesses with effective affirmative action measures.

I find insufficient evidence to demonstrate that Mrs. Lee would not be able to attend such a centre to assist her further in finding employment in South Korea.

I accept that societal discrimination against North Korean defectors is an ongoing issue in South Korea. On the other hand, I note that research submits that those lacking South Korean citizenship encounter more problems related to employment or civic services. I note that according to the same report, the state continues to accept North Korean defectors and by law they are entitled to citizenship. I do not find that the applicants before me are without South Korean citizenship. I find that research demonstrates the state's efforts in addressing the stigma and discrimination faced by some North Koreans residing in South Korea. I find the state has introduced legalisation, and there is presence of non-government organizations who assist North Koreans residing in South Korea. I do not find Mrs. Lee has demonstrated these avenues of assistance would not be available to her if she required it. As such, I am not satisfied that Mrs. Lee has demonstrated hardship based upon her statements relating to discrimination as a defector from North Korea.

North Korean Defector

I acknowledge that North Korean spies do operate in South Korea and they sometimes pose as defectors and gather intelligence while residing in South Korea; however, documentary evidence does not suggest that these spies present a direct threat to the thousands of defectors residing in the South.

I note that Mrs. Lee has been outside of North Korea for approximately 17 years and has spent approximately 6 of those

years living in South Korea. I note that she has provided insufficient evidence or information to ever being approached by North Korean spies or being threatened by anyone based on being a defector from North Korea. There is insufficient evidence before me that Mrs. Lee is a high value target or a high profile defector from North Korea. There is insufficient information before me to suggest that she is a high ranking official that would be of special or significant interest to the North Koreans. There is little evidence that since her departure from North Korea, over 17 years ago, anyone from North Korea, has made any inquiries as to the whereabouts of Mrs. Lee. There is also little objective evidence before me that her remaining family members have ever been threatened, questioned, or interrogated regarding Mrs. Lee's whereabouts. Overall, I find insufficient evidence to support that anyone in South Korea poses a threat or harm to Mrs. Lee or her family members as a result of being a North Korean defector. Mrs. Lee has also not submitted that she maintains any contact with her remaining family members in North Korea, or that they have been harmed as a result of her departure from North Korea. There is insufficient evidence to demonstrate that her family in North Korea is being monitored or penalized. As such, I do not find an associated hardship based on Mrs. Lee's statements on being harmed as a North Korean defector living in South Korea.

Housing

Mrs. Lee submits they do not have savings to secure accommodation in South Korea. She further submits that she would no longer have access to government housing in South Korea. I acknowledge that given the hostile history between Mrs. Lee and her husband's family they may wish not to reside with them in South Korea if required to depart Canada. On the other hand, I note that the applicants were able to move to Canada, a foreign country and secure housing. I find there is little evidence before me that they would not be able to do the same in South Korea, a place which they are familiar with. Furthermore, there is little evidence before me that Mr. Jung would not be able to secure employment in South Korea and that the family will not be able to secure suitable accommodation.

Family in South Korea

Mrs. Lee worries that if she and her family are required to return to South Korea, her husband's family would force him to leave her. I note that Mr. Jung's decision is ultimately his own. However, I note that it is not required that the applicants reside in the same city as Mr. Jung's family. They have the option to reside in any

> given part of South Korea, as mobility within the country is not limited by the state. As such, if the applicants wanted to put distance between themselves and Mr. Jung's parents they have the option to do so. I note the applicants have been together for almost 15 years and share a child. I find this would demonstrate a reasonably strong bond between the two, which would not change if they were required to depart Canada. I do not find an associated hardship based on Mrs. Lee's statements that Mr. Jung would be forced to leave her.

[82] The hardship analysis for Ms. Lee is based upon insufficient evidence to demonstrate that she personally is likely to suffer from discrimination. It is not the obligation of the Officer to establish that she will not suffer discrimination.

E. *Unreasonable Global Assessment*

[83] The Applicants say that the Officer's global assessment was unreasonable and lacked transparency, and that how the Officer weighed the different factors is unclear and unintelligible. They say the Officer did not explain "what weight was given to the issues, except for one minor factor."

[84] The Officer's conclusion is that "I have made a global assessment of the factors raised by the applicant [*sic*], and find that collectively, these factors are not sufficient to warrant an exemption based on humanitarian and compassionate grounds."

[85] The Officer does not assign a specific weight to each factor, but it is clear from the analysis of each factor what is positive, what is given little weight, and what is given no weight.

[86] As regards establishment, there are some positive considerations but, generally speaking there is nothing exceptional about the Applicants' degree of establishment and, although it is not negative, it is given little weight. The BIOC is given little weight because the evidence and information adduced "does not support that if the applicants were required to apply for permanent residence from outside of Canada, Seonwoo's best interests would be negatively impacted." I have already pointed out why the BIOC analysis contains a reviewable error, so that the balancing will have to be done again on reconsideration. In addition, the Applicants were unable to establish that they faced any degree of hardship or adverse country conditions if they return to South Korea that would warrant exceptional H&C relief.

[87] I think it is sufficiently clear how each factor was assessed and why, globally, the Officer felt they did not require H&C relief. As the Chief Justice has recently made clear in *Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 at para 19, H&C relief is exceptional relief and is not intended to alleviate every hardship that the Applicants face:

> … an applicant for the exceptional H&C relief provided by the IRPA must demonstrate the existence or likely existence of misfortunes or other H&C considerations *that are greater than those typically faced by others who apply for permanent residence in Canada*.

F. *Conclusion*

[88] Although I do not accept the Applicants' general criticism of the Decision as dismissive, conflationary and woefully inadequate, I nevertheless accept that the BIOC analysis was unreasonable for reasons set out above. This is sufficiently serious to require that the matter be returned for reconsideration.

G. *TRP Relief*

[89] The Applicants point out that the Officer failed to address their request for alternative TRP relief. The Respondent concedes that that Officer did not consider the Applicants' request for a TRP.

[90] This error is separate and distinct from the Officer's H&C analysis. Nevertheless, it can be dealt with as part of the reconsideration. In this regard, it is worth bearing in mind Justice Bell's advice in *Mpoyi v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 251:

> [36] The Officer was correct to conclude that he lacked the authorization to consider the Applicants' alternative TRP request. However, his assertion that a separate application should be submitted for the TRP request constitutes a reviewable error. The Officer should have forwarded this request to the proper decision-maker upon refusing the Applicants' application for permanent residence in Canada on H&C grounds. For this reason, and with the consent of the Respondent, the Applicants' judicial review is granted on this issue. I find the H&C decision to be reasonable. The judicial review in relation to that matter is dismissed.

IX. CERTIFICATION

[91] The parties agree there is no questions for certification and the Court concurs.

JUDGMENT IN IMM-3941-19

THIS COURT'S JUDGMENT is that

1. This application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different officer in accordance with these reasons.
2. There is no question for certification.
3. The style of cause is amended to reflect the correct name of the Respondent, the Minister of Citizenship and Immigration.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3941-19
STYLE OF CAUSE:	SEONHEE LEE A.K.A. YOUNGLAN LEE ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 26, 2020
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	APRIL 8, 2020

APPEARANCES:

Annie O'Dell	FOR THE APPLICANT
Melissa Mathieu	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Annie O'Dell Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT