

Federal Court



Cour fédérale

**Date: 20200507**

**Docket: IMM-1618-19**

**Citation: 2020 FC 599**

**Ottawa, Ontario, May 7, 2020**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**MAHMOOD HUSSAIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of the decision of a visa officer [Officer] dated February 11, 2019 [Decision] denying the Applicant's application for permanent residence based on humanitarian and compassionate [H&C] grounds.

[2] For the reasons that follow, this application is dismissed.

## II. **Background Facts**

[3] The Applicant, Mahmood Hussain, is a 79-year-old retired Pakistan Navy Commander. He is a citizen of Pakistan. He has lived in Canada since July 2016. He also has permanent resident status in the United States.

[4] From 2002 to 2007, the Applicant lived with his wife, daughter, and granddaughter in Pakistan. After his wife passed away, his daughter became his primary caregiver. When his daughter moved to the United Kingdom in 2011, the Applicant moved to the United States to live with his son.

[5] The Applicant became a permanent resident of the United States in 2012. Between 2012 and 2015, the Applicant's relationship with his son began to break down. On July 4, 2016, the Applicant went to visit his daughter and granddaughter, who lived in Surrey, British Columbia.

[6] On July 6, 2016, the Applicant's son called and told the Applicant not to return to the United States, as the son's wife threatened divorce if the Applicant returned.

[7] On September 5, 2017, the Applicant submitted an H&C application to have his permanent residence application processed from within Canada.

III. **Decision Under Review**

[8] The Officer refused the application, finding that the H&C factors raised by the Applicant did not justify granting an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[9] The Officer found that the Applicant's H&C materials demonstrated little establishment in Canada. The Officer mentioned two letters indicated the Applicant had taken part in the activities of the Aza-E-Hussain Association of BC. The Officer noted there was also a letter of support from the daughter's landlord which spoke favourably of the Applicant's character. The Officer noted the Applicant's testimony that he has made friends, visits a community garden, and he attends religious ceremonies.

[10] The Officer noted that the Applicant had been in Canada for 2.5 years and found that was a short period of time. The Officer contrasted that to his living in the United States for 4.5 years and in Pakistan for most of his life. The Officer also noted that while the Applicant speaks English, he is also familiar with the language and culture of Pakistan.

[11] The Officer noted that while the Applicant's daughter and granddaughter live in Canada, the Applicant also has family ties in Pakistan, the United States, and the United Kingdom. Family members in Pakistan and the United Kingdom provided letters in support of the application.

[12] The Officer acknowledged the Applicant's submission that he is estranged from his son and cannot stay with his siblings because they are all over the age of 60 and require support from their own family. The Officer noted that the Applicant had stated that:

Due to my old age, it's really difficult to live alone, as everyone my age needs some type of supervision or company from family and friends. Life without family is impractical for me. Although I am independent and self supportive, I still wish to be cared after, and acknowledged by my intimate family.

[13] The Officer considered counsel's H&C submission that the Applicant was "solely dependent upon the sponsor [his daughter] and would not be able to survive without his daughter's personal and emotional support." The Officer accepted that the Applicant benefits from the emotional support of his daughter and that he might miss his family if he returned to Pakistan. However, the Officer found there was little evidence that the Applicant would be unable to live independently or support himself financially in Pakistan.

[14] The Officer considered the Applicant's submission that his daughter took care of all of his expenses, and found there was little in the H&C submissions to indicate that the daughter would be unable or unwilling to provide financial assistance to the Applicant if he returned to Pakistan.

[15] The Officer noted that the Applicant's son and nephew also stated in their letters that they would provide support to the Applicant if he needed it. The Officer also mentioned that the Applicant had savings in his daughter's account and that his representative stated that the Applicant has a home and a pension in Greece.

[16] The Officer considered the Applicant's submission that he "was heartbroken with grief and went into a severe depression" after the death of his wife, but noted that there was little to indicate that the Applicant was currently being treated for depression. The Officer observed that the submissions had indicated that the Applicant was in good medical condition, and that his health issues were controlled by prescription medication.

[17] The Officer reviewed the letter from Dr. Liaquat Khan which stated that the Applicant has coronary artery disease, hypertension, and dyslipidemia and that he underwent cardiac bypass surgery in Pakistan in 2006. The Officer noted that the Applicant was able to access medical care when he lived in Pakistan, and found there was no indication that the Applicant would be unable to access medical services if he returned to Pakistan.

[18] The Officer concluded that there was little in the H&C materials to indicate that the Applicant required support with daily activities or that he has a health condition which would prevent him from living independently in Pakistan.

[19] The Officer considered the best interests of the Applicant's three grandsons in the United States. The Officer found that based on the minimal information filed, the best interests of the grandsons would not be significantly affected by the outcome of the H&C application.

[20] The Officer then considered the best interests of the Applicant's granddaughter, Kainat. The Officer noted that Kainat was age 17, a Canadian citizen, and lived in Surrey with her mother. The Officer reviewed the support letter from Kainat and the Applicant's statement that

he keeps his granddaughter company while her mother is at work. The Officer accepted that Kainat and the Applicant have an emotional bond, but found there was little to indicate that they could not maintain a meaningful relationship over email, telephone and Skype or that the Applicant could not return to visit Canada in the future.

[21] The Officer noted that Kainat's primary caregiver is her mother. They found there was no evidence that her mother was unable to fully support and care for Kainat. The Officer found it was in Kainat's best interest to remain in the care of her mother in Canada, and that her wellbeing would not be significantly affected if the application was refused.

[22] The Officer acknowledged that the Applicant would prefer to live with his daughter in Canada and recognized there are difficulties associated with the separation of family members. The Officer said they were mindful that Canada has programs to facilitate family reunification and that many people wish to live in Canada with their families.

[23] The Officer found, having reviewed all of the H&C materials submitted by the Applicant, that the Applicant's particular circumstances did not justify an exemption from the regular immigration process. The humanitarian and compassionate factors raised by the Applicant did not justify granting an exemption under subsection 25(1) of the *IRPA*.

#### IV. **Issues**

[24] The Applicant argues that the Officer made several errors that render the Decision unreasonable: 1) the Officer fettered their discretion by making establishment in Canada the

most important factor and failing to consider the “family reunification” objective in *IRPA*; 2) the Officer failed to take a “global view of the case”; 3) the Officer applied the wrong test when assessing the application; and 4) the Officer did not properly consider Kainat’s best interests.

[25] Ultimately, the issue is whether the Decision was reasonable.

## V. Standard of Review

[26] Granting H&C relief has been described as a “flexible and responsive exception to the ordinary operation of the [IRPA]”. The discretion to grant it is exercised to “mitigate the rigidity of the law in an appropriate case”: *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 19 [*Kanhasamy*].

[27] The parties agree that the Officer’s decision should be reviewed on a reasonableness standard, which is well-established by the case law: see *Kanhasamy* at paragraph 44, *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at paragraph 18 [*Kisana*].

[28] This application was argued before the Supreme Court of Canada released the decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] in which it restated how a reviewing court is to conduct a reasonableness review.

[29] Although the principles set out in *Vavilov* now apply to this application, I find it is not necessary to receive further submissions from the parties. The result would be the same under the pre-*Vavilov* framework set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*].

[30] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*].

[31] In *Vavilov*, the requirements of a reasonable decision are re-stated as possessing “an internally coherent and rational chain of analysis that is justified in relation to the facts and law”: *Vavilov* at paragraph 85.

## VI. Analysis

### A. *Overview*

[32] The Applicant submits that while the Officer recited the facts accurately, the Officer did not conduct an adequate analysis of those facts.

[33] The theory of the case put forward by the Applicant is that the Officer ignored the human side of his case. The Applicant says that by performing little or no analysis of the factors he put forward, the Officer trivialized the human part of his case.

[34] The Applicant also submits that the Officer failed to properly consider the Minister’s Guidelines regarding H&C applications and failed to consider that “family reunification” is one of the stated objectives of the *IRPA*. If the Officer had considered it, the Applicant submits that his application clearly would have been granted.



[35] The Applicant says the human side of the case includes that:

- he has been in despair since his son told him in 2016 that he could not live with him anymore;
- he requires assistance with daily living since his wife died in 2007;
- he cannot live with his siblings in Pakistan as he does not fit in with their lifestyle;
- he wants to have less stress in his life;
- he needs family;
- he is elderly.

[36] The Respondent says the Officer did not ignore evidence or fail to consider any factors.

The Applicant simply is asking the court to reweigh the evidence.

B. *Establishment and a global view*

[37] The Applicant contends that the Officer determined his H&C application by using establishment as the measuring stick, and failed to consider family reunification. An example provided by the Applicant was when the Officer concluded that the 2.5 years the Applicant had been in Canada was a short period of time and then contrasted it with the 4.5 years the Applicant lived with his son in the United States and also said that he had spent most of his life in Pakistan.

[38] The Applicant submits that the Officer failed to take a global view of the case and weigh all the relevant considerations cumulatively as part of the determination of whether relief is justified in the circumstances as required by *Kanthasamy* at paragraph 28. He says that in lieu of a global view, the Officer imposed an onerous condition by making establishment in Canada a determinative factor and arbitrarily concluding that 2.5 years was an insufficient time for the Applicant to have become established.

[39] The Respondent submits that the Officer did take a global view of the case; they considered the Applicant's establishment in Canada, his family ties, finances, health needs, and access to medical care in Pakistan.

[40] Different counsel represented the Applicant in preparing and submitting the H&C application than represented him at the hearing of this application. The submissions to the Officer were prepared by the former counsel. The submissions included this summary of the Applicant's establishment in Canada: he was quite active in his mosque; he regularly volunteered on special religious occasions; he immersed himself in his community and his English is excellent.

[41] A Supplementary Information form for H&C Considerations was filed by the Applicant on September 5, 2017. In box 11, answering the question "[h]ow have you established yourself in Canada?" the Applicant supplied this additional information:

- as he was retired, he had time to spend on things he could not do while he was working;
- reading was his passion and he read all kinds of books as well as reading the newspaper every morning;
- his favourite place to spend time was the library;
- he had made a few friends of his own age with whom he went for walks and discussed and shared ideas;
- his granddaughter enjoyed his presence, as before he arrived, she was alone all the time while her mother was at work;
- whenever he could, he went to a community nursery where people would grow vegetables and flowers.

[42] A review of the Decision shows that the Officer considered the submissions, both original and supplementary, as well as the letters filed in support. The Officer concluded that the

materials demonstrated that the Applicant had little establishment in Canada, where he had been living for 2.5 years. The Officer examined and responded to the evidence and arguments on establishment submitted by the Applicant.

[43] The Officer did not determine the Applicant's application solely based on establishment. In addition to establishment, the Officer considered other factors raised by the Applicant. These include his ability to live independently, his family ties, his health needs, finances and access to medical care in Pakistan.

[44] The Officer's conclusion that the Applicant showed little establishment in Canada was not determinative. It was appropriately responsive to the submissions made by the Applicant and was considered globally with the other factors mentioned above.

[45] The Officer's finding on establishment is well within the range of possible, acceptable outcomes based on the facts, law and arguments before the Officer.

C. *Hardship and the "wrong test"*

[46] The Applicant further argues that the Officer applied the wrong test when assessing the application. While the test requires the Officer to consider a variety of factors including "hardship", he says that the Officer wrongly applied the test of whether he would be able to live independently if returned to Pakistan. The Officer then erred in disregarding his advanced age and medical needs, finding that he could live independently.

[47] The Applicant argues that the Officer did not sufficiently consider the hardship that the Applicant would face if he returned to Pakistan. He says that the Officer either ignored or tacitly gave short shrift to the particular factors in support of his lack of independence which would result in undue hardship if he has to return to Pakistan.

[48] The Officer did not ignore the hardship submissions that the Applicant put forward for consideration. As previously set out, the submissions are recited in the Decision. They speak of the Applicant's independence, not a lack of it:

Due to my old age, it's really difficult to live alone, as everyone my age needs some type of supervision or company from family and friends. Life without family is impractical for me. Although I am independent and self supportive, I still wish to be cared after, and acknowledged by my intimate family.

[My emphasis]

[49] The Applicant submits that the Officer did not acknowledge "the obvious psychological impact caused by isolation if he were to return to Pakistan." Yet the submission above refers to it being "impractical" to live without family and that he "wishes" to be cared after and "acknowledged" by his family. Without more, those statements do not reasonably evince an "obvious psychological impact".

[50] No medical or psychological evidence was submitted speaking to any kind of psychological impact to the Applicant if he returned to Pakistan. The only medical letter refers to his 2006 cardiac bypass surgery in Pakistan and states that he is taking treatment for coronary artery disease, hypertension and dyslipidemia.

[51] The support letter from the Applicant's daughter mentions that when her mother died in 2007, her father experienced mental stress, especially feelings of loneliness and being left behind. She also describes the breakdown of her father's relationship with her brother. She indicates that her father needs assistance to do daily things, although she does not describe those things. She says that if her father stays with her it will comfort him greatly.

[52] The Applicant's statements and submissions on hardship and his ability to live independently are not consistent. In the foregoing extract from his H&C submissions the Applicant mentions he is "self-supportive"; he also indicated he has a house in Greece and a pension. By contrast, in his initial H&C submissions the Applicant says that he is solely dependent upon his daughter to take care of him. Shortly thereafter, he states that he has assets abroad which he can "easily liquefy if he is granted PR status in Canada".

[53] The Applicant concluded his original submissions by saying that his extended family abroad was not willing to support him. In his Supplementary Information form, the Applicant states that his daughter is taking care of him and his expenses but if there are unexpected financial constraints his nephew in London, England will financially help him.

[54] The Officer refers to the various statements made by the Applicant. The Officer's conclusion that "there is little evidence that the applicant would be unable to live independently or support himself financially if he returned to Pakistan" arises from and is responsive to the submissions. The conclusion is grounded in the Applicant's evidence. It is reasonable on the facts and law.

D. *Best interests of the granddaughter*

[55] The Applicant argues that the Officer did not sufficiently consider the best interests of his granddaughter (“BIOC analysis”). The Applicant relies on the concurring opinion in *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 for the principle that a BIOC analysis must be done with a great deal of attention.

[56] The Applicant states that the Officer trivialized the best interests of the granddaughter by suggesting that email and Skype or the Applicant visiting Canada would be sufficient. The Applicant adds that the Officer further erred in speculating that he would be able to use email or Skype in Pakistan, and in speculating that the Applicant could obtain a visa to visit Canada in the future.

[57] The Applicant relies on *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 [*Lewis*] for the principle that an officer cannot speculate and make suggestions that rebut an applicant’s assertions, unless there is objective evidence.

[58] *Lewis* is distinguishable from the present case. The facts in *Lewis* are very different than the Applicant’s factual matrix. In *Lewis*, the child’s father was found inadmissible to Canada for criminality and likely would not be permitted to return. In the present case, the Applicant is not inadmissible to Canada. In *Lewis*, the child could not be expected to return to Canada alone. In the present case, the Applicant would be travelling to visit his granddaughter. In *Lewis*, the child’s family likely could not afford to purchase a plane ticket or support the child if she visited

Canada. In the present case, the Applicant has assets that could be easily liquidated, and the financial support of his son and nephew.

[59] The Applicant stated in his materials that he had used Skype to communicate with his family when he lived with his son. While the Officer did not have evidence about internet access in Pakistan, it was not unreasonable to find that the Applicant would be able to use technology to communicate with his granddaughter.

[60] The Officer accepted that the Applicant and his granddaughter have an emotional bond and that the Applicant keeps his granddaughter company. In considering the impact on the granddaughter if the application was refused, the Officer noted both that the Applicant is not the granddaughter's primary caregiver, and that there is no evidence that the daughter could not fully care for the granddaughter.

[61] It was not speculative for the Officer to find based on the facts and submissions that her wellbeing would not be significantly affected if the H&C application was refused. The Officer reasonably arrived at that conclusion after considering myriad facts and articulating in the BIOC analysis how they were applying them.

[62] Even if the Officer had found it was in the best interests of the Applicant's granddaughter that he remain in Canada with her, it is only one of many factors to be considered by the Officer. An applicant is not entitled to a positive H&C finding simply because the best interests of a child may favour that result: *Kisana* at paragraph 24.

VII. **Conclusion**

[63] The Applicant has not persuaded me that the Officer erred in considering his H&C application. The Officer reviewed and responded to the Applicant's submissions. That in places those submissions were contradictory or amounted to bald assertions without any support did not assist the Applicant.

[64] The Officer reviewed all the factors put forward by the Applicant and made a global assessment only when they had assessed them all. That the Applicant takes issue with each finding the Officer made does not alter the fact that the Officer took them all into consideration in determining that the H&C factors raised by the Applicant did not justify an exemption from the *IRPA*.

[65] The Supreme Court has stated very clearly that when conducting judicial review a Court is to refrain from deciding the issue afresh. I am to consider only whether the Decision, including the rationale for it and the outcome to which it led, is unreasonable: *Vavilov* at paragraph 83.

[66] The Applicant has not met his onus of demonstrating that the Decision is unreasonable by establishing that "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 paragraph 100.

[67] For all the above reasons, this application is dismissed.



[68] There is no serious question of general importance for certification on these facts.

[69] No costs.

**JUDGMENT in IMM-1618-19**

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

1. The application is dismissed.
2. There is no serious question of general importance for certification.
3. No costs.

**"E. Susan Elliott"**

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Judge

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

**DOCKET:** IMM-1618-19

**STYLE OF CAUSE:** MAHMOOD HUSSAIN v THE MINISTER OF  
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**PLACE OF HEARING:** Toronto, Ontario

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**DATED:** MAY 7, 2020

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