Federal Court  Cour fédérale

Date: 20210712

Docket: IMM-841-20

Citation: 2021 FC 733

Ottawa, Ontario, July 12, 2021

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

LAWRENCE EVANS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Lawrence Evans [Mr. Evans], seeks judicial review of the decision of an immigration officer [the Officer] dated January 17, 2020. The Officer refused Mr. Evans' application [the Application] for permanent residence in Canada on humanitarian and compassionate [H&C] grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the Application is dismissed. Although Mr. Evans' circumstances are sympathetic, more is required to justify an H&C exemption. Moreover, it is not the role of the Court to reweigh the evidence or remake the decision. Rather, the Court's role is to determine if the decision is reasonable. The Officer considered all the relevant factors, attributed weight to each factor, cumulatively assessed all the factors to determine whether the H&C exemption was warranted, and reasonably concluded that it was not.

I. Background

[3] Mr. Evans was born in the United Kingdom [UK] and remains a citizen of the UK. He was raised by his grandmother in Jamaica and returned to the UK at the age of 13 to live with an uncle.

[4] In 2004, Mr. Evans arrived in Canada and married Julene Foggin-Evans [Ms. Foggin-Evans], whom he had met online. Mr. Evans became a permanent resident of Canada in 2009 through spousal sponsorship. The couple divorced in 2009 and remarried in 2018. Although the couple remain married, they maintain two residences in close proximity, attributed to Ms. Foggin-Evans' cat allergy. Ms. Foggin-Evans is now in her late 70s and suffers from dementia. Mr. Evans is 58 years old and is cognitively impaired. Mr. Evans is Ms. Foggin-Evans' primary caregiver and assists her with her daily activities.

[5] On March 15, 2017, Mr. Evans was convicted of one count of luring a child under paragraph 172.1(1)(b) of the *Criminal Code*, RSC 1985, c C-46. He received a 236-day custodial

sentence and three years' probation. As a result of his conviction, he lost his permanent resident status and is inadmissible to Canada. A deportation order was issued in June 2019.

[6] Mr. Evans submitted his pre-removal risk assessment [PRRA] application in July 2019. His H&C Application was refused on January 17, 2020. Mr. Evans seeks judicial review only of the H&C decision.

[7] Mr. Evans' motion to stay his removal from Canada was dismissed by Justice Paul Favel on September 19, 2020. Justice Favel found that no serious issue was raised in the removal officer's decision and no irreparable harm had been established. Despite this outcome, the Court granted leave to commence this Application. The parties agree that this Application should be determined on the record now before the Court.

II. The Decision Under Review

[8] The Officer assessed Mr. Evans' personal circumstances, his establishment in Canada, family ties, the impact that his return to the UK would have on his wife, the hardship he would face in reintegrating in the UK, medical reports regarding his cognitive and mental health issues, and his serious criminality.

[9] With respect to establishment, the Officer noted Mr. Evans' employment, attendance at church and role as a caregiver to his wife. However, the Officer found that Mr. Evans had "otherwise minimally established himself both socially and financially during his years in Canada".

[10] The Officer considered that Mr. Evans had been employed for the 15 years he had been in Canada and had paid taxes, but noted that there were no bank records and the Officer was not satisfied that Mr. Evans had sufficient savings to support a long-term stay in Canada.

[11] The Officer also considered supportive letters from Ms. Foggin-Evans, other friends and members of Mr. Evans' church. The Officer noted that Mr. Evans had made several acquaintances, but that the only enduring and close relationship was with his wife. The Officer found that Mr. Evans could maintain these relationships, including with his wife, long distance through telephone, mail and visits.

[12] The Officer acknowledged that Mr. Evans and his wife have a close relationship, he assists her with daily tasks, and his removal from Canada would likely result in his wife moving into an assisted living facility. The Officer noted that Mr. Evans' submissions focussed on the hardship related to the impact of his removal on his wife's care rather than the emotional impact. The Officer found that the hardship to Mr. Evans' wife could be mitigated by hiring a personal support worker or moving her into an assisted living facility.

[13] The Officer also noted that Mr. Evans' family ties in Canada were primarily his ties to his wife, and that this is not a determinative factor in an H&C application. The Officer found that there was "little evidence to suggest that the applicant's spouse is unable to travel (with assistance if needed) to the UK to visit the applicant and provide him with emotional support".

[14] With respect to the hardship to Mr. Evans upon returning to the UK, the Officer considered the reports of two psychologists and two psychiatrists. These reports described

Mr. Evans as having a “very limited cognitive capacity” and presenting with “a likely learning disability and associated adjustment disorder with anxious mood”.

[15] The Officer acknowledged that Mr. Evans may experience reestablishment difficulties, but noted that, for most people, moving to a different country is likely to impose challenges, including psychological stress. The Officer found that Mr. Evans had demonstrated his resilience by his ability to move to Canada and resettle successfully and would be able to do so again.

[16] The Officer acknowledged Mr. Evans’ mental health challenges and cognitive impairment, but found that there was little objective evidence to suggest that he would not be able to seek out therapy in the UK to assist him to cope and reintegrate. In addition, the Officer found that there was little objective evidence to suggest that Mr. Evans’ family members in the UK would be unable to offer him emotional support and assistance in reintegrating.

[17] Overall, the Officer gave some weight to the hardship, including the mental health challenges that Mr. Evans would face, but noted that this was only one of several factors to consider.

[18] With respect to Mr. Evans’ serious criminality, the Officer acknowledged that Mr. Evans had no prior convictions. The Officer considered the psychiatric and psychological reports, including that Mr. Evans was assessed as having very limited cognitive capacity and a learning disability, yet he did not meet the criteria for a finding of not criminally responsible on account of mental disorder with respect to the child luring offence. The Officer considered Dr. Davis’ opinion from July 2019 that Mr. Evans had a low risk of recidivism. The Officer also considered the October 2016 psycho-educational assessment by Mr. Sander, which noted that Mr. Evans was not likely to learn from his past experiences unless it is in the same social situation and in a

similar context, and the June 2017 presentence report, which stated that Mr. Evans does not take ownership or accountability and that rehabilitation with a counsellor would be futile.

[19] The Officer attributed greater weight to the serious nature of the conviction and to the opinions that Mr. Evans did not take accountability for his actions or display remorse than to Dr. Davis' opinion regarding the low risk of recidivism.

[20] In conclusion, the Officer accepted that Mr. Evans had been in Canada for 15 years, is employed and in a marital relationship. The Officer also accepted that Mr. Evans would experience some hardship due to the challenges of reintegration and that his wife would experience some hardship due to the absence of Mr. Evans as her primary caregiver. However, the Officer found that the hardship could be "somewhat, if not largely mitigated".

[21] Overall, the Officer found that the positive factors did not outweigh Mr. Evans' serious criminality.

III. The Standard of Review

[22] It is well established that H&C decisions, which are discretionary decisions, are reviewed on the reasonableness standard (*Baker v Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817 at paras 57–62, 174 DLR (4th) 193; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]). In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16, 23 [*Vavilov*], the Supreme Court of Canada confirmed that reasonableness is the applicable standard of review for discretionary decisions and has provided extensive guidance to the courts in reviewing a decision for reasonableness.

[23] The Court begins by examining the reasons for the decision with respectful attention, seeking to understand the reasoning process followed by the decision-maker to arrive at a conclusion. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–110). The Court does not assess the reasons against a standard of perfection (*Vavilov* at para 99).

[24] In *Vavilov*, at para 100, the Supreme Court of Canada noted that decisions should not be set aside unless there are "sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" and that "[t]he court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" [Emphasis added].

[25] The Supreme Court of Canada identified two types of fundamental flaws that will render a decision unreasonable, at para 101 of *Vavilov*, "[t]he first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it."

IV. The Applicant's Submissions

[26] Mr. Evans argues that the Officer failed to consider his establishment in Canada in its proper context, ignored relevant evidence regarding the impact of his removal on his wife, failed to consider the impact of his removal on his own mental health, and speculated that he would

have support from family in the UK. More generally, Mr. Evans submits that the Officer's assessment focussed on his criminal conviction almost to the extent of excluding the other relevant factors that would support an H&C exemption.

[27] Mr. Evans submits that the Officer failed to consider his level of establishment taking into account his limited cognitive capacity. He argues that the Officer's finding that his establishment was generally unremarkable for the amount of time that he had spent in Canada suggests that the Officer had some expected level of establishment, which is an error (*Baco v Canada (Citizenship and Immigration)*, 2017 FC 694 at para 18 [*Baco*]).

[28] Mr. Evans notes that the Officer found he had few relationships in Canada, yet he submitted letters from friends that vouch for him and state that they have known him for several years. In addition, the psychological and psychiatric evidence notes that he lacks capacity to perceive and interpret social cues, which would impair his ability to make lasting friendships.

[29] Mr. Evans argues that the Officer's conclusion that his wife's needs could be met by a personal support worker or by moving to an assisted living facility are not based on the evidence. Mr. Evans notes that the Officer focussed on a replacement caregiver for his wife, which ignores Dr. Davis' opinion that his wife's condition would seriously decline without Mr. Evans as her caregiver. Mr. Evans also notes the letters from Ms. Foggin-Evans' son and her close friend, Jacqueline Schow, regarding the impact of his removal on his wife. More generally, Mr. Evans submits that the impact of separation from his wife is an important consideration in H&C

applications which was ignored (*Lopez Bidart v Canada (Citizenship and Immigration)*, 2020 FC 307, at para 30 [*Lopez Bidart*]).

[30] Mr. Evans adds that the Officer's suggestion that Ms. Foggin-Evans could travel to the UK, with assistance, to visit Mr. Evans is speculative and unreasonable given her inability to perform basic daily tasks. In addition, he submits that the Officer's conclusion that he can rely on his sister and uncle in the UK to assist him to reintegrate is based only on speculation.

[31] Mr. Evans further submits that the Officer ignored the impact of his removal on his own mental health, focusing instead on the treatment that might be available to him in the UK, contrary to *Kanthasamy* at paras 46–49.

[32] Mr. Evans argues that his serious criminality, which is the very reason for his inadmissibility to Canada and for the exemption he seeks, cannot eclipse all the other factors that may support an H&C exemption (*Lopez Bidart* at para 32). He also argues that the Officer focussed on his presentence report regarding his risk of reoffending rather than the more recent evidence of Dr. Davis, which found that he was at a low risk to reoffend.

V. The Respondent's Submissions

[33] The Respondent submits that the Officer's decision is transparent and justified by the facts and the law. The Officer weighed all the factors and explained each conclusion and the overall conclusion.

[34] The Respondent disputes that the Officer erred by failing to articulate what level of establishment would be “expected” in the circumstances. The Respondent submits that the Officer acknowledged Mr. Evans’ cognitive limitations, and noted his employment and his role as caregiver. On the other hand, the Officer considered that there was no record of sound financial management. The conclusion that Mr. Evans establishment was minimal after 15 years in Canada is supported by the evidence, or lack of evidence, on the record.

[35] The Respondent notes that the Officer considered the evidence of hardship to Mr. Evans’ wife, including Dr. Davis’ report, Ms. Foggin-Evans’ letter, and her son’s letter.

[36] The Respondent submits that the Officer’s consideration of both the impact of removal on Mr. Evans’ mental health and the existence of mental health supports to assist him in the UK was entirely reasonable, in the context of assessing his hardship upon return. There was no evidence that treatment and support would not be available in the UK. The Respondent also notes that Mr. Evans provided information for his presentence report indicating that he had contact with his sister and uncle in the UK.

[37] The Respondent disputes that *Lopez Bidart* establishes that the reason for the inadmissibility can be discounted in an H&C determination. The Respondent submits, in any event, that *Lopez Bidart* can be easily distinguished as it dealt with inadmissibility based on the applicant’s overstay in Canada and a failed spousal sponsorship, not on serious criminality.

[38] With respect to the serious criminality factor, the Respondent submits that the Officer considered Dr. Davis' report and clearly explained that other evidence was given more weight, in particular, the presentence report and psycho-educational assessment. The Respondent submits that the Officer reasonably placed more weight on the opinion and assessment by Mr. Sanders, who conducted more extensive testing of Mr. Evans and concluded that Mr. Evans did not take ownership of his conduct, lacked remorse, and was more concerned with how his conviction affected his employment. The Respondent also notes the circumstances of the child luring offence, which demonstrate that Mr. Evans was aware he was communicating with a child and had represented himself as a child.

VI. The Decision is Reasonable

[39] At the outset, it is important to note the purpose of an H&C determination and the jurisprudence regarding what constitutes a reasonable decision, i.e., one that is rational and coherent, transparent, intelligible, and justified by the facts and the law.

[40] Section 25 of the Act provides that an exemption from some findings of inadmissibility and from other criteria or obligations of the Act may be granted on the basis of H&C considerations. This discretionary relief provides an exemption from the otherwise applicable legal requirements and is commonly referred to as "exceptional". In the present case, the exemption, if granted, would overcome Mr. Evans' inadmissibility to Canada.

[41] The onus is at all times on an applicant to establish with sufficient evidence that the exemption should be granted. Officers who conduct H&C assessments must consider all the

evidence presented and the jurisprudence, which guides the assessment, and be satisfied that the relief is justified in the particular circumstances.

[42] In *Liang v Canada (Minister of Citizenship and Immigration)*, 2017 FC 287 at para 23, Justice Strickland captured the essence of an H&C determination noting that if granted, it exempts an applicant from "any applicable criteria or obligations of the IRPA" including, relieving an applicant from having to leave Canada to apply for permanent residence "through the normal channels". Justice Strickland emphasized that "[a]n H&C exemption is an exceptional and discretionary remedy" and that "the onus of establishing that an H&C exemption is warranted lies with the applicant".

[43] Mr. Evans relies extensively on *Kanthasamy,* in particular regarding the importance of the mental health consequences of removal. In *Kanthasamy,* the Supreme Court of Canada provided extensive guidance about how section 25 should be interpreted and applied.

[44] In *Kanthasamy,* at para 13, the Supreme Court of Canada noted the approach previously set out in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, which described H&C considerations as "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" [Emphasis added].

[45] While this appears to be a flexible and generous basis to grant the exemption, the Supreme Court of Canada explained that what will warrant relief under section 25 will vary depending on the facts and context of each case. Officers making such decisions must substantively consider and weigh all of the relevant facts and factors before them (*Kanthasamy* at

para 25). The significant aspects of *Kanthasamy* are the Court's clear directions to avoid imposing a threshold of *unusual, undeserved or disproportionate* hardship and to "give weight to all relevant humanitarian and compassionate considerations in a particular case" (at para 33) [Emphasis in original].

[46] While the Court noted the need to consider all relevant H&C factors, it also acknowledged, at para 23, that the H&C process is not an alternative immigration scheme and that "[t]here will inevitably be some hardship associated with being required to leave Canada", which on its own is generally not sufficient to grant relief.

[47] In *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313 [*Shackleford*], Justice Roy considered paragraph 33 of *Kanthasamy*, noting at para 11, that "the notion of hardship continues to be an important consideration in the review of applications on H&C grounds" and that *Kanthasamy* has not changed the characterization of an H&C exemption as exceptional.

[48] Mr. Evans also points to *Lopez Bidart* in support of several of his arguments. In that case, Justice Pentney also cited *Kanthasamy*, noting:

> [14] It is not sufficient to demonstrate that being forced to leave Canada will cause some hardship, because that is an unavoidable consequence of removal. Instead, what is required is a circumstance that falls outside of the usual situation and this will vary with the facts and context of each case (*Kanthasamy* at paras 23-25). [Emphasis added]

[49] While applicants before this Court can point to jurisprudence to support a finding that similar circumstances have been found to be exceptional and warranting relief, each case is determined on the evidence before the decision-maker. The Court's role is to assess whether the decision-maker reached a reasonable decision based on the decision-maker's assessment of the evidence and the application of the statutory provision and the jurisprudence that has interpreted it. The jurisprudence post-*Kanthasamy* is consistent in several respects, including that the H&C exemption is discretionary and exceptional relief, that some hardship is the normal consequence of removal and on its own does not support the exemption, and that more than a sympathetic case is required to justify the exemption. Justice Roy noted in *Shackleford*, at para 14, that reviewing courts must not substitute their discretion for that given to the Minister and that "there must be a measure of the severity to the circumstances that could legitimately attract humanitarian and compassionate considerations" assessed together with the other relevant factors.

[50] With respect to Mr. Evans' submission that the decision is not reasonable because the Officer suggested that his establishment fell short of some undisclosed expected level of establishment, there is no indication in the decision that the Officer took such an approach.

[51] Mr. Evans points to *Baco* at para 18, where Justice Boswell found that the officer had erred by assessing the applicant's establishment against an expected benchmark and failed to explain why the evidence of establishment was insufficient. Unlike *Baco*, the Officer did not discount Mr. Evans' level of establishment or suggest that it did not meet what would be normal in the circumstances. The Officer simply assessed the evidence of establishment and concluded that it was minimal.

[52] Moreover, in *Baco* at para 18, Justice Boswell acknowledged that establishment is one of several factors and that the assessment of the evidence is within the officer's expertise and discretion. Justice Boswell found, on the facts, that it was unreasonable for the officer to have discounted the applicants' establishment merely because it was not "beyond the normal establishment that one would expect" of the applicants in their circumstances. He also found that the officer unreasonably failed to explain why the establishment evidence was insufficient or what would be expected.

[53] Although the Officer did not suggest an expected level of establishment for Mr. Evans, I do not agree that it would necessarily be an error for an officer to find that an applicant had not achieved or exceeded the level of establishment that would be customary for a similarly situated person. An H&C exemption is not simply another avenue to gain status in Canada or to overcome the need to apply from abroad (as noted in *Kanthasamy*). In this context, it would be reasonable for an officer to consider whether the establishment is simply what is minimally reasonable in the circumstances or is greater, without attaching some artificial level or expectation, based on the time spent in Canada. Working, paying rent, paying bills and making friends are basic aspects of life and are reasonably "expected", unless there is some impediment. This would not be remarkable or exceptional establishment, warranting some greater relative weight on an H&C application.

[54] Mr. Evans also relies on *Ranji v Canada (PSEPC)*, 2008 FC 521 at para 22, for his submission that the Officer should have assessed his establishment in the context of his cognitive

capacity. In *Ranji*, the Court stated that "the officer must consider the evidence presented with respect to the background and characteristics of the Applicant".

[55] In the present case, the Officer considered the nature of Mr. Evans' employment, that he has lived in Canada for 15 years, he attends church, he is his wife's primary caregiver and he had made a number of acquaintances in Canada. The Officer also considered that Mr. Evans had not made any enduring and close friendships with anyone but his wife.

[56] The Officer acknowledged Mr. Evans' personal circumstances, including his cognitive impairment. The Officer found that Mr. Evans had some establishment, but it was minimal. The weight attached to the evidence relevant to the establishment factor within the H&C analysis is within the Officer's discretion. The Officer did not ignore any relevant evidence regarding establishment.

[57] The Officer also considered whether Mr. Evans could establish himself upon return to the UK, noting his employment experience and that he had some family in the UK who could assist him. It is not unreasonable for the Officer to consider Mr. Evans' ability to re-establish himself in the UK as relevant to both his establishment in Canada — in the sense of what he would be leaving behind — and to the hardship he would experience upon removal. The Officer assessed both factors: establishment and hardship.

[58] Mr. Evans also relies on *Lopez Bidart* at para 30, for the proposition that the separation from his spouse is an important consideration. Justice Pentney noted that "the hardship caused by

separation of spouses has been recognized as an important consideration in other cases, yet it is given almost no attention in this decision".

[59] The need to consider the impact of separation is not in dispute, but unlike the finding in *Lopez Bidart*, the Officer did consider the hardship of separation to both Mr. Evans and his wife, but found that it was only one of several factors and that it would be mitigated.

[60] The Officer considered the impact of Mr. Evans' removal on his wife, noting that as her primary caregiver, Mr. Evans' removal would likely result in his wife moving to an assisted living facility. The Officer found that the hardship to Mr. Evans' wife with respect to her day-to-day needs and the possibility of further cognitive decline, as set out in Dr. Davis' opinion, would be mitigated by hiring a support worker or moving her into an assisted living facility.

[61] Although the Officer considered Dr. Davis' report, Dr. Davis had elaborated on the impact of the loss of a caregiver for a dementia patient, such as Ms. Foggin-Evans, and stated that it would be reasonable to expect that a decrease in a caregiver's physical availability would have an adverse effect. He also stated that "declines in the emotional availability of a caregiver predicts more rapid mortality of the dementia patient", "depression itself is a strong predictor of the rate of functional and cognitive decline in patients with dementia" and that the severity of Ms. Foggin-Evans' depression would be reasonably predicted to increase upon the removal of her husband. Dr. Davis also more specifically noted that the loss of Mr. Evans as his wife's caregiver would result in a more rapid decline in her mental capacity and mortality.

[62] While the Court notes that the Officer's conclusion that a support worker or assisted living facility would mitigate this hardship does not reflect Dr. Davis' opinion, which is the only evidence about the impact of Mr. Evans' removal on his wife — i.e., that she will decline more rapidly without Mr. Evans as her caregiver — it is apparent that the Officer attached less weight to Dr. Davis' opinion than to other considerations, including that Mr. Evans' role is more that of a physical caregiver, which others could fulfill.

[63] With respect to the impact of removal on Mr. Evans, it was reasonable for the Officer to consider the availability of resources and family support in the UK to assist with his reintegration. There is some evidence on the record that Mr. Evans had indicated that he remained in contact with his sister and uncle. Although there is no evidence of what level of support they would provide, there is also no evidence from Mr. Evans, who bears the onus of providing evidence to support his application, that he would not be able to reintegrate in the UK or that he had no one to turn to there.

[64] Mr. Evans relies on *Kanthasamy* (at paras 46–49) for his submission that the Officer must consider evidence of an applicant's mental health diagnosis and evidence that removal will likely worsen their mental health. In *Kanthasamy* at para 48, the Supreme Court found that the officer, "in her exclusive focus on whether treatment was available in Sri Lanka, the Officer ignored what the effect of removal from Canada would be on his mental health". In the present case, unlike *Kanthasamy*, the Officer did not ignore the impact of Mr. Evans' removal on his mental health, discount the evidence of Mr. Evans' mental health challenges, or suggest that additional evidence was needed about any required treatment.

[65] The Officer did not run afoul of the Supreme Court's guidance in *Kanthasamy*, rather the Officer accepted that Mr. Evans would experience the impact of removal, including on his mental health and that he could seek resources in the UK. *Kanthasamy* does not say that the availability of resources in the home country is not relevant. There is also no suggestion that such resources are not available in the UK.

[66] Dr. Davis stated that he would reasonably expect an adverse impact on Mr. Evans' mental health if he is removed due to "resettlement challenges and the experience of loss in a forced separation from his wife" and that he would not be a candidate for cognitive behaviour therapy due to his low language skills. However, Dr. Davis clarified that "there is a risk for Mr. Evans to compensate into depression without sufficient verbal skills or financial resources to remedy a mental illness". Dr. Davis also stated, "[i]t would be normal for a person to feel depressed when forced to separate from his spouse. There is nothing in this man's mental health history to suggest that he would have a different outcome from that expected for the general population." Based on the evidence, it was reasonable for the Officer to conclude that Mr. Evans may face the challenges and difficulties faced by most people when moving to a different country, including psychological stress, and it was reasonable for the Officer to consider that Mr. Evans could access mental health supports in the UK.

[67] With respect to Mr. Evans' serious criminality — which is the reason he was found inadmissible and the reason he now seeks an exemption on H&C grounds to exempt him from his inadmissibility — I do not agree that this consideration eclipsed all others.

[68] I acknowledge that the reason for inadmissibility to Canada or for not complying with the requirements of the Act cannot be determinative in an H&C, as that would render the exemption pointless. However, the underlying reason the exemption is necessary is a relevant consideration and the weight attached to it is for the officer to determine.

[69] In *Lopez Bidart*, relied on by Mr. Evans, the Court noted this very principle at para 32:

> [32] It is important to recall that the very reason an applicant is seeking H&C relief is that they are inadmissible to Canada or do not meet the requirements of the law for some reason. The reason why the person finds themselves in this situation is obviously a relevant consideration, and it must be given due weight in the analysis. It must not, however, eclipse adequate consideration of the nature and extent of the legal obstacles to admissibility (per *Jugpall and Patel v Canada (Citizenship and Immigration)*, 2019 FC 394 at para 12), as well as the considerations which weigh in favour of granting relief.

[70] In *Lopez Bidart*, the Court found that the Officer had not given consideration to the other factors in the H&C application. That is not the situation in the present case. The Officer considered all the relevant factors, but in the overall analysis, concluded that Mr. Evans' serious criminality was a significant factor, not outweighed by other positive factors, and that the H&C exemption was not justified.

[71] The Officer considered all of the relevant evidence regarding Mr. Evans' serious criminality. The Officer specifically noted Dr. Davis' opinion that Mr. Evans poses a low risk of recidivism. The Officer also noted the report by Mr. Sander and the presentence report which stated that Mr. Evans would not learn from his past experience, did not take accountability and that rehabilitation would be futile. The Officer also noted that Mr. Evans did not have prior

convictions. The Officer clearly explains why significant weight is placed on the serious nature of the offence and on the presentence report.

[72] Although the Officer made some findings that are not strongly supported by the evidence, including with respect to mitigating the impact of Mr. Evans' removal on his wife and the availability of support in the UK to mitigate his hardship upon return, there are no serious flaws in the decision.

[73] The Officer's decision — that the H&C exemption was not warranted — permits the Court to understand the reasoning process and reflects a coherent and rational chain of analysis. The Officer considered and weighed all the relevant factors on their own and cumulatively. The Officer reasonably concluded that Mr. Evans' serious criminality carried significant negative weight, which was not overcome by the positive factors considered, and, as a result, the exemption was not warranted.

JUDGMENT in file IMM-841-20

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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