Federal Court  Cour fédérale

**Date: 20220323**

**Docket: IMM-3046-20**

**Citation: 2022 FC 397**

**Ottawa, Ontario, March 23, 2022**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**DIKLA DESSIE ET AL.**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] This is the judicial review of a decision of a Senior Immigration Officer [Officer] refusing the Applicants' application for permanent residence. The application was based on humanitarian and compassionate [H&C] grounds pursuant to s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

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

**Background**

[3] The Applicants are Ms. Dikla Dessie [Principal Applicant] and her three children, Elishai Eliel and, Elinoi who were ages 21, 17 and 10, respectively, at the time of the Officer's decision.

[4] The Applicants entered Canada in 2008 together with the Principal Applicant's then spouse, who is the father of the children [Former Spouse]. Their claims were accepted in March 2010 and they then applied for permanent residence. While that application was pending, it was discovered that the Applicants had claimed refugee protection using false personal and national identities, asserting that they were citizens of Ethiopia and seeking protection with respect to that country. The Principal Applicant, her spouse and the two oldest children are actually citizens of Israel and no other country. Their applications for permanent residence were subsequently refused due to misrepresentation. The youngest child was born in Canada and is a Canadian citizen. The Principal Applicant and her spouse separated in 2015.

[5] On August 8, 2018 the Applicants then made an application for permanent residence based on H&C grounds. This was followed by a four-page letter from their counsel dated August 21, 2018 making submissions in support of the H&C application and attaching supporting documents, including an unsigned and unsworn statement authored by the Principal Applicant.

**Decision under review**

[6] The Officer addressed the Principal Applicant's submission that the Applicants would suffer hardship in Israel due to threats of violence from the Former Spouse but found that there was insufficient evidence to demonstrate that the Former Spouse wished to harm her or her children if they were returned to Israel.

[7] The Officer also reviewed the Principal Applicant's assertion that the family would face hardship in Israel because she would lose her Jewish identity because she converted to Christianity while in Canada. The Officer noted that the Principal Applicant had not provided objective evidence to support that assertion or how she would incur hardship as a result.

[8] With respect to the Applicants' assertion that the Principal Applicant's 21-year-old son, Elishai, was so frightened by the idea of returning to Israel that he had been diagnosed with depression and was on anti-depressants, the Officer found that there was no corroborating evidence of this assertion, such as a psychological assessment or other medical documentation. Nor had Elishai provided an affidavit in support of this claim and there was no evidence that he was unable to do so. The Applicant's evidence also did not establish that any treatment or medication required by Elishai was not available to him in Israel.

[9] The Officer noted the Applicants asserted that they were discriminated against in Israel due to their profile as Ethiopian Israelites but that this assertion was vague and unsupported by corroborating evidence. Nor did the country conditions assist the Applicants in that regard.

[10] The Officer noted the supports that the family has received in their Canadian community. The Officer referred to a letter from the Guelph-Wellington Women in Crisis organization [Women in Crisis] indicating that the Principal Applicant had been connected to their services since May 2016, after leaving an emotionally and physically abusive partner. The Officer found that the evidence did not support that the Principal Applicant has accessed the counselling services offered by Women in Crisis or whether she continues to require counselling. Nor was there evidence that if she required or chose to seek counselling or assistance from social agencies in Israel that they would be unavailable to her or that she would incur hardship in accessing any required treatment or services.

[11] The Officer also assessed the Applicants' establishment in Canada. The Officer gave the Principal Applicant's efforts to establish herself and her family through employment, volunteering, church membership and education positive consideration but found that their establishment was not more than what one would expect of persons in Canada for a similar length of time. Further, that the Applicants assumed their establishment efforts while knowing that their immigration status could be revoked should it be discovered that they were not truthful in their immigration claim.

[12] The Officer then considered the best interests of the minor children, Elinoi and Eliel. The Officer referred to the submission by counsel for the Applicants that the children are frightened of returning to Israel, are accustomed to the culture and language of Canada and that it would curtail their establishment and affect their growth if they were removed from Canada. The Officer acknowledged that both children are familiar with the language and culture of Canada,

but found that the Applicants had not provided specific details as to how the children's establishment and growth would be affected by leaving Canada. The Officer referred to objective evidence supporting that English is taught and spoken in Israel and found that it could be reasonably expected that the children's English language knowledge would be of benefit to them there as a second language in learning institutions, that Elinoi had been exposed to the Israeli language, culture and customs by her family, and that Eliel might have retained memories of his upbringing in Israel which would assist in the transition.

[13] The Officer acknowledged the letter of support provided by Dayami Ramirez of Immigrant Services Guelph-Wellington [Immigrant Services] which states that "it would be devastating to deny them [the children] the possibility to grow with their friends and live in the country that has welcomed them to develop to their full potential as human beings", but found that this did not provide an objective basis for the stated belief and was vague, speculative, and not supported by corroborating evidence. The Officer also noted that Eliel is of an age where he could reasonably express his feelings with regards to the application, but that he had not done so. And, while not determinative, there were no submissions from the Former Spouse, who had been allowed "liberal and generous access with the children" by the terms of the separation agreement, conveying his perspective on the best interest of the children. This evidence did not support that it would be contrary to the children's best interests to reside in the same country as, and to re-establish a relationship with, their father.

[14] The Officer noted the absence of any evidence to support that the children would lack access to education, medical or extra-curricula activities or similar amenities in Israel and stated

that they were not satisfied that returning to Israel as a family unit will adversely impact the best interests of the children. The Officer concluded that the best interests of the children had been considered and given weight, but that this factor did not warrant providing an exemption.

[15] The Officer summarized their findings and concluded that the hardships the Applicants may encounter in leaving Canada were inherent in removal after being in a place for a period of time. A cumulative balancing of the H&C factors raised by the Applicants did not warrant the exercising of the exceptional remedy afforded by s 25 of the IRPA.

**Issues and standard of review**

[16] In my view, all of the matters raised by the Applicants fall within the overarching question of whether the Officer's decision was reasonable.

[17] The parties submit and I agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23 and 25). On judicial review, the Court "asks whether the decision 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).

**Analysis**

### A. Domestic Abuse

*Applicant's Position*

[18] The Applicants' submissions are lengthy but the nub of the argument is that the Officer failed to consider their H&C circumstances through the lens of intimate partner violence. More specifically, that the Officer's analysis failed to recognise the realities of intimate partner violence. The Officer should have accepted the Principal Applicant's statements about the past history of domestic violence by her Former Spouse as true and considered this as an indictor of his future actions.

*Respondent's position*

[19] The Respondent submits that it was reasonable for the Officer to conclude that there was insufficient evidence to demonstrate that the Former Spouse wishes harm to the Applicants upon return to Israel. While the Principal Applicant alleges that her fear of future harm is predicated on past abuse, the Officer was required to determine if there were sufficient H&C reasons to justify an exemption from the IRPA. The lack of evidence of continued threats was relevant to that analysis. The Officer's reasons were not concerned with credibility but with the insufficiency of the evidence supporting the Applicants claim.

*Analysis*

[20] Section 25(1) of the IRPA is an exceptional and discretionary remedy. It affords foreign nationals who apply for permanent residence from within Canada who are inadmissible, or who do not meet the requirements of the IRPA, to have their circumstances examined and permanent residence, or an exception from any applicable criteria or obligation of the IRPA, granted if the Minister is of the opinion that it is justified on H&C grounds. On the basis of hardship, this relieves such a person from having to leave Canada to apply for permanent residence through the normal channels. Such an exemption is not an alternative immigration stream or an appeal mechanism for failed asylum seekers or permanent residents, but "acts as a sort of safety valve available for exceptional cases". The applicant has the onus of establishing that an H&C exemption is warranted (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45; *Liang v Canada (Citizenship and Immigration)*, 2017 FC 287 at para 23; *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 15; *Gregory v Canada (Citizenship and Immigration)*, 2022 FC 277 at paras 28-31).).

[21] It is significant to note at the outset that the written submissions of counsel that were before the Officer are brief, four pages in length. They primarily address establishment and the best interest of the children. There is no reference to past intimate partner violence, in fact, only reference to the Former Spouse was the submission that:

> The Applicants are mindful and regret that they used fraudulent documents and identity to make their refugee claims. A lot of changes occurred since their applications for permanent residence was rejected. The husband of the primary applicant abandoned them and left for Israel. He has threatened the primary Applicant with unknown consequences. The fact that he reported them to

> Canadian immigration authorities shows how far he can go to take revenge. Besides the hardships, the best interests of the three children, the threats from her husband and the problems she face in Israel are the grounds for her application.

[22] Submitted with counsel's written submissions is a five-page unsigned, unsworn statement of the Principal Applicant. This alleges prior spousal abuse.

[23] The Applicants' submissions in this application for judicial review assert that the Officer should have explicitly considered the past domestic abuse by the Former Spouse as predictive of the likelihood of future abuse. However, this was not raised in the submissions before the Officer as a basis for H&C relief.

[24] In any event, the Officer did deal with the submission by the Applicants that threats by the Former Spouse amount to hardship if they were removed to Israel. The Officer found that the Principal Applicant had not provided objective evidence that the Former Spouse has threatened her or the children since his departure from Canada in December 2017. She had not provided any details of any such threats such as when they occurred, the frequency, the manner in which they were received or a reason for the threats. Nor that she had reported any threats to the police or explained why she failed to do so. Given this, the Officer found that the Principal Applicant had failed to provide sufficient evidence to demonstrate that her Former Spouse wishes to harm her or her children upon their return to Israel.

[25] The Applicants do not assert that there has been any threat received from the Former Spouse since he left Canada over four years ago. The unsworn and unsigned statement of the

Principal Applicant indicates only that in 2015 her Former Spouse demanded that she move to Guelph. He threatened to expose their fraudulent refugee claims if she did not and stated that that he would “deal with her personally” if she were deported to Israel. Further, that her Former Spouse had abused her in Canada and threatened to do the same if she returned to Israel. The statement makes no reference to any threats since 2015. I also note that the statement is silent as to whether there have been any communications between the Former Spouse and the Applicants since his departure in 2017. Thus, presumably, either all communications were cut in 2017 or any subsequent communications have not been threatening.

[26] Given this limited evidence, I see no error in this the Officer’s finding that the Principal Applicant failed to provide sufficient evidence to demonstrate that her Former Spouse wishes to harm her or her children upon their return to Israel. Accordingly, that this not a hardship that warrants extraordinary relief under s 25 of the IRPA.

[27] The Applicants also submit that even if the Officer reasonably required objective evidence of ongoing threats to substantiate the Principal Applicant’s fear of harm, the Officer unreasonably required that she have reported the threats made by the Former Spouse while in Israel to the police in Canada. The Applicants submit that this is a manifestation of the myths and stereotypes applied to survivors of domestic violence. In my view, this submission is without merit. The Applicants do not assert that any threats were received since the Former Spouse departed Canada in 2017. Further, the Officer’s point was that while the Applicants asserted risk upon return to Israel due to threats from the Former Spouse, there was no objective evidence to support that such threats had been made, including reports to the police. The Officer did not

demand that the Principal Applicant have reported such threats to the police. And, as the Officer noted, nor was there any explanation of why such reports were not made, had threats been made after the Former Spouse's departure from Canada. The Applicants had the opportunity when making the H&C application to explain any fear of reporting that they may have had, however, they did not address this. I would also add that, had there been threats, given that the Former Spouse was in a different country and that the Applicants knew they were facing removal from Canada, it would be reasonable to expect the Principal Applicant, at that stage, to report any threats as this would have supported her claim of hardship if returned to Israel.

[28] The Applicants assert that the Officer did not make any negative credibility findings pertaining to the Principal Applicant's allegation of abuse and should have accepted as true her unsworn statement, without requirement of corroborating evidence. They refer to my decision in *Chekroun v Canada (Citizenship and Immigration)*, 2013 FC 737 [*Chekroun*] in support of that submission.

[29] First, as I have found above, the Officer did not take issue with the Applicant's allegation of abuse. Rather, the Officer found that there was a lack of any evidence of ongoing threats from the Former Spouse to substantiate the Applicants claim of hardship upon return to Israel.

[30] Second, again as discussed above, the Applicants did not argue before the Officer that the prior abuse should be considered as an indicator of future abuse. While the Applicant now refers to the Department of Justice document "*Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection) A Family Law, Domestic Violence*

*Perspective*" and family cases concerning predictions of future abuse, these documents and submissions were not before the Officer.

[31] Third, in *Chekroun* I referred to *Maldonado v Canada (Employment and Immigration)*, [1980] 2 FC 302 (CA) which held that when a claimant swears to the truth of his testimony, that testimony is presumed to be true unless there is a valid reason to doubt its truthfulness. I found that, in the absence of such reasons, the applicant in that matter had met the burden of establishing his sexual identity by way of his sworn affidavit. Therefore, the officer in that case unreasonably demanded corroborating evidence of that fact.

[32] In this matter, the Principal Applicant has not filed a sworn affidavit. She submits that her unsigned, unsworn statement was attached to the Supplementary Information Humanitarian and Compassionate Considerations form which form includes a declaration, signed by the Principal Applicant on August 8, 2018, that the information given on that on the supplementary information form is truthful and correct. While the statement is inserted in that document as found in the Application Record, in the CTR the statement is not a part of the document. Rather, it is one of the documents submitted with counsel's submissions dated August 21, 2018.

[33] In any event, the Officer did not demand corroborating evidence of the alleged abuse. The Officer observed an absence of corroborating evidence that could reasonably have been expected to be available to the Principal Applicant, based on her statement, but the decision did not turn on this.

[34] Additionally, in *Chekroun*, once the applicant had proved the fact of his sexual identity, there was substantial country conditions documentation demonstrating that this established fact would create a risk to his life in Algeria. In this case, as the Officer found, the Applicants did not provide evidence sufficient of ongoing threats to establish that the alleged abuse in Canada would give rise to future hardship in Israel.

[35] Nor do I agree with the Applicants' assertion that the Officer discounted the letter of support from Women in Crisis based on a misapprehension of the evidence. This letter states that the Principal Applicant has been connected to the services of that agency since May 2016 after leaving an emotionally and physically abusive partner. She received assistance in securing subsidized housing on a priority basis because of her experience in domestic violence and has been offered ongoing counselling, safety planning and advocacy with other social service agencies. She also received information and support regarding custody and access issues pertaining to her children.

[36] The Applicants submit that the Officer ignored that in her Generic Application Form the Principal Applicant indicated that she had been married from March 19, 1998 to March 26, 2016 and that in her unsworn statement that she and her husband began living together again in 2015 "as a result of the Minutes of Settlement and surrounding family court proceedings".

[37] I note that the Minutes of Settlement from the Ontario Court of Justice comprise an agreement between the Principal Applicant and her Former Spouse that the Principal Applicant would have custody of the children, the Former Spouse would have liberal and generous access

to the children and would pay child support. The Minutes are dated June 25, 2015 and are witnessed by duty counsel.

[38] In my view, nothing turns on the date of the Minutes of Settlement and any later formal dissolution of the marriage, of which there was no objective documentary evidence in the record. The Officer was merely pointing out that the Principal Applicant's statement lacked clarity and raised unanswered questions. Indeed, I am unable to understand the Applicants' written submission made before me that the Principal Applicant and her Former Spouse began to live together again "as a result of the Minutes of Settlement and the surrounding family court proceedings". But, again, nothing turns on this point. In my view, the Officer considered the letter of support from Women in Crisis and did not dismiss its content. However, the letter does not assert any threat of future abuse in Israel.

[39] In sum, in these circumstances, I do not agree with the Applicants that the Officer erred in failing to consider that the alleged past abuse by the Former Spouse could be predictive of future abuse in Israel. I would also note that there was no evidence in the record to suggest that protection from any potential abuse would not be available to the Applicants in Israel.

### B. Establishment

*Applicants' position*

[40] The Applicants submit that the Officer erred in their establishment analysis by failing to address the impact of the domestic abuse on establishment and in failing to set out what would have been considered sufficient establishment in the Applicant's circumstances.

*Respondent's position*

[41] The Respondent submits that it was reasonable for the Officer to consider that the Applicants knew or should have known that being asked to leave Canada could become an eventuality if their misrepresentation were discovered. The Officer otherwise reasonably assessed the Applicants' establishment, and this exercise of discretion should not be interfered with by the Court.

*Analysis*

[42] The Officer reviewed the Principal Applicant's employment history, her submissions about attending English language classes, her volunteer work with the Ethiopian Evangelic Church in Toronto and with St. Joseph's Health Centre in Guelph and other similar activities. The Officer afforded her efforts to establish herself and her family in Canada positive consideration but also found that their establishment is not more than one would expect of persons who have been in Canada for a similar period of time. The Officer also noted that the

Applicants assumed their establishment efforts knowing that their immigration status could be revoked if it were discovered that their refugee claim was not truthful.

[43] I see no merit in the Applicants' submission that the Officer erred in failing to address her statement that by moving to Guelph for the sake of family unity and for fear of her Former Spouse's threat of reporting the misrepresentation in their refugee claims to the immigration authorities that she lost any connection with the church and friend her were supporting her in Toronto. The Officer afforded positive consideration to her volunteer work. The alleged abuse which caused her to move to Guelph is irrelevant in the sense that the Officer made no negative finding about her establishment efforts after the move.

[44] The purpose of assessing the degree of establishment is so that a determination can be made about whether an applicant would suffer hardship if required to apply for permanent residence from outside Canada. This assessment must be done in reference to the particular circumstances of the applicant (*Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at paras 61-62 citing *Persaud v Canada (Citizenship and Immigration)*, 2012 FC 1133 at paras 44-45; *Ranji v Canada (Citizenship and Immigration)*, 2008 FC 521 at paras 19-20). This Court has previously held that unless the establishment in Canada is both exceptional in nature and not of the applicant's own choosing, this will not normally be a factor that weighs in favour of the applicants. At best, this factor will usually be neutral (*Dan Shallow v Canada (Citizenship and Immigration)*, 2012 FC 749 at para 9). More recently, in *Rocha v Canada (Citizenship and Immigration)*, 2015 FC 1070, Justice Gascon distinguished *Chandidas*, relied upon by the Applicants in this matter, and stated:

> [25] A strong degree of establishment is required for an H&C application to succeed. Evidence showing that an applicant could be a model immigrant and a welcome addition to the Canadian community is not enough. Furthermore, being a "hard-working, law-abiding, self-sufficient, enterprising, thrifty, and charitable to others" is not the test as to whether or not there are sufficient H&C grounds to warrant exceptional relief (*Zambrano v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 481 at para 75). "[T]he fact that the applicant made progress in adapting to Canadian society, held employment and became financially independent cannot automatically allow the officer to conclude that there were sufficient humanitarian and compassionate considerations" (*Aoutlev v Canada (Minister of Citizenship and Immigration)*, 2007 FC 111 at para 22). An applicant has to establish that being forced to leave Canada will not only cause hardship but hardship that is unusual and undeserved, or disproportionate. It is the applicant's onus to provide sufficient evidence of significant establishment, not on the Officer to investigate Mr. Rocha's allegations and evidence (*Lalane* at para 42; *Owusu* at para 5).

[45] I see no error with respect to the Officer's establishment assessment. The Officer considered the Applicant's evidence in reaching the determination that the Applicant's level of establishment was what would be expected of persons who have been in Canada for a similar period of time. The Officer did not demand an extraordinary level of establishment. There is nothing in the Officer's reasons or the record to suggest that they misapprehended the Applicants' establishment efforts or that they ignored any of the evidence that was submitted by the Applicants. Nor did the Applicants' submissions concerning establishment suggest that their level of establishment had been impacted by the alleged domestic abuse. Thus, unlike *Chandidas*, the Officer did not fail to meaningfully consider the Applicants' particular situation. The Officer stated "the question in this assessment is not whether the applicants would make welcome additions to Canadian society but whether their return to Israel amounts to hardship". The Officer found that the Applicants' level of integration into Canadian society would not result

in hardship on their return to Israel. I see no basis to interfere with this finding. Further, as the Respondent submits, establishment is one factor that can be considered by an H&C officer, it is not determinative.

[46] Nor did the Officer err in considering the impact of the misrepresentation on the degree of establishment.

[47] I have previously addressed this in *Fouda v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1176 [*Fouda*]:

> [54] This Court has held that misrepresentation is a relevant factor when considering a person's degree of establishment as, to do otherwise, would place the immigration cheat on an equal footing with a person who complied with the law. Further, whether the impact of the fraud is to reduce the establishment to zero or to something more is a question for the discretion of the decision-maker based on the particular facts of the matter before them (*Canada (Citizenship and Immigration) v Liu*, 2016 FC 460 at para 29).

(see also *Tartchinska v Canada (Citizenship and Immigration)*, [2000] FCJ No 373 at para 20, 22 (*FCTD*); *Chau v Canada (Citizenship and Immigration)*, 2002 FCT 107 at paras 15, 16: *Zhao v. Canada (Citizenship and Immigration)*, 2021 FC 38 at para 39; *Canada (Citizenship and Immigration) v. Ndir*, 2020 FC 673 at para 37).

[48] I find no error in the Officer's assessment of the Applicants' establishment.

### C. Best Interests of the Child

*Applicants' position*

[49] The Applicants submit that the Officer erred in their best interests of the child assessment by not considering the Principal Applicant's statement that the minor children were subject to abuse by the Former Spouse and by speculating that the children may be positively impacted by reuniting with their father. Further, that the Officer disregarded the children's lack of agency over the misrepresentation and weighed the misrepresentation against the hardship that the children would experience in returning to Israel.

*Respondent's position*

[50] The Respondent submits that the Officer sufficiently considered the best interests of the children in accordance with *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. The Principal Applicant provided very little information to support her submissions on the best interest of the children and has not shown that the Officer erred in the assessment of what was provided.

*Analysis*

[51] In *Kanthasamy*, the Supreme Court of Canada stated that the best interests' principle is highly contextual because of the multitude of factors that may impinge on the child's best interests. It must therefore be applied in a manner responsive to each child's particular age, capacity, needs, and maturity. The decision maker should consider children's best interests as an

important factor, give them substantial weight, and be alert, alive, and sensitive to them (*Kanthasamy* at para 38, referencing *Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74–75 [*Baker*]).

[52] A decision under s 25(1) of the IRPA will be unreasonable if the interests of children affected by the decision are not sufficiently considered. This means that decision makers must do more than simply state that the interests of a child have been taken into account, those interests must be well identified and defined, and examined with a great deal of attention in light of all the evidence (*Kanthasamy* at paras 23–25, 35, 38 and 41). Accordingly, the Officer was required to be alert, alive and sensitive to the best interests of the children, afford these interests significant consideration, examine them with care and attention in light of all of the evidence, and to take into account the children's personal circumstances. That said, the best interests of the child are not necessarily a determinative factor in an H&C assessment (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 75; *Motrichko v Canada (Citizenship and Immigration)*, 2017 FC 516 at para 21).

[53] In this matter, the Applicants submissions to the Officer did not address the allegation of abuse against either the Principal Applicant or the minor Applicants. The totality of the best interests of the child submissions was that the children are doing well in school and are “now so used to the educational system in Canada that it would be difficult for them to adjust to the educational system and cultural environment in Israel. Plus, they would miss their friends, school, church, and community which have become important part of their lives”. Further, the children are accustomed to the culture and language of Canada and “[i]t would curtail their

establishment" and "their growth would be affected" if they were removed to Israel. The Applicants' counsel submitted that H&C relief was warranted "in particular, because of the difficulties that would be faced by their children".

[54] As set out in the background section of these reasons, the Officer addressed the best interests of the child submissions as made by the Applicants and the related supporting documentation. For example, the Officer considered the supporting letter from Immigrant Services. This indicates that the agency has assisted the Applicants for almost 10 years with respect to their needs related to the settlement process and advocates for them to remain in Canada. The letter states, with respect to the children, that "it would be devastating to deny them the possibility to grow with their friends and live in the country that has welcomed them to develop to their full potential as human beings" and that their removal will prevent them from having the future they have the right to enjoy. The Officer found that this letter does not indicate on what objective evidence the author bases her stated belief, and found the assertions to be vague and speculative. I would also note that this letter does not address the Principal Applicant's allegation of potential hardship arising from domestic abuse or any concern about abuse of the children by their father. The Officer also noted that Eliel is of an age that he could reasonably express his feelings with regard to the H&C application but submissions from him had not been provided.

[55] The Applicants have not challenged any of the Officer's best interests of the child findings that were made in response to their submissions. Having reviewed the reasons and the

limited submissions made and supporting documentation provided by the Applicants, I am satisfied that the Officer's best interests of the children analysis was reasonable.

[56] As to the Officer's reference to the children's father, the Officer stated that while not determinative, the Minutes of Settlement indicated that the father had been given "liberal and generous access to the children" but that this did not speak to perspective on what or how their best interest are served by either remaining in Canada or returning to Israel. The custody terms did not support that it would be contrary to their best interests to reside in Israel and re-establish a relationship with their father. Contrary to the Applicants' submission, the Officer did not "demand" that the children's father's best interests be considered and that he provide evidence as to the children's best interests.

[57] I acknowledge that the Principal Applicant's unsworn statement alleges abuse against the children. I observe, however, it is extraordinary that this was not raised as part of the best interests of the child submissions by her counsel. No explanation is offered for this. In any event, as the Officer found, there was no evidence that the Principal Applicant's Former Spouse had made any threats against the Principal Applicant *or the children* since his return to Israel in 2017. As discussed above, the Principal Applicant's statement refers only to a threat allegedly made to her in 2015. The Officer found that the Principal Applicant had provided insufficient evidence to demonstrate that her Former Spouse wishes to harm her or her children upon their return to Israel. Given this, and while it may have been preferable had the Officer made reference within the best interests of the child analysis to the allegations of abuse of the children as contained in

the Principal Applicant's unsworn statement, the insufficiency of the evidence finding was determinative.

[58] Finally, with respect to the Applicants' submission that the Officer made a perverse finding by holding the children responsible for their parents' misrepresentation, the Officer did not make such a finding. To the extent that the Officer assesses the misrepresentation as a negative factor, they do so solely in relation to the Applicants' establishment, not to discount the best interests of the children. The Officer did not assess the children's best interests against the misrepresentations.

[59] In any event, it is not incumbent on an Officer to highlight the fact that children were innocent of any wrongdoing in misrepresentation (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at paras 26-27). Further, this Court has held that an Officer in an H&C application can validly weigh the public policy considerations of a misrepresentation by a parent against the best interests of the child to remain in Canada (*Aslam v Canada (Citizenship and Immigration)*, 2015 FC 946, at paras 16-17).

**JUDGMENT IN IMM-3046-20**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3046-20 |
| **STYLE OF CAUSE:** | DIKLA DESSIE ET AL. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | BY VIDEOCONFERENCE USING ZOOM |
| **DATE OF HEARING:** | MARCH 16, 2022 |
| **JUDGMENT AND REASONS:** | STRICKLAND J. |
| **DATED:** | MARCH 23, 2022 |

**APPEARANCES:**

| | |
|---|---|
| Nastaran Roushan | FOR THE APPLICANTS |
| Leanne Briscoe | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
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| Department of Justice<br>Toronto, Ontario | FOR THE RESPONDENT |