

Federal Court



Cour fédérale

**Date: 20220526**

**Docket: IMM-270-21**

**Citation: 2022 FC 763**

**Ottawa, Ontario, May 26, 2022**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**AMOREN BERNADINE JOSEPH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision of a Senior Immigration Officer (the Officer) refusing the Applicant's application for permanent residence on humanitarian and compassionate (H&C) grounds. For the reasons that follow, this judicial review is granted as the Officer's assessment of hardship arising from the Applicant's mental health condition is unreasonable.

I. Background

[2] The Applicant is a citizen of St. Vincent and the Grenadines. She came to Canada in 2012 to escape harassment and threats she was receiving from a male police officer named Gary. She has been diagnosed with post-traumatic stress disorder (PTSD) as a result of this ordeal. In 2013, the Applicant began trying to regularize her status. She submitted a Pre-Removal Risk Assessment (PRRA) and an H&C application through a couple falsely claiming to be immigration consultants. When these were refused, the Applicant submitted a second H&C application in 2019.

II. H&C Decision

[3] The Officer found the Applicant's "demonstrated steps towards community integration to be impressive" but also found "insufficient information or documentary evidence to indicate a history of stable employment or income" and "insufficient evidence to indicate that the applicant had the legal authorization to work". The Officer also reviewed the Applicant's bank statements, and found "insufficient evidence which is reflective of a pattern of sound financial management".

[4] The Officer then considered the Applicant's submissions that her life was at risk in St. Vincent, due to the threats from the police officer. However, the Officer reasoned the Applicant had been absent for 8 years, and there was little evidence that the individual had a continuing interest in the Applicant.

[5] With respect to the Applicant's mental health, the Officer accepted that she was diagnosed with PTSD, and considered a medical report, as well as a letter from the Applicant's social worker. However, the Officer stated:

With respect to the applicant's noted anxieties linked to the threats made by Gary, as previously noted there is insufficient evidence to indicate that he continues to pursue the applicant since she left St. Vincent.

I am also cognizant of more recent documentation, namely, a report dated 7 October 2019 which is prepared by a social worker. The worker notes that the applicant was seen by the psychiatrist at the centre who was able to assist the applicant with her sleep issues and help her feel much more calmer. The writer continues to note that despite the applicant's traumatic experience she has begun to show some great strengths and promises in being able to contribute to society. I find overall, there is insufficient evidence to elaborate on hardships linked to the applicant's mental health considerations if she returned to St. Vincent. In the alternative, I find insufficient evidence to indicate why the applicant could not access health services in St. Vincent, if the need arose, or how that could pose hardships.

### III. Issue and Standard of Review

[6] Although the Applicant raises a number of issues with the H&C decision, in my view the Officer's treatment of the medical evidence with respect to the impact of her return to St. Vincent is dispositive of this judicial review. I, therefore, decline to address the other issues.

[7] The parties agree that the standard of review is reasonableness. As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 99, in conducting a reasonableness 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."

IV. Analysis

[8] The Applicant argues the Officer misapprehended the evidence and found that her mental health had improved. The Applicant states this led the Officer to conclude that this mitigates hardship on removal.

[9] The evidence before the Officer included a medical report from Dr. Alpna Munshi, a psychiatrist, dated December 19, 2013 and January 9, 2014. Dr. Munshi diagnosed the Applicant with PTSD as a result of her experiences in St. Vincent, and states in the report “I have absolutely no doubt that should she be forced to return to St. Vincent that no [sic] only would her life be in danger because of this man (who seems very persistent in his resolve to track her down and hurt her), but it will also obviously lead to a significant deterioration of her mental health. Even the idea of being forced to go back had her shaking in my office....”

[10] The Officer also had a report dated October 7, 2019 from a social worker who treated the Applicant. The social worker states that “she would experience great hardship in going back to her country of origin, which may only re-traumatize her, having an astounding effect on her mental health.”

[11] The medical evidence confirms that the Applicant suffers from PTSD as a result of her experiences in St. Vincent. The medical evidence also confirms that her condition would deteriorate if she was removed from Canada. Despite this, the Officer concludes that the

evidence of hardships linked to mental health considerations is “insufficient”. The Officer does not explain why, or how, the evidence is insufficient, but simply dismisses the evidence.

[12] The Court in *Aguirre v Canada (Citizenship and Immigration)*, 2014 FC 274 [*Aguirre*] held that the officer was required to address the evidence that the applicant would suffer psychological harm if removed to a country that was the cause of her PTSD (at para 8).

Likewise, in *Saidoun v Canada (Citizenship and Immigration)*, 2019 FC 1110 [*Saidoun*], the Court held that officers “must consider the likelihood of the mental health condition worsening as a result of the removal” (at para 27).

[13] As in *Aguirre* and *Saidoun*, the Officer here failed to engage with this evidence to justify the conclusion that the Applicant would not experience hardship on removal to St. Vincent. The failure of the Officer to do so renders the decision unreasonable.

[14] This judicial review is, therefore, granted.

**JUDGMENT IN IMM-270-21**

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

1. This application for judicial review is granted, and the matter is remitted for redetermination by a different officer.
2. There is no certified question.

"Ann Marie McDonald"

Judge

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

**DOCKET:** IMM-270-21

**STYLE OF CAUSE:** AMOREN BERNADINE JOSEPH v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 13, 2022

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** MAY 26, 2022

**APPEARANCES:**

Nathaniel Ng-Cornish FOR THE APPLICANT

Brendan Stock FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Nathaniel Ng-Cornish FOR THE APPLICANT  
Toronto, ON

Attorney General of Canada FOR THE RESPONDENT  
Toronto, ON