

Federal Court



Cour fédérale

**Date: 20220613**

**Docket: IMM-6693-20**

**Citation: 2022 FC 873**

**Ottawa, Ontario, June 13, 2022**

**PRESENT: Mr. Justice James W. O'Reilly**

**BETWEEN:**

**SAAD FAIK ABDULFATTAH AL-ABAYECHI  
SHALAH SHEHAB AHMED AL-JANABI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] In 2019, the applicants, Mr Saad Faik Abdulfattah Al-Abayechi and Ms Shalah Shehab Ahmed Al-Janabi, applied for permanent residence in Canada. They asked that they be granted an exemption, based on humanitarian and compassionate grounds, from the requirement that applicants apply from outside Canada. An immigration officer denied their request finding

insufficient evidence that the applicants would experience hardship if they were required to apply for permanent residence from their home country of Iran.

[2] The applicants argue that the officer's decision was unreasonable and ask me to quash it. In particular, they submit that the officer discounted the hardship they would experience as Sunni Muslims if they were required to return to Iraq to file their permanent residence applications. In addition, they maintain that the officer's reasoning is contradictory, on the one hand, noting the deplorable conditions in Iraq, and on the other, concluding that the applicants are merely seeking to spend their retirement years in Canada with their son. Finally, the applicants contend that the officer relied on the existence of a temporary suspension of removals (TSR) to Iraq to dismiss concerns about the unsafe conditions there.

[3] I agree with the applicants that the officer's decision was unreasonable. The officer recognized the hardship that the applicants would face if they had to return to Iraq to apply for permanent residence in Canada. But the officer then pointed to the TSR and the fact that the applicants will not be removed from Canada, at least in the near future, as a basis for denying them a chance to apply from here. The logic of the officer's approach is not transparent. For that reason, I will grant the applicants' application for judicial review.

[4] The sole issue is whether the officer's decision was unreasonable.

## II. The Officer's Decision

[5] The officer described the applicants' immigration history. They had made a refugee claim when they first arrived in Canada in 2017. Their claim was dismissed the following year. However, due to the TSR, they could not be removed from Canada.

[6] The officer then assessed the applicants' degree of establishment in Canada and found it to be "unremarkable and modest." Ms Al Janabi was taking English courses and volunteering at a mosque. Mr Al Abayechi expressed hope that he might integrate more into Canadian life but explained that his opportunities to do so were limited because he was recovering from surgery.

[7] In terms of other ties to Canada, the officer noted the applicants' close relationship with their son. He, too, had made an unsuccessful refugee claim and his own application for permanent residence on humanitarian and compassionate grounds was denied (and his subsequent applications for judicial review of both decisions were dismissed: *Al Abayechi v Canada (Citizenship and Immigration)*, 2018 FC 360; *Al Abayechi v Canada (Citizenship and Immigration)*, 2021 FC 1280). The officer considered the applicants' submissions about the centrality of family in their culture and their lack of an alternative to reuniting in Canada. However, because of the TSR, the officer found that there was no risk of family separation or removal from Canada.

[8] In response to the applicants' submission that conditions in Iraq were dangerous, especially for Sunni Muslims, the officer agreed that Iraq was a country in conflict and that Sunnis were especially at risk. However, the officer also noted that the applicants had led successful lives there before coming to Canada. Both husband and wife were well educated, had

long employment histories, and travelled widely. The officer found that the applicants had enjoyed a “comfortable lifestyle” in Iraq.

[9] On balance, the officer concluded that the arguments against the applicants’ removal from Canada weighed heavily in their favour. However, those arguments, according to the officer, were outweighed by the existence of the TSR, which meant that the applicants’ removal to Iraq was not imminent. In fact, the officer speculated that the applicants did not actually fear hardship in Iraq; rather, they simply wished to spend their retirement years in Canada with their son. The officer was not persuaded that humanitarian and compassionate factors justified granting the applicants an exemption from the requirement of applying for permanent residence from outside Canada.

### III. Was the Officer’s Decision Unreasonable?

[10] The Minister maintains that the officer’s decision consists of a balancing of factors relevant to the applicants’ application – some favourable, some unfavourable – in determining the degree of hardship they would face in Iraq. The Minister submits that the officer’s decision was, therefore, not unreasonable.

[11] I agree with the Minister that the officer considered and weighed a number of factors. This is usually the essence of an officer’s exercise of discretion in applications of this kind, and an officer’s conclusions usually merit judicial deference. In this case, however, the officer’s reasoning was faulty and led him to an unreasonable conclusion.

[12] The officer accepted that Iraq was a dangerous place and that the applicants, as Sunni Muslims, were especially at risk there, and found that the evidence about conditions in Iraq supported the applicants' case. However, the officer concluded that the applicants' position was defeated by the TSR. Since the applicants could not be forcibly removed from Canada to Iraq, there was no imminent chance that they would have to confront the difficult circumstances there.

[13] But the result of the officer's approach is this: While they face a real risk in Iraq, one which the Government of Canada recognizes (the TSR for Iraq has been in place for nearly 20 years), the applicants should nevertheless have to return to Iraq to apply for permanent residence. In other words, the applicants cannot be forced to return to Iraq, but they must do so anyway if they want to obtain status in Canada. It does not appear that the officer considered the consequence of the decision for the applicants.

[14] The same observation was made by Justice John Norris in a case dealing with an applicant in like circumstances. Justice Norris found that the officer erred in failing to consider that the applicant would have to leave Canada in order to apply for permanent residence, stating that "a reasonable and fair-minded person would judge the requirement that he leave Canada to go to a war zone where a dire humanitarian crisis prevails so that he could apply for permanent residence as a misfortune potentially deserving of amelioration" (*Bawazir v Canada (Citizenship and Immigration)*, 2019 FC 623 at para 17).

[15] I agree with Justice Norris and with the applicants' submission that the officer's reasoning "leads to the perverse outcome that a policy designed to respond to a humanitarian

crisis (the TSR) is being used as grounds to deny humanitarian relief” (Applicants Memorandum, para 51).

[16] Accordingly, I find that the officer’s decision was unreasonable.

#### IV. Conclusion and Disposition

[17] The officer’s reasoning in dismissing the applicants’ request for humanitarian and compassionate relief lacks the requisite rationality that characterizes a reasonable decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 101).

Therefore, I must allow this application for judicial review. Neither party proposes a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-6693-20**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed and the matter is returned to another officer for reconsideration.
2. No question of general importance is stated.

"James W. O'Reilly"

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Judge

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

**DOCKET:** IMM-6693-20

**STYLE OF CAUSE:** SAAD FAIK ABDULFATTAH AL-ABAYECHI  
SHALAH SHEHAB AHMED AL-JANABI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARING HELD BY VIDEOCONFERENCE IN  
TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 27, 2022

**JUDGMENT AND REASONS** O'REILLY J.

**DATED:** JUNE 13, 2022

**APPEARANCES:**

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