Federal Court  Cour fédérale

**Date: 20220727**

**Docket: IMM-4700-20**

**Citation: 2022 FC 1117**

**Ottawa, Ontario, July 27, 2022**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**SLIWA NAMROOD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Background

[1] The Applicant, Sliwa Namrood, is a citizen of Iraq. He fled to Syria with his family in 2003. He applied for and was granted refugee protection in the United States in 2009, and was granted permanent resident status that same year.

[2] The Applicant entered Canada in May 2015 and subsequently made a refugee claim, however, he was deemed ineligible. The Applicant then applied for permanent residence based on humanitarian and compassionate [H&C] grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], which was refused on September 8, 2020 [Decision].

[3] The Decision of the Senior Immigration Officer [Officer] is the subject of the present judicial review. The Applicant asserts that the Officer erred by: (a) relying on irrelevant evidence related to the availability of social services for the Applicant in the United States; (b) applying an incorrect test with respect to hardship; and (c) failing to consider the Applicant's mental health issues when assessing his establishment in Canada.

[4] For the reasons that follow, this application for judicial review is allowed.

## II. Analysis

[5] An exemption under subsection 25(1) of the IRPA is an exceptional and discretionary remedy (*Fatt Kok v Canada (Citizenship and Immigration)*, 2011 FC 741 at para 7; *Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 at paras 19-20). Subsection 25(1) of the IRPA provides the Minister of Citizenship and Immigration [Minister] with the discretion to exempt foreign nationals from the ordinary requirements of that statute and to grant permanent resident status to an applicant in Canada if the Minister is of the opinion that such relief is justified by H&C considerations. The H&C discretion is a flexible and responsive exception that

provides equitable relief, namely to mitigate the rigidity of the law in an appropriate case (*Rainholz v Canada (Citizenship and Immigration),* 2021 FC 121 [*Rainholz*] at paras 13-14).

[6] H&C considerations are facts, established by evidence, that would excite in a reasonable person in a civilized community the desire to relieve the misfortunes of another provided these misfortunes warrant the granting of special relief from the otherwise applicable provisions of the IRPA (*Kanthasamy v Canada (Citizenship and Immigration),* 2015 SCC 61 [*Kanthasamy*] at paras 13, 21). As noted by my colleague Justice Andrew D. Little, "subsection 25(1) has been interpreted to require that the officer assess the hardship that the applicant(s) will experience on leaving Canada. Although not used in the statute itself, appellate case law has confirmed that the words 'unusual', 'undeserved' and 'disproportionate' describe the hardship contemplated by the provision that will give rise to an exemption" (*Rainholz* at para 15).

[7] Subsection 25(1) has been interpreted to require an officer to assess the hardship that an applicant will experience upon leaving Canada. In an application for H&C relief, an applicant may raise a wide variety of factors to show hardship, with such commonly raised factors including establishment in Canada, ties to Canada, the consequences of separation from relatives, the best interests of the children, and health considerations (*Rainholz* at para 16).

[8] The parties submit, and I agree, that the applicable standard of review of an H&C decision is reasonableness (*Kanthasamy* at para 44; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). It is the

Applicant who bears the onus of demonstrating that the Officer's decision is unreasonable (*Vavilov* at para 100).

[9] I am satisfied that the Applicant has met his burden of demonstrating that the Decision is unreasonable because the Officer relied on evidence concerning programs in the United States that the Applicant is not eligible for. When considering the Applicant's history of mental health issues and his access to healthcare, the Officer relied on and quoted at length an Immigration and Refugee Board Response to Information Request, regarding services and assistance provided to refugees who settle in the United States. Many of the programs discussed in the extract are time limited, with some programs available for the first 90 days, while others are available for up to five years.

[10] The Applicant pleads that the programs are no longer available to him. As such, the Officer erred by relying on irrelevant objective documentary evidence pertaining to programs that he is not eligible for.

[11] The Respondent pleads that the Officer sought to consider all the evidence before them in an effort to understand the systems and programs available. In any event, the Respondent submits that if there was an error in referring to certain programs, it is not a reviewable error as it was a minor point that is not sufficiently central to the Decision.

[12] I agree with the Applicant that the issue of access to health care services and financial assistance for same is not a minor point. From the Decision, it appears that the Officer did rely

on documentary evidence of programs for which the Applicant is not eligible. Following an extract of seven paragraphs on the Office of Refugee Resettlement programs, the Officer states, "[w]hile I sympathize with the applicant and his struggles with mental illness, I find that there are healthcare resources and social support services that he can access in the US to help him cope with his condition." Later in the Decision, when considering establishment in Canada and re-establishment in the US, the Officer states, "[a]s noted earlier, the applicant can also access various healthcare and social support services to help with his mental health and reintegration in the US."

[13] The Officer's reliance on objective evidence of programs for which the Applicant is not eligible renders the Decision unreasonable. I find that the Officer's analysis of the Applicant's access to assistance programs and healthcare is not justified in the circumstances and thus warrants this Court's intervention. Having found the Decision to be unreasonable in this respect, it is unnecessary for me to address the remaining two issues raised by the Applicant.

## III. Conclusion

[14] For the foregoing reasons, this application for judicial review is allowed. The Decision is hereby set aside and the matter is remitted to a different officer for redetermination. No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

**JUDGMENT in IMM-4700-20**

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

1. The Applicant's application for judicial review is allowed;
2. The Decision is set aside and the matter is remitted to a different officer for redetermination; and
3. No question of general importance is certified.

"Vanessa Rochester"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4700-20 |
| **STYLE OF CAUSE:** | SLIWA NAMROOD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | MAY 25, 2022 |
| **JUDGMENT AND REASONS:** | ROCHESTER J. |
| **DATED:** | JULY 27, 2022 |

**APPEARANCES:**

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| Laura MacLean | FOR THE APPLICANT |
| Emma Gozdzik | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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