Federal Court  Cour fédérale

**Date: 20221005**

**Docket: IMM-3802-21**

**Citation: 2022 FC 1376**

**Ottawa, Ontario, October 5, 2022**

**PRESENT: The Hon Mr. Justice Henry S. Brown**

**BETWEEN:**

**FATMATA KARGBO**
**THADUBA ALIMAMY KARGBO (A MINOR)**
**MATHEBEH ALIMAMY KARGBO (A MINOR)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Nature of the matter

[1] This is an application for judicial review of a decision by a Senior Immigration Officer [Officer], dated May 26, 2021, denying the Applicants' application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds. The Officer for the Minister,

having assessed establishment, the best interests of the children [BIOC], and the risk and country conditions, found insufficient H&C considerations to justify an exemption under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

## II. Facts

[2] The Principal Applicant [PA] and her two minor sons [collectively, the Applicants] are citizens of Sierra Leone. The PA also has one adult daughter, not included in this application, who resides in Sierra Leone.

[3] The PA claims she was subjected to emotional and physical abuse over the course of her marriage to her ex-husband. The PA's ex-husband is alleged to be a member of the Poro Society, a secret male traditionalist society. The PA claims her ex-husband wanted his sons to be initiated into the society, and became angry when the PA objected.

[4] The PA, her sons, and her ex-husband (who was not her ex-husband at the time), entered Canada as visitors in June 2013. They principally came to Canada to attend a wedding, but they also came to try and resolve the differences between the PA and her now ex-husband. The two, however, were unable to resolve their differences and the ex-husband allegedly remained steadfast in demanding that his sons join the Poro Society. Unable to convince the PA to change her position, the PA's ex-husband returned to Sierra Leone by himself. Shortly thereafter, the PA initiated a claim for refugee protection.

[5] In April 2018, the PA and her ex-husband divorced. The PA's ex-husband also divested the PA of all rights and ownership of their shared assets in Sierra Leone. While the PA was granted full custody of the two minor sons, the ex-husband refused to provide any support.

[6] This is not the Applicants' first attempt to apply for refugee protection in Canada. In February 2017, the Applicants filed an initial H&C application, which was refused in February 2018. They then filed a pre-removal risk assessment application. That application was refused in January 2019. At that point, the Applicants were directed by the Canada Border Services Agency to appear for removal to Sierra Leone in April 2019. They failed to appear, and instead sought refuge in a church in Manitoba, where it seems they have remained since. An immigration warrant was subsequently issued.

[7] The Applicants then filed a second H&C application, which is the application that underlies this application for judicial review. The underlying application was rejected on May 26, 2021.

## III. Decision under review

[8] On May 26, 2021, an Officer representing the Minister refused to grant the Applicants' permanent residence application from within Canada on H&C grounds. The Minister's Officer assessed establishment, the BIOC, and the risk and country conditions in Sierra Leone. On this judicial review, the Applicants only challenge is the reasonableness of the Officer's BIOC analysis.

[9] With respect to the BIOC, the Officer was satisfied the minor children had demonstrated some degree of establishment in Canada. Evidence was tendered demonstrating that the children had attended school in Canada, and letters of support from the community and the children's friends, as well as photographs of the children's time in Canada, all lent support to their establishment.

[10] With respect to education in Sierra Leone, the Officer noted that according to Sierra Leone's *Education Act, 2004,* basic education is compulsory. The Officer found, in the absence of evidence to the contrary, the older son likely attended primary school in Sierra Leone for several years, and there was little evidence that he was subjected to corporal punishment during that time which would have deterred him from attending school. While corporal punishment is unlawful in Sierra Leone, the Officer accepted that the practice still existed. However, the Officer found there to be a lack of information pertaining to the prevalence in which corporal punishment existed in day care and school settings.

[11] The Officer accepted there was likely a disparity in the standard of education between Canada and Sierra Leone. However, the Officer took into consideration that the minor children's sister was currently attending university in Sierra Leone and their father likely obtained most of his education in Sierra Leone. The Officer drew on the PA's affidavit, which stated her ex-husband subsequently went to school in the United States while they were still married to obtain a master's degree. In light of these facts, the Officer concluded higher education was reasonably accessible to the children and that the quality of education in Sierra Leone was likely transferrable to other countries.

[12] With respect to child labour, the Officer was satisfied there were laws in Sierra Leone to protect the children from falling victim to child labour, and that redress by law enforcement was available. The Officer also noted that, while there are gaps in regards to enforcing child labour laws in Sierra Leone, there was insufficient evidence on the record to substantiate the Applicants' claims the children would be personally subjected to child labour in Sierra Leone.

[13] On the issue of Poro Society, the Officer acknowledged that there were a number of documents and media articles submitted regarding Poro Society in Sierra Leone. The Officer found that the documents and articles indicated that Poro Society is predominantly active in the Southern, Eastern, and Northern provinces, as well as in the rural areas, of Sierra Leone. The Officer further noted the males who were reported by the media to flee from Poro Society initiations tended to be from villages or were the sons of the village Chiefs. On the evidence before them, the Officer found the Applicants lived in the Freetown, which is the most populated city in Sierra Leone and located in the Western province. They also found that there was insufficient evidence that the children's father was a Chief. While one document (from 2009) suggests the Poro Society exists in Freetown, the document also states that there is vocal opposition to the Poro Society in the city. The Officer further noted that the government of Sierra Leone announced a nationwide ban on all secret society initiations in 2019.

[14] The Officer acknowledged the Applicants had submitted letters from friends and family stating that the children's father intended to initiate the children into Poro Society. However, the Officer found that some of the letters were unsigned, and that there was little information to determine how the letters were retrieved from Sierra Leone. The Officer also found other letters

suffered from the fact there was little information to determine how the authors of the letters came to know the information they spoke about or to corroborate their assertions. Ultimately, with respect to Poro Society, the Officer acknowledged that Poro Society exists in certain areas of Sierra Leone, and that the PA subjectively feared that her sons may be at risk. However, the Officer found there to be a lack of objective evidence to corroborate the father's intention to initiate his children into Poro Society. Given the Applicants were from Freetown, the Officer also noted that the Applicants could relocate to an area of Sierra Leone safe from Poro Society and that redress was available to mitigate the hardship. In my view, the word relocate refers to relocating from Canada to Freetown, a matter to be discussed later.

[15] The Officer also addressed the mental health difficulties experienced by one of the minor children. The Officer accepted the child suffered from anxiety, but found there to be a lack of information regarding whether the PA sought treatment for the child following the diagnosis. The Officer found no corroborating evidence regarding the medication the child took, whether the medication was effective, or how long the child had been taking the medication. The Officer acknowledged that an assessment for the child was submitted. However, the Officer found that much of the information the psychiatrist based her assessment on was from one session of unknown length. Further, information in the assessment was predominantly provided by the PA and her friend. The Officer noted the psychiatrist did not make a definitive diagnosis regarding one of the children, and therefore there was little objective evidence provided to corroborate that one of the children was historically diagnosed with PTSD. That said, the Officer was prepared to accept one of the children had experienced mental health conditions relating to anxiety and emotional distress.

[16] With respect to accessibility of mental health services, the Officer accepted there were gaps in the mental health services across Sierra Leone compared to resources available in Canada. That said, the Officer found the evidence indicated the majority of mental health resources in Sierra Leone are centralized in Freetown, where the Applicants are from, and where in my view they would be relocating. Finally, the Officer found insufficient evidence to demonstrate the PA would be unable to access adequate mental health services for her children.

[17] The Officer ultimately, after a careful consideration of the evidence, was not satisfied returning to Sierra Leone would be contrary to the BIOC. In so doing, the Officer acknowledged that the children had established friendships and had integrated themselves to some degree in Canada. The Officer recognized returning to Sierra Leone would initially present emotional hardship for the children and that there would inevitably be a period of stress and destabilization for the children as they re-integrate and re-establish themselves in Sierra Leone. The Officer had sympathy one of the children would likely face additional stress and anxiety due to his past mental health struggles, as a result of returning to Sierra Leone. All of this notwithstanding, the Officer took into consideration that the children were born in Sierra Leone, spoke at least one language of the country, and have immediate and extended family in Sierra Leone. The Officer finally noted the children would also have the care and support of their mother, who was their primary caregiver, to mitigate the hardships that arise from relocating to Sierra Leone. Emotional hardships due to geographic separation with their friends in Canada could also be mitigated through electronic communication.

## IV. Issues

[18] As the Applicants have only challenged the Officer's analysis as it pertains to the BIOC, the sole issue is whether the Officer's BIOC analysis is reasonable.

## V. Standard of Review

[19] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Vavilov*, the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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 para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "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, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[20] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
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> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.
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> [Emphasis added]

[21] The Supreme Court of Canada in *Vavilov* at para 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies," and provides guidance that the reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must

> take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
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> [Emphasis added]

[22] Furthermore, *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

[23] Moreover, *Vavilov* requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker,* at para. 39.

[24] The Federal Court of Appeal recently held in *Doyle v Canada (Attorney General),* 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
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> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.
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> [Emphasis added]

## VI. Analysis

[25] On judicial review, while the Applicants only challenge the Officer's BIOC analysis, they filed a very lengthy memorandum, which challenged virtually every aspect of the Officer's assessment and weighing of relevant evidence. As such it strayed significantly from the four corners within which this Court conducts judicial review. I say this because this Court is not permitted to engage in a reweighing and reassessment of the evidence: see *Doyle* which I quote above and which is a recent judgment of the Federal Court of Appeal.

[26] I should also explain that on judicial review, I do not decide if the Decision is correct. In this case I will only decide if it is reasonable – what is reasonable is set out in binding decisions of the Supreme Court of Canada and Federal Court of Appeal to which I have already referred.

[27] Also by way of background, Canada's immigration laws enacted by Parliament almost invariable require foreigners wishing to live in Canada to make their application from outside Canada. Many if not most foreigners follow Parliament's instructions, make their applications from outside Canada and then wait their turn for a decision. In some cases the lines are very long.

[28] However, Parliament has given the Minister the authority to allow foreign nationals to apply for status in Canada from inside Canada, where there are "humanitarian and compassionate" circumstances. Parliament confers this power on the Minister in section 25 of *IRPA*.

[29] The Minister cannot personally consider all such applications, there are far too many. Instead Ministers delegate their powers to employees in their department to make such decisions for them. Thus, the Decision here was made by a person delegated by the Minister to make it.

[30] In this case, the Applicants submit the Minister's delegate, the H&C Officer, failed to define or meaningfully assess the best interests of the children [BIOC] and made inconsistent findings. They submit the Officer erred in applying "hardship" test, focusing on whether the inevitable hardship that the children would experience upon removal to Sierra Leone could be mitigated. They therefore ask the Court to conclude the Decision is unreasonable and should be set aside.

[31] With respect, upon review I am not persuaded by these submissions. I find the Decision is reasonable, that is, it is justified, transparent and intelligible.

A. *General principles*

[32] The BIOC plays an important role in assessments of applications for permanent residence on H&C grounds. The jurisprudence on BIOC assessments is that an officer reviewing the BIOC must be "alert, alive, and sensitive" to these interests (*Legault v Canada*, 2002 FCA 125 at para 12). An officer is "alert" to the existence of the BIOC when they note ways in which those interests are implicated by the decision. An officer is "alive" to the BIOC if they demonstrate understanding of the child's perspective in the decision to be rendered. Finally, an officer is "sensitive" to the BIOC when they can clearly articulate the impact of a negative decision on the children affected, and provide analysis as to whether that suffering warrants humanitarian and

compassionate relief (*Kolosovs v Canada (Citizenship and Immigration)*, 2008 FC 165 at paras 9, 11, 12).

[33] In *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, when discussing section 25 of the *IRPA* generally, the Supreme Court of Canada tells us that there will inevitably be some hardship associated with being required to leave Canada. However, the Supreme Court adds that alone will generally be insufficient to warrant relief on H&C grounds (*Kanthasamy* at para 23). As to the requirement under subsection 25(1) to take into account the best interests of a child directly affected, the Supreme Court states the best interests principle is highly contextual because of the multitude of factors that may impinge on the child's best interests. 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). A decision under subsection 25(1) of *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: the BIOC must be examined with a great deal of attention in light of *all* the evidence [the Supreme Court itself italicizes the word "*all*"].

[34] Contrary to what the Applicants submit, there is no specific formula, approach, or precise analytical method prescribed or required when conducting a BIOC analysis or to demonstrate that an officer has been alert, alive and sensitive to those interests (*Esahak-Shammas v Canada (Citizenship and Immigration)*, 2018 FC 461 at para 38). As stated in *Chandidas v Canada (Citizenship and Immigration)*, 2013 FC 258 at para 64, an H&C officer is presumed to know

that living in Canada would offer the child opportunities that they would not otherwise have and that to compare a better life in Canada to life in the child's home country cannot be determinative of a child's best interests as the outcome would almost always favor Canada. This means that in most cases officers need not conduct an explicit analysis of whether children's best interests favor remaining in Canada, because it is assumed that they would.

B. *Hardship associated with initiation into the Poro Society*

[35] The Applicants submit the Officer determinatively erred by failing to meaningfully consider the BIOC and by using the "limiting lens of hardship" when considering the children's potential initiation into the Poro Society. In advancing this position, the Applicants point to a country condition document they say shows the prominence of Poro Society in Sierra Leonean life, culture, and government, as well as the violent methods employed by Poro Society both during initiations and on those opposed to initiation.

[36] To highlight this error, the Applicants point to the Officer's finding that, even if the children's father attempts to forcibly initiate his sons, H&C relief is not warranted because the PA can take steps to "mitigate the hardship associated with Poro initiation". This determination, says the Applicants, is flawed because the Officer failed to consider or explain how the BIOC would be affected if their father tries to initiate them.

[37] The Applicants also claim the substance of the Officer's decision clearly shows an improper analysis was employed. They point to the Officer's finding that hardship the children would experience because of the Poro Society can be mitigated by state protection. The

Applicants state that it is difficult to conceive how the BIOC could be served by removing them from Canada and placing them in a situation where their mother would have to seek recourse in order to stave off violent ritual initiation.

[38] The Applicants further submit the Officer erred in focussing exclusively on whether they will suffer undue hardship in the circumstances. As already noted, there is no specific formula, approach, or precise analytical method prescribed or required when conducting a BIOC analysis or to demonstrate an officer has been alert, alive and sensitive to those interests. Notwithstanding this, the Applicants point to *Williams v Canada (Citizenship and Immigration)*, 2012 FC 166 at para 64, and submit it was incumbent on the Officer to explain how placing the children in a situation where state and legal intervention would be necessary would serve their best interest:

> [64] There is no basic needs minimum which if "met" satisfies the best interest test. Furthermore, there is no hardship threshold, such that if the circumstances of the child reach a certain point on that hardship scale only then will a child's best interests be so significantly "negatively impacted" as to warrant positive consideration. The question is not: "is the child suffering enough that his "best interests" are not being "met"? The question at the initial stage of the assessment is: "what is in the child's best interests?"

[39] Finally, the Applicants submit that the Officer's flawed approach to BIOC is apparent in the face of their finding that the PA can mitigate any hardship associated with Poro Society by relocating with her children to a different area of Sierra Leone. The Applicants say the Officer failed to explain how leaving Freetown, where they are from, would be in the BIOC. This finding, says the Applicants, is impossible to square with the Officer's other determinations that hardship would be mitigated by the relationships the Applicants still have in Freetown and that the children would be safer in Freetown.

[40] The Respondent on the other hand submits the Officer's findings were open to make on the record, and are therefore reasonable. With respect to the Applicants' fears and the dangers of initiation into Poro Society, the Respondent submits that the Applicants cannot simply rely on documentary evidence to discount the Officer's analysis. The Respondent asserts the Officer considered all of the evidence presented and reached a reasonable conclusion.

[41] Respectfully, I am not persuaded to accept the Applicant's assertions. While the Applicants point to three cases (*Phyang v Canada (Citizenship and Immigration)*, 2014 FC 81 at para 29; *Sinniah v Canada (Citizenship and Immigration)*, 2011 FC 1285 at paras 59-63; and *Hawthorne v Canada (Citizenship and Immigration)*, 2002 FCA 475 at para 9 [*Hawthorne*]) for the proposition it is unreasonable to employ a hardship analysis when considering the BIOC, these cases do not assist them in the case at bar.

[42] First, in all three cases, the officer was found to err when they required the Applicants to show "unusual, undeserved or disproportionate hardship" when analyzing the BIOC. The Officer in this case did not commit such an error. Such a standard is neither explicitly nor implicitly applied in the Officer's reasons and is therefore irrelevant.

[43] Second, as the Applicants' concede, an officer's use of the word "hardship" does not necessarily mean such a threshold analysis is applied. A reviewing court must consider the substance of the decision to determine whether the officer applied an inappropriate hardship threshold test (*Weng v Canada (Citizenship and Immigration)*, 2014 FC 778 at para 27).

[44] In this regard, it is important to keep in mind the remarks of *Hawthorne*. In that case, the Federal Court of Appeal held that the BIOC are determined by considering the benefit to the child of the parent's non-removal from Canada *as well as* the hardship the child would suffer from the parent's removal from Canada. Such benefits and hardship were described as two sides of the same coin, the coin being the BIOC (*Hawthorne* at para 4). The Court also held the inquiry of the officer is predicated on the premise, which need not be stated in the reasons, the officer will end up finding, absent exceptional circumstances, and that the "child's best interests" factor will play in favour of the non-removal of the parent (*Hawthorne* at para 5). As such, the officer's task in a BIOC analysis is to determine, in the circumstances of each case, the *likely degree of hardship to the child* caused by the removal of the parent and to weigh this degree of hardship together with other factors, including public policy considerations, that militate in favour of or against the removal of the parent (*Hawthorne* at para 6).

[45] I should add the Supreme Court of Canada in *Kanthasamy* does not exclude consideration of hardship, but instead requires assessment of "*all*" factors – including hardship - as previously noted.

[46] The Applicants have not pointed to any jurisprudence showing it is an error for the Officer, in assessing the likely degree of hardship, to weigh evidence that minimizes the risk of hardship. In my view, as long as H&C Officers do not use the language of "unusual and underserved or disproportionate hardship" in a way that limits their ability to consider and give weight to all relevant humanitarian and compassionate considerations (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 33), they act reasonably.

[47] As such, I disagree with the Applicants when they submit it is difficult to conceive how the BIOC could possibly be served by removing them from Canada and placing them in a situation where their mother would need to seek judicial recourse and police protection in order to stave off violent ritual initiation. The Officer did not conclude removing the children from Canada was in their best interest. Instead, in line with *Hawthorne,* the Officer found there were ways to mitigate the inevitable hardship associated with their removal.

[48] As noted previously, I also disagree with the Applicant's contention the Officer found hardship associated with Poro Society could be mitigated by relocating to an area of Sierra Leone *other than* Freetown. Respectfully, that is not what the Officer concluded.

[49] The basis for the Applicants argument is the following sentence in the Officer's reasons:

> I am satisfied that the principal applicant would likely be able to relocate her family to an area of Sierra Leone safe from Poro Society and that redress, such as local law enforcement or the legal options provided by Sierra Leonean law, are available to mitigate the hardship associated with Poro initiation.

[50] I do not read this statement as suggesting the Applicants would "relocate" to an area of Sierra Leone other than Freetown. The Officer's statement is found in the conclusion of the analysis into the Poro Society portion to the BIOC analysis. There, the Officer finds that the Applicants are from Freetown, which, as outlined above, is located in the Western area of Sierra Leone. This finding is important when put in context: the Officer pointed to documents and articles in the record indicating the Poro Society is predominantly active in areas *other than* the Western one. As such, when put in proper context, the Officer is simply suggesting that by relocating to Freetown, the Applicants would be relocating from Canada (where they are now) to

an area where risk from Poro Society could be mitigated since the Poro Society is predominantly active elsewhere. By doing so they would also be going home; they were from Freetown. Why they would relocate from Canada to a place other than their home, or a place with a greater presence of Poro Society, as entailed in the Applicants' arguments, make no sense. In my respectful view, there is no merit in the Applicants' submissions otherwise.

C. *State protection to mitigate hardship*

[51] The Applicants submit the Officer also erred by focusing on state protection instead of the BIOC when considering the hardship associated with potential initiation into the Poro Society. They claim that even if the children can access state protection, the Officer was nevertheless required to determine whether it would be in their best interest to place them in a situation where they would have to seek such assistance. This error, says the Applicants, is compounded by the fact the Officer "cherry-picked" two incidents from the country condition evidence showing that law enforcement acted in support of the victims of the Poro Society. The Applicants claim the Officer failed to mention any contradictory evidence on this point.

[52] With respect to the Applicants' arguments that Officer was required to determine whether it would be in the BIOC to place them in a situation where their mother would have to seek legal and police recourse against their father and family, I find the same comments above from *Hawthorne* to apply. The Courts have recognized the children's' best interests will in most cases lie in remaining in Canada. As such, the Officer's task, as done in this case, is to determine, in the circumstances of each case, the impact of removal and the likely degree of hardship to the child caused by removal. It was open to the Officer to find as they did.

[53] With respect to the Applicants “cherry-picking” argument, the law presumes a decision maker has weighed and considered all of the evidence before them (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). As such, the failure to mention a particular piece of evidence does not mean it was ignored. Further, our highest Court has determined that decision makers are not required to refer to each and every piece of evidence supporting their conclusions (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[54] Rather, it is only when an administrative decision maker is silent on evidence clearly pointing to an opposite conclusion that the Court *may* intervene and infer that the decision maker overlooked the contradictory evidence when making findings of fact (*Ozdemir v Canada (Citizenship & Immigration)*, 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] FCJ No 1425 (FCTD) [*Cepeda-Gutierrez*] at paras 16-17). However, *Cepeda-Gutierrez* does not stand for the proposition that mere failure to refer to an important piece of evidence contrary to the tribunal's conclusion necessarily renders a decision unreasonable and results in the decision being overturned. To the contrary, *Cepeda-Gutierrez* holds it is only where the not-mentioned evidence is critical and squarely contradicts the tribunal's conclusion that a reviewing court may decide the omission establishes the tribunal did not have regard to the material before it.

[55] I am not persuaded the evidence referred to in this case is so critical and squarely contradicts the Officer’s conclusions. As the Applicants concede, the Officer was entitled to

review the evidence and weigh it. The two articles cited by the Officer support the Officer's finding.

[56] Thus and with respect, the Officer's decision is justified. While the Applicants would have preferred a different outcome in the weighing of evidence, second-guessing the Officer in such a respect is not the role of this Court on judicial review: see *Doyle*. On this point there is no shortcoming or flaw sufficiently central or significant to render the Decision unreasonable (*Canada Post* at para 33).

D. *Risk associated with the Poro Society in Freetown*

[57] The Applicant also challenges the Officer's finding that the children are not at risk from the Poro Society in Freetown because the group is more active in other regions of Sierra Leone. The Applicants submit this finding was made without regard to all the evidence, and there is again evidence contrary to the Officer's finding on this point. Specifically, the Applicants point to evidence showing the Poro Society is active in some Western areas of Sierra Leone, including Freetown.

[58] With respect, I am unable to agree with the Applicants' submissions. Contrary to the Applicants submissions, the Officer explicitly discussed the exact 2009 document the Applicants raise in their written submissions, which is titled "Fear of force initiation into the Poro Secret Society in Freetown" [Emphasis added]. The Officer, in assessing this document, acknowledges it states the Poro society has some presence in Freetown. In fact, although the document was more than a decade old, the Officer used it to find Poro Society "exists" in Freetown. In my

view, the Officer merely assessed the document and weighed it against other evidence in reaching a conclusion.

[59] Importantly, the Officer noted there is “vocal opposition” to the Poro Society in Freetown and that the government of Sierra Leone had announced a nationwide ban on all secret society initiations in 2019. These evidentiary findings, in light of the additional factual determinations that there are local law enforcement and legal options which could provide redress from Poro Society, establish the Officer’s weighing and assessment of the evidence in this regard is reasonable.

[60] With respect again, the Applicant’s arguments amount only to a disagreement with the weighing and assessing of evidence without establishing any reviewable error. The Officer certainly did not “make bald determinations without any regard to the evidence that belied her conclusion”, as the Applicant alleges.

E. *Evidence of risk from the children’s father*

[61] The Applicants submits the Officer erred in finding that the PA failed to disclose evidence to corroborate her allegations that her ex-husband intends to initiate the children into Poro Society. The basis for this argument is the Applicants’ allegation the Officer erred in rejecting or giving little weight to certain letters filed by the Applicants.

[62] I am not persuaded. While the Officer accepted the PA's subjective fears on this matter, the Officer found there was a lack of *objective* evidence to corroborate that the children's father intended to initiate the children into Poro Society upon their return to Sierra Leone.

[63] The first letter discussed was from the PA's sister. While the Officer acknowledged the letter, the Officer correctly noted that it was unsigned. The Officer also takes issue with the fact that there is little information to determine how the letter was retrieved from Sierra Leone. While I do not put a great deal of weight on this latter point, I nevertheless find the Officer's conclusion reasonable.

[64] The fact the letter was not signed would be enough to support that conclusion. With respect, there is no merit in the Applicants' argument that it makes no difference if a letter filed on an H&C application is signed or not signed. It clearly does – the truth of a signed letter is attributed to the signatory and verified by the signature; an unsigned letter lacks both features and might reasonably be discounted as amounting only to unverified and unattributed words on a piece of paper.

[65] The Officer also acted reasonably in finding there was no evidence to corroborate the assertions in the letter or corroborate how the author came to know the information they provided. Contrary to the Applicant's submissions, the sister does not state that the information is based on personal knowledge. All the letter states, regarding the risk of the ex-husband, is that the ex-husband's family "is putting her under severe pressure for her son so that they could

initiate him into secret society". Nowhere in the letter does the sister state that she has personal knowledge of what she was saying.

[66] The second letter was from the children's godmother. While the information she speaks to appears to be based on her "being a close member of the family and one who knew the intricacies" of the family, her letter is also unsigned. For the same reasons above, I find it reasonable for the Officer to have discounted the letter on that basis.

[67] The third letter was from a friend of the PA in Winnipeg. This letter speaks of a conversation the writer allegedly had with the children's father. The author states the father conveyed he wanted his children back, and that if they returned to Sierra Leone he would take them away from the PA. The author, later on in the letter, states that the children would not be safe if they returned to Sierra Leone because of their father's traditional beliefs in Poro society and that he wants to initiate them. While I am prepared to accept the author's first hand knowledge of the first statement, that the father would take his children away from the PA if they return to Sierra Leone, I agree with the Officer that there is little information on how the author came to know the information outlined in the latter statement, that the father would initiate his sons into Poro Society. As such, I do not find the Officer erred in giving the letter diminished weight.

[68] The final letter assessed as part of this fact-finding by the Officer was from the Director of the Men's Association for Gender Equality Sierra Leone. The Director stated that "leaving or allowing the children to Sierra Leone may likely increase a strong probability of them being

initiated into any of these aforesaid secret societies as a result of family pressure or otherwise". The Officer noted, with respect to this letter, there was also little information to corroborate the assertions made or corroborate how the author came to know the information provided. These findings are reasonable. While the author of the letter is stated to be the executive director of an NGO, there is no discussion of the bases on which their statements were made.

[69] The Applicants also point to the fact the Officer did not mention two other letters, one from the PA's sister and one from the children's former nanny. While the Applicant's are correct in that neither of these letters are mentioned, it was not incumbent on the Officer to do so, as neither letter spoke to the risk of the children being initiated into the Poro Society.

F. *Impact on the children's mental health*

[70] The Applicants also allege the Officer erred in assessing the mental health implications of a return to Sierra Leone. Rather than meaningfully consider what is in the children's best interest, the Applicants allege the Officer focused exclusively on whether the mental health hardship to the children could be mitigated. Drawing the Court to *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633, the Applicant's submit that this approach cannot be sustained:

> [30] This approach, however, does not truly address the children's best interests. A lack of hardship cannot serve as a valid substitute for a BIOC analysis any more than it can for an establishment analysis. Each factor must be assessed on its own, and be accorded the weight it deserves. The fact that the parents may be able to provide for the children in India does not replace a determination of where their best interests lie.

[71] While the Applicants conceded the Officer considered all the evidence related to the children's mental health, I note the Officer nevertheless concluded that H&C relief was not warranted because the hardship associated with one of the children's mental health issues could be mitigated through recourse to mental health resources in Sierra Leone, which I take to be in Freetown. This conclusion, says the Applicants, was the result of an inappropriate focus on hardship and a failure to consider what is actually in the BIOC.

[72] Similar to the other issues in this application, I once again draw on the comments in *Hawthorne* in finding that the Officer's conclusion is reasonable. In my view, the Applicants again misinterpret the Officers' reasons when they argue the Officer's finding that the hardship to the children can be mitigated by recourse to resources in Freetown being fundamentally at odds with its previous finding that the hardship to the children could be mitigated by moving away from Freetown. As stated above, this was not the Officer's finding. His finding that the family would be relocating from Canada to Freetown, not to some unspecified place outside Freetown.

G. *Reliance on the Child Rights Act 2007*

[73] The final error alleged by the Applicants relates to the Officer's continued reliance on the Applicants ability to mitigate hardship by way of recourse to Sierra Leone's *Child Rights Act 2007* [*CRA*]. In this regard, the Applicants point to evidence they say was disregarded which speaks to the law's lack of efficacy.

[74] The Officer first relies on the *CRA* as a form of redress to the risk of child labour in Sierra Leone. The Applicant's point to a news article they submit calls into question the efficacy of the law on this topic. However, this was assessed: while the Officer acknowledged there are gaps in the enforcement of the child labour laws in Sierra Leone, the Officer nevertheless found insufficient evidence to substantiate that the children would *personally* be subjected to child labour in Sierra Leone. As such, I disagree with the Applicant that the Officer erred in relying on the redress found in the *CRA* with respect to child labour.

[75] The Applicants also submit the Officer erred in relying on the *CRA* as it relates to protection against corporal punishment. The Applicants point to a document by the Global Initiative to End all Corporal Punishment of Children, which expresses the Committee of the Rights of the Child's concern that corporal punishment is not explicitly prohibited under the *CRA* and that it is a continuing practice. Again, the Officer acknowledges that, while a prohibited practice in schools, the practice still exists in various settings, including day care and schools. However, the Officer noted there was a lack of information pertaining to the prevalence in which corporal punishment exists in those settings. As such, I find the Applicants' assertions to be without merit.

[76] Finally, the Applicants point to a research paper which concludes the implementation of the *CRA* has been counterproductive because those in charge of prosecution are members of the Poro secret society and depend on politicians for their promotion. While the Officer relied on the redress found in the *CRA* to support the conclusion there was insufficient evidence the PA would be unable to enforce her custody rights under Sierra Leonean law should the children's father

breach the custody agreement, the Officer also noted other redress available to protect against violence at the hands of members of the Poro society. The Officer assessed and weighed media articles submitted that reported government intervention and opposition to harmful Poro society initiation practices, that an immediate nationwide ban on all secret societies was imposed in 2019, and that law enforcement has been involved in preventing and investigating crimes committed by the Poro society. As such, even if the Officer's reliance on the *was* misplaced as it relates to redress it provides against harm at the hands of Poro society, the Officer's findings are nonetheless reasonable in light of all the evidence weighed and assessed by the Officer.

## VII. Conclusion

[77] The Decision is transparent, intelligible, and justified based on the evidence presented and the constraining law. Therefore judicial review will be dismissed.

## VIII. Certified Question

[78] Neither party proposed a question of general importance and, in my view, none arises.

**JUDGMENT in IMM-3802-21**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed, no question of general importance is certified, and there is no Order as to costs.

"Henry S. Brown"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3802-21 |
| **STYLE OF CAUSE:** | FATMATA KARGBO, THADUBA ALIMAMY KARGBO (A MINOR), MATHEBEH ALIMAMY KARGBO (A MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY WAY OF VIDEOCONFERENCE |
| **DATE OF HEARING:** | SEPTEMBER 29, 2022 |
| **JUDGMENT AND REASONS:** | BROWN J. |
| **DATED:** | OCTOBER 5, 2022 |

**APPEARANCES:**

| | |
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| Nimanthika Kaneira | FOR THE RESPONDENT |

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