

Federal Court



Cour fédérale

Date: 20221109

Docket: IMM-4788-21

Citation: 2022 FC 1523

Ottawa, Ontario, November 9, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MAJIDA ITANI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Majida Itani (“Ms. Itani”), is a 68-year-old citizen of Lebanon whose daughter, son-in-law, and three grandchildren live in Canada. Just over two years ago, she came to Canada to visit her family. Two days before she arrived, there was an explosion in the port of Beirut. Since her arrival in Canada, Ms. Itani’s circumstances changed. She now fears, among

other issues, that she would not have access to medical supplies she needs if she returned to Lebanon.

[2] Ms. Itani's daughter applied to sponsor Ms. Itani through a parental sponsorship application but the application was not selected for processing through the lottery system. Ms. Itani then sought humanitarian relief to be able to remain in Canada permanently with her family by filing an application for permanent residence based on humanitarian and compassionate grounds ("H & C Application") in February 2021. Ms. Itani's H & C Application was based on her establishment in Canada, the best interests of her three Canadian grandchildren, the adverse conditions in Lebanon, her health conditions (diabetes and hypertension), and other considerations. In June 2021, Senior Immigration Officer ("Officer") at Immigration, Refugees and Citizenship Canada [IRCC] refused Ms. Itani's application. It is this refusal that Ms. Itani challenges on judicial review.

[3] Ms. Itani raised several arguments. I find the determinative issue on judicial review is the Officer's treatment of the evidence regarding Ms. Itani's ability to access insulin for her diabetes. I agree with Ms. Itani that the Officer made several unreasonable findings in evaluating this issue. Access to medication was a central basis on which Ms. Itani sought relief and therefore the Officer's decision as a whole must be set aside and redetermined.

[4] Based on the reasons set out below, I grant this judicial review.

II. Background

[5] Prior to Ms. Itani's last entry into Canada as a visitor in August 2020, she lived alone in her home in Beirut. She came to visit her daughter, son-in-law and three grandchildren (aged 9, 11, and 14 at the time of her H & C Application) who are all Canadian citizens. Two days before she arrived, there was a major port explosion in Beirut. Ms. Itani claims in her H & C Application that her home was severely damaged in the explosion; its foundation was cracked and it became inhabitable. Ms. Itani has made a number of extended trips to Canada prior to her arrival in August 2020. She visited for a few months in 2007, for roughly two years in 2014, and for roughly a year in 2017. The 2020 trip was different in that she decided, following the wake of the port explosion and given the conditions in Lebanon, she would attempt to stay in Canada with her daughter and family.

III. Issue and Standard of Review

[6] As noted above, the determinative issue is the Officer's assessment of Ms. Itani's access to necessary medication in Lebanon. In reviewing the decision of the Officer, I applied a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[7] Foreign nationals applying for permanent residence in Canada can seek discretionary humanitarian and compassionate relief from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27, s 25(1) [IRPA]. The Supreme Court of Canada in *Kanthisamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [Kanthisamy], citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is “to offer equitable relief in circumstances that ‘would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another’” (*Kanthisamy* at para 21).

[8] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case,” there is no limited set of factors that warrant relief (*Kanthisamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh *all* the relevant facts and factors before them” (*Kanthisamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74-75 [*Baker*]).

[9] The Officer accepted that Ms. Itani was diagnosed with diabetes and hypertension, requiring regular access to insulin. At issue is the Officer’s treatment of evidence on the limited access to insulin in Lebanon after the port explosion, compounded by other scarcity causes like the COVID-19 pandemic. The Officer determined this evidence was insufficient to establish Ms.

Itani could not access her required medications. I find the Officer's determination flawed in two respects: first, the Officer required Ms. Itani to produce evidence that was not directly relevant to this issue; and second, in focusing on absence of evidence, the Officer failed to substantively address the evidence before them, namely, the objective country condition evidence.

[10] The Officer questioned the absence of evidence showing the following: i) that adequate healthcare services and medication were not available to Ms. Itani when she was in Lebanon; ii) that Ms. Itani had made attempts to obtain medical care or medication for which she was denied; and iii) that her family members in Lebanon are currently unable to receive adequate healthcare services in Lebanon. On the first point, Ms. Itani never claimed that she could not access her medication when she was in Lebanon. Her fear arose after she was already in Canada, because of reports of scarcity of medication in the wake of the port explosion. On the second point, it is not clear what the Officer is requiring given that Ms. Itani has been in Canada since two days after the port explosion. Is the Officer requiring that Ms. Itani contact a medical provider in Lebanon from Canada and attempt to access insulin on a particular day? It is not clear whether this evidence would be probative given that Ms. Itani's submission is not that one can never access insulin but rather it has become scarce and there is a risk of unavailability. On the last point, Ms. Itani never claimed that her family members in Lebanon were suffering from medical ailments for which they could not access medication or services. There is no evidence, for example, that any of her family members require insulin.

[11] The Officer also found insufficient evidence to show that the medication Ms. Itani required is not available in Lebanon. On this point, the Officer did not evaluate any of the

evidence Ms. Itani relied upon in her H & C Application to argue that there is a problem with scarcity of medication, particularly insulin, in Lebanon. Counsel for the Respondent took me to articles in evidence on this issue and suggested that they are not as conclusive as the Applicant's counsel argues. The problem with this submission is that the Officer did not analyze any of this evidence. The scarcity of medicine is a key issue that was raised in the submissions of Ms. Itani's counsel, in the affidavit of Ms. Itani filed with the H & C Application, and in the objective country condition evidence filed with the H & C Application. Despite this evidence, the Officer did not address this issue specifically, except to state their conclusion that the evidence was insufficient to establish that Ms. Itani could not access her required medication in Lebanon. The Officer failed to "meaningfully grapple" with a key, relevant factor Ms. Itani raised, calling into question the Officer's sensitivity and alertness to the issues in the application before them (*Vavilov* at para 128).

[12] The application for judicial review is allowed and sent back to a new officer for redetermination. The parties did not ask to certify a serious question of general importance and none arises.

JUDGMENT IN IMM-4788-21

THIS COURT'S JUDGMENT is that:

1. The decision dated June 30, 2021 is set aside;
2. The matter is remitted for redetermination by a different officer; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4788-21

STYLE OF CAUSE: MAJIDA ITANI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 21, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: NOVEMBER 9, 2022

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