Federal Court Cour fédérale

Date: 20230908

Docket: IMM-4420-22

Citation: 2023 FC 1223

Ottawa, Ontario, September 8, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

AIDAH M F A ALGHANEM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Aidah M F A Alghanem, seeks judicial review of a decision by a senior immigration officer (the "Officer") dated April 8, 2022, refusing the Applicant's application for permanent residence on humanitarian and compassionate ("H&C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Officer found that upon considering the Applicant's establishment in Canada, the potential hardship facing her in Kuwait, and the best interests of her children ("BIOC"), an H&C exemption is not warranted.

[3] The Applicant submits that the Officer's decision is unreasonable on three grounds: 1) its misrepresentation of the independent evidence; 2) its repetition of the same errors made in the previous H&C decision rendered in the Applicant's case; and 3) its reliance on unreasonable stereotypes and myths regarding victims of domestic abuse.

[4] For the reasons that follow, I find that the Officer's decision is unreasonable. This application for judicial review is granted.

II. Facts

A. *The Applicant*

[5] The Applicant is a 66-year-old citizen of Kuwait. She has five children, all of whom are Canadian citizens, settled permanently in Canada, and range between the ages of 29 to 38 years old. The Applicant has resided in Canada for 19 years and in Halifax, Nova Scotia since April 2014, where she lives with two of her children.

[6] Prior to her arrival in Canada, the Applicant was a professional social worker, employed with the Ministry of Education in Kuwait. The Applicant first arrived in Canada on May 30, 1994, with her ex-husband, Walid Mohammed (Mr. "Mohammed"), and their five children.

They landed in Canada as permanent residents. The Applicants' five children became Canadian citizens in 1997. The Applicant claims that Mr. Mohammed subjected her and her three daughters to physical and emotional abuse for many years. The Applicant claims that she did not apply for Canadian citizenship at this time, in order to retain her Kuwaiti citizenship and to retain what she thought was a "safety net," allowing her and her children to return to Kuwait. The family returned to Kuwait in 1998. The Applicant claims that she and her children continued to experience abuse at the hands of Mr. Mohammed.

[7] The Applicant left Mr. Mohammed in 2001, travelling to Canada with her five children. She raised her children in Canada as a single mother for seven years. The Applicant applied for Canadian citizenship at this time but did not finalize the process. Mr. Mohammed would visit the Applicant and her children once a year and he would continue to be abusive towards them during these visits.

[8] The Applicant claims that once her children were slightly older and had completed their studies, Mr. Mohammed successfully convinced her and her children to return to Kuwait in an attempt to repair their family. The Applicant claims that Mr. Mohammed insisted that things would be better for their family. One of the Applicant's children, Noura Walid Mohammed, writes in her statutory declaration that her father "began manipulating [the children] to move back to Kuwait to be with him," promising "to support [them] and said [they] could be a family again and things would be better." The Applicant and her children therefore decided to return to Kuwait to reconcile with Mr. Mohammed, leaving Canada in 2008.

[9] However, the Applicant claims that as the family resettled in Kuwait, Mr. Mohammed's abuse continued. She claims that Mr. Mohammed remained physically abusive, attempted to control every aspect of their lives, attempted to take portions of the children's salaries, and manipulated the children. The Applicant states that she was not concerned with the residency obligation of her Canadian permanent resident status at the time because she was preoccupied with supporting her children through this difficult period in their lives. Her permanent resident card eventually expired and she lost her permanent resident status in March 2014.

[10] The Applicant claims that in 2013, she and her children decided to leave Kuwait and return to Canada permanently, to flee from Mr. Mohammed. The Applicant began the process of divorcing Mr. Mohammed and her children stopped communication with their father. The Applicant's children returned to Canada in September 2013. Given that the Applicant had lost her permanent resident status, she travelled to Canada on a visitor visa in April 2014, after which she successfully extended her visa. The Applicant returned to Kuwait to finalize her divorce in 2017 and returned to Canada when it was finalized, in June 2017. On July 24, 2018, the Applicant's subsequent application for a visitor visa was refused.

[11] On December 20, 2018, the Applicant submitted her first application for permanent residence on H&C grounds. This application was refused on June 30, 2020. The Applicant filed an application for leave and judicial review of this decision. This Court granted judicial review in a decision dated October 25, 2021. On judicial review of the initial H&C refusal, my colleague Justice Diner found that the officer "stated and relied on an incorrect legal test without justification, failed to consider compassionate evidence and factors that were relevant to the

balancing exercise, and turned Ms. Alghanem's proven resilience against her in the assessment of hardship," rendering the decision unreasonable (*Alghanem v Canada (Citizenship and Immigration)*, 2021 FC 1137 ("*Alghanem*") at para 41). The matter was sent back for redetermination by a different officer.

[12] The redetermination of the Applicant's H&C application was refused on April 8, 2022, and is the subject of the present application for judicial review.

B. *Decision under Review*

[13] At the outset, the Officer noted that H&C relief requires consideration of whether the Applicant's circumstances justify an exemption and whether she would face hardship if returned to Kuwait. The Officer noted that while hardship is not the determinative or exclusive consideration, it remains an important factor. The Officer identified the following factors raised by the Applicant as the basis for her H&C application: the degree of the Applicant's establishment in Canada; the potential hardship facing the Applicant in Kuwait; the best interests of the children ("BIOC"); and the circumstances surrounding the Applicant's return to Kuwait.

[14] With respect to the Applicant's establishment in Canada, the Officer acknowledged the two affidavits from one of her daughters, four supporting letters from her other four children, and a letter of support from a friend in Canada. The Officer found that although the Applicant and her daughter indicate that the Applicant is active in the community, there is no corroborative evidence of this involvement, such as the address or proof of sale of the building the Applicant allegedly purchased in an impoverished neighbourhood or evidence of her involvement in local

community organizations. The Officer found that the length of time the Applicant has resided in Canada is not necessarily indicative of establishment and that outside of the time she spent with her children, the Applicant provided little corroborative evidence of contributions to her local community, membership in a religious organization, or involvement in extracurricular activities.

[15] Although finding that the Applicant's role in raising her children throughout her time in Canada warrants positive weight, the Officer also found that the letters and affidavits from her children do not indicate that they continue to be financially or physically dependent on the Applicant such that her removal would cause hardship or adversity. The Officer further noted that the Applicant did not indicate that she is reliant on her children for financial or physical support. The Officer found that the emotional connection the Applicant shares with her children is "duly noted" and warrants positive weight, but ultimately found insufficient evidence to demonstrate that she would be unable to maintain this connection while abroad. The Officer found that the Applicant's establishment in Canada is not unusual compared to others who have been in Canada for a similar amount of time.

[16] The Officer acknowledged the Applicant's submission that the past mistreatment she faced is a relevant consideration, but found that the Applicant's assertions regarding Mr. Mohammed's abuse are "vague and lacking in detail," and that apart from stating that he controlled the finances, the Applicant did not provide details about the nature of the abuse she or her children experienced. The Officer noted the difficulty in recalling such details and that evidence to that effect may not be perfect, but concluded that it is not the decision-maker's role to speculate about such details or "fill in the blanks" of such incidents. The Officer found that

while not determinative, neither the Applicant nor her children provided evidence to show that they sought redress against Mr. Mohammed, whether they incurred injuries from the physical abuse, and whether there were measures taken to protect the Applicant's safety during the months she was alone in Kuwait after her children left in 2013.

[17] Concerning the hardship facing the Applicant upon return to Kuwait, the Officer acknowledged the Applicant's evidence that Mr. Mohammed recently tried to contact her and her son and offered to send her money, which she refused. The Officer found no evidence to suggest that Mr. Mohammed made further attempts to contact the Applicant after she denied this request, nor how Mr. Mohammed would come to learn that the Applicant had returned to Kuwait. The Officer noted that divorce proceedings in Kuwait require the consent of both parties, which Mr. Mohammed must have voluntarily provided, and that there is no evidence to suggest that Mr. Mohammed does not recognize the legality of this divorce. Acknowledging the Applicant's skepticism regarding Mr. Mohammed's intentions, the Officer ultimately found insufficient evidence to establish that he would continue to cause hardship upon her return to Kuwait.

[18] The Officer further noted the lack of evidence from the Applicant's siblings, who reside in Kuwait, to substantiate her claim that they would not be able to take her into their homes. The Officer found nothing to indicate that she could not temporarily reside with her siblings while finding her own accommodation, particularly through benefits and initiatives aimed at assisting vulnerable women in Kuwait. The Officer noted that the Applicant is financially self-sufficient, namely through a Kuwaiti pension, and that she does not require physical support from her children for her day-to-day living.

[19] Regarding alternative streams of entry to Canada, the Officer acknowledged the submission by the Applicant's counsel that parental sponsorship would not be a meaningful or realistic option because the Applicant's children do not meet the minimum income requirement. The Officer considered the tax documents for the Applicant's son submitted as evidence and found that, contrary to the Applicant's assertion, her son's income from the Canadian Armed Forces would satisfy the financial requirements for parental sponsorship. The Officer also found that the high volume of applications and long wait times are applicable to all parental sponsorship applications and do not warrant exceptional relief in the Applicant's case.

[20] The Officer emphasized that H&C relief is not simply an alternate means of applying for permanent resident status. The Officer ultimately found that based on a cumulative assessment of the relevant factors, the general hardships associated with leaving Canada do not warrant granting H&C relief in the Applicant's particular case.

III. Issue and Standard of Review

[21] The sole issue in this application is whether the Officer's decision is reasonable. Although the Applicant raises a procedural fairness issue in the context of a specific piece of extrinsic evidence referenced in the Officer's decision, I do not address this issue as I find the reviewable errors regarding the decision's reasonableness to be sufficient to warrant this Court's intervention.

[22] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[23] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[24] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[25] The Applicant submits that the Officer's assessment of the H&C factors as they pertain to the Applicant's circumstances is unreasonable on the following grounds: 1) the Officer misapprehended and selectively cited the independent evidence such that they acted in bad faith; 2) the Officer committed the same reviewable errors as the previous H&C decision, which was found unreasonable by this Court in *Alghanem*; and 3) the Officer relied on unreasonable stereotypes and myths regarding survivors of abuse.

[26] For the reasons that follow, I agree that the Officer's decision is unreasonable and warrants this Court's intervention.

A. *Selective Review of the Evidence*

[27] The Applicant submits that the Officer misapprehends and selectively relies on extrinsic evidence to justify the finding that H&C relief is not warranted in the Applicant's case. The Applicant submits that the Officer misquoted the independent research regarding gendered discrimination in Kuwait, omitting the part of the excerpt stating that there is no official government system to track this issue. The Applicant submits that in light of the full excerpt, this same evidence cannot support the Officer's finding that the Applicant would not face discrimination in accessing certain resources in Kuwait on the basis of her gender. The Applicant further submits that the Officer relies on selective aspects of independent research, while ignoring information indicating that barriers that exist for women in Kuwait, particularly women who have experienced domestic violence. The Applicant contends that the Officer's

selective reliance on extrinsic evidence and disregard for aspects of the same evidence that supports the Applicant's assertions is indicative of the Officer's bad faith.

[28] The Respondent submits that decision-makers are presumed to have acted in good faith and that an allegation of bad faith requires a high threshold of proof (*Freeman v Canada (Citizenship and Immigration)*, 2013 FC 1065 at para 25). The Respondent submits that the Officer's failure to mention a specific portion of the extrinsic evidence is insufficient to rise to the high threshold of proof for a finding of bad faith on the part of the Officer. The Respondent contends that such omissions also do not compromise the decision's reasonableness. Contrary to the Applicant's submission that the Officer unreasonably relied on selective elements of extrinsic evidence regarding gendered discrimination in Kuwait, while ignoring the evidence demonstrating barriers facing vulnerable women in Kuwait, the Respondent submits that the Applicant did not raise adverse country conditions as a factor in her H&C application and it is therefore unfair to impugn the Officer for failing to consider such evidence.

[29] While I agree with the Respondent's submission that the Applicant's allegation of bad faith requires a high threshold of proof, I find that the Officer's decision nonetheless exhibits a selective and one-sided review of the extrinsic evidence such that it fails to accord with the facts and evidence bearing upon it (*Vavilov* at para 126). The Officer's decision relies on "independent research" from extrinsic sources on several occasions, and cites excerpts that justify the ultimate finding that the Applicant would not face gendered discrimination upon return to Kuwait, in turn mitigating any hardship. For instance, the Officer states the following:

> In this regard, evidence has not been adduced demonstrating that the applicant would be unable to secure such permanent accommodation. Independent research indicates that while women in Kuwait experienced discrimination in areas such as family law, divorce and citizenship, "there were no reported cases of official or private sector discrimination in accessing credit, owning or managing a business, or securing housing".
>
> Further independent research indicates that Kuwaiti authorities have made legislative changes to facilitate accommodation rights for women in the country, specifically for divorcees.
>
> […]
>
> While not perfect, the aforementioned independent research from publically available sources indicate that the Kuwaiti government is taking steps to address issues pertaining to gender-based discrimination, including the enactment of legislative measures specifically tailored for female divorcees.

[30] Based on the above, these references support the finding that the Applicant would not face discrimination in securing housing and would have access to housing loans. However, a fulsome and holistic review of this evidence demonstrates the Officer's unreasonable disregard for the information within the same pieces of evidence that mitigate the reliability of this evidence and illustrate the variety of barriers that exist in Kuwait for women similarly situated to the Applicant. Had the Officer included the part of the quote regarding the lack of reported cases of private sector discrimination that explicitly states that no official system exists to track such reports, thus undermining the reliability of this statement, this evidence would not be as clear or unequivocal as presented in the decision. Had the Officer looked beyond this singular statement about the lack of reported cases and considered other information in the same 2020 Country Report on Human Rights in Kuwait, from the US Department of State, the Officer would have found information that directly contradicts the finding that the Applicant would not face hardship

in Kuwait as a woman, as a divorcee, and as a survivor of domestic violence. As the Applicant notes in her written submissions, this information includes:

> • Authorities in Kuwait do not effectively enforce laws against rape;
>
> • Spousal rape is not a crime under the law;
>
> • Violence against women continues to be a problem;
>
> • There were reports alleging that some police stations did not take seriously reports of sexual assault by both citizens and noncitizens, which service providers stated contributes to a culture of underreporting by survivors;
>
> • In domestic violence cases, including for any type of physical assault, a woman must produce a report from a government hospital to document her injuries in addition to having at least two male witnesses (or a male witness and two female witnesses) who can attest to the abuse;
>
> • Advocates reported that women who reach out to police rarely get help because officers were not adequately trained to deal with domestic violence cases;
>
> • No specific law addresses sexual harassment – the law criminalizes "encroachment on honor", which encompasses everything from touching a woman against her will to rape, but police inconsistently enforced this law;
>
> • The law does not provide women with the same legal status, rights and inheritance provisions as men;
>
> • Women do not enjoy the same citizenship rights as men.

[31] The Officer's failure to grapple with the key issues raised by this report, which is the same extrinsic evidence the Officer selectively relied on to support their own finding, raises a reviewable error (*Vavilov* at para 128). It is true that the Officer is not required to mention every piece of information in this evidence (*Newfoundland and Labrador Nurses' Union v*

Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para 17). That being said, a holistic review of this report reveals that the Officer's finding is reliant on a single sentence in the report, which itself is unreliable, while ignoring a wealth of information that directly contradicts it. As stated in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17, and consistently affirmed and applied by this Court in reviews of H&C decisions (see *Clarke v Canada (Citizenship and Immigration)*, 2023 FC 680 at paras 27-28; *Li v Canada (Citizenship and Immigration)*, 2023 FC 26 at paras 27-29):

> … the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains* v. *Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency"s burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[32] The Respondent seems to suggest that the Officer's failure to grapple with this contradictory evidence does not cast doubt on the reasonableness of the H&C assessment because the Officer cannot be impugned for an unreasonable consideration of adverse country conditions when the Applicant herself did not raise these conditions as a factor in her application. This reasoning is illogical. It is the Officer that conducted this independent research of extrinsic evidence and, in so doing, relied on selective and minute portions of evidence to support the finding that the Applicant would not face hardship in Kuwait sufficient to ground H&C relief,

which is central to the refusal of the H&C application. If the Officer raised extrinsic evidence regarding country conditions in Kuwait of their own accord, and then did so in a manner that was selective, this is a reviewable error (*Vavilov* at paras 126-127). It is meritless to suggest that the Officer is immunized from a finding of unreasonableness simply because the Applicant did not raise every potential piece of extrinsic evidence regarding adverse country conditions in Kuwait that support her application.

B. *Assessment of the Compassionate Factors*

[33] The Applicant submits that the Officer committed the same errors as those identified by this Court in her previously refused H&C application, which this Court found sufficient to grant judicial review and remit the matter back for redetermination. The Applicant submits that a decision-maker deciding a matter at first instance "cannot give rise to an endless merry-go-round of judicial reviews" and that this phenomenon is created in the Applicant's case by the Officer having committed the same errors as in the previous decision (*Vavilov* at para 142). These errors include discounting and failing to adequately weigh the compassionate factors in the hardship analysis, attributing no weight to the Applicant's concerns that Mr. Mohammed will continue to contact her in Kuwait, and unreasonably holding the Applicant's immigration history against her.

[34] I will focus on the first of these alleged errors, finding it to be the most apparent in the Officer's decision. The Applicant submits that the Officer discounts or ignores the following compassionate factors that are central to her H&C application:

> (a) She has lived with her Canadian children for nearly their entire lives and raised them as a single mother in Canada while fleeing her abusive ex-husband;
>
> (b) She has lived in Canada with her children for 19 years;
>
> (c) She and her children remain a tightknit family unit and provide each other with ongoing and daily emotional support;
>
> (d) She has no way of applying for permanent residence from abroad;
>
> (e) She will suffer psychological harm to her health if she is returned to Kuwait;
>
> (f) Her children will suffer mental stress if she is returned to Kuwait; and,
>
> (g) Her children wish to provide care for her as she ages and there is no one in Kuwait capable of providing care for her as she ages.

[35] The Applicant submits that the Officer further erred by viewing the positive factors—which the Officer identified as the Applicant's efforts in raising her children and the emotional connection between her and her children—through the lens of hardship, which was unreasonably elevated above all other compassionate factors in the H&C assessment. The Applicant relies on the decision of the Supreme Court in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*"), which states that granting H&C relief is focused on "equitable relief in circumstances that would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (at para 21).

[36] The Respondent submits that the Applicant takes issue with the weight granted to certain factors in the H&C assessment and that this amounts to a request that this Court reweigh the evidence that was before the Officer, which is not this Court's role on reasonableness review.

The Respondent submits that the Applicant's disagreement with the degree of weight that should have been granted to certain factors does not constitute a reviewable error. The Respondent further counters the Applicant's submission that the positive factors in her application were unreasonably viewed through the lens of hardship and, in so doing, hardship was elevated above all other factors. The Respondent notes that the Officer's consideration of hardship as a key consideration in the H&C assessment is in accordance with *Kanthasamy* and this Court's jurisprudence, and that at no point in the decision did the Officer unduly elevate the standard of hardship to "unusual, undeserved or disproportionate" hardship such that other considerations were undermined.

[37] I disagree with the Respondent. Firstly, while the Officer may not have used the exact descriptors of "unusual, undeserved or disproportionate" hardship, the decision, in its substance, commits the same error that the Supreme Court warned against in *Kanthasamy*. As explained in *Kanthasamy*, the Officer failed to consider the Applicant's compassionate factors as a whole, took an "unduly narrow approach" to the assessment of her circumstances, and assessed each factor through the lens of exceptional hardship such that H&C relief would be warranted (at para 45). This is the same unduly restrictive assessment that improperly restricts the discretion to grant H&C relief under subsection 25(1) of *IRPA* (*Kanthasamy* at para 45). The essence of this unreasonableness is not solely in the specific descriptors used to refer to the factor of hardship, but largely in the effect of elevating and unduly focusing on hardship such that it becomes the sole lens through which the application is assessed, in lieu of all else.

[38] The Applicant rightly notes that within the various compassionate considerations raised in her application, the Officer grants positive weight to only two factors: the emotional support and connection the Applicant continues to share with her children, and her efforts to raise her children in Canada. I do not find that the decision is mindful to, or meaningfully grapples with, the totality of the Applicant's circumstances: that she and her children endured years of physical and psychological abuse at the hands of Mr. Mohammed; that she prioritized her children's safety by fleeing Mr. Mohammed and resettling in a new country; that she raised her children as a single mom in a foreign country, aiding in their pursuits and providing them with emotional support for almost 20 years; that she and her children compose a tightknit family unit and that their emotional connection is, in part, the result of traumatic shared experiences; that her immigration history and lack of status must be considered in light of the Applicant's difficult circumstances; that Mr. Mohammed has recently attempted to establish contact with the Applicant and one of her children; that as a survivor of domestic violence, Kuwait holds little more than traumatic memories for the Applicant; and that her children, who are now adults, wish to care for and provide the same physical and emotional care to their mother that she has provided them throughout their lives.

[39] The Officer's decision failed to weigh all the relevant facts and factors central to the H&C application (*Kanthasamy* at para 25). I do not agree that this is a matter of reweighing the evidence before the decision-maker. Rather, the Officer's exercise of weighing fails to accord with the totality of the Applicant's circumstances and, in turn, is unreasonable in light of the facts and the legal constraints bearing upon the decision (*Vavilov* at para 99).

[40] The Respondent cites this Court's decision in *Pryce v Canada (Citizenship and Immigration)*, 2020 FC 377 ("*Pryce*") for the proposition that past hardship is not a necessary factor for consideration in an H&C assessment, and that the pertinent question is "how much more suffering" the Applicant may endure upon return to her country of nationality (at para 65). However, the full analysis by the Court in *Pryce* demonstrates exactly the ways in which the Officer's decision in the Applicant's case unreasonably disregarded the past unconscionable treatment she faced at the hands of her ex-husband:

> [65] Past hardship is not a factor listed in the Guidelines. They focus on the disproportionate suffering caused children by or upon their removal, or indirectly by that of their parents. Special needs, establishment, discrimination, safety, or appalling conditions that the claimants are returning to tend to makeup the content of the Guidelines' factors. That is not the issue here. Rather, it is a question about how much more suffering do these children, and the Applicant, have to endure after their shocking abandonment in a foreign country with their family riven apart, only to land fortuitously on their feet in Canada, and putting such a craven experience behind them? It applies the equitable standard described in *Chirwa*.
>
> [66] At the very minimum, I conclude that the Officer was obliged to consider the impact of the past unconscionable hardship suffered by the children and the Applicant that will not likely recur upon removal, as a possible significant contributing factor to a finding of disproportionate suffering attendant on their removal to Jamaica. Similarly, the Officer is required to assess their past mistreatment to determine whether it is a sufficient basis to grant special relief based on the principles elaborated in *Chirwa*. This would be in addition to the other considerations that the Officer weighed, but not amounting to "Guidelines" hardship.
>
> [Emphasis added]

[41] Reviewing the Officer's decision holistically, it is unclear how a failure to meaningfully consider and account for the past mistreatment faced by the Applicant and her children, which is

at the core of her H&C application, would accord with the equitable standard for granting H&C relief that is described in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, and adopted by the Supreme Court in *Kanthasamy*. The Officer was obliged to confront all compassionate factors in totality, including the significant past hardships faced by the Applicant and her children, and how these past hardships are inextricable from the hardship facing her upon her return to Kuwait, specifically her separation from her children and her potential return to a place that holds nothing but painful memories of abuse. A failure to grapple with these key issues is unreasonable and undermines the equitable considerations that underlie the purpose H&C relief (*Vavilov* at para 128; *Pryce* at para 50).

C. *Reliance on Myths and Stereotypes*

[42] The Applicant submits that the Officer's decision is inconsistent with Immigration, Refugees and Citizenship Canada Operational Guidelines pertaining to barriers experienced by victims of abuse (the "Guidelines"). The Applicant notes that the Guidelines explicitly identify barriers for victims escaping an abusive relationship, barriers specific to recent immigrants, and reasons why a victim of abuse may not disclose their experiences, which "relate to their circumstances, feelings, beliefs and level of knowledge about domestic abuse." The Applicant submits that the Officer, despite stating that they do not doubt that she experienced abuse, extensively undermines her experience nonetheless, largely blaming the lack of extrinsic evidence to support her claims. The Applicant submits that in doing so, the Officer unreasonably disregards the unique barriers facing survivors of domestic abuse and the explanations she and her daughter provided in their sworn testimonies, which describe the abuse they suffered, their reasons for not reporting it, and why they did not provide police reports or medical documents.

[43] The Respondent submits that the Officer was not seeking corroborative evidence to substantiate the abuse faced by the Applicant and, rather, was looking for evidence to substantiate the Applicant's claim that her past hardship rose to the level of "shocking unconscionable treatment" to ground H&C relief, as per the decision in *Pryce.* The Respondent submits that the Officer reasonably found that the Applicant's evidence regarding the extent and nature of the abuse she faced was vague and undetailed, and permissibly looked to whether there was extrinsic evidence—such as medical reports or police reports—to provide further details.

[44] I find the Officer's analysis of the Applicant's experiences of domestic abuse to be troublesome. On the one hand, the Officer states that they are "not questioning the applicant's assertions that the ex-spouse abused her and the children," notes that "abuse is a sensitive subjective," and that evidence to support such allegations "may not be perfect." On the other hand, the Officer's analysis of the Applicant's experiences repeatedly undermines the veracity of her claims on the basis that they lack detail about the nature and extent of the abuse. First, this fails to account for the numerous social and cultural barriers that face survivors of domestic violence in openly sharing their experiences of abuse, as explicitly stated in the Guidelines, including the hesitation to relive traumatic experiences in detail. In effect, the decision draws negative inferences from the very difficulties and vulnerabilities that arise from the kind of trauma that the Applicant and her children experienced for many years.

[45] Second, this analysis also disregards the Applicant's own explanation and the explanation by the Applicant's daughter regarding the abuse, why they did not disclose their experiences, and why there is no extrinsic evidence to support it. In her sworn declaration, the Applicant's

daughter writes that Mr. Mohammed physically abused her and her sisters, “became physical with [them] in a way that made [them] extremely uncomfortable and frightened,” and “demanded that [they] keep [their] family business private.” The Applicant’s sworn declaration explains the cycle of abuse within which she and her children were caught, describing Mr. Mohammed as “controlling and abusive, both emotionally and physically” and explaining that the details are difficult to discuss because “it brings up traumatic and painful memories.” The Officer fails to meaningfully consider or grapple with these explanations for the lack of extrinsic evidence and descriptions of the nature of the extensive cycle of abuse (*Vavilov* at para 128).

[46] The Officer stating that they “[examined] the situation through a compassionate lens” does not make it so. To the contrary, the Officer’s decision appears to impugn the Applicant for failing to provide details about the abuse or documentation to support the fact that it occurred, without regard to the totality of her evidence and without adequately considering the barriers to providing such details as a survivor of abuse. Along with the other reviewable errors in the Officer’s decision, this failure is sufficient to render the decision unreasonable.

V. Conclusion

[47] This application for judicial review is granted. The Officer’s decision selectively relies on extrinsic evidence to support its findings, fails to holistically consider all the compassionate considerations at play, and draws inappropriate and harmful inferences about survivors of abuse. These errors are sufficient to render the decision unreasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-4420-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted and the matter is remitted back for redetermination by a different officer.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4420-22
STYLE OF CAUSE:	AIDAH M F A ALGHANEM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HALIFAX, NOVA SCOTIA
DATE OF HEARING:	JUNE 14, 2023
JUDGMENT AND REASONS:	AHMED J.
DATED:	SEPTEMBER 8, 2023

APPEARANCES:

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Shauna Hall-Coates	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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