Federal Court  Cour fédérale

Date: 20140317

Docket: IMM-3446-13

Citation: 2014 FC 259

Ottawa, Ontario, March 17, 2014

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

SONIA DEL CARMEN PEREZ DE SALAMANCA

Applicant

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [Act] for judicial review of the decision of a Senior Immigration Officer [Officer] dated April 4, 2013 [Decision], with supplementary reasons issued in an addendum dated April 12, 2013 [Addendum], which refused the Applicant's application for an exemption on

humanitarian and compassionate grounds under subsection 25(1) of the Act from the requirement to apply for a permanent resident visa from outside of Canada [H&C Application].

BACKGROUND

[2] The Applicant is a 42-year-old citizen of El Salvador who came to Canada on a two-year work permit and temporary resident visa in November 2007, to work as a production worker at Maple Leaf Foods in Lethbridge, Alberta. She left behind her common law spouse and three children, now aged 22, 16 and 11, who went to stay with the Applicant's mother and sister. In May 2008, her common law spouse, Jose Antonio, was murdered by one of the Maras – the criminal gangs that are prevalent in El Salvador – which had apparently been extorting him for money. The Applicant claims that since Jose Antonio's death, the Maras have asked her family where she is, and have approached her children to try to recruit them. She based her H&C Application on the fear of these gangs, the best interests of her children, and her establishment in Canada.

[3] The Applicant has continued to work for Maple Leaf Foods, though she was laid off between September 2009 and September 2010. During that time, in April 2010, the Applicant filed a refugee claim based on the murder of Jose Antonio and the subsequent inquiries and threats received by her family. This claim was rejected by the Refugee Protection Division [RPD] of the Immigration and Refugee Board in July 2011. The RPD found that the Applicant gave reliable and trustworthy evidence and was credible, but was not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act. It found that the Applicant's family was targeted based on perceived ability to pay, and her fear therefore resulted from criminality and not from persecution based on a Convention ground. With respect to section 97 of the Act, the RPD found

that the Applicant's situation, "unfortunate as it is, is no different than the fears of millions of other Salvadorans who have been targeted and victimized by these gangs." The RPD found that there was no evidence that the Applicant had been or would be targeted because of her relationship to her deceased common law partner; rather, she faced the same risk of extortion faced by other Salvadorans. Thus, her circumstances were not sufficiently individualized to meet the requirements of section 97, though the RPD noted there may be humanitarian and compassionate considerations present.

[4] In June 2012, the Applicant filed her H&C Application, which was rejected in the Decision under review. A decision letter was mailed on April 8, 2013, but the Officer received additional submissions from the Applicant on April 9, 2013. These additional submissions were considered, and the Officer issued an Addendum on April 12, 2013 providing additional reasons and confirming that the H&C Application was refused.

DECISION UNDER REVIEW

[5] The Officer found in the original Decision that the Applicant had attained a "basic level of establishment," maintaining employment with the same employer during most of her time in Canada. However, there was "little evidence… that the applicant has otherwise become integrated into her community" such that departing would cause her unusual or disproportionate hardship. She had not indicated that she had close ties to friends or family in Canada, or provided any support letters. The Applicant's additional submissions included photos and letters from co-workers and friends. The Officer observed in the Addendum that these demonstrated that the Applicant had "developed and maintained relationships with several people" and had established "ties, through

friends, to the community." While this warranted "additional positive weight" regarding her establishment in Canada," the Applicant had not indicated that she would suffer hardship based on severing ties with her friends, or that she had formed inter-dependent relationships. While separating from friends and co-workers would be sad for her, the Officer found this did not warrant the granting of a waiver of visa requirements.

[6] With respect to hardship based on country conditions and the Applicant's fear of criminal gangs, the Officer acknowledged that El Salvador has high rates of crime and gang activity, and that efforts by the government to curb crime rates had been largely unsuccessful. The Officer therefore gave "some positive weight to the hardship of having to live in a country in which rates of crime are high and in which state protection can be greatly improved." While noting that Maras had contacted the Applicant's family in 2010 seeking her whereabouts, apparently suspecting that she was working abroad and her earnings could be extorted, the Officer found that there was no evidence of further contact or repercussions since 2010, and "little evidence… concerning the impact of gang activity on the applicant's family on a daily basis." The Officer accepted that the Applicant would experience some hardship due to the prevalence of crime and gang activity in El Salvador, but found that there was "little evidence… about the nature and degree of this hardship factor in relation to the applicant's personal circumstances." Thus, while giving "some positive weight" to this factor, the Officer was unable to conclude on this basis that the Applicant would suffer unusual and undeserved or disproportionate hardship if she returned to El Salvador.

[7] While the Applicant's additional submissions included further evidence about the murder of her common law husband, the Officer noted in the Addendum that he or she had already accepted that Jose Antonio was murdered by Maras in May 2008. The additional documents confirmed this.

[8] The additional submissions also included "a translated letter signed by a police investigator and her friend, named Marvin Antonio Ventura, dated August 19, 2011" [Ventura letter], wherein Ventura stated that he had known the Applicant for 15 years and provided information about events that occurred after Jose Antonio's death, including that:

- The Applicant called him from Canada on May 11, 2008 and informed him that her spouse had been killed, and he confirmed the death with police authorities;
- The Applicant has three children who reside with the Applicant's mother and sister, and this household had received threats from unknown sources;
- The Applicant's daughter (her oldest child) had stopped going to school because of the threats;
- The Applicant's children were afraid to go to school because of the prevalence of gangs;
- The Applicant fears returning because of the death of her spouse and the prevalence of gangs; and
- Unknown persons had asked the Applicant's family about her whereabouts.

[9] The Officer assigned this letter "low weight because it was written by a friend of the applicant at her request," but noted that he or she had "previously accepted much of the information contained in the letter." The concluding section of the Addendum included the following observations regarding the letter and other evidence on the same issue:

> [A]s noted this evidence primarily addresses the death of the applicant's common law spouse in 2008. I accepted that the applicant's spouse was killed and maras were responsible in my decision and reasons dated April 4, 2013. I also accepted that the applicant's family was approached by unknown persons in 2010 requesting money and asking about her whereabouts. I note there is little evidence before me that there were further or ongoing repercussions for the applicant's family after the events of 2010. Overall, based on evidence provided regarding country conditions and the applicant's personal circumstances, I do not find that the additional submissions support a finding that the applicant will face unusual and undeserved, or disproportionate hardship, should she return to El Salvador.

[10] Regarding the best interests of the children, the Officer accepted that the Applicant's children continued to be emotionally impacted by the murder of their father (one child) and stepfather (two children). The Officer found that "[t]he entire family was traumatized by this tragic event," and did not doubt that the emotional impact was ongoing. The Officer observed that the children were living with their grandmother and other extended family members, and that it was reasonable to conclude that, upon her return, the Applicant would join them and continue to receive their support in caring for her children.

[11] The Officer found that the Applicant was essentially indicating in her application "that the granting of an exemption from permanent resident application requirements and allowing her to remain in Canada would ultimately mean that her children would join her in Canada and therefore be removed from the situation where they are experiencing fear and risk." While acknowledging that "living conditions in Canada would be more conducive to [the children's] well being," the Officer observed that "it is also important to note that the family connections and support that the children currently enjoy are also important for their well-being, as is being with their mother." The Officer found that it was reasonable to conclude that, given her work experience in Canada and the

fact that she previously worked in El Salvador, the Applicant would be able to secure employment upon her return and would be able to provide for her children's care and support. The Officer concluded on this point as follows:

> In conclusion, while exposure to the country conditions in El Salvador may not be in the applicant's children's best interests, with this application she is seeking an exemption to remain in Canada to facilitate processing of her application for permanent residence. Should the applicant return to El Salvador to apply for permanent residence in the usual manner, she will be reunited with her children and in a position to provide them care and support. I find that in light of all the factors in this case, the degree to which the children's interests are compromised does not outweigh all other factors in this case. In light of the foregoing assessment I have determined that this factor does not hold enough weight in the ultimate balancing of positive and negative factors in the application to justify the granting of an exemption from visa requirements.

[12] In the Addendum, the Officer noted that report cards and school correspondence showed that the Applicant's children were "students in good standing with good attendance records." While her daughter had stopped attending school due to fear following the death of her stepfather, she had now "resumed her studies and is achieving good results."

[13] The Officer also considered four affidavits submitted with the additional materials [Ventura affidavit and children's affidavits], which the Officer perceived to be "all written by her acquaintance, Marvin Antonio Ventura, at her request, and all dated January 25, 2013." The Officer described these affidavits and the weight assigned to them as follows:

> Mr. Ventura signs each affidavit, one contains his name and each of the other three affidavits also contains the name of each of the applicant's children. The affidavits each provide substantively the same information regarding the living arrangements of the applicant's children with their grandmother, the prevalence of gang activity, that the children have been approached by gang members asking them to join, and that the applicant does not want to return to

> El Salvador due to her fear of gangs and fear she will be killed as her spouse was killed. I have assigned this evidence low weight as it was prepared by the applicant's acquaintance at her request.

[14] The additional submissions also included a news article from January 22, 2013 reporting the shooting death of a teacher whose name also appeared on the report card of the Applicant's older son [news article]. This article was assigned "low weight in considering the H&C considerations overall." The Officer noted that "[t]he applicant has not stated in submissions that her son's teacher was killed, however, it appears that if the documents submitted are genuine, that is the case." The Officer observed that "this death did not occur at the applicant's son's school and… according to the article… authorities reassured the public that security in schools will be increased." While observing that "[t]his is a tragic event and I do not discount the impact on the applicant's children," the Officer concluded: "However, I also note that the translation of the news article provided was unofficial, and that the applicant did not address the impact of this event on herself or her children in her submissions. I therefore give this evidence little weight."

[15] The Officer concluded in the initial Decision that "individually and globally, the elements presented… are insufficient to establish that [the Applicant] will suffer unusual and undeserved or disproportionate hardship if she applies for permanent residence from outside Canada," and that a visa exemption under section 25 of the Act was not justified. The Addendum confirmed that upon consideration of the additional submissions, the application was refused.

ISSUES

[16] The Applicant raises the following issues in this application:

a. Did the Officer unreasonably give low probative weight to the Ventura letter, the Ventura affidavit, and the children's affidavits?
b. Did the Officer unreasonably give low probative weight to the news article, and ignore evidence directly contradicting this finding?
c. Did the Officer breach the Applicant's right to procedural fairness by denying the opportunity to respond to the finding that the translation of the news article was unofficial?

STANDARD OF REVIEW

[17] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[18] The parties agree that the standard of review applicable to the first two issues above is reasonableness: *Baker v Canada*, [1999] 2 SCR 817; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189; *Lemus v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1274 at para 14. It has been held that "[a] heavy burden rests on an applicant to satisfy the Court that a decision under section 25 requires its intervention": *Lopez v Canada (Minister of Citizenship and*

Immigration), 2013 FC 1172 at para 29, citing *Mikhno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 386 and *Cuthbert v Canada (Minister of Citizenship and Immigration)*, 2012 FC 470. The parties also agree that issues of procedural fairness are reviewable on a standard of correctness (*Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53), though the Respondent denies that any such issue arises in this application.

[19] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

STATUTORY PROVISIONS

[20] The following provisions of the Act are applicable in these proceedings:

Application before entering Canada	**Visa et documents**
11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the	11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger

officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act. […]	n'est pas interdit de territoire et se conforme à la présente loi. […]
Humanitarian and compassionate considerations — request of foreign national 25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible or does not meet the requirements of this Act, and may, on request of a foreign national outside Canada who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger** 25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

ARGUMENT

Applicant

[21] The Applicant raises three grounds for quashing the Decision. Two of these grounds assert that the Officer unreasonably assigned low probative weight to relevant and corroborative evidence: first, the Ventura letter, Ventura affidavit, and the children's affidavits; and second, the news article.

The third ground asserts that the Officer breached procedural fairness by failing to advise the Applicant of a concern that the translation of the news article was unofficial, and to provide an opportunity for her to respond to that concern.

[22] The Applicant argues that the first two issues are related: the low weight assigned to the evidence in question led the Officer to conclude that there was little evidence of further or ongoing repercussions for the Applicant and her family after the year 2010, and that the Applicant would therefore not face unusual and undeserved or disproportionate hardship should she return to El Salvador.

Low probative weight assigned to Ventura letter and affidavits

[23] The Applicant argues that the Officer's reasons for assigning low weight to the Ventura letter, the Ventura affidavit, and the children's affidavits were based upon factual errors and are not supported by the record. First, the Officer states that the Ventura letter was assigned low weight because it was written by a "friend" of the Applicant at her request, but at no time did the Applicant state that she had any relationship with Ventura outside of his professional capacity. The Applicant says the record confirms that she had no close ties to Ventura, and that he had no direct interest in the Applicant or her family's situation. She attests that she met Ventura while applying for a police record check at the local police station in 1996. He gave her his card and invited her to contact him should she require police assistance. He was the only local police officer who ever offered to help the Applicant's family, and she trusted him despite the fact that police corruption is widespread. Her mother is afraid to contact the local police directly, so each time there was an incident the Applicant contacted Ventura by phone or through Facebook. In view of this, she argues, Ventura is in the best

position to describe the hardship she and her children face. She therefore asked him to provide a letter and later an affidavit, and she paid him a fee for this service.

[24] Furthermore, there is no evidence whatsoever that Ventura prepared all four affidavits, the Applicant argues. She attests that her children's affidavits were prepared by her oldest child. The finding that all four affidavits were signed by Ventura is also wrong. While Ventura jointly executed the affidavits of the minor sons, as required by local laws, her daughter is of age and she alone signed her affidavit.

[25] Finally, the Applicant says it is an error and unreasonable to disregard evidence or assign it little weight solely because it is "self-serving" or comes from individuals connected to the Applicant: *Ugalde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 458 at paras 26-28 [*Ugalde*].

Low probative weight assigned to news article

[26] The Applicant says the Officer assigned the news article low probative weight for two reasons, neither of which is valid in her view. First, the Officer found that the Applicant did not address the impact of this event on herself and her children directly in a written submission; and second, the translation was "unofficial" and completed on the Applicant's behalf.

[27] As to the first point, the Applicant notes that a letter from her eldest child speaks directly to the impact of the school teacher's murder on the Applicant's children: she says it caused her to suffer a severe asthma attack.

[28] With respect to the translation issue, the Applicant says the Decision is unclear about the significance of the observation that the translation was "unofficial." The Officer appeared to question the genuine nature of the article, but did not provide any clear explanation of the deficiencies of the translation. It is unclear, for example, whether the Officer required the translation to be certified and notarized. The document was translated in the same manner as all of the documents she provided to the RPD, the Applicant says: by a Canadian citizen active in the Edmonton community who provided signed letters attesting to the accuracy of each translation.

[29] The Applicant argues that it is an error to remain silent on evidence that contradicts the Officer's finding (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 [*Cepeda-Gutierrez*]), and the more probative the evidence, the more likely it is that the Court will find that the Board erred in ignoring it: *Karayel v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1305 at para 16.

[30] The Applicant argues that it is impossible to give low weight to a murder: it must be given considerable value or no value whatsoever. If the Officer gives it no value, it follows that the Officer considered the news article and the letter from the Applicant's oldest child discussing the murder to be forgeries: *Hamadi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 317. The Officer therefore had a duty to make further inquiries.

Procedural Fairness

[31] The Applicant argues that the Officer breached her right to procedural fairness by denying her the opportunity to respond to the finding that the translation of the news article was unofficial. The Officer's concerns did not arise directly from a requirement of the Act, and therefore the Officer had a duty to seek clarification on the accuracy or authenticity of this document: *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24 [*Hassani*].

Respondent

[32] The Respondent notes that an H&C Application is not an alternative immigration route for applicants who are unable or unwilling to meet the criteria set out in the Act: *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at paras 15-20 [*Legault*]; *Serda v Canada (Minister of Citizenship and Immigration)*, 2006 FC 356 at para 20; *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1404 at paras 51-52 [*Ramirez*]. Rather, section 25 provides an exceptional and discretionary remedy, and a decision not to recommend an exemption takes no right away from an individual: *Vidal v Canada (Minister of Employment and Immigration)* (1991), 41 FTR 118; *Chieu v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 84; *Legault*, above; *Adams v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1193 at paras 29-31 [*Adams*]. An applicant is not entitled to a particular outcome, and there is a high threshold to meet when requesting an exemption. The H&C process is not designed to eliminate hardship, but to provide relief from "unusual and undeserved or disproportionate hardship."

Preliminary issue: inadmissible affidavit

[33] The Respondent argues that the Applicant has filed an affidavit that contains inadmissible evidence, which should be struck from the Record. In particular, the Respondent says that paragraphs 12, 29 and 30 of the Applicant's affidavit contain explanations for some of the issues raised by the Officer and seek to rebut the Officer's findings on the merits, contrary to the direction of this Court and the Federal Court of Appeal: *Canadian Tire Corp. v Canadian Bicycle Manufacturers Assn.*, 2006 FCA 56 at para 9 [*Canadian Tire*]; *Ly v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1184 at para 10; *Li v Canada (Minister of Citizenship and Immigration)*, 2010 FC 803. As such, the Respondent requested that the affidavit be given no weight to the extent that it goes beyond setting out the facts, and that whatever arguments are based upon it should be disregarded.

Procedural Fairness

[34] The Respondent says there was no breach of procedural fairness arising from the Officer's treatment of the translation of the news article.

[35] First, *Hassani*, above and cited by the Applicant, states only that an obligation to make further inquiries *may* arise where an officer has concerns about the credibility, accuracy or genuineness of evidence.

[36] Second, the Officer did not challenge the credibility of the article. The observation that the translation was "unofficial" did not cause of the Officer to discount the article's contents. Rather, the Officer accepted that the son's teacher was shot and killed in January 2013. The Officer did not

give the article much weight because the Applicant did not address the impact of this event on herself or her children in her submissions, and because the translation was unofficial.

[37] The Respondent argues that it was open to the Officer to give the article little weight, or in fact to reject it out of hand, as this Court found with respect to unofficial translations of documents in *Naqvi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 503 at para 24 (TD) [*Naqvi*] and *Wang v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1274, 173 FTR 266 (TD). The onus is on the applicant to present sufficient information to warrant a positive decision, and a visa officer is under no obligation either to inform the applicant of weaknesses in the application or to seek clarification or further information before rendering a decision: *Silva v Canada (Minister of Citizenship and Immigration)*, 2007 FC 733; *Begum v Canada (Minister of Citizenship and Immigration)*, 2013 FC 265 at paras 46-47; *Ayyalasomayajula v Canada (Minister of Citizenship and Immigration)*, 2007 FC 248 at para 17.

Weight of the Evidence

[38] The Respondent argues that the Officer had valid reasons for assigning little weight to the news article, as well as the Ventura letter, Ventura affidavit, and children's affidavits.

[39] With respect to the news article, as noted, it was not officially translated and the Applicant did not address the impact of the teacher's death on the Applicant or her children. The daughter's letter states nothing more than that she had an asthma crisis from watching the news when she found out about the teacher's death. It is not clear how that death relates to the Applicant's H&C Application. The Officer was entitled to proper notice of exactly what was being advanced; it was

not up to the Officer to "ferret out points" not made by the Applicant that might assist her: *Ye v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1072 at para 19.

[40] Furthermore, the Citizenship and Immigration Canada website provides clear instructions regarding the requirements for a translation, which include an affidavit from the translator and a certified copy of the original.

[41] Likewise, the Officer did not err by failing to give more weight to the Ventura letter, the Ventura affidavit, or the affidavits of the Applicant's children, the Respondent argues. The Applicant has not shown that she provided any submissions to the Officer regarding the nature of her relationship to Ventura, and the evidence before the Officer was that Ventura had known the Applicant for 15 years and kept in touch with her and her children. It was therefore not unreasonable for the Officer to find that Ventura was a friend.

[42] Furthermore, the Officer did not disregard this evidence based on it being self-serving, but simply attributed minimal weight to the evidence. At the same time, the Officer specifically noted that most of the information in the Ventura letter was already accepted as true in the original Decision.

[43] The fact that Ventura signed each of the affidavits and that each provided substantively the same information provided valid reasons for giving minimal weight to these affidavits, the Respondent says. While the Applicant has provided an explanation to the Court for why Ventura swore the children's affidavits, no such explanation was provided to the Officer. In light of this, and

the fact that the affiants had an interest in the outcome, it was open to the Officer to assign the evidence minimal weight: *Tahiru v Canada (Minister of Citizenship and Immigration)*, 2009 FC 437 at paras 46-48.

[44] The Respondent notes that immigration officers have jurisdiction to assess the relevant factors and determine the weight to be assigned to them on each H&C application: *Adams*, above at paras 29-31. The Applicant bears the onus of demonstrating sufficient grounds to warrant a positive decision: *Owusu v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 94 at paras 11-12 (TD) [*Owusu*]. Here, the Officer reasonably determined that there were insufficient H&C grounds to justify granting an exemption: *Jeffrey v Canada (Minister of Citizenship and Immigration)*, 2006 FC 605 at paras 24-28. The Applicant is requesting the Court search for minute alleged errors in the reasons for decision, rather than understanding the chain of reasoning as a whole, as directed by the Supreme Court and the Federal Court of Appeal: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*]; *Canada (Minister of Citizenship and Immigration) v Ragupathy*, 2006 FCA 151 at para 15.

Applicant's Reply

[45] With respect to the Respondent's allegation that all or portions of her affidavit are inadmissible, the Applicant submits that paragraphs 12 and 29 contain only such evidence as she could give if testifying as a witness before a Court, in compliance with Rule 12(1) of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, and that her knowledge relating to the preparation of her children's affidavits, as set out in paragraph 30, is based on information received from her daughter which she has no reason not to believe. Furthermore, the Applicant

argues, if any paragraph is found to be inadmissible, such paragraph(s) can be easily dissociated from the remainder of the affidavit. Moreover, an application involving an inadmissible affidavit can still succeed where an error is apparent on the face of the record: *Canadian Tire*, above.

[46] The Applicant argues that the Officer's reasons for assigning low weight to the Ventura letter and the affidavits were not valid and were based on errors apparent on the face of the record. First, while Ventura may have known the Applicant for 15 years and kept in touch with her and her children, he was not a "friend" but rather a police officer who assisted them in his professional capacity. Second, the finding that Ventura signed all of the affidavits is wrong, as he did not sign the affidavit of the Applicant's daughter, as noted above.

[47] With respect to the procedural fairness issue, while *Hassani*, above, states that an obligation to make further enquiries *may* arise, the Applicant cites *Gharalia v Canada (Minister of Citizenship and Immigration)*, 2013 FC 745 at paras 18-20 for the proposition that a visa officer "is obligated to inform an applicant of any concerns related to the veracity of documents" (quoting *Patel v Canada (Minister of Citizenship and Immigration)*, 2011 FC 571 at para 22, Applicant's emphasis). Furthermore, contrary to the Respondent's assertions, the Officer did challenge the credibility of the news article. He or she did not accept that the son's teacher was killed, but merely stated that "it *appears* that *if* the documents submitted are genuine, this is the case."

[48] The Applicant says that the present case can be distinguished from *Naqvi*, above, because in *Naqvi* the applicant was specifically advised by letter to provide certified translations, whereas no such correspondence was received in this case.

Respondent's Further Submissions

[49] The Respondent argues that the Applicant failed to address a "very substantial" reason for according little weight to Ventura's letter, as stated by the Officer: much of its content had already been presented and considered in coming to the original Decision. The Officer reasonably concluded that the letter did not reveal a direct negative impact on the Applicant that amounted to unusual and undeserved or disproportionate hardship. It was therefore reasonable to assign little weight to it. The Respondent notes that section 25 of the Act calls for evidence of potential hardship relating directly to the Applicant, not simply evidence of general adverse country conditions: *Caliskan v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1190 at paras 22, 26. The Applicant did not adduce any evidence that her family was contacted by Maras or experienced further repercussions after 2010.

[50] Similarly, the Officer's statement that the affidavits were assigned low weight as they were "prepared by the applicant's acquaintance at her request" should not be scrutinized in isolation and outside the overall context of the reasons, the Respondent argues: *Newfoundland Nurses*, above, at paras 12, 15; *Ayanru v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1017 at paras 6-8. Here, the Officer's consideration of the affidavits included the observation that each provided substantively the same information, and the substance of this evidence had already been addressed in the original Decision.

[51] The Officer also explained why this evidence did not elevate the significance of the best interests of the children to the level of undue and undeserved or disproportionate hardship, the

Respondent argues, by pointing out that the H&C Application only sought "an exemption to remain in Canada to facilitate processing of her application for permanent residence." A positive decision would not accord the Applicant permanent resident status, or the automatic right to sponsor her children to join her in Canada, which would require a separate application. Thus, any hardship the Applicant's children may be experiencing in El Salvador carries relatively little weight in the context of the H&C decision under review. In dismissing an appeal of *Owusu*, above, the Federal Court of Appeal expressly did not endorse the Application Judge's view that the duty to consider the best interests of an applicant's children was engaged where the children were not in and had never been to Canada, noting that the resolution of this issue must await a case in which the facts require it to be decided: *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paras 13-14.

[52] With respect to the news article, the Respondent argues that the Applicant is engaging in semantic hair-splitting: a fair and straightforward reading of the Decision reveals that the Officer did accept, for the purposes of the H&C analysis, that the teacher of the Applicant's son had been murdered as reported in the article.

[53] Furthermore, the Respondent says that the Applicant's argument regarding this piece of evidence conflates the issues of credibility versus weight or probative value, which are legally distinct and have different consequences for the Applicant: *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at paras 23-27, following *Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94. Here, having accepted that the teacher had been murdered, the Officer nevertheless accorded little weight to this evidence as it did not have

sufficient probative value to establish that the incidence of crime in El Salvador and the best interests of the Applicant's children pointed to the prospect of unusual, undeserved or disproportionate hardship. The Officer provided cogent reasons, apart from the translation requirements, for assigning little weight to the substance of the news article.

ANALYSIS

[54] The Applicant wishes to become a permanent resident of Canada. This Decision does not prevent her from doing that. The only issue before the Officer was whether she should make her permanent resident application from El Salvador in the usual way or whether, because of unusual, undeserved and disproportionate hardship that could occur if she returns to El Salvador, she should be allowed to stay in Canada and make her permanent resident application here. This is a special dispensation and its denial does not remove the Applicant's rights to apply for permanent residence.

[55] As the Officer points out, the onus was on the Applicant to satisfy the criteria for this special exemption. In the end, the Officer examined all of the Applicant's submissions, weighed all of the factors, and decided that the Applicant had not satisfied the test for remaining in Canada to make her permanent resident application. This is a highly discretionary Decision in which Parliament has said that the weighing of factors is a matter for that Officer; it is not for the Court to reweigh the evidence and substitute its opinion for that of the Officer. See *Legault*, above, at paras 11, 15-19; *Ramirez*, above, at paras 51-52; *Adams*, above, at para 31; *Nagulathas v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1159 at para 46. All the Court can do is to require that the Decision be returned for reconsideration if the Applicant can establish that a reviewable error has occurred. The Applicant has raised several issues for consideration by the Court.

[56] First of all, as regards the Officer's treatment of the news article, it seems obvious to me that the Officer accepted that the son's teacher had been killed. The Officer says "This is a tragic event and I do not discount the impact on the Applicant's children." If the Officer had not accepted the teacher's death, there would have been no impact to consider. The Officer felt, however, that the death of the teacher had little bearing on the Applicant's H&C Application. This was not an unreasonable conclusion. The evidence before the Officer already established that gang killings are common in El Salvador and, absent some further connection, the fact that one of the persons tragically killed by this general violence happens to have been the teacher of one of the Applicant's sons does not lend further weight to the Applicant's H&C Application. In my view, there was nothing procedurally unfair or unreasonable in the Officer's treatment of the news article.

[57] The only real issue, in my view, arises over the Officer's treatment of the Ventura letter and the affidavits of Ventura and the Applicant's children and the weight that was given to this evidence.

[58] The Officer assigned the Ventura letter "low weight because it was written by a friend of the applicant at her request" and the Officer had "previously accepted much of the information contained in the letter."

[59] From the Applicant's perspective, the Ventura letter, which is dated August 19, 2011, supports her concerns that the problems with the Maras are on-going, so that the Officer's finding that there is no evidence of further contact since 2010 should be regarded as unreasonable.

However, while the Ventura letter says that the children "have been receiving threats from unknown sources" due to the death of their father/stepfather, it does not say when these threats occurred or provide any further details that would assist the Officer in assessing whether there was any on-going hardship or the nature and extent of that hardship. It says that the children "have manifested their fear to continue going to school due to the consequences that they see…," but it doesn't deal with specific events. So the letter is vague and not very helpful when it comes to on-going hardship to the Applicant from the Maras. It doesn't really add much to what the Officer has already assessed and, as the Officer points out, he had already accepted much of what the letter says.

[60] I see nothing material in the Officer's referring to Ventura as a "friend" of the Applicant. First of all, the Officer says that the letter "was written by a friend of the Applicant at her request." The letter was certainly written at the Applicant's request. Ventura is referred to several times as an "acquaintance" of the Applicant and her family over a number of years. As *Ugalde*, above, teaches it is unreasonable to distrust evidence simply because it comes from family members or persons connected to the Applicant. However, the main point is that his letter is too vague and general about the on-going effect of the Maras to advance the Applicant's case. Giving it "low weight" was not unreasonable.

[61] Similar problems arise over the Ventura affidavit. Ventura tells us that the children live in an area dominated by gangs and that he "has seen in many occasions that they have been approached by these groups to join them, since they are of the age group to be recruited by the gangs," but he does not provide specifics as to when this occurred. The affidavits in general say that the Applicant

"cannot return out of fear of the same happening to her as it did to her husband," but this is no more than the expression of an opinion on a matter that has been addressed in the past.

[62] The affidavit of the oldest daughter, Yancy, is slightly different and uses the present tense to say that "it has gotten to the point that her and her brother have been threatened to death if they do not join the gang." But this does not materially change what the Officer has already assessed.

[63] The Officer assigns the affidavit evidence "low weight as it was prepared by the applicant's acquaintance at her request," but the general conclusion is that "there is little evidence before me that there were further or ongoing repercussions for the applicant's family after the events of 2010." The events of 2010 were when the Maras contacted her family in El Salvador seeking her whereabouts "with the aim to target her family for extortion because of the perception the family would have financial assets as the applicant was abroad." There is in fact no probative evidence that shows these problems were on-going.

[64] The Officer had also concluded that

> There is little evidence before me concerning the impact of gang activity on the applicant's family on a daily basis, though it is reasonable to conclude that they are required to be vigilant about safety as are other residents of El Salvador.

[65] The Applicant's daughter, Yancy, now says that she and her brothers are being threatened with death if they don't join the gang, but there are no specifics.

[66] So, in my view, there is no new probative evidence of hardship to the Applicant which the Officer failed to address in the addendum to his initial Decision, and the situation of the children – as regards threats from the Maras – was dealt with as part of the best interests analysis:

> [I] accept and have considered that adverse country conditions exist and that the applicant's children, along with the population in general are exposed to risk inherent to these conditions.
>
> [W]hile exposure to the country conditions in El Salvador may not be in the applicant's children best interests, with this application she is seeking an exemption to remain in Canada to facilitate processing of her application for permanent residence. Should the applicant return to El Salvador to apply for permanent residence in the usual manner, she will be united with her children and in a position to provide them care and support."

[67] If the Applicant remains in Canada to complete her permanent residence application, this does not assist the children in dealing with whatever present threats they may face from the gang. And, if the Applicant wishes to bring the children to Canada eventually, she can do that as part of her permanent residence application from El Salvador just as well as from Canada.

[68] In the context of this assessment, I cannot say that the Officer's treatment of the Ventura letter or the affidavits of Ventura and the children – given their contents – fall outside of the range of possible, acceptable outcomes which are defensible in respect of the facts and the law. See *Dunsmuir*, above, at para 47. And this means that, notwithstanding my considerable sympathy for the Applicant and her children, I cannot intervene and quash this Decision.

[69] The Applicant also says that the Decision is unreasonable in that the Officer overlooked evidence dealing with her inability to find work in El Salvador. In particular, she refers the Court to a letter from her mother which says in translation

> I ask God for you not to return, just thinking of you looking for work and that you will not find any because the gangs do not even let you work, your sister and I do not even know what to do anymore, the gangs come around asking for Rent to those who work…

[70] This letter is undated but, more importantly, it contradicts itself. It says the gangs don't let "you" work – and we don't know who "you" is here, it sounds like people in general – but then says that the gangs collect "rent" from people who work. This is not cogent evidence that the Officer had to specifically address in accordance with the principles in *Cepeda-Gutierrez,* above. The evidence from the Applicant's mother on this issue speaks mostly in generalizations and does not tell the Officer about particular circumstances that could prevent the Applicant from working.

[71] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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