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Dockets: IMM-2340-13
IMM-2873-13

Citation: 2014 FC 772

Ottawa, Ontario, August 1, 2014

PRESENT: The Honourable Mr. Justice Russell

Docket: IMM-2340-13

BETWEEN:

JUDE NICOLE JUDY CHARLES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

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and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

INTRODUCTION

[1] These are applications under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of two decisions of a Senior Immigration Officer [Officer] refusing the Applicant's application for permanent residence from within Canada on humanitarian grounds [H&C Application]. The first, dated February 27, 2013, refused the H&C Application [Initial Decision] and the second, dated March 26, 2013, refused the Applicant's request to have the Initial Decision reconsidered [Reconsideration Decision].

BACKGROUND

[2] The Applicant is a citizen of Grenada who came to Canada in 1999 after suffering severe abuse at the hands of her former domestic partner. She has three children who remain in Grenada – daughters aged 22 and 20 and a son who is 16-years-old – and one Canadian-born daughter who is now six-years-old. The Applicant initially came to Canada on a visitor's visa. She remained here without status after its expiry until she applied for permanent residence on H&C grounds in May 2011.

[3] The Applicant provided a Statutory Declaration in support of her H&C Application which outlines her experiences in Grenada. She was abandoned by her mother at birth, and was

raised by her maternal grandmother, who abused and neglected her. She met her father for the first time when she was 13-years-old, but he was murdered a short time later.

[4] When the Applicant was 14-years-old, she was befriended by a 25-year-old man named Leon. She stayed at his home one night when her grandmother locked her out of the house, and he raped her. She continued to see him afterward, as she believed the sexual assault was her fault and he was the first person to really show an interest in her.

[5] At 16-years-old, the Applicant became pregnant and had to quit school. She went to stay with Leon and his family, who were very abusive towards her. Things became worse after her first daughter was born and she and Leon moved to another house. Leon became physically abusive, and physically and sexually assaulted her many times. He controlled her movements, and threatened to kill her if she left him. They had two more children together – another daughter and a son – and Leon was abusive towards the children as well.

[6] In 1999, at age 25, the Applicant came to Canada at the suggestion of her uncle, a Canadian citizen, who was aware of the abuse she was suffering. She was unable to bring her children, and left them with Leon's mother. The Applicant has supported the children by sending money, food and clothing, but says they have continued to be abused and neglected. When the money she sends runs out, they have to go without food. The girls are sexually harassed by their male cousins who live in the same home, and are hit and punched when they refuse to have sex with them. Leon's sister's boyfriend attempted to rape one of the girls and she narrowly escaped. The Applicant's son was beaten with a cutlass on his back to "discipline" him.

[7] The Applicant stated in her Statutory Declaration that she hoped to sponsor her children to come to Canada at the earliest opportunity in order to give them a better life. If sent back to Grenada, she said she would not be able to support her family and herself, since the cost of living is high and the job market is not good. She has no family there with whom she remains in contact, but is close to her relatives who are in Canada, including her uncle and his family, an aunt and a cousin. She has worked full-time at the Dara Residence, a home for individuals with mental illness, since two weeks after her arrival in Canada, and has done other jobs and volunteer work as well.

[8] The Officer's Initial Decision was issued on February 27, 2013, refusing the H&C Application. The day before, on February 26, 2013, the Applicant had seen a clinical psychologist to undergo a psychodiagnostic evaluation. The Applicant's counsel submitted the Psychodiagnostic Evaluation Report on March 13, 2013, and requested that the Officer exercise his or her discretion to reconsider their decision. After doing so, the Officer issued the Reconsideration Decision confirming that the H&C Application was refused.

DECISION UNDER REVIEW

[9] The Officer considered the Applicant's establishment in Canada, the best interests of the children affected by the decision, and "risk and adverse country conditions" that could result in hardship to the Applicant. The Officer noted that the Applicant bore the onus of satisfying the decision-maker that her personal circumstances were such that the hardship of having to obtain a permanent resident visa from outside Canada would be either unusual and undeserved or disproportionate.

[10] With respect to the Applicant's establishment in Canada, the Officer noted that she came to Canada when she was 25-years-old and began working almost immediately at the Dara Residence. She had provided letters confirming her employment history and the training she had received, but did not provide information about her income or fiscal management within Canada. The evidence showed she had upgraded her skills while in Canada, and letters from extended family attested to her hardworking nature.

[11] The Officer found that while the Applicant's education and employment reflected positively on her, the evidence did not indicate that she would be unable to find employment or gain education in Grenada. While it would be difficult for her to leave Canada after 12 years, she had knowingly remained and worked here after the expiry of her visitor status, and it could not be said that the resulting hardship was not anticipated by the Act. The Officer quoted *Serda v Canada (Minister of Citizenship and Immigration)*, 2006 FC 356 at para 21, where Justice de Montigny observed: "[i]t would obviously defeat the purpose of the Act if the longer an applicant was to live illegally in Canada, the better his or her chances were to be allowed to stay permanently, even though he or she would not otherwise qualify as a refugee or permanent resident." The Officer found that the evidence did not demonstrate that the Applicant has integrated into Canadian society to the extent that her departure would cause unusual and undeserved or disproportionate hardship. She had gained work experience in Canada that was transferable to her home country, and her knowledge of the culture would assist in her re-establishment.

[12] The Officer found that the Applicant had two children who met the definition of a child, being under the age of 18. One was 15-years-old and living in Grenada, and the other was a Canadian citizen. The Applicant had supported her children for the duration of her time in Canada. Letters from the children in Grenada showed they lived with their father but their home life was not comfortable. They had been verbally and physically abused by their father and other family members, and wished to come to Canada to reunite with their mother. With respect to the Applicant's Canadian-born daughter, the Officer observed:

> The applicant informs that her Canadian born daughter Elisha's father resides in Canada in Toronto. Further information related to him has not been provided. I note in letters from the applicant's children in Grenada it is implied that the applicant has maintained a relationship with the man. Information to support that he would be unwilling to support his daughter in Canada or in Grenada has not been provided. I note that the child is a Canadian citizen and not subject to a removal order, it would be a parental decision if the applicant wishes to have her daughter accompany her to Grenada.

[13] Later in the Officer's reasons, he or she added the following regarding the best interests of the children:

> While I note it will be a difficult personal decision related to her Canadian born daughter, I also note that she is young and it would be reasonable that she could adapt to living in Grenada with the support of her mother. The applicant has three children who have outlined they have suffered without their mother and it is reasonable that they would welcome their mother's return and assist her in her re-establishment, if only emotionally.

[14] With respect to adverse country conditions, the Officer noted that the Applicant had submitted a number of articles discussing the prevalence of gender-based violence in Grenada. They indicated that limited resources were available for victims of domestic violence. The

Officer observed that the Applicant had "not outlined that she attempted to seek protection while in Grenada."

[15] The Officer also conducted independent research on country conditions in Grenada using publicly available sources. He or she found that the Royal Grenada Police Force "generally was effective at responding to complaints and maintained a community policing program," and that

> A new Domestic Violence Bill expanded protection provisions to victims. Police and judicial authorities acted promptly in cases of domestic violence. Under-reporting of crimes remained an issue in the country. In 2003, the Ministry of Social Development created the Domestic Violence unit, to address the issue of domestic violence. Shelters have been built in the country to provide support to women and children fleeing abusive relationships.

[16] The Officer found that while country conditions in Grenada might not be as favourable as in Canada, the evidence did not indicate that the Applicant will face a risk in her home country of unusual, undeserved or disproportionate hardship. The Officer observed that the H&C process is not designed to eliminate hardship, and the fact that Canada is a more desirable place to live than the country of return is not determinative of an H&C assessment.

[17] The Officer found that, individually and cumulatively, the above factors were not sufficient to warrant an exemption. The Applicant had "not demonstrated that her personal circumstances are such that the hardship of not being granted the requested exemption would be unusual and undeserved or disproportionate, and not anticipated by the legislation."

[18] In issuing the Reconsideration Decision, the Officer added an Addendum at the end of the reasons outlined above. The Addendum noted the Psychodiagnostic Evaluation Report

showing that "the psychologist found through testing that the applicant has post-traumatic stress disorder and suffered from depressive symptomology." The psychologist recommended 12-16 cognitive behavioural therapy sessions and a referral to see if medication would help. The Officer then provided the following analysis:

> I note that the applicant did not present these mental health issues at the time of her original application and she did not indicate that she had planned to receive counselling.
>
> A statement from the applicant informing of her intention to follow the suggested treatment plan has not been provided. Evidence to support that the applicant would be unable to receive treatment for mental health issues in Grenada has not been provided. The onus is on the applicant to provide evidence to support her application.
>
> Based on the evidence before me I find that my negative decision remains unchanged, the applicant has not demonstrated that her personal circumstances are such that the hardship of not being granted the requested exemption would be unusual and undeserved or disproportionate, and not anticipated by the legislation.
>
> The application is refused.

ISSUES

[19] With respect to the Initial Decision, the Applicant raises the following issue:

a. Does the Officer's best interests of the child analysis contain reviewable errors?

[20] With respect to the Reconsideration Decision, the Applicant raises the following issue:

b. Does the Officer's hardship analysis contain reviewable errors?

STANDARD OF REVIEW

[21] 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.

[22] The Federal Court of Appeal has recently confirmed that a standard of reasonableness applies when reviewing an officer's decision under s. 25(1) of the Act. This includes the Court's review of the Officer's interpretation of s. 25 of the Act and the test or legal principles to be applied in making H&C decisions: see *Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 30 and *Lemus v Canada (Citizenship and Immigration)*, 2014 FCA 114 at para 18.

[23] However, as I have recently set out in two other cases dealing with s. 25 of the Act (see *Blas v Canada (Citizenship and Immigration)*, 2014 FC 629 at paras 17-20; *Ainab v Canada (Citizenship and Immigration)*, 2014 FC 630 at para 18), the range of reasonable outcomes available to the officer is constrained by the established principles set out in the jurisprudence regarding s. 25(1): see *Canada (Transport, Infrastructure and Communities) v Farwaha*, 2014 FCA 56 at para 95; *Canada (Attorney General) v Canadian Human Rights Commission* (sub nom *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*), 2013 FCA 75 at paras 13-19; *Mills v Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 436 at para 22; *Canada (Attorney General) v Abraham*, 2012 FCA 266

at paras 41-49; *Canada (Attorney General) v Pictou Landing First Nation*, 2014 FCA 21 at para 26; see also *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 37-41. In other words, it will normally be unreasonable to depart from the well-established tests and legal principles set out in the jurisprudence on s. 25(1), though the Court must still consider, in light of that case law, whether the decision-maker's approach was reasonable in the circumstances of the case.

[24] 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

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

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
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	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

who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — 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.

résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — 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.

[…]

[…]

Non-application of certain factors

(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.

Non-application de certains facteurs

(1.3) Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

ARGUMENT

Applicant

Initial Decision: Best Interests of the Child Analysis

[26] The Applicant argues that an officer making an H&C decision is required to consider the best interests of a child directly affected, and in doing so, has an obligation to consider: 1) what is in the child's best interests; 2) the degree to which the child's interests are compromised by one potential decision over another; and 3) in light of the foregoing assessment, determine the weight that this factor plays in the ultimate balancing of positive and negative factors assessed in the H&C application: *Sun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 206 at para 44 [*Sun*]; see also *Williams v Canada (Minister of Citizenship and Immigration)*, 2012 FC 166 at para 63.

[27] The Applicant says this analysis is separate from the broader threshold standards that apply to H&C decisions, and officers must be "alert, alive and sensitive to the best interests of the child": *Uo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 557 at para 43; *Sun*, above. A brief analysis providing "lip service" to the relevant factors in not adequate: *Duka v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1071. Rather, a child's best interests must be "well-identified or defined" (*Judnardine v Canada (Minister of Citizenship and Immigration)*, 2013 FC 82 at para 48), consideration must include the interrelationship of the relevant factors (*Guadeloupe v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1190 at paras 31-33; *Thomas v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1517; *Beharry v Canada (Minister of Citizenship and Immigration)*, 2011 FC 110); and there must be a "meaningful critical analysis" of the best interests of the children affected: *Kolosovs v*

Canada (Minister of Citizenship and Immigration), 2008 FC 165 at paras 11-12, 14. The analysis must be focused on the child him or herself, as opposed to the impact on his or her family members: *Aliev Canada (Minister of Citizenship and Immigration)*, 2008 FC 925 at para 9. The assessment of the child's best interests is not to be wrapped up in the officer's analysis of hardship resulting from the parents' removal, and there is no legal basis for incorporating a burden of irreparable harm or undue hardship into the consideration of the best interests of the children: *Mangru v Canada (Minister of Citizenship and Immigration)*, 2011 FC 779 at paras 23-24; *Sinniah v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1285. Children are not separately represented in H&C proceedings, and the role of an officer is akin to that of *parens patria*, particularly when the child is a Canadian citizen and his or her parents are not: *Sebbe v Canada (Minister of Citizenship and Immigration)*, 2012 FC 813 at para 13.

[28] The Applicant argues that these legal requirements were clearly not met in this case. She submitted that it was in Elesha's best interests to remain in Canada with her, and that it was not viable for the child to remain in Canada without her, as the Applicant is her only caregiver. In addition, the Applicant noted that Elesha's relationship with her father would be severed if she were to accompany her mother to Grenada. Despite these submissions, the Officer had very little to say about Elesha. One cannot point to anything that suggests he or she fully analyzed what Elesha's interests were. This is similar to the errors that occurred in *Walker v Canada (Minister of Citizenship and Immigration)*, 2007 FC 600, *Sepulveda Soto v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1524, and *Walker v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1309. In the latter, the officer failed to address the best interests of the applicant's Canadian-born child and "merely addressed the mother's choice" regarding whether

to bring the child with her if deported (see para 3). The Applicant says the same error occurred here.

[29] The Officer also failed to engage with the country conditions in Grenada from the child's perspective, including high levels of violence against women, serious issues of child abuse, and deficiencies in education including the continued use of corporal punishment in schools: United States Department of State, *2011 Human Rights Report: Grenada* (May 24, 2012), Application Record at p. 118; United Nations Human Rights Committee Report (2009), Application Record at p. 100. The Applicant says this evidence should have raised serious concerns about Elesha's well-being in Grenada, but the Officer either ignored these facts or failed to explain why they were not adverse to Elesha's best interests, and therefore failed to be alert, alive and sensitive to the child's interests: *Elenes Gaona v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1083 at para 10.

[30] In the present case, the Applicant argues, the Officer failed to even recognize the relevant concerns, simply observing that "[w]hile… it will be a difficult personal decision related to [the Applicant's] Canadian born daughter, I also note that she is young and it would be reasonable that she could adapt to living in Grenada with the support of her mother." The Decision did no more than pay lip service to the best interests of Elesha. The Officer did not identify what was in her best interests, much less weigh the degree to which they would be compromised by denying the H&C Application. The analysis is so deficient that it appears the wrong legal test was applied.

[31] The Applicant also argues that the Officer erred in his or her analysis regarding the children who live in Grenada. For one thing, Shawntell was only 17-years-old when the H&C Application was submitted, and her interests should have been considered. The Officer's failure to do so is a reviewable error. The Minister's publicly available Guidelines state that the interests of children who are under the age of 18 when the application is submitted should be considered, and this creates a legitimate expectation that they will be: see *Noh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 529 at para 65. Moreover, the Court has held that children aged 18 and older may still be considered children for the purposes of an H&C application: *Naredo v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1250, 187 FTR 47 (TD); *Swartz v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 268; *Yoo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 343; *Ramsawak v Canada (Minister of Citizenship and Immigration)*, 2009 FC 636.

[32] While the Officer accepted that the Applicant's son Loxley, now 16-years-old, was a child whose interests were to be considered, the analysis of his interests was also deficient. First, the Officer was incorrect in stating that the children live with their father, as the record clearly shows the children live with their father's abusive mother. Second, by considering only that the Applicant's return to Grenada would be "welcomed" by her children – which in itself is not so simple due to their reliance on her financial support from Canada – the Officer failed to consider the alternative scenario of the family reuniting in Canada, which was a reviewable error: see *Kobita v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1479 at para 53 [*Kobita*]. The scenario of the Applicant's children being reunited with her in Canada should have been

weighed and balanced against the scenario considered by the Officer of the Applicant being deported to Grenada.

[33] While acknowledging that there is no "magic formula" for H&C decisions, as argued by the Respondent, the Applicant says that recent case law sets out very clear standards when it comes to analysing the best interests of the child, and the Officer failed to meet these standards.

[34] With respect to the argument that the Officer was entitled to give "limited weight" to certain evidence regarding Elesha's best interests, as outlined below, the Applicant argues that the Officer was not entitled to give limited weight to this evidence unless he or she first considered it, which the Officer failed to do.

Reconsideration Decision: Hardship Analysis

[35] The Applicant notes that in the Initial Decision, the Officer consulted two publicly available country condition documents, and recounted some general information about Grenada, including information about protections for victims of domestic violence. The Applicant requested reconsideration of that Initial Decision based on a psychological assessment in which Dr. Donna Ferguson, a Clinical Psychologist specializing in Post Traumatic Stress Disorder and Anxiety Disorders, diagnosed her with Major Depressive Disorder and Post Traumatic Stress Disorder precipitated by the sexual, physical and emotional abuse she experienced in Grenada. The Applicant highlights the following finding from that report:

> This information taken together indicates a significant risk to Ms. Charles' current psychological condition if she were further exposed to traumatic stress (such as being sent back to her country and subjected to further physical, sexual and emotional abuse).

> Thus, it would be extremely detrimental to Ms. Charles' mental health and cause further deterioration to her already fragile psychological condition and impede her from adequately caring for herself and her children.
>
> See Certified Tribunal Record in IMM-2873-13 at p. 20

[36] The Applicant argues that the Officer's reasons set out in the Addendum reveal that he or she failed to adequately consider the Applicant's personal circumstances. First, the Officer did not grapple with the horrendous abuse and neglect the Applicant experienced in Grenada. Second, the Officer ignored the fact that the Applicant's fragile mental health will further deteriorate upon removal, impeding her from caring for herself and her children. This means that the Officer failed to adequately engage with the implications of removal for the Applicant, and whether the hardship associated with removal would be disproportionate in her personal circumstances: *Rajanayagamv Canada (Minister of Citizenship and Immigration)*, 2012 FC 1443 at para 7.

[37] The Applicant says the Officer failed to consider the impact on the Applicant of re-exposure to trauma, instead focusing solely on the lack of evidence regarding the availability of mental health services in Grenada. This analysis failed to address the core issue, which was that re-exposure to the very trauma the Applicant left Grenada to avoid would cause a significant deterioration in her mental health symptoms. No amount of counselling would remedy this as long as the source of the trauma was ongoing.

[38] The Applicant argues that it is an error to minimize or mischaracterize medical evidence (*Mings-Edwards v Canada (Minister of Citizenship and Immigration)*, 2011 FC 90; *Damte v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1212 at paras 16, 33-34 [*Damte*]),

and that the Officer did so in the present case. As in *Damte*, the Officer failed to adequately consider the purpose for which the psychiatric evidence was introduced, which was to show the psychiatric impact that removal would have on the Applicant.

[39] The Applicant says that, as in *White v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1043, the Officer here minimized the hardship she will face if removed from Canada. She has no family or ability to support her children in Grenada, and will have four dependants to care for, all while living in constant fear of her ex-partner and experiencing serious mental health consequences upon removal. All of this was ignored by the Officer, who focused on how the Applicant's work experience in Canada would assist her in seeking employment in Grenada.

[40] The Officer also quoted selectively from the country condition documents, citing a report that said the police were generally responsive to domestic violence victims but failing to cite another report stating that domestic violence is a serious problem and sexual violence against women is pervasive and underpinned by widespread sexual harassment. By focusing only on the positive aspects of the country conditions and ignoring the negative, the Officer minimized the hardship to the Applicant. It was incumbent on the Officer to consider the hardship on the Applicant in light of the realistic situation on the ground in Grenada, particularly on reconsideration when presented with significant new information regarding the Applicant's mental health.

[41] The Applicant disagrees with the Respondent's submission that it is sufficient for the Officer to acknowledge the existence of a discretion to reconsider and exercise it. Rather, once

an officer recognizes the discretion to reconsider, the resulting decision becomes reviewable on a standard of reasonableness. Furthermore, "to the extent that the Officer's original reasoning is carried into the refusal to reconsider, it is subject to consideration and review": *Herdoiza Mancheno v Canada (Minister of Citizenship and Immigration)*, 2013 FC 66 at para 17.

Respondent

Initial Decision: Best Interests of the Child Analysis

[42] The Respondent argues that the Officer's reasoning was alert, alive and sensitive to the interests of the children. The Officer balanced these interests, but did not find them to be dispositive: *John v Canada (Minister of Citizenship and Immigration)*, 2012 FC 96 at para 20. An officer's weighing of the evidence is entitled to considerable deference: *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 11.

[43] In making H&C decisions, "immigration officers are not bound by any magic formula in the exercise of their discretion": *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at paras 5-7 [*Hawthorne*]. Moreover, the object of giving reasons is to show why the decision was made, not how. It does not require setting out every finding or conclusion in the process of arriving at the decision in a "watch me think" fashion: *R v REM*, 2008 SCC 51 at paras 17-18. The Officer was not required to parse every aspect of the best interests analysis or make separate findings on the weight to be given to each factor. The issue for the reviewing Court is whether the Decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3.

[44] The Respondent says that no evidence was presented regarding the Canadian-born child's father. While the Applicant's H&C submissions were generally detailed and thorough, minimal evidence was provided regarding the effect of moving to Grenada on her Canadian-born child's interests, including the impact on the child's relationship to her father. The H&C submissions state only that he "lives in Toronto" and if the child were to move to Grenada their relationship "would be severed." The submissions provide no details on the nature or the extent of the relationship at the time of the application. As such, there was an insufficient evidentiary basis for the Officer to determine the consequences of the child moving to Grenada.

[45] H&C decisions are not rendered in a vacuum, the Respondent submits, and it is well-settled that the onus lies with applicants to lead evidence on the best interests of their children and how they will be affected by removal. Information which is "oblique, cursory and obscure" does not impose a positive obligation on the officer to inquire further about the best interests of the children. Applicants omit pertinent information from their written submissions at their peril: *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paras 7-9.

[46] The Officer considered two potential outcomes if the Applicant were removed: the child could travel to Grenada with her, or remain in Canada, presumably with her biological father. While family separation would be difficult, the Officer was not persuaded that the child's interests required the Applicant to remain in Canada.

[47] If there is a close relationship between the child and her father, presumably he will continue to support her and maintain a connection in Grenada, the Respondent says. However, in

the absence of any information, the Officer could not speculate on the consequences of the child moving to Grenada.

[48] The Applicant's argument that the Officer failed to consider the impact of adverse country conditions on Elesha is in substance a challenge to the Officer's weighting of the evidence. There is no *prima facie* presumption that the children's interests should prevail and outweigh all other considerations. Moreover, inquiry is predicated on the premise – which need not be stated – that absent exceptional circumstances the child's best interests will weigh in favour of the non-removal of the parent. Requiring the Officer to state this is artificial, since such a finding will be made in all but a very few, unusual cases: *Hawthorne*, above, at paras 5-6. The Officer cannot be faulted for not making a superfluous finding. Assuming that conditions in Canada would be more favourable for this child, and that it would be in her interests to remain in Canada along with her mother, this was merely one factor for the Officer to weigh in coming to his or her overall conclusion. Absent some particular evidence that conditions in Grenada would be especially significant for the Applicant's daughter, the Officer was entitled to give this factor limited weight.

[49] As for the Applicant's children in Grenada, the Officer accepted that they were poorly cared for by their paternal family and rely on the Applicant's financial assistance, but found that "they would welcome their mother's return and assist in her re-establishment, if only emotionally." Since the Applicant argues that her children in Grenada are being mistreated by relatives there, it was open to the Officer to find that her return to care for them would not be detrimental to their interests.

[50] The Respondent argues that the Officer engaged with the evidence and weighed the factors raised. He or she considered the best interests of the children, but found that they did not compel a positive decision, which was a conclusion reasonably open to the Officer. An applicant is not entitled to an affirmative result on an H&C application simply because the best interests of a child favour that result: *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 24. There were no exceptional medical or personal issues raised regarding the children.

Reconsideration Decision: hardship analysis

[51] The Respondent argues that an officer considering a request to reconsider has a limited role, as stated by the Court of Appeal in *Kurukkal v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 230 at para 5:

> [5] The judge directed the immigration officer to consider the new evidence and to decide what, if any, weight should be attributed to it. In our view, that direction was improper. While the judge correctly concluded that the principle of functus officio does not bar a reconsideration of the negative section 25 determination, the immigration officer's obligation, at this stage, is to consider, taking into account all relevant circumstances, whether to exercise the discretion to reconsider.
>
> [Respondent's emphasis]

A reconsideration decision is essentially a "screening exercise" to determine whether or not to exercise the discretion to reconsider. There is no general duty to reconsider an application upon the receipt of new information, and no duty to provide detailed reasons for deciding not to do so: *Trivedi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 422 at para 30. If the officer acknowledges their discretion to reconsider and conducts at least a "preliminary vetting"

of the new evidence, they have fulfilled their obligation. A full review on the merits is not required, and an applicant is not entitled to a second full set of reasons.

[52] The Respondent argues that the Applicant's challenge to the Officer's findings goes beyond the narrow scope of a request to reconsider. The Applicant seeks to re-litigate the issues determined in the Initial Decision, but that is not the function of a reconsideration decision. Where an officer acknowledges the existence of a discretion to reconsider, and exercises it, the decision is sufficient.

[53] The decision on a request to reconsider is separate from the substantive decision and must be challenged separately: *Marteli Medina v Canada (Minister of Citizenship and Immigration)*, 2010 FC 504 at para 32. As such, the Respondent argues, the Applicant's arguments regarding material that was considered in the Initial Decision (i.e. the country condition evidence) should not be considered in relation to the Reconsideration Decision.

[54] The only issue was whether the new evidence on the Applicant's mental state mandated a reconsideration of the Initial Decision, the Respondent says. The Officer carefully reviewed the psychologist's report, which contained a tentative diagnosis and a recommendation for further treatment. The Officer considered this, and found that there was no evidence the Applicant would be unable to get treatment for her mental health issues in Grenada. This was a reasonable conclusion: *Mooker v Canada (Minister of Citizenship and Immigration)*, 2007 FC 779 at para 23. Without more, the new evidence did not require a reconsideration on the merits. The Officer

turned his or her mind to the evidence and exercised his or her discretion in finding that it did not justify a reconsideration. This does not constitute a reviewable error.

ANALYSIS

[55] The portion of the Decision dealing with the best interests of the children reads as follows:

> The applicant has two children who meet the definition of a child, specifically that are under the age of 18. One is 15 years old and lives in Grenada the other is five years old and is a Canadian citizen.
>
> The applicant informs that she provided for her children for the duration of her time in Canada. The applicant has submitted four copies of money transfers sent via Western Union. The transfers are dated within 2006-2010 and are for varying amounts.
>
> Letters from her children written in Grenada outline that they reside with their father but that their home life is not comfortable. They inform that their father does not provide for them financially and they rely on the money sent by their mother. They also outline that they have been verbally and physically abused by their father and other family members with whom they have lived with in Grenada. The letters all state that they wish to come to Canada to unite with their mother.
>
> The applicant informs that her Canadian born daughter Elisha's father resides in Canada in Toronto. Further information related to him has not been provided. I note in letters from the applicant's children in Grenada it is implied that the applicant has maintained a relationship with the man. Information to support that he would be unwilling to support his daughter in Canada or in Grenada has not been provided. I note that the child is a Canadian citizen and not subject to a removal order, it would be a parental decision if the applicant wishes to have her daughter accompany her to Grenada.
>
> This assessment has been alive and alert to the best interest of the child. I am satisfied that I have considered all factors related to the applicant's children.

[56] The law is clear that the best interests of the child need not necessarily be paramount and need to be weighed against the other considerations at play in the Decision. It is also clear that the onus is on the Applicant to provide the materials and submissions necessary for the best interests of the children analysis. It is also well-established that, in most cases, it can be assumed that children will be better off in Canada. See *Hawthorne*, above, at para 5.

[57] The Officer makes mistakes of fact (there were at least three children who met the definition of child, and the children in Grenada do not reside with their father) but the main point of difficulty is that, given the evidence before the Officer about the horrendous conditions under which the children in Grenada live (referred to by the Officer as verbal and physical abuse) and the general climate of violence in Grenada, this best interests of the children analysis is not adequate.

[58] The Officer leaves out of account the sexual abuse and persistent sexual harassment that the girls in Grenada have had to face from family members there, quite apart from the severe physical abuse under which, and the awful domestic situation in which they are forced to live. And the Officer doesn't explain how she thinks young Elesha is going to cope in this environment, even with the support of her mother. It can perhaps be implied that the Officer believed that the Applicant's return to Grenada will remove the problems that the children face there, and that the Applicant will somehow be able to find a job to support herself and all of her children there, but these matters are not adequately articulated and explained. I am not convinced the Officer was alert and alive to the best interests of the children.

[59] It is interesting that the Officer reviews his or her own Decision and feels compelled to declare that "[t]his assessment has been alive and alert to the best interests of the child. I am satisfied that I have considered all factors related to this Applicant's children." Well, the Court is not "satisfied."

[60] Before the best interests of the children can be weighed against the other factors at play, the Officer must provide a reasonably realistic assessment of what the children are facing. In this case the potential for severe physical abuse, constant sexual harassment, and general social violence are not adequately acknowledged and assessed. The conclusion that the Applicant's return will somehow alleviate the conditions which the children in Grenada face and that young Elesha will simply adapt to this awful environment is not a reasonable best interests of the children assessment.

[61] I agree with the Applicant that the Officer fails to engage with the situation in Grenada from the perspective of the children. Quite apart from the horrendous family situation, the record shows high levels of general violence against women, serious issues of child abuse, and deficiencies in the education system, including the use of corporal punishment in schools. The Officer also fails entirely to consider the alternative scenario of uniting this family in Canada. As Justice Kane pointed out in *Kobita*, above:

> [53] Finally, as noted in *Cordeiro*, the officer may weigh the pros and cons or the impacts of different scenarios, but the officer should not ignore or fail to consider one of those scenarios, i.e. how the best interests of the children could also be addressed by reuniting the family in Canada. Given that the family's goal in pursuing the application was to be together in Canada, that scenario should have been considered to determine if the best interests of the children could be met and then weighed or

> balanced against other scenarios. Based on the record before the Court, the officer failed to consider the alternatives in her assessment of the children's best interests.

[62] I am not convinced that the Officer was alert, alive and sensitive to the best interests of these children. As a consequence, this Decision is unreasonable because no weighing and balancing with other factors could occur without a realistic and adequate assessment of the best interests of the children

[63] My conclusion that this matter must be returned for reconsideration renders the application to review the reconsideration under IMM-2873-13 moot and obviates the need for further analysis.

[64] Counsel agree there are no questions for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application in IMM-2340-13 is granted. The Decision is quashed and the matter is referred back for reconsideration by a different Officer.

2. The application in IMM-2873-13 is dismissed for being moot.

3. There are no questions for certification.

4. A copy of these reasons and judgment will be placed on both IMM-2340-13 and IMM-2873-13.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2340-13
STYLE OF CAUSE:	JUDE NICOLE JUDY CHARLES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-2873-13
STYLE OF CAUSE:	JUDE NICOLE JUDY CHARLES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 26, 2014
REASONS FOR JUDGMENT AND JUDGMENT:	RUSSELL J.
DATED:	AUGUST 1, 2014

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