Federal Court  Cour fédérale

Date: 20180606

Docket: IMM-4659-17

Citation: 2018 FC 585

Ottawa, Ontario, June 6, 2018

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

CHRISTOPHER GREGORY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Christopher Gregory [the Applicant] applies for judicial review of a decision made by Senior Immigration Officer Anne Dello [the Officer] on October 18, 2017 refusing to grant the Applicant's in Canada permanent residency application made on Humanitarian and Compassionate grounds [H&C Application].

[2] On review I have decided to grant the judicial review.

II. **Facts**

[3] The Applicant is a 57 year old man who was born in Jamaica and has Jamaican citizenship.

[4] The Applicant came to Canada in 1981 to visit his mother. The Applicant then travelled to the USA where he applied for a Canadian student visa and re-entered Canada beginning studies as an electrical technician. The Applicant left school in 1985 and began doing construction related work followed by an electrician apprenticeship.

[5] The Applicant married his first wife in 1986. His first wife sponsored him for Canadian permanent residency which he received on June 29, 1987. The Applicant and his first wife did not have children and divorced in 1989. Around 1989 the Applicant met the woman who later became his second wife. The Applicant married his second wife on July 4, 1992 becoming the step-father of the second wife's daughter Stephanie (who was 6 years old at the time and is now 32). The Applicant and his second wife had one child together, Nicole, who is now 28 years old.

[6] The Applicant continued to work in the electrical business and had a large business with a number of employees. In 1996 a project the Applicant had been subcontracted to do the electrical work on ran into difficulties due to another subcontractor's deficient work (requiring work to be redone) and eventual financial default by the general contractor. As a result of these issues the Applicant was unable to pay his employees and suppliers placing him in financial crisis.

[7] The Applicant sold most possessions and lost his house and vehicles. This lead to a family breakdown with the Applicant separating from his second wife (although they have not divorced) and the Applicant being ordered to not contact her. During this period the Applicant was homeless and was charged with probation violations (later withdrawn) that caused him to spend some time in jail (the conviction that gave rise to probation was later pardoned).

[8] The Applicant then moved in with a friend and worked out a custody arrangement with his second wife. In 1998 the Applicant met and started a relationship, and supply company, with a woman. They bought a house together in Fort Erie around 1999 and the Applicant continued to see his daughters while also becoming involved in the hobby of kite flying. Unfortunately the supply business of the Applicant and this woman slowed down in 2001-2003 and they were forced to sell off inventory and eventually their house.

[9] Living in a border town the Applicant had connections in both Canada and the United States [US] and began doing renovation work in both countries starting in 2003. Although most of this work was in the US the Applicant made certain that he remained in Canada for sufficient days to maintain his permanent residency.

[10] While living in the US (Buffalo) the Applicant states he became involved with the party lifestyle, consuming alcohol in excess and using illegal drugs. This resulted in the Applicant being charged in 2007 and pleading guilty to a US charge related to cocaine possession. The Applicant also failed to comply with his probation (missing a community service requirement) and a warrant was issued for his arrest in May 2008.

[11] In the fall of 2008 the Applicant had sexual relations with a 15 year old female who was his neighbour. As a result of this the Applicant was arrested, charged and plead guilty to the US charge of Attempted Criminal Sexual act in the 3rd degree. The Applicant was sentenced on April 2, 2009 to time served (a little over 5 months of custody) for this charge and for the probation violation.

[12] The Applicant was then held in US immigration detention and subsequently deported to Canada in June 2009. Upon return to Canada the Applicant was held in immigration detention and was found inadmissible by the Immigration Division [ID] of the Immigration Refugee Board [IRB] on July 16, 2009 (the Applicant having conceded the facts surrounding his offence). As a result of this inadmissibility finding the Applicant lost his permanent residency status and was placed under a deportation order.

[13] The Applicant was released from immigration detention on July 24, 2009 as a result of his mother posting a $5000 bond and then went to live with his mother and began reconnecting with his daughters and now grandchildren (Stephanie has a son, and Nicole has a daughter).

[14] The Applicant appealed his inadmissibility finding to the Immigration Appeal Division [IAD] to have H&C factors considered however the IAD upheld the ID's inadmissibility finding. The Applicant also discussed in his H&C Application how the person he chose to assist him (who was not a lawyer, paralegal or immigration consultant) provided ineffective assistance.

[15] The Applicant had continually reported since his initial release from immigration detention however he failed to report once in December 2011 and then again in February 2012. As a result of these failures to report an immigration warrant was issued for the Applicant.

[16] On June 16, 2012 while leaving the Don Mills TTC Station the Applicant tripped and fell face first resulting in sudden vision loss. The paramedics and police arrived with the Applicant being treated and then arrested for his outstanding immigration warrant. According to the Applicant, his eye pain continued in custody, with some vision returning and then disappearing. Although he raised these concerns he states he was not taken to receive medical treatment until August 15, 2012. The Applicant has been recognised as legally bind due to glaucoma after this incident with total vision loss in his left eye and only a small amount of vision remaining in his right eye.

[17] The Applicant continued to be held in immigration detention from the June 2012 incident until April 3, 2013 when the Toronto Bail Program was able to assist with his release.

A. *The H&C Application*

[18] The Applicant's H&C Application was received by the Respondent on December 2, 2016.

[19] In his submissions the Applicant raised his establishment in Canada, lack of connection to Jamaica, the Best Interests of the Child [BIOC] (his grandson), his close relationship with family and friends in Canada, and his medical condition. The Applicant pointed to the help he receives from family and friends due to his vision deficiencies and to all of the accessibility accommodations in Toronto for those with vision impairment, which do not exist in Jamaica.

[20] In his submissions on the issue of inadmissibility the Applicant clearly accepts responsibility for his past illegal conduct, expresses remorse for what he did, and outlines his change in behaviour.

[21] In regard to establishment the Applicant notes his past employment and hobbies in Canada and his close relationship to his friends and family (for which numerous letters were provided). The Applicant and his mother discuss how the Applicant helps support her due to her age and health, while at the same time she supports him with his vision loss.

[22] In regard to the BIOC the Applicant submits he has a close relationship with his grandson and actively counsels and assists him and his mother (the Applicant's step daughter who he says struggles with addiction issues).

[23] On the issue of the Applicant's medical condition the Applicant asserts he will face hardship as a blind person in Jamaica as it is lacking in both physical and legal infrastructure for accommodation and assistance of those with disabilities. The Applicant provides correspondence from two academics on this point.

[24] One letter is from a Jamaican academic, who holds a doctorate and is a specialist in disability and development (advising clients such as the United Nations Development Programme, and with published works including 4 on the situation of those with disabilities in Jamaica). This letter denotes that medical and social services for those with disabilities in Jamaica are inadequate, that disability legislation in process remains unenforceable at present, and there are low employment prospects and very limited financial assistance ($15/month if approved which cannot cover even 1.5 weeks of food) for those who are disabled.

[25] The second letter is from an accessibility consultant with a Canadian engineering company who holds a Master of Arts degree in rehabilitation and certification as an orientation and mobility specialist. The consultant has acted as an accessible design consultant/auditor on a number of projects within Ontario, including past work with Metrolinx and Go Transit. This letter outlines the current legislation in Ontario on accessibility requirements for those with disabilities, and legal protections against discrimination. The letter then goes on to explain the accessibility features for blind persons that are found in the Greater Toronto Area [GTA] (including transit systems in Toronto).

[26] In addition, the Applicant provides a letter from the Canadian National Institute for the Blind [CNIB] that outlines the services he has used and the services he would be able to use in Ontario if he had health coverage as a permanent resident and/or citizen. The Applicant also provides a letter from his Doctor which outlines that his condition will not improve and only deteriorate over time.

[27] In terms of news articles the Applicant provides:

i) articles about alleged discrimination in Jamaica towards those with disabilities (a blind adult, and disabled youth),

ii) an article questioning whether new vision initiatives will be successful as past initiatives have not been successful, while also noting motor vehicle accidents that have led to injuries and a fatality to visually disabled pedestrians,

iii) an article about the prevalence of glaucoma and blindness in Jamaica that discusses a volunteer program where North American medical practitioners come to Jamaica to perform some surgeries over a one week period annually, and

iv) an opinion piece that mentions there are approximately 27,000 Jamaicans who are blind and that there is a shortage of optometrists (current ratio is about 1 optometrist to 165,000 Jamaicans).

III. **The H&C Decision**

[28] The Office made the H&C decision [the Decision] on October 18, 2017, using the standard format H&C document and sets out that the Applicant's mother, daughter, and step-daughter are in Canada while a brother and three step-sisters are not in Canada. The Officer did not complete section 4 (in which the factors for consideration as asserted within the application are normally set out) and instead continues directly into the reasons for the Decision.

[29] The Officer first notes that the onus is on the Applicant to satisfy the Officer and that the Applicant has raised his establishment, family, BIOC, and medical care in Jamaica as factors for consideration. The Officer then outlines the past history of the Applicant from his arrival in Canada to his 2012 vision loss. The Officer finally states that they have read and considered the entirety of the Applicant's submissions and are not satisfied that sufficient H&C considerations exist to warrant granting his application.

[30] At this point the Officer then individually addresses each of the H&C factors raised.

[31] For establishment the Officer says that although the Applicant has been in Canada over 35 years he has provided insufficient evidence about his prior employment and finances (such as tax return, business ownership). The Officer felt that given this was such a long period of time the Applicant ought to have more documentation to back up his statements. Likewise the Officer says there is insufficient evidence of his work in the US and whether he actually maintained his

residence in Canada. The Officer acknowledges that with the Applicant's limited vision he has reduced employment prospects but does give weight to a letter outlining that the Applicant and his brother have started a business venture. The Officer however significantly discounts the weight of the letter as it is undated, unsigned, without any accompanying identification, and provides no further details on this venture. Finally the Officer gives some weight to the Applicant's involvement with his community such as the support group he participates in as a result of his past contraction of Hepatitis C.

[32] On the factor of family connections the Officer notes that the Applicant and his mother rely on each other due to her age and his vision loss which the Officer says is worth "some weight". The Officer then notes that although the Applicant states things are tense with his daughters he also states that they do not want him to leave and have an ongoing relationship with him. The Officer however notes that the daughters have not provided any letters to this effect.

[33] In regard to the Applicant's biological daughter the Officer notes that the IAD in 2011 stated he did not know the whereabouts of his daughter, last saw her in 2006 and she was not reliant on him for emotional or financial support. The Officer then concludes that they are not satisfied that there is interdependency with the biological daughter that would result in hardship if the Applicant was removed.

[34] In regard to the Applicant's step-daughter the Officer discusses how she was hospitalized in 2014 and that the Applicant travelled to Hamilton to visit and care for her a number of times. The Officer notes that the Applicant says the letter from the social worker supports his involvement however the Officer observes it references a different admission date and only

references the Applicant in terms of stating to the reader of the letter that the social worker appreciates any assistance the reader can provide to the Applicant. The Officer however then goes on to note that a different letter comments about how the Applicant has assisted his step-daughter even with his limited vision. The Officer states that although they give weight to the support the Applicant provides to his step-daughter they are not satisfied that removal would result in hardship given they live in different cities, Hamilton & Toronto, and the step-daughter should be able to access services that will assist in her recovery without needing the Applicant.

[35] On the BIOC factor the Officer notes that although it is important it is not necessarily determinative. The Officer after mentioning the addiction issues of the step-daughter and struggles of the grandson, discusses how the Applicant supports the grandson through talking with him, and also provides financial support on occasion. The Officer finds that the Applicant has provided insufficient information to show that the BIOC of the grandson will be adversely affected by the Applicant's removal as: they will be able to continue talking on the phone as they do now; they reside over 100km away and given the Applicant's vision loss there must be limitations in the Applicants ability to provide assistance; and the Applicant does not make sufficient statements that he is so integral to his grandson's life that his removal will negatively affect the grandson's best interests.

[36] In regard to the Applicant's loss of vision the Officer says that the Applicant will experience difficulty adjusting to Jamaica for a period but that as the Applicant was able to make his way to Hamilton there is insufficient evidence to show he would not also be able to adapt to Jamaica. The Officer also suggests that the Applicant's mother, who obviously cares for him a great deal, could accompany him to Jamaica until he becomes acclimatized.

[37] The Officer then states that through public documents the Officer is aware of financial assistance being available to vulnerable Jamaicans and that there is a new Jamaican Society for the Blind that opened in January 2017 which postdates the expert letter about the poor conditions for those with disabilities in Jamaica. The Officer accepts the presumption that accessibility of services in Canada is better than Jamaica but also notes that Jamaica does have some services such as: the yet to be implemented disability accommodation legislation; healthcare is universally available; there has been a reduction in reports of problems for those with disabilities in higher learning institutions; and there are grants (~$420 CAD) which can be given to those with disabilities to provide assistive devices or help them start a small business. The Officer then concludes that they give weight to the difficulties that may be faced on removal.

[38] On the issue of inadmissibility the Officer notes the US convictions surrounding sexual relations with a 15 year old and cocaine. The Officer states that the Applicant has no charges since these prior US offences, which weights in his favour, and that the Applicant is remorseful and reconnecting with his family. The Officer then goes on to stay that “the seriousness and heinous nature of the conviction cannot be understated” and notes that although his plea was to attempted criminal sexual act the IAD stated he engaged in oral sex with someone under 17 years old and the 15 year old complainant’s statement stated that: they had both sexual intercourse and oral sex; he was aware she was under age; they had previous conversations of a sexual nature; and the Applicant said he was 37 when he was actually 47. The Officer then concludes that based on the complainant’s age, the surrounding events, and the severity of the conviction, the criminal record of the Applicant is a significant weight against his H&C Application.

[39] The Officer concludes that after considering the information provided and their additional research, along with the grounds claimed, they are not satisfied that the H&C considerations are sufficient to grant the application.

IV. **Issues**

[40] The Applicant submits the Decision was unreasonable for two reasons: first, the assessment of hardship as a result of returning to Jamaica with limited vision was unreasonable; second, the Officer unreasonably disregarded the Applicant's rehabilitation.

[41] The Respondent asserts that the Officer's Decision was reasonable as they had discretion as to how to weigh the different factors and they treated the state of medical care in Jamaica in a reasonable fashion.

[42] The issue in this proceeding is whether or not the Decision was reasonable, in particular with respect to:

a. the Applicant's limited vision and the effect of removal to Jamaica; and
b. the conclusion with respect to criminal history and rehabilitation.

V. **Standard of Review**

[43] The Applicant and Respondent both submit that the standard of review of the Officer's H&C Decision is reasonableness and outline the contents of what a reasonable decision and reasons mean according to *Dunsmuir v New Brunswick*, 2008 SCC 9, [*Dunsmuir*], and with the Applicant also referencing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [*Newfoundland Nurses*].

[44] I would agree on an H&C Application the overall standard of review is reasonableness: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 42-44 [*Kanthasamy*]. In conducting a reasonableness review the Court should concern itself with whether the decision was justified, transparent, intelligible and within the range of possible acceptable outcomes defensible on the facts and law: *Dunsmuir* at para 47. *Newfoundland Nurses* notes the ability of the Court, when necessary, to look beyond the reasons under review and examine the record to assess the reasonableness of the decision however recent jurisprudence from the Supreme Court of Canada has reaffirmed that when a Court is doing so it must only supplement reasons already given and "it cannot ignore or replace the reasons actually provided": *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 24; *Newfoundland Nurses* at para 15.

VI. **Relevant Legislation**

[45] *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]

Objectives — immigration	Objet en matière d'immigration
3 (1) The objectives of this Act with respect to immigration are	3 (1) En matière d'immigration, la présente loi a pour objet :
…	…
(h) to protect public health and safety and to maintain the security of Canadian society;	h) de protéger la santé et la sécurité publiques et de garantir la sécurité de la société canadienne;
(i) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and	i) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des

…

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 — 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.

…

Serious criminality

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

…

(b) having been convicted of an offence outside Canada that, if committed in Canada, criminels ou constituent un danger pour la sécurité;

…

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 — 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.

…

Grande criminalité

36 (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

…

b) être déclaré coupable, à l’extérieur du Canada, d’une infraction qui, commise au Canada, constituerait une

would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or	infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
…	…
Application	Application
(3) The following provisions govern subsections (1) and (2):	(3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2) :
…	…
(c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;	c) les faits visés aux alinéas (1)b) ou c) et (2)b) ou c) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées;

VII. **Parties' Submissions**

A. *The Applicant*

(1) The conditions in Jamaica versus Canada for those with vision impairment

[46] The Applicant submits there were clear factors before the Officer which render his limited vision a serious permanent hardship, and not just a difficulty for which there will be a period of adjustment as the Officer suggests.

[47] The Applicant states the Officer uses three things to ground this temporary difficulty versus hardship finding despite the thrust of the evidence.

[48] First the Officer notes that there are some services in Jamaica (vision resource center, accessibility legislation in process, schools are trying to accommodate, there is healthcare, and the $420CAD grant). The Applicant states he was not arguing that limited services did not exist but arguing that the nature and limits of these services would still result in hardship. The Applicant also notes that he provided a letter from an expert on disabilities in Jamaica that clearly explained and gave evidence about the hardships faced by those in Jamaica who are disabled.

[49] Second, the Applicant states that it was not reasonable for the Officer to find that there was limited evidence that the Applicant would be unable to adapt to Jamaica.

[50] The final reason the Applicant states the Officer unreasonably found difficulty instead of hardship was based on the Applicant's ability to travel in the GTA and surrounding area. The Officer appears to find that because the Applicant was able to travel from Toronto to Hamilton to visit his step-daughter when she was ill it suggests that he has the ability to adapt on return to Jamaica. The Applicant, and I agree, points out that this finding is entirely contrary to the point the Applicant was trying to make with his evidence and submissions. The expert letter that was on Ontario accessibility (including transit in the GTA) stated there are numerous features that allow a visually impaired person to utilize public transit.

[51] For all these reasons the Applicant states the Officer's conclusion that the Applicant would experience only some temporary difficulties, versus lasting hardship, was unreasonable.

(2) The Applicant's past criminality and current rehabilitation

[52] The Applicant states the Officer did not properly address criminality and rehabilitation. The Applicant notes that although the Officer mentions the Applicant's clean record over the last number of years and his remorse, the Officer then seems to gravitate towards the criminal offence instead of weighing both the offence and rehabilitation.

[53] The Applicant then submits that in an H&C assessment rehabilitation is important and it is an error to consider past criminality without also considering rehabilitation.

B. *The Respondent*

[54] The Respondent begins by noting that H&C applications are a special exemption to the normal immigration scheme, not a separate regular immigration process, and that the usual hardship with departure, on its own, is not enough to warrant relief.

(1) Healthcare in Jamaica

[55] The Respondent states that it was reasonable for the Officer to state that there will be a period of adjustment on removal to Jamaica and that any hardship would be temporary. The Respondent then submits that there is evidence that treatment and services do exit in Jamaica and that higher expense or difficulty in obtaining them should not be the standard on which H&C relief should be granted.

[56] The Respondent also cites a removal case for the proposition that the availability of better care in Canada is not a ground to defer removal: *Gumbura v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 833 at para 14. The paragraph cited for this observation also

specially references that the enforcement officer's conclusion was reasonable given their limited discretion is not meant to duplicate H&C and pre-removal risk assessments.

[57] I would agree with the Respondent that the existence of better care in Canada is not what an H&C application is about but instead suggest, as done by the Applicant, that the consideration is whether there may be hardship due to the conditions in Jamaica with regard to the current abilities of the Applicant and how he has been able to cope with his condition thus far (e.g. the accessible nature of his current situation in Canada).

(2) This Court is not to reweigh evidence

[58] The Respondent asserts that this Court is not to reweigh evidence and that with respect to past criminality and current rehabilitation this is what the Applicant is actually requesting. The Respondent submits that although a different outcome could be possible on the evidence the matter is only to be sent for redetermination if the current Decision is unreasonable by falling outside the range of possible acceptable outcomes.

VIII. **Analysis**

[59] The Officer found that the Applicant's return to Jamaica would not occasion hardship but only a period of difficulty and adjustment and with the support of his elderly mother, who lives in Canada, the Applicant could become familiar with his new surroundings. The three factors the Officer identified were that: Jamaica was not completely lacking in services; there was insufficient evidence to explain why the Applicant could not reorient himself in Jamaica; and because the Applicant could travel from his residence in Toronto to Hamilton to visit his ill step-daughter, he had achieved the level of independence needed to manage a relocation to Jamaica.

The difficulty with the Officer's analysis is that the evidence does not justify the Officer's conclusion.

[60] The expert evidence shows that while services for the vision impaired are available in Jamaica, those services were extremely limited. The Applicant was not claiming that no services were available; instead the Applicant was submitting that those services which were available are so limited, the practical effect is that they were not likely available to him. The expert report on the rights of disabled people in Jamaica leads to the following conclusions:

i) "Disability is primarily viewed as a negative, and marginalized minority identity which results in stigmatization, discrimination and inequities";

ii) Inequities are evident in respect of access to healthcare and employment;

iii) Basic social services for the visually impaired are inadequate, servicing less than one fifth of the blind population.

[61] The evidence before the Officer also included a letter from a manager with the CNIB that set out the challenges and risks for individuals such as the Applicant who suffered a loss of vision as an adult:

> Recovering one's sense of independence, abilities and confidence after losing vision is a long process, especially for previously cited adults like Mr. Gregory. With training and peer supports, they make incremental steps toward navigating the world again and dealing with the isolation and frustration that accompanies visual impairment. However, dramatically new environments and major life changes - like the one Mr. Gregory would face in Jamaica - can impose significant hardships on blind and partially sighted individuals in terms of their physical safety and mental health.

[62] Further, the evidence includes a letter from Mr. Gregory's doctor. He advises that Mr. Gregory has a diagnosis of end stage glaucoma with the very advanced stage of the disease resulting in a blind left eye and a very small island of vision in his right eye. The doctor writes: "He will need to be followed lifelong for his glaucoma, he will need drops and at least a 6 month assessments using visual fields. He will not have improvement of his vision; the treatment is to try to maintain what little vision he has left." The implication is that without continued medical and institutional supports, Mr. Gregory will become completely blind.

[63] The Officer considered Mr. Gregory's travel to Hamilton to be indicative of his measure of independence. However, there was also evidence before the Officer of the significant measures undertaken by the Province of Ontario to make the province more accessible for disabled individuals, in particular, the regional transit authority's accessibility measures to accommodate blind individuals. In contrast, the evidence disclosed a lack of such aids in Jamaica.

[64] Mr. Gregory's mother sums up what would await Mr. Gregory in Jamaica. "I take care of him every day. There is nobody who could do this for him in Jamaica. I would not want him to go back there. He would be in the streets, homeless, with no help."

[65] Although giving weight to the evidence is for the Officer to decide, the Officer's conclusion that the Applicant would only face some difficulty that is limited in duration is unjustified in the face of the evidence. Moreover, although the Officer is assumed to have considered all the evidence before her, the Officer's failure to address the prospect that the

Applicant could go completely blind without medical and institutional supports is to disregard a potential hardship the Applicant might face on removal to Jamaica.

[66] In result, I conclude the Officer's Decision is unreasonable based on the question of the hardship the Applicant would face on return to Jamaica. This is sufficient in itself for granting judicial review.

[67] The Officer also held the Applicant's criminal conviction, sexual conduct with a fifteen year old girl, against his request for an H&C exemption. The Officer briefly acknowledged the Applicant had no further convictions and expressed remorse for his prior criminal conduct. The Officer then went on to state: "However, the seriousness and heinous nature of his conviction cannot be understated. … Given the severity of the conviction, the age of the victim and the events that lead to the conviction, the applicant's criminal record weighs significantly against him in his request for an exemption."

[68] The Officer showed scant regard for the Applicant's submissions on rehabilitation. The Officer's language suggests the Applicant could not qualify for an H&C exemption because of his past criminal conduct.

[69] In my view, the Officer was obligated to consider the entirety of the Applicant's circumstances including a meaningful consideration and weighing of all factors including rehabilitation. Simply stating "I have also considered the applicant feels remorse for his past transgression ..." is not much of an analysis. The Officer did not examine the Applicant's choice of words expressing his remorse, his conduct since the conviction, and the observations by others

about the Applicant's behaviour. Instead the Officer jumped to her condemnation of the criminal offence.

[70] I consider the Officer unreasonably focussed on the Applicant's criminal conviction instead of giving full regard the purpose of section 25 of the *IRPA.* In *Sivalingam v Canada (Citizenship and Immigration)*, 2017 FC 1185, Justice Sébastien Grammond wrote:

> [9] First, the Officer's analysis unreasonably focused on the grounds that resulted in Mr. Sivalingam's inadmissibility. In doing so, the Officer did not give effect to the purpose of section 25 of IRPA, which is to allow for the mitigation of "the rigidity of the law in an appropriate case" (*Kanthasamy* at para 19). An interpretation of section 25 that focuses unduly on the reason that made the applicant inadmissible under a provision of IRPA reinforces, rather than mitigates, the rigidity of the law and defeats the purpose of section 25 (*Kobita v Canada (Citizenship and Immigration)*, 2012 FC 1479 at para. 29). The interpretation of a statutory provision may be unreasonable if it defeats the purpose of the legislature in enacting the provision: *Montréal (City) v Montreal Port Authority*, 2010 SCC 14, [2010] 1 SCR 427, at para 42.

[71] I find the Officer's refusal of the H&C application was unreasonable: firstly, because of the unjustifiable assessment of the hardships the Applicant would face on removal to Jamaica; and secondly, in giving significant weight to the Applicant's criminal conviction while giving cursory regard to evidence concerning rehabilitation.

[72] On a technical point, the Style of Cause in this Application lists the Respondent as the Minister of Immigration, Refugees and Citizenship. Although this is the new name for the Minister and Department (the *de facto* name), the legal name for the Respondent at present remains the Minister of Citizenship and Immigration (the *de jure* name). Accordingly, an order amending the Respondent's name will issue as part of this judgment.

IX. **Conclusion**

[73] I grant the application for judicial review and refer the matter back for redetermination by a different Immigration Officer.

[74] Neither Party proposed a serious question of general importance to certify, nor do I find that any question should be certified.

JUDGMENT IN IMM-4659-17

THIS COURT'S JUDGMENT is that:

1. The application is granted and the matter is to be referred back for redetermination by another Immigration Officer.

2. No serious question of general importance is certified.

3. The Respondent's name is amended to the Minister of Citizenship and Immigration.

"Leonard S. Mandamin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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JUDGMENT AND REASONS:	MANDAMIN J.
DATED:	JUNE 6, 2018

APPEARANCES:

Simon Wallace	FOR THE APPLICANT
Judy Michaely	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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