Federal Court  Cour fédérale

Date: 20200122

Docket: IMM-2612-19

Citation: 2020 FC 91

Ottawa, Ontario, January 22, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

RASALEDCHUMY THANGESWARAN
DESINY THANGESWARAN

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the decision of a Canada Border Services Agency ("CBSA") Inland Enforcement Officer (the "Officer") to deny a deferral request of the Applicants' removal order to Mexico ("Deferral Decision"). The Applicants are a Tamil mother and daughter from Sri Lanka. The Applicants fled Sri Lanka in 2009.

[2] In 2012, the Applicants travelled through Mexico in order to join their family in Canada. However, while in transit in Mexico, the Applicants were detained. As a result, they made refugee claims to avoid removal back to Sri Lanka. The Applicants were granted Convention refugee status in Mexico, but left for Canada after five months.

[3] The Applicants have a pending application for permanent residence on humanitarian and compassionate grounds ("H&C") since June 2018.

[4] On April 11, 2019, CBSA issued the Applicants a Direction to Report for scheduled removal to Mexico on April 30, 2019. The Applicants submitted a request to defer removal until their H&C application would be decided.

[5] On April 26, 2019, the Officer denied the Applicants' request for a deferral of the removal order pursuant to section 48 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") to enforce removal orders as soon as reasonably practicable.

[6] The Applicants submit that the Officer made significant errors in his assessment of the medical evidence, and erred in his hardship assessment by conflating the test for risk with that of hardship. The Applicants submit the Officer also ignored and misconstrued evidence in his consideration of hardship. Furthermore, the Applicants submit the Officer unreasonably required the Applicants to show proof that a decision on their H&C application is imminent, and unreasonably ignored and misconstrued statistical evidence from Immigration, Refugees and Citizenship Canada ("IRCC") on processing times provided by the Applicants.

[7] The Deferral Decision is unreasonable. This application for judicial review is granted.

II. Facts

A. *The Applicants*

[8] Mrs. Rasaledchumy Thangeswaran (the "Principal Applicant") and her daughter Desiny Thangeswaran (the "Associate Applicant") are citizens of Sri Lanka, with Convention refugee status in Mexico. They are respectively 47 and 20 years old.

[9] The Principal Applicant was born in the village of Mallavi, Vanni in the northern province of Sri Lanka. After the outbreak of the Sri Lankan civil war in 1983, the Principal Applicant's brother Yogeswaran fled around 1989 to Canada because he was pressured to join the Liberation Tigers of Tamil Eelam ("LTTE") and was at risk of being harmed or killed by the Sri Lankan army for being a young Tamil man. Yogeswaran obtained Convention refugee status in Canada.

[10] The Principal Applicant was able to avoid joining the LTTE because her mother paid them a fee. In 1990, the Principal Applicant met her late husband Thangeswaran Uruththiran, who had joined the LTTE in 1986 after witnessing the murder of his uncle by the Sri Lankan army. Mr. Uruththiran left the LTTE in 1991. The couple married in 1992. After their marriage, the Principal Applicant worked as a teacher, and her husband as a farmer. They had four children together, the youngest of which was Desiny, the Associate Applicant.

[11] In 1999, the Principal Applicant's husband was forced to return to the LTTE to work as a border guard. He was killed by shellfire on December 3, 1999. As the Principal Applicant's children were very young at the time (with her eldest daughter being 7 years old and the

Associate Applicant only 7 months old), the Principal Applicant moved in with her in-laws for some time.

[12] After several years of ceasefire, at the beginning of 2006, the LTTE began carrying out attacks on the Sri Lankan army. In 2006, the village of Kalmadu—where the Principal Applicant's family lived—came under army control, and the Principal Applicant feared being targeted by the Sri Lankan army, as her husband had died fighting for the LTTE. The Principal Applicant notes that soldiers from the Sri Lankan army searched her in-laws' house.

[13] In 2008, the Sri Lankan army began to recapture the area where the Principal Applicant and her family lived. The Principal Applicant fled with her family and ended up in Mullaivaikal. After the LTTE was defeated, the Principal Applicant and her three older children were sent to a camp for internally displaced people ("IDP") in Vavuniya. The Associate Applicant stayed with her paternal grandmother. The Principal Applicant was eventually arrested by the Sri Lankan army and separated from her children. During the 10 days that she was held, the Principal Applicant was interrogated, beaten, and threatened with sexual abuse. She was subsequently smuggled from the camp with the help of her brother.

[14] In 2009, the Applicants fled Sri Lanka and travelled to France via Malaysia. The Principal Applicant's son Piraveen also travelled with the Applicants, but he was detained briefly in Malaysia before being returned back to Sri Lanka. In France, the Applicants made claims for refugee protection, but the claims were rejected after approximately a year.

[15] In April 2012, the Applicants travelled to Mexico with the intention to go to Canada, where the Principal Applicant had extensive family ties. However, the Applicants were detained in Mexico, and were sent to an immigration detention camp in Acayucan, where they spent

several months. The conditions in the camp were very poor. Initially, the Applicants did not want to make a refugee claim in Mexico because they had intended on travelling to Canada, their final destination. However, out of fear of deportation back to Sri Lanka, the Applicants ended up making a refugee claim in Mexico.

[16] The Applicants were granted Convention refugee status in Mexico. The Principal Applicant decided that she and her daughter could not stay in Mexico because they did not speak Spanish and did not know anyone in the country. In their application, the Applicants claim they did not encounter another Tamil person in Mexico. The Principal Applicant's brother arranged the Applicants' journey from Mexico to Canada via the U.S. through a smuggler.

[17] On September 28, 2012, the Applicants were caught by U.S. authorities and taken to a Texas border crossing. After a brief detention, when the U.S. authorities learned the Applicants wanted to reach their family in Canada, they arranged for the Applicants to take a bus to Buffalo, New York. The Applicants stayed at a refugee shelter where they received assistance to make a refugee claim at the Canada-U.S. border.

[18] On November 29, 2012, the Applicants made their refugee claims at the border. After entering Canada, the Applicants stayed with the Principal Applicant's sister, brother-in-law, mother, brother, and nieces in Ottawa.

[19] In 2015, the Principal Applicant was diagnosed with squamous cell carcinoma in her uterus, and had a hysterectomy as a result. She continues to require follow-up with her gynecologist every six months for monitoring. After the surgery, the Principal Applicant was also diagnosed with depression. She was later diagnosed by a psychologist with Major Depressive Disorder and Post-Traumatic Stress Disorder ("PTSD").

[20] In September 2017, the Applicants moved to Markham, Ontario to live with the Principal Applicant's brother and his family.

[21] After learning that they had been granted refugee status in Mexico and thus ineligible for refugee status in Canada, the Applicants withdrew their claims for refugee protection on May 30, 2018. On June 22, 2018, the Applicants submitted an application for permanent residence on H&C grounds.

[22] On April 11, 2019, the Applicants were issued a Direction to Report for removal to Mexico scheduled for April 30, 2019. On April 15, 2019, the Applicants submitted a request for deferral of removal, until a decision would be made on the pending H&C application. The deferral was requested on the basis of the pending H&C application, the detrimental impact of the removal on the Principal Applicant's physical and mental health, and the significant hardship and lack of support the Applicants would face in Mexico.

B. *Underlying Decision*

[23] On April 26, 2019, the Officer refused the Applicants' deferral request for removal.

[24] After quoting an excerpt from the counsel's submissions for deferral, the Officer stated that he had considered all the statements and submissions, and noted the Applicants' pending H&C application had been submitted on June 22, 2018. The Officer noted that the processing time for in-Canada H&C applications as posted on the IRCC website was 31 months, and found that the Applicants' statements and statistical information of a shorter processing of an H&C application was "speculative in nature". The Officer concluded there was insufficient evidence submitted to show that the decision on the application was imminent.

[25] In considering the impact of hardship to the Applicants should they be removed, the Officer noted, "some hardship related to employment and developing relationships is a normal consequence of removal." The Officer addressed the Principal Applicant's lack of Spanish-speaking abilities, and the Associate Applicant's limited knowledge of Spanish, but found the Applicants to be "highly adaptable to new circumstances" because they had "travelled through several countries including Malaysia, France, Mexico and U.S.A. and they [had] made a refugee claim in France and Mexico."

[26] The Officer further noted that although limited, Mexico provides settlement resources for immigrants. The Officer found that the Applicants' submissions did not constitute unusual or disproportionate hardship, and that insufficient evidence was provided to show the Applicants would be unable to find employment or adapt in Mexico. The Officer found the statements regarding employment to be "speculative in nature".

[27] In considering the risks to the Applicants and their claim that they would be targeted by criminals, the Officer stated that the documents regarding criminality and the socio-economic situation in Mexico were general in nature and did not mention the Applicants personally. The Officer acknowledged the situation in Mexico is not perfect, but that the government was taking steps to improve the situation. Moreover, the Officer found that insufficient evidence was submitted to show that the Applicants would be personally targeted by criminals.

[28] On the issue of establishment, the Officer noted that the Applicants have family and friends in Canada; the Principal Applicant is employed and her daughter is applying for post-secondary studies; and the Applicants are volunteering and contributing to the Canadian economy. However, the Officer concluded these factors alone did not warrant a stay of removal.

The Officer also reiterated the fact that the Applicants had been to Mexico before, and thereby inferred they would be "highly adaptable" to Mexico despite some period of adjustment.

[29] After reviewing hardship regarding family separation, and the best interests of the children (the Principal Applicants' nieces and nephews), the Officer found these factors did not warrant a deferral of removal.

[30] The Officer addressed the Principal Applicant's medical issues and found that "while removal from Canada may be difficult and cause some anxiety, it will require a period of adjustments which is reasonable and understandable". Moreover, the Officer noted that while the removal will be "stressful" for the Principal Applicant who has "some psychological issues", the provided documents did not preclude her from travel by air. Regarding the issue of benign fibroma for the Principal Applicant, the Officer found there was insufficient evidence to show the Principal Applicant would be unable to monitor the situation with a gynecologist in Mexico. The Officer also concluded insufficient evidence was submitted to show the Principal Applicant could not receive medical treatment for her conditions.

[31] The Officer noted the Applicants had plenty of time to prepare for their removal from Canada. When the Applicants submitted their refugee claim in 2012, they were issued a conditional removal order and advised that they would be expected to arrange the return to Mexico, if their claim was withdrawn or refused.

III. Issue and Standard of Review

[32] The issue on this application for judicial review is whether the Officer's decision is reasonable.

[33] Prior to the Supreme Court's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*], the reasonableness standard generally applied to the review of decisions made by enforcement officers under section 48 of the *IRPA*, as in the case at bar: *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 (CanLII) at para 43; *Canada (Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286 (CanLII) at para 27; *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 (CanLII) at para 25 [*Baron*].

[34] The applicable standard of review of the Deferral Decision must be determined in accordance with the framework set out in *Vavilov*. The revised standard of review analysis begins with the presumption of reasonableness, which can be rebutted in two types of situations. The first is where the legislature has indicated that it intends a different standard to apply. This will be the case where it has explicitly prescribed the applicable standard of review, or where it has provided a statutory appeal mechanism from the administrative decision maker to a court (*Vavilov* at para 17).

[35] The second situation is where the rule of law requires that the standard of correctness be applied, for example in certain categories of legal questions, namely constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at para 17).

[36] However, given that neither exception applies to the case at bar, the presumption of reasonableness review applies.

[37] As noted by the majority in *Vavilov*, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker," (*Vavilov* at para 85). Furthermore, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency," (*Vavilov* at para 100). It is important to bear in mind that, "Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law," (*Vavilov* at para 135).

IV. Analysis

[38] The Applicants submit that the compelling grounds in their H&C application—the hardship they would face in Mexico without support, family, or community; the potential deterioration of the Principal Applicant's physical and mental health conditions; and the Applicants' establishment and close family ties to Canada—warrant the exercise of discretion to defer removal, and that the Officer's decision was unreasonable.

[39] The Applicants rely on *Ramada v Canada (Solicitor General)*, 2005 FC 1112 (CanLII) for the proposition that circumstances warranting deferral include humanitarian and compassionate considerations. The Applicants cite *Baron* for the proposition that a pending permanent residence application that raises special humanitarian and compassionate considerations can justify deferral. The Applicants submit an enforcement officer is also

obligated to consider allegations of risk (*Wong v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 966 (CanLII) and *Etienne v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 415 (CanLII)).

A. *Medical Evidence*

[40] The Applicants make several submissions regarding the Officer's assessment of medical evidence. The Applicants claim there was significant and probative evidence of the Principal Applicant's mental and physical conditions including a psychological assessment from 2018, a recent letter from a Nurse Practitioner who treated the Principal Applicant for several years, and other letters from health professionals involved in the Principal Applicant's care.

[41] First, the Applicants submit the Officer made a blanket statement that he considered all the medical documents submitted, but did not refer to specific assessments or pieces of evidence, other than by a quote from the counsel's submissions. The Applicants submit that the Officer's language in his reasons (such as "may be difficult and cause some anxiety" and "require a period of adjustment") imply that the Officer ignored or misunderstood the medical evidence. Although presented with the presence of significant psychological disorders—Major Depressive Disorder and PTSD—the Officer did not consider their effects on the Principal Applicant, and simply stated that she would be able to travel by air.

[42] The Applicants rely on *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) and *Rahimi v Canada (Citizenship and Immigration)*, 2017 FC 56 (CanLII) at paras 13-14 for the principle that "a court may also infer that findings have been made without regard to the evidence where those findings have been made without reference to directly contradictory and relevant evidence." The Applicants submit that the

Principal Applicant's mental health evidence was highly relevant to her current state and the effect of the removal, but that the Officer erred in showing a disregard for the mental health evidence.

[43] Second, the Applicants argue the Officer improperly required the Applicants to establish that medical treatment was not available in Mexico, and thus made findings that do not comport with the Supreme Court of Canada's decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. The Applicants rely on *Danyi v Canada (Citizenship and Immigration)*, 2017 FC 112 (CanLII) at paras 38-39 [*Danyi*], where the Court held the discussion of treatment of medical evidence in *Kanthasamy* is equally applicable in the deferral context.

[44] Third, the Applicants submit the Officer ignored evidence on the unavailability of medical treatment in Mexico. The Applicants argue they had adduced evidence about deficiencies in the healthcare system in Mexico, which would affect the Principal Applicant, including country documents that indicate mental health care in Mexico is limited, with significantly fewer resources than in Canada and the U.S. One of the reports indicates that Mexico's mental health care centres often lack sufficient minimum personnel to cover the demand for treatment.

[45] The Applicants cite *Wells v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 351 (CanLII) [*Wells*] at paras 6, 13-18 for the proposition that an officer's failure to consider evidence on the availability of medical care is a reviewable error. The Applicants submit the case at bar bears similarity to *Ismail v Canada (Public Safety and Emergency Preparedness)*,

2019 FC 845 [*Ismail*] at paras 15, 19 where the Court held the officer must analyze the evidence, instead of simply "acknowledging" and "noting" the evidence.

[46] The Respondent submits the Officer did refer to the Principal Applicant's medical conditions by quoting the counsel's submissions. The Respondent also submits the Court has found an applicant's physical ability to comply, i.e. fitness to travel, to be a factor that can be considered in a deferral of removal. Furthermore, the Respondent submits the Officer reasonably considered psychiatric evidence and argues officers are entitled to ascribe low weight to evidence prepared for the purpose of litigation. The Respondent argues it is clear from the Officer's reasons that the medical documents were considered and that an officer is presumed to have considered all the evidence.

[47] The Respondent submits the Applicant's reliance on *Danyi* and *Kanthasamy* are misplaced. The Respondent argues *Danyi* can be distinguished from the present case because it involved a Roma family that was fleeing persecution, while the Applicants have Convention refugee status in Mexico. Also, in *Danyi*, the decision involved the officer's failure to consider the best interests of the child. The Respondent argues *Kanthasamy* is distinguished from the present case as it involves an H&C application.

[48] On the availability of medical treatment in Mexico, the Respondent submits the Officer was not obligated to conduct an H&C assessment, and relies on *Munar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1180 (CanLII) at para 36. The Respondent argues the Officer did consider the Applicant's medical conditions. The Respondent cites *Gumbura v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 833 (CanLII) at para 14 for the proposition that better care availability in Canada is not a ground for deferral, and *Melnykova v*

Canada (Public Safety and Emergency Preparedness), 2019 FC 136 (CanLII) at para 73 for the proposition that it is reasonable for a deferral officer to consider the sufficiency of evidence on whether medical treatment would be available to the applicant when removed.

[49] The Respondent further submits the Applicants' reliance on the *Ismail* decision is misplaced because the Court had taken issue with the officer's conclusions that were contradicted by the evidence on record, with respect to the applicant's family members being wholly financially dependent on the applicant. The Respondent submits the same circumstances do not apply in the case at bar.

[50] In my view, the Officer's decision in the case at bar bears great resemblance to that of the officer in *Danyi*, in finding that insufficient medical evidence existed to show the Principal Applicant could not receive treatment for her conditions in Mexico, or monitor health issues. In *Danyi*, the Court found the officer's decision problematic for its failure to consider the fact that removal itself could trigger psychological harm to the applicant and its improper focus on the availability of treatment options in the country of origin. I agree with the Applicants that the Officer committed the same error in the present case.

[51] As noted by the Applicants, Major Depressive Disorder and PTSD are serious mental health issues that may pose an aggravated psychological harm to the Principal Applicant should she be removed to Mexico. The psychologist's letter had opined that the Principal Applicant's prognosis was likely to worsen and "lead to a significant deterioration in [her] mental health," if the Principal Applicant was removed. However, the Officer failed to properly consider the medical evidence when he simply stated that removal may "be difficult and cause some anxiety" during a "period of adjustment", and focused on the availability of treatment in Mexico. Unlike

the Respondent's assertion that the case in *Danyi* is strictly limited to an analysis on the best interests of the child, the Court in *Danyi* found that the officer had erred in its assessment of the adult female applicant's medical psychological evidence.

[52] Furthermore, the Officer erred by ignoring evidence on the lack of availability of medical treatment in Mexico. The Principal Applicant requires regular follow-ups on her previously treated squamous cell carcinoma. However, as the country documentation indicates, resources for mental health care in Mexico is limited with lacking personnel to cover demand for patient treatment. A person who has an illness or medical condition that does not fall within the scope of the health package must cover the entire cost of the medical needs. For instance, one report notes that the national health insurance would not cover the service required by the Principal Applicant. The national health insurance only covers six types of cancer—breast cancer, cervical cancer, prostate cancer, testicular cancer, non-Hodgkin's lymphoma, and childhood leukemia—which is inapplicable to the Principal Applicant since she requires monitoring on squamous cell carcinoma, a type of skin cancer. Many of the treatment centres lack necessary equipment to provide optimal care, and the quality of treatment provided is affected by the shortage of oncologists.

[53] As correctly noted by the Applicants, the officer's language in *Wells* is similar to the present case at bar. In *Wells*, the officer stated that while the mental health system in Trinidad is different than the one in Canada, it does exist and no evidence was submitted to show the applicant would be denied treatment for his condition (*Wells* at para 8). Similarly, in the present case, the Officer, while acknowledging the medical system in Mexico may be different from Canada, noted that insufficient evidence was submitted to show treatment for the Principal Applicant's conditions would not be available in Mexico.

[54] I note that in *Wells*, the officer stated there was no evidence (when in fact the applicant had submitted evidence), and in the present case, the Officer takes issue with the sufficiency. Nevertheless, in my view, the Officer's reasons in the case at bar do not exhibit transparency or intelligibility as to why the submitted evidence did not address the Officer's questions on the non-availability of treatment for the Principal Applicant.

[55] As for the Respondent's reliance on *Gumbura* and *Melnykova*, I find that neither case is applicable to the case at bar. The argument is not whether the availability of better care in Canada is a ground of deferral. Also, although it is reasonable for an enforcement officer to consider the sufficiency of evidence on medical treatment in the country of removal, the issue here is that the Officer unreasonably found there to be insufficient evidence, without actually having engaged with the evidence.

[56] Thus, I find that the Officer's decision is unreasonable with respect to the assessment of medical evidence.

B. *Hardship*

[57] The Applicants argue that the Officer improperly required the Applicants to adduce evidence naming them personally, and conflated a risk assessment under section 96 or 97 of the *IRPA* with a hardship assessment. The Applicants rely on *Henriquez v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 437 (CanLII) [*Henriquez*] at paras 11-15, where the Court found it was a reviewable error for an officer to require that country articles and reports personally mention an applicant, in the context of a deferral request. The Applicants argue that although *Henriquez* dealt with a risk assessment, the principles also apply when an officer conducts a hardship assessment.

[58] The Respondent submits that the present case can be distinguished from *Henriquez* because the Applicants have protected status in Mexico. The Respondent also submits the Officer did not require that the country reports must cite the Applicants by name, but only noted the documents were general in nature and did not mention the Applicants personally.

[59] In this case, I am not persuaded by the Respondent's argument that the present case can be distinguished from *Henriquez* only on the basis that the Applicants have status in Mexico. As stated by Justice Boswell in *Nguyen v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 225 (CanLII) [*Nguyen*], "An enforcement officer's discretion to defer removal under section 48 of the *IRPA* is focused on harm," (*Nguyen* at para 24). In an assessment of harm, the existence of status does not necessarily preclude the Applicants from being exposed to harm if they are to be removed to Mexico.

[60] As for the Respondent's argument that the Officer did not require the country reports cite the Applicants by name, I find that the Officer's reasons cannot be read in any other way than to require the Applicants to have established a personal mention of their names in the country condition information.

[61] I note that although the Applicants had not submitted allegations of risk as a reason for their deferral request, from a reading of the Officer's reasons, it appears the Officer engaged in a risk assessment in addition to the hardship assessment. Before diving into the analysis, the Officer states that he has "considered the hardships and risks to [the Applicants] if they were removed from Canada." Furthermore, after a paragraph discussing hardship, the Officer states, "I also considered the risks to [the Applicants]…"

[62] If the Officer had attempted a risk assessment, the case in *Henriquez* would be applicable to the case at bar, and it would form a reviewable error for the Officer to have required that country documentation personally mention an applicant. As the Court notes in *Henriquez*, "It is not often, unless the person is a politician, military officer, or another high profile individual in a leadership position, that the independent country condition reports would ever mention an applicant by name. The Officer was looking for proof of a serious risk that was akin to a wanted poster. Of course, this is not the test."

[63] Under a hardship assessment, we may be guided by *Kanthasamy*, in which the Supreme Court stated, "…applicants need only show that they would likely be affected by adverse conditions such as discrimination. Evidence of discrimination experienced by others who share the applicant's identity is therefore clearly relevant under s. 25(1), whether or not the applicant has evidence of being personally targeted, and reasonable inferences can be drawn from those experiences," (*Kanthasamy* at para 56) in the context of discussing adverse country conditions and discrimination. Although *Kanthasamy* involved the judicial review of an H&C decision, in my view, the principles of assessing hardship can be imported into the deferral context where enforcement officers are assessing harm or threats to personal safety.

[64] However, irrespective of whether the Officer undertook a hardship or risk analysis, in neither case are the Applicants required to provide evidence of personal mention of names in country condition information. As a result, the Officer committed a reviewable error. Also, as I stated above, the assessment for enforcement officers is to consider harm to the Applicants.

[65] Furthermore, in the context of a pending H&C application, which is at issue in the case at bar, a "threat to personal safety" may also justify a deferral of removal, as noted by the Court in

Newman v Canada (Public Safety and Emergency Preparedness), 2016 FC 888 (CanLII) at para 26. However, in dismissing the country condition evidence for lack of personal mention of the Applicants' names, the Officer did not properly consider whether the evidence would establish a threat to personal safety for the Applicants.

[66] For example, the Applicants had submitted several country documentation showing that refugees, migrants, and asylum seekers—especially women—in Mexico face dangerous conditions including high levels of violence, abuse and crimes. Other reports have found that: migrants and refugees in Mexico face acute risks of kidnapping, disappearance, sexual assault, and trafficking; migrants and refugees are targeted due to their nationality, race, gender, refugee status; and migrant women and girls have been trafficked to Mexico's southern border.

[67] However, the Officer failed to address any of this evidence, and instead required the Applicants to be personally named, along with a finding that the Applicants would be "highly adaptable to new circumstances" in Mexico. This renders the Deferral Decision unreasonable.

C. *H&C Application*

[68] The Applicants submit that the Officer fettered his discretion by refusing to consider the removal until a decision would be made on the pending H&C application, and by requiring the Applicants to establish a decision on the pending application would be imminent. The Applicants also submit the Officer misapprehended evidence on the H&C application processing times because the Officer did not provide reasons for preferring the times posted on the IRCC's website to the IRCC statistics submitted by the Applicants, and failed to explain how the Applicants' statements were speculative.

[69] The Applicants argue that it was incumbent on the Officer to consider the statistics purporting to show reduced success rates of H&C applications when applicants are removed from Canada.

[70] The Respondent submits that the Officer reasonably referred to the IRCC's website for overall processing times. The Applicants' reliance on specific statistics, such as the 2017 processing time from the Vancouver office is an attempt to ask the Court to re-weigh the evidence.

[71] In their deferral request, the Applicants had submitted statistics from IRCC to support their argument that although the published processing time for H&C applications is 30 months on average, decisions are being made much faster in reality. For example, in 2017, the Vancouver office—which has carriage of the Applicants' file—processed 80% of the approved applications in 12 months or less. The average processing time for approved applications was 14 months Canada-wide. Refused applications were processed in similar timeframes.

[72] Generally, this Court and the Federal Court of Appeal have cautioned against drawing any conclusions from statistics absent any expert analysis (*Es-Sayyid v Canada (Public Safety and Emergency Preparedness)*, 2012 FCA 59 (CanLII) at paras 45-49; *Gillani v Canada (Citizenship and Immigration)*, 2012 FC 533 (CanLII) at para 43; *Zupko v Canada (Citizenship and Immigration)*, 2010 FC 1319 (CanLII) at para 22; *Xuan v Canada (Citizenship and Immigration)*, 2013 FC 673 (CanLII) at para 15).

[73] However, given that the IRCC statistics submitted by the Applicants are straight-forward figures indicating processing times of inland H&C applications in a given year, I find it concerning for the Officer to have dismissed the submissions as "speculative". At the very least,

the Officer could have offered a rationale for preferring the IRCC's website processing times to the actual processing times, but failed to do so. In this regard, the Officer's reasons fail to exhibit transparency and intelligibility.

V. Certified Question

[74] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VI. Conclusion

[75] This application for judicial review is granted.

JUDGMENT in IMM-2612-19

THIS COURT'S JUDGMENT is that

1. The decision is set aside and the matter is to be returned for redetermination by a different decision-maker.
2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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