Federal Court  Cour fédérale

Date: 20201009

Docket: IMM-2267-19

Citation: 2020 FC 959

Ottawa, Ontario, October 9, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

VIKTOR KALABA

Applicant

And

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Officers with the Canada Border Services Agency (CBSA) charged with enforcing a removal order against someone not entitled to remain in Canada have a very limited discretion to defer removal. Removal may be deferred where the person being removed will be exposed to a risk of death, extreme sanction, or inhumane treatment; or based on short-term considerations,

such as illness or other impediments to removal, the short-term best interests of a child, or the existence of pending immigration applications that were filed in a timely way.

[2] Viktor Kalaba requested deferral of his removal until the determination of an immigration appeal that he filed in the United States, which was anticipated to take about six months. On this application for judicial review, he asks the Court to quash the refusal of that request. He argues the enforcement officer's treatment of the timing of the US immigration appeal, and the consequences of removal on the mental health of Mr. Kalaba and his family members, was unreasonable.

[3] I conclude that the enforcement officer's refusal of Mr. Kalaba's deferral request was reasonable. The enforcement officer reasonably assessed the timing of the immigration appeal and whether it justified a deferral, and reasonably concluded that the medical evidence did not show that Mr. Kalaba was at imminent risk. The enforcement officer appropriately recognized their limited discretion to defer removal to address temporary impediments to removal, and concluded that the evidence did not show circumstances warranting a deferral of the removal. That conclusion was reasonably open to the enforcement officer, and the reasons provided for the conclusion were justified, transparent, intelligible, and responsive to the arguments and evidence put forward by Mr. Kalaba.

[4] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[5] Mr. Kalaba raises a single issue on this application, namely whether the enforcement officer erred in refusing his deferral request.

[6] The parties agree that decisions on deferral requests are reviewable on the reasonableness standard: *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 42; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. A reasonable decision is one that is justified, transparent, and intelligible, reflecting "an internally coherent and rational chain of analysis" when read as a whole and taking into account the record before the decision maker: *Vavilov* at paras 81, 85, 91, 96, 99. Reasonableness is to be assessed in relation to the factual and legal constraints that bear on the decision: *Vavilov* at para 99. The factual constraints include the evidence before the decision maker, which must be reasonably reviewed and considered: *Vavilov* at paras 125–126. The legal constraints include the governing statutory scheme and binding precedent that interprets it: *Vavilov* at paras 108–114.

III. Analysis

A. *The Deferral Request*

[7] Mr. Kalaba left the former Yugoslavia as an infant with his parents, who sought asylum in the US. He was granted permanent resident status there, but lost that status after a criminal conviction in 2006. He was removed from the US to Kosovo in 2010. In late 2011, Mr. Kalaba came to Canada and sought refugee protection based on the risks he faced in Kosovo arising

from a historic blood feud. That claim was rejected in 2015 on the basis that Mr. Kalaba's criminal conviction excluded him from refugee protection under Article 1F(b) of the United Nations *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[8] After Mr. Kalaba was ordered removed from Canada, he sought a Pre-removal Risk Assessment (PRRA) under section 112 of the *IRPA*, claiming that he would be at risk if returned to Kosovo because of the ongoing blood feud and his Roman Catholic faith. His PRRA application was rejected in early 2017. The PRRA officer found that Mr. Kalaba had provided insufficient objective evidence to demonstrate he would be at risk either from a blood feud or because he is Roman Catholic, and that he could avail himself of adequate state protection in Kosovo if needed.

[9] In the interim, Mr. Kalaba had filed applications with the United States Customs and Immigration Service (USCIS) seeking a waiver of inadmissibility arising from the criminal conviction. Those applications were denied, and Mr. Kalaba filed an appeal with the USCIS in March 2019.

[10] At around the same time, the CBSA secured a travel document for Mr. Kalaba for Kosovo. Removal arrangements were made, and Mr. Kalaba was scheduled to be removed from Canada on April 2, 2019. On March 19, 2019, Mr. Kalaba filed an application for permanent residence on humanitarian and compassionate (H&C) grounds, and the next day requested a deferral of his removal. The request asked that Mr. Kalaba's removal be deferred until his

USCIS appeal was determined, and raised concerns regarding Mr. Kalaba's mental and emotional state. The request included copies of reports that had been filed in the H&C application, notably a recent report from Dr. Fady Hannah-Shmouni, as well as an earlier 2013 psychosocial report from Dr. Mark Silver that had been updated in 2015 and 2016.

[11] Mr. Kalaba's removal was briefly deferred to allow the CBSA to seek an assessment of the medical requirements for his removal. When the CBSA again scheduled Mr. Kalaba to be removed on April 11, 2019, he reiterated his request for deferral pending the USCIS appeal. The denial of that request on April 10, 2019 is the subject of this application for judicial review. The removal did not proceed as scheduled, as Justice Norris of this Court issued a stay of removal on April 10, 2019 pending the hearing and determination of this judicial review.

[12] I note that the combined impact of this application for judicial review and the stay of removal pending the application is that by the time of the hearing of this matter, a further nine months had passed from the originally scheduled removal date. Nonetheless, Mr. Kalaba advised at the hearing that the matter had not been rendered moot, since the USCIS appeal remained outstanding.

B. *The Refusal was Reasonable*

[13] The Federal Court of Appeal confirmed in *Lewis* that an enforcement officer has a "very limited" discretion to defer execution of a removal order, given the language in subsection 48(2) of the *IRPA* directing that removal orders be enforced "as soon as possible": *Lewis* at para 54; *Baron v Canada (Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paras 48–51.

The assessment is restricted to *when* a removal order will be executed, and may consider factors such as illness and other impediments to travelling: *Baron* at para 49. A pending H&C application that was brought on a timely basis but has not been resolved due to backlogs may be considered, but the mere existence of an H&C application does not constitute a bar to execution of a valid removal order: *Baron* at paras 49–50.

[14] The Court of Appeal in *Baron* emphasized the limits on the discretion and the restricted circumstances in which a deferral can be granted. The Court of Appeal adopted the principles set out by Justice Pelletier, then of this Court, in *Wang*, including his conclusion that "deferral should be reserved for those applications or processes where the failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment…": *Baron* at para 51, citing *Wang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148 at para 48.

[15] In *Forde*, Chief Justice Crampton referred to these principles, and underscored the "short-term" nature of a deferral: *Forde v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1029 at paras 40–43, 51, 62. The Chief Justice observed that the jurisprudence and the language of section 48 of the *IRPA* was difficult to reconcile with a discretion to defer removal "beyond a few months or so": *Forde* at para 43. While Mr. Kalaba notes that the issues in *Forde* related to impacts on Mr. Forde's family members and not himself, the Chief Justice's discussion of the principles does not turn on the question of who was impacted. I do not see this as a point of distinction, and consider that the discussion in *Forde* applies equally where the impacts at issue are those affecting the person being removed.

[16] While not citing case law, the enforcement officer recognized and applied these legal constraints, stating the CBSA's obligation under subsection 48(2) of the *IRPA* to enforce removal orders as soon as possible, and noting that an enforcement officer has "little discretion" to defer removal. In this context, the enforcement officer concluded it was not appropriate to defer execution of the removal order until the USCIS decided Mr. Kalaba's appeal. The enforcement officer considered the pending appeal, Mr. Kalaba's outstanding H&C application, the medical concerns identified by Mr. Kalaba, and the documents filed pertaining to Albanian blood feuds, and found that none of these elements justified a deferral.

[17] Mr. Kalaba argues on this application that the enforcement officer erred in their treatment of the USCIS appeal, and of the consequences of removal on his mental health and his family members. For the reasons below, I find the enforcement officer's treatment of these issues, and their decision as a whole, reasonable.

(1) Deferral pending determination of immigration appeal in the United States

[18] In making his request, Mr. Kalaba referred to passages from the USCIS website governing the appeal process. The website states that the USCIS Administrative Appeals Office (AAO) "strives to complete its appellate review within 180 days from the time it receives a complete case file after the initial field review," but that some cases "may take longer than 180 days due to factors beyond the AAO's control." I note in passing the Minister's observation that the USCIS website gives no timeline for the "initial field review" step that appears to occur before appellate review. Since the enforcement officer did not base their decision on the timing

of the “initial field review,” it has no impact on my assessment of the reasonableness of the decision.

[19] The enforcement officer referred to the estimated 180-day timeline and the potential for the process to be lengthier, and found themselves “unable to conclude when a decision on the matter could be rendered.” They also noted that there was insufficient evidence that the appeal could not continue following removal. While recognizing the desire to remain close to family in the US, the enforcement officer concluded this was not a hardship beyond the normal inherent consequences of the removal process. They therefore concluded that the USCIS appeal was not an appropriate basis to defer the removal order.

[20] Mr. Kalaba argues that the enforcement officer unreasonably concluded that the lack of a precise date for an appeal decision meant the deferral request was effectively for an indefinite period. While the enforcement officer clearly had concerns about the fact that the appeal process could take an unknown length of time longer than six months, I do not read the enforcement officer’s decision as rejecting the request simply because it was for an “indefinite” period. Rather, the uncertain and potentially even lengthier appeal process was one factor in the enforcement officer’s exercise of discretion. This was considered in the context that the *IRPA* provides for the enforcement of removal orders as soon as possible, that the US appeal did not provide for a stay of removal under the *IRPA*, and that the USCIS appeal could continue following his removal. These were reasonable considerations.

[21] I similarly reject Mr. Kalaba's assertion that the enforcement officer failed to "grapple with" the true length of the requested deferral, or side-stepped the merits of the deferral request for this reason. To the contrary, the enforcement officer addressed the arguments raised by Mr. Kalaba with respect to the USCIS appeal. Notably, these arguments were limited to quoting the USCIS website on proposed timing, and noting that "[g]iven the length of time Mr. Kalaba has been in Canada and the hardship removal would cause him, it is submitted that delaying his removal for a further six months is a reasonable and proportionate response in consideration of his circumstances." The enforcement officer considered these issues, including the potential hardship, and concluded that they did not warrant the deferral requested. The decision was reasonable, particularly reading it in the context of the arguments made by Mr. Kalaba, and the fact that the decision was issued under significant time constraints: *Vavilov* at paras 91–94, 127–128.

[22] Mr. Kalaba also argues it was inconsistent for the enforcement officer not to accept the USCIS's six-month estimate of the timing of appeals, while accepting and relying on Immigration, Refugees and Citizenship Canada's estimate of the timing of H&C applications, as the enforcement officer did later in their decision. However, contrary to Mr. Kalaba's submission, the enforcement officer did effectively accept the USCIS's estimate of timing. The enforcement officer referred to and relied on the statement from the USCIS that the AAO endeavoured to decide appeals within six months, but that the process could be longer in some cases. The enforcement officer was not obliged to take such a timing estimate as a clear statement that Mr. Kalaba's appeal would be concluded within six months. The officer accepted both the estimated length of the appeal process (which was itself longer than the "few months or

so" described by the Chief Justice in *Forde*) and the uncertainty of that estimate in reaching their conclusion. I do not see any inconsistency or unreasonableness in this approach.

[23] Finally, Mr. Kalaba suggests that if the enforcement officer had concerns about the uncertain length of the USCIS appeal process, they could reasonably have granted a deferral for 180 days, or some shorter period, and then recommence removal proceedings if no decision had been rendered by then. Even if such a possibility might have been open to the enforcement officer as part of their very limited discretion, this does not make it unreasonable not to have granted a deferral on such a basis.

[24] Nor do I consider the enforcement officer's failure to directly address this possibility to constitute a fettering of discretion, as Mr. Kalaba contends. While Mr. Kalaba made reference to a six-month deferral, this was in the context of a request to defer removal until the appeal had been determined. Mr. Kalaba neither requested nor suggested a shorter deferral period. There is no indication that the enforcement officer viewed their discretion as being limited by anything other than the requirement of subsection 48(2) of the *IRPA* that the removal take place as soon as possible.

[25] I therefore conclude that the enforcement officer's assessment of the nature of Mr. Kalaba's request, and the treatment of the anticipated length of the USCIS appeal process, was reasonable.

(2) Consequences of removal on Mr. Kalaba and his family

[26] Mr. Kalaba's deferral request referred to his mental and emotional struggles, as documented in evidence filed on his H&C application. In particular, the request asked the enforcement officer to "take specific notice of the information in the psychological reports for the US waiver [application]," and reproduced three paragraphs from Dr. Hannah-Shmouni's report. Dr. Hannah-Shmouni's report stated that Mr. Kalaba has "severe situational anxiety and will not likely be able to fly as this will lead to a severe panic attack."

[27] As noted above, Mr. Kalaba's removal was briefly deferred to allow CBSA to consult a physician. That physician, Dr. Alikhan, reviewed Dr. Hannah-Shmouni's report and concluded that the reported mental health conditions "do not, in and of themselves, constitute an absolute contradiction to air travel." Dr. Alikhan also observed that there was a certain inconsistency in Dr. Hannah-Shmouni's report, which stated that Mr. Kalaba suffered from severe panic attacks, while also stating that he denied having panic attacks. Dr. Alikhan also noted that Dr. Hannah-Shmouni's report concluded that Mr. Kalaba was not actively suicidal, and did not report a history of self-harm or current suicidal intent. He therefore gave his opinion that the medical information did not offer "compelling evidence of imminent suicidal behaviour/risk," or of "active communicable disease, clinical instability or other illness which could possibly prohibit air travel at the present time."

[28] Mr. Kalaba did not provide a response to Dr. Alikhan's assessment. However, he did file additional evidence from his sister, stating that in the days since the deferral request, Mr. Kalaba

had been treated at the Centre for Addiction and Mental Health (CAMH). Mr. Kalaba was assessed for risk of suicide arising from his imminent deportation, admitted, and subsequently released from CAMH.

[29] The enforcement officer reviewed and considered this medical evidence in some detail, including the reports of Dr. Silver, Dr. Hannah-Shmouni, and Dr. Alikhan. Addressing the recent treatment at CAMH, the enforcement officer concluded that the medical staff at CAMH would not have released Mr. Kalaba on the day he was admitted if they had concerns that he was at imminent risk of self-harm. They went on to consider Mr. Kalaba's mental health in the following language:

> I also do not find it unreasonable to note that as Mr. Kalaba is now aware of his mental health conditions, and has now sought the assistance of medical professionals with respect to that mental health condition, I am confident that he would be able to avail himself of future mental health treatment should he feel that it is necessary. I also note that the removals process is a difficult one but I would also note that a certain level of anxiety is inherent in the process and is not unusual or unexpected.
>
> I also note that counsel has provided several other documents, including submissions detailing the state of the health care system in Kosovo. While I acknowledge that some of these documents speak to certain difficulties facing the health care system in Kosovo, I find that they are insufficient to demonstrate that Mr. Kalaba would be unable to pursue treatment for his mental health condition(s) upon return should he feel that he requires it.
>
> I do not feel that this is an appropriate basis to defer Mr. Kalaba's removal from Canada.

[30] Mr. Kalaba raises a number of criticisms of the enforcement officer's treatment of the medical evidence. First, he argues that it was unreasonable for Dr. Alikhan to focus almost exclusively on the issue of whether Mr. Kalaba was "fit to fly," and for the enforcement officer

to rely on such a narrow response to the evidence. I disagree. As the Minister argued, Dr. Alikhan was responding to the evidence presented by Mr. Kalaba in the context of the limited discretion to temporarily defer removal. Dr. Hannah-Shmouni's report had noted that Mr. Kalaba "will not likely be able to fly," Mr. Kalaba's deferral request itself identified Mr. Kalaba's "fitness to travel at this time" as a critical issue, and Dr. Alikhan's report responded to this issue.

[31] As noted above, deferral of removal is limited to short-term issues, illness that would interfere with travel, and risks of death, extreme sanction or inhumane treatment: *Baron* at paras 49–51; *Forde* at paras 40–43. While I entirely agree with Mr. Kalaba that both physical and mental health should be considered in this assessment, the principles outlined in *Wang* and affirmed in *Baron* and *Lewis* remain applicable in each case. The enforcement officer gave serious consideration to Mr. Kalaba's risks arising from his mental health and the evidence in respect of those risks, including both the older evidence from Dr. Silver and the more recent evidence from Dr. Hannah-Shmouni, Dr. Alikhan, and Mr. Kalaba's sister. It was not unreasonable for the officer to focus their assessment on the impacts of Mr. Kalaba's mental health on his ability to undergo removal, and the enforcement officer's assessment of those impacts was reasonable.

[32] Mr. Kalaba next argues that the enforcement officer did not adequately consider the evidence regarding his treatment at CAMH. He argues that the enforcement officer implicitly discounted the evidence of his sister on the basis that it came from a family member, and was not supported by documentary evidence. This Court has held that it is unreasonable to reject

evidence solely on the basis that it comes from family members, or to ignore probative and relevant documentary evidence: *Tabatadze v Canada (Citizenship and Immigration)*, 2016 FC 24 at paras 6–7 and *Voytik v Canada (Minister of Citizenship and Immigration)*, 2004 FC 66 at paras 20–21.

[33] However, the enforcement officer did not discount the evidence on this ground. There is no indication that the enforcement officer made any adverse credibility findings, discounted or disregarded the evidence because it came from Mr. Kalaba's sister, or ignored it because no documents from CAMH were provided. To the contrary, the enforcement officer acknowledged that documentation could not be provided since the information arose and was filed on short notice. Rather, the enforcement officer appears to have accepted the information on its face, simply observing that Mr. Kalaba's release from CAMH was not consistent with an imminent risk of self-harm.

[34] Mr. Kalaba also challenges this latter finding. He asserts that the enforcement officer had no specialized knowledge of CAMH's practices that would allow them to conclude that the same-day release showed Mr. Kalaba was not at imminent risk. I cannot agree that the enforcement officer's inference was unreasonable in the circumstances. Given the short timing, the only evidence regarding the CAMH visit that Mr. Kalaba presented was his sister's affidavit, which necessarily contained no medical opinion on Mr. Kalaba's condition. This left the enforcement officer in the position of having to draw reasoned inferences based on the information before them. It is evidently not an ideal situation for an officer to have to draw inferences based on second-hand reports of medical treatment, rather than relying on medical

reports and opinions. However, the officer was put in this position by the evidence Mr. Kalaba filed. In light of the state of the evidence, it was not unreasonable for the enforcement officer to draw the inference that CAMH releasing Mr. Kalaba suggests that he was not at imminent threat of self-harm.

[35] Mr. Kalaba next argues that it was unreasonable for the enforcement officer to refer to and rely on the possibility of Mr. Kalaba receiving mental health treatment in future. He refers to the decision of Justice LeBlanc, then of this Court, in *Tiliouine v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1146 as an example of the Court finding reliance on the availability of mental health treatment in the country of return to be unreasonable. In *Tiliouine*, however, the enforcement officer had recognized that there was consistent evidence that one of the applicants was suicidal, particularly if she were to return to Algeria. The officer nevertheless concluded that the family's situation did not rise to the level of undue hardship since she would have access to medical treatment before leaving Canada and after returning to Algeria: *Tiliouine* at para 5. Justice LeBlanc concluded that it was unreasonable to rely on the availability of future care where "there is evidence of irreparable psychological harm resulting from the removal itself": *Tiliouine* at paras 11–12. The enforcement officer in that case unreasonably failed to consider whether the fact of removal itself would trigger suicidal behaviour, which was the basis for the removal request: *Tiliouine* at para 12.

[36] In the present case, unlike in *Tiliouine*, the enforcement officer *did* consider the impacts of the removal itself, concluding that the evidence did not show Mr. Kalaba to be at imminent risk of self-harm. Considering the potential availability of future mental health care in such

circumstances is not in itself unreasonable as part of assessing the effective impacts of removal. While Mr. Kalaba submits that the medical evidence showed him to be at greater risk than assessed by the enforcement officer, it is not the Court's role to reassess that evidence barring unreasonableness in the assessment. There was no such unreasonableness here.

[37] Mr. Kalaba refers to *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, and this Court's decision in *Francis v Canada (Citizenship and Immigration)*, 2016 FC 1366, in which Justice Strickland applied *Kanthasamy*. In each case, the Court noted that mental health is to be assessed as a factor in an H&C assessment, regardless of the potential availability of treatment: *Kanthasamy* at para 48; *Francis* at paras 15–16. However, the nature of an H&C assessment is very different from that on a deferral request. All H&C factors will be considered on the H&C application Mr. Kalaba has filed, but the existence of that application neither mandates a deferral of removal, nor turns the deferral request into an H&C application: *Lewis* at paras 46, 56–61; *Newman v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 888 at paras 19–20. In any event, as noted above, the enforcement officer did consider Mr. Kalaba's current state of mental health and the potential impact of removal, in addition to considering the potential for future care.

[38] Mr. Kalaba also challenges the contents of the enforcement officer's assessment of the potential for mental health care treatment in Kosovo. He points to the evidence of corruption in the Kosovar health care system and the limited availability of mental health care, and argues that the enforcement officer's reference to "certain difficulties facing the health care system in Kosovo" is an insufficient assessment of the evidence. I cannot accept this argument for two

reasons. First, the enforcement officer's reasons must be assessed in light of the submissions and arguments made before them, and their responsiveness to those arguments: *Vavilov* at paras 127–128. Mr. Kalaba's request for deferral focused on his USCIS appeal and his "fitness to travel at this time." While the request also referred to his H&C application being based on the "disproportionate mental, emotional, physical and financial hardship" that would be caused by removal to Kosovo, his deferral request placed no reliance on the quality of mental health care in Kosovo. The enforcement officer cannot be faulted for not undertaking a more in-depth analysis of a matter not raised by Mr. Kalaba. Second, as the Minister points out, the identified concerns about the health care system in Kosovo are not "short-term" issues of a sort that will typically be relevant to a deferral request.

[39] Finally, Mr. Kalaba argues that the enforcement officer failed to engage with the harmful consequences that would befall other members of his family if he were removed. Again, Mr. Kalaba's deferral request identified the impacts on Mr. Kalaba's family as being part of his H&C application, although it did also refer to the concern that returning Mr. Kalaba "at this time" would cause him and others disproportionate hardship.

[40] The evidence filed with respect to the impact of removal from Canada on Mr. Kalaba's family did not relate to any short-term issues relating to the timing of removal. Rather, as Mr. Kalaba conceded, the evidence was primarily concerned with potential reunification in the United States, and the few areas that speak to the impacts of removal from Canada to Kosovo address that issue generally, rather than identifying any short-term concerns.

[41] The enforcement officer acknowledged Mr. Kalaba's submission regarding his H&C application and the identified impacts on Mr. Kalaba and his family. They responded to this submission by observing that an H&C application does not confer a stay of removal, and that they did not have the authority to undertake an H&C assessment. They also stated that "it is important to bear in mind that a deferral of removal is intended to obviate or address ***temporary*** impediments to removal and is not meant to be an indefinite reprieve" [emphasis in original]. The enforcement officer referred to, but did not undertake a review of the particular medical reports and personal evidence relating to the impacts on Mr. Kalaba's family.

[42] In the circumstances, I conclude that the enforcement officer's assessment of this issue was reasonable. The enforcement officer's recognition that deferral of removal was only to address short-term issues reasonably reflected the legal constraints on their decision. As the evidence regarding the impacts on Mr. Kalaba's family was only briefly referenced in his deferral request, and did not identify any short-term concerns affecting the timing of removal, the enforcement officer was not obliged to recite the contents of that evidence. In the context of the arguments made and the evidence filed, the discussion of this issue was reasonable, and does not show that the enforcement officer failed to consider relevant issues or evidence as Mr. Kalaba contends.

(3) The decision as a whole

[43] Mr. Kalaba contends that even if none of the individual grounds raised was sufficient to justify a deferral, the totality of factors, "considered holistically" do justify a deferral, and render the enforcement officer's decision unreasonable.

[44] I disagree. While there may be circumstances in which multiple factors may cumulatively justify a deferral, the inquiry remains focused on short-term impediments to removal or severe consequences of removal as described in *Lewis* and *Baron*. The enforcement officer considered the various arguments put forward by Mr. Kalaba and concluded that none amounted to an issue that would justify a temporary deferral of execution of the removal order. That conclusion was reasonable. Other than the USCIS appeal, the issues identified by Mr. Kalaba were largely ones related to concerns about his being removed at all, rather than reasons for temporarily deferring his removal. As the enforcement officer noted, and the Court of Appeal has reiterated, a deferral request is not an H&C application, and cannot be treated as such: *Baron* at paras 49–50.

IV. Conclusion

[45] I conclude that the enforcement officer reasonably assessed Mr. Kalaba's deferral request and that their refusal of that request was reasonable. The application for judicial review is therefore dismissed.

[46] Neither party proposed a question for certification. I agree that none arises in the matter.

JUDGMENT IN IMM-2267-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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