Federal Court  Cour fédérale

Date: 20220411

Docket: IMM-91-21

Citation: 2022 FC 514

Ottawa, Ontario, April 11, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

MONIQUE CASSANDRA NICOLE BROWNE
BERTRAM GLADSTONE BROWNE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Monique and Bertram Browne are citizens of St. Vincent and the Grenadines. They have been in Canada since 2008 and 2011 respectively, and got married in 2012. They each came on temporary resident visas and have been in Canada without status since those visas expired shortly after their respective arrivals. In 2015, they unsuccessfully sought permanent residence

on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. They filed another H&C application in 2018, which was again refused in May 2020. In this application, they seek judicial review of the latter refusal, challenging both the merits of the refusal and the fairness of the process by which it was reached.

[2] For the reasons I set out below, I conclude that the refusal of the Brownes' H&C application was reasonable and fair. On the merits, the officer's analysis conformed with the approach to H&C applications established in the case law, and reasonably assessed the Brownes' establishment in Canada and the hardship they would face if returned to St. Vincent and the Grenadines. With respect to the procedure, I conclude that in the circumstances, the officer was not obliged to request updated medical records from the Brownes in light of the passage of time while the application was being processed.

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

II. Issues and Standard of Review

[4] The Brownes challenge both the merits of the officer's refusal of their H&C application and the process by which that decision was reached. The Brownes' arguments raise the following issues:

A. Was the officer's refusal of the Brownes' H&C application reasonable, and in particular:

   (1) Did the officer apply the right legal approach to the assessment of the H&C application?

   (2) Did the officer err in assessing the Brownes' establishment in Canada? and

   (3) Did the officer err in assessing the hardship the Brownes would face if required to return to St. Vincent and the Grenadines?

B. Did the officer breach the duty of procedural fairness by failing to request updated medical records?

[5] The merits of the officer's decision to refuse the H&C application, and thus issues A(1) to (3), are reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 44–45.

[6] The Brownes argue that the question of applying the right legal approach [Issue A(1)] attracts the correctness standard, citing *Mursalim v Canada (Citizenship and Immigration)*, 2018 FC 596 at paras 30–31. In this pre-*Vavilov* decision, Justice Norris noted that "[t]he deferential reasonableness of review presupposes that the decision-maker has applied the correct legal test," referring to the Supreme Court's decisions in *Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 41 and *Németh v Canada (Justice)*, 2010 SCC 56 at para 10. Since the legal test for an H&C application was settled in *Kanthasamy*, Justice Norris concluded that the choice of test should be reviewed on a standard of correctness: *Mursalim* at para 32, citing *Kanthasamy*.

[7] However, the majority of the Supreme Court of Canada in *Vavilov* made clear that assessment of whether an administrative decision maker has appropriately followed binding precedent is part of the reasonableness analysis: *Vavilov* at paras 111–112. Failure to follow binding precedent, or failure to reasonably explain departure from it, will render a decision unreasonable: *Vavilov* at para 112. To some degree, this may be a matter of semantics. Whether an administrative decision that departs from binding precedent on the applicable legal test is considered "incorrect" or "unreasonable" matters less than the fact that the decision cannot stand. However, *Vavilov* leaves no doubt that the analytical approach is one of reasonableness, with binding precedent acting as a "legal constraint" on the decision maker that may render the decision unreasonable: *Vavilov* at paras 105, 111–112.

[8] The procedural fairness issue [Issue B] is reviewed by asking whether the procedure leading to the decision was fair in all the circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. This assessment can be considered to be akin to a correctness standard or as having no standard of review: *Canadian Pacific* at paras 54–56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35.

III. Analysis

A. *The officer's decision was reasonable*

(1) The officer's decision conformed with the applicable legal approach

[9] In *Kanthasamy*, the Supreme Court of Canada set out the approach to be taken in reviewing H&C applications made under subsection 25(1) of the *IRPA*. Reviewing the history of the provision, Justice Abella for the majority referred with approval to the approach taken by the Immigration Appeal Board in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338: *Kanthasamy* at paras 13–14, 20–21. She concluded that subsection 25(1) shared with its legislative predecessors the purposes of offering "equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'": *Kanthasamy* at para 21, citing *Chirwa* at p 350.

[10] In doing so, the Supreme Court rejected an approach that equated H&C considerations with a requirement to show "unusual and undeserved or disproportionate hardship." While hardship is a relevant factor for consideration, there is no hardship threshold for relief under subsection 25(1), and consideration of hardship should not limit an officer's ability to consider and give weight to all relevant H&C considerations in a particular case: *Kanthasamy* at paras 28–33; *Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73 at paras 15–16. This guidance has led this Court to quash H&C refusals where the officer undertook an unduly "hardship-centric" analysis, viewed the application "exclusively through the lens of hardship," or failed to consider the factors globally or holistically: *Marshall v Canada (Citizenship and Immigration)*,

2017 FC 72 at para 37; *Mursalim* at para 37; *Li v Canada (Citizenship and Immigration)*, 2020 FC 848 at paras 32–34.

[11] The Brownes argue the officer reviewing their application fell into the same error, treating their H&C factors in isolation and failing to adopt the compassionate approach to their application mandated by *Kanthasamy*. I cannot agree.

[12] When filed in June 2018, the Brownes' H&C application referred to the emotional and financial hardship they would face if required to leave Canada to return to St. Vincent and the Grenadines; their personal backgrounds coming from poor families in St. Vincent; and their establishment and family ties in Canada. In supplementary submissions filed in March 2019, the Brownes advised the officer that Ms. Browne had undergone surgery after being diagnosed with thyroid cancer and that while she was expected to recover, it would be difficult to obtain ongoing care in St. Vincent and the Grenadines given the country's health care system, including a shortage of oncology care.

[13] The officer reviewing the H&C application considered these issues, both individually and cumulatively. After a brief introduction and confirming the Brownes' identity, the officer organized their reasons for refusing the application under two main headings, namely "Hardships and Challenges in St. Vincent and the Grenadines" and "Establishment." Under the former heading, the officer considered the Brownes' submissions and supporting evidence regarding Ms. Browne's cancer diagnosis and surgery, and the health care system in St. Vincent and the Grenadines. They also assessed the Brownes' submissions regarding economic conditions in

St. Vincent and the Grenadines, the potential challenges in finding employment, and how those challenges and their families' poverty would make it difficult to pay for medicines.

[14] Under the heading "Establishment," the officer reviewed the Brownes' submissions and evidence regarding their life in Canada, including their employment and continuing education, their financial situation, their personal connections to friends, and their involvement and volunteering with their church in Canada.

[15] The officer then considered these elements together under the heading "Conclusion." They considered the factors worthy of positive weight and favourable consideration, while limiting the weight given to their establishment in light of it having been developed while without authorization to stay or work in Canada, particularly after the refusal of their earlier H&C application. The officer concluded that the collective weight of these factors was insufficient to grant relief.

[16] Having reviewed the officer's reasons as a whole, and leaving the Brownes' particular challenges to the assessments of hardship and establishment to the discussion below, I cannot conclude their analysis shows an approach devoid of compassion as the Brownes argue. The officer addressed the submissions and evidence put forward by the Brownes, considering the strength of the evidence and the weight to give to various factors. They acknowledged the difficulties the couple faced, and described in positive terms the evidence regarding their relationships and community service. This shows an approach in conformity with that described in *Kanthasamy*.

[17] I must also reject the Brownes' argument that it was unreasonable to deny their application given their circumstances, and that their application may well have been approved had the officer focused more on broader compassion. This amounts to little more than asking the Court to substitute its decision for that of the officer, which is not the role of the Court on judicial review: *Vavilov* at paras 75, 96.

[18] Nor did the officer treat the various H&C factors in isolation or adopt a "lens of hardship." Of necessity, the officer addressed the factors in sequence, considering first the Brownes' submissions regarding hardship and other challenges. However, the officer's consideration of establishment was focused on establishment and not hardship. The officer then made a point of considering the Brownes' situation as a whole and weighing the various factors in assessing whether H&C relief was justified. Again, this conforms to the analysis required on an H&C application.

[19] I therefore conclude the officer did not fail to adopt the right approach to the H&C analysis as a general matter. I therefore turn to the Brownes' particular arguments regarding the contents of that analysis as it relates to their establishment and the hardships they would face if required to return to St. Vincent and the Grenadines.

(2) The officer's assessment of the establishment factor was reasonable

[20] In assessing the Brownes' establishment in Canada as an H&C consideration, the officer summarized Ms. Browne's history of employment and her efforts to further her education. He then summarized Mr. Browne's history of employment and efforts to further his education. In

each case, the officer noted that they had been out of status since 2009 and 2012 respectively, and had made no effort to correct the situation. The officer went on to review the Brownes' financial establishment, noting there were limited supporting documents, making it difficult to determine their current financial situation. The officer noted that Ms. Browne sent money home to family in St. Vincent, although there were no records to this effect after 2014. Overall, the officer found that although the Brownes had made efforts toward establishing themselves by working, they lacked a stable employment history and had filed limited financial information, which reduced the favourable weight that could be given to this aspect of establishment.

[21] As noted above, the officer went on to assess the personal and community aspects of the Brownes' establishment, giving favourable weight to their efforts to integrate given their very positive letters of support. The officer also gave favourable weight to Ms. Browne's volunteer and charitable activity through her church, which showed her efforts to become an active member of Canadian society. Considering the personal, community, and financial aspects together, the officer found that the former weighed in the Brownes' favour, but that given the limited evidence showing Ms. Browne's current financial status or meaningful progress to secure permanent employment, the officer could give only moderate positive weight to the establishment factor.

[22] In their overall conclusion, the officer noted that establishment was the only factor that attracted any appreciable weight, and it did not rise to a significant level. The officer noted again that the weight that could be given to the factor was limited by the fact that the Brownes were

able to develop aspects of establishment by remaining and working in Canada without authorization, including after their first unsuccessful H&C application.

[23] The Brownes submit this analysis is unreasonable. They raise four arguments, which I will address in turn.

(a) *The Brownes' lack of status in Canada*

[24] The Brownes first argue it was unreasonable for the officer to dwell on their lack of status and use it to undermine their demonstrated establishment in Canada, citing this Court's decisions in *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 and *Osun v Canada (Citizenship and Immigration)*, 2020 FC 295. In *Sebbe*, Justice Zinn expressed concern with an officer's observation that an H&C applicant had "received due process through the refugee programs and was accordingly afforded the tools and opportunity to obtain a degree of establishment into Canadian society." Justice Zinn concluded an officer must analyze and assess the degree of establishment and how it weighs in favour of granting an exemption, and "not merely discount what they have done by crediting the Canadian immigration and refugee system for having given them the time to do these things without giving credit for the initiatives they undertook": *Sebbe* at para 21.

[25] Justice Diner applied these principles in *Osun*, finding an officer's analysis that used language essentially identical to that in *Sebbe* to be unreasonable: *Osun* at paras 13–15. Notably, in each of *Sebbe* and *Osun*, the officer's reasons discounted the applicant's establishment primarily because it arose while the applicant was a refugee claimant, rather than because it arose

while the applicant was without status: *Sebbe* at para 21; *Osun* at para 13; see also *Aboubacar v Canada (Citizenship and Immigration)*, 2014 FC 714 at paras 14–20; *Jaramillo Zaragoza v Canada (Citizenship and Immigration)*, 2020 FC 879 at paras 18, 36–40. That said, *Sebbe* and subsequent cases have also found it unreasonable to wholly disregard evidence of establishment simply because it arose when an applicant was without status: *Sebbe* at paras 23–24; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1142 at paras 31–32; *Lopez Bidart v Canada (Citizenship and Immigration)*, 2020 FC 307 at para 32.

[26] As the Minister points out, *Sebbe*, *Osun*, and similar cases, exist alongside the principles this Court has set out in cases such as *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 and *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313. *Semana* involved a finding by the Immigration Appeal Division (IAD) that H&C factors did not warrant overturning an individual's inadmissibility for misrepresentation. Justice Gascon held it was reasonable for the IAD to have lessened the weight to be given to the applicant's establishment given her repeated misrepresentations and prolonged disregard for immigration laws: *Semana* at para 46. He adopted the observation of Justice Nadon, then of this Court, that applicants should not be "rewarded" for accumulating time in Canada when they have no legal right to do so: *Semana* at para 48, citing *Tartchinska v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15032 (FC) at para 22; see also *Shackleford* at paras 23–24; *Edo-Osagie v Canada (Citizenship and Immigration)*, 2017 FC 1084 at paras 15–17; *Ylanan v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1063 at para 35.

[27] In my view, there is no inconsistency in these cases. *Sebbe* itself underscores that whether the steps the applicant took were done legally is a relevant question: *Sebbe* at para 24; see also *Singh* at para 32. Conversely, the Court in *Semana*, *Shackleford*, and *Edo-Osagie* underscored that the officer did not discount the applicant's evidence of establishment, but gave it attenuated weight in light of the applicant's lack of status, an approach found to be reasonable: *Semana* at para 46; *Shackleford* at paras 23–24; *Edo-Osagie* at paras 15, 17; see also *Franco v Canada (Citizenship and Immigration)*, 2021 FC 734 at para 24; *Dela Pena v Canada (Citizenship and Immigration)*, 2021 FC 1407 at para 27.

[28] The foregoing cases can be viewed as standing for three propositions: (1) it is unreasonable for an officer assessing an application for relief on H&C grounds under subsection 25(1) of the *IRPA* to discount an applicant's evidence of establishment in Canada because it arose while they had status as refugee claimants; (2) it is unreasonable for an officer assessing an application for relief on H&C grounds under subsection 25(1) of the *IRPA* to wholly discount or disregard an applicant's evidence of establishment in Canada because it arose while the applicant did not have legal status; (3) it is not unreasonable for an officer to take into account the circumstances giving rise to the establishment, including lack of status or misrepresentations, and to conclude that the positive weight to be given to establishment ought to be attenuated because of those circumstances.

[29] In the present case, the officer did not disregard the Brownes' evidence of establishment simply because it arose while they did not have status. Rather, the officer gave their evidence of establishment positive weight, but concluded that less weight should be given to that positive

factor since the establishment arose while the Brownes stayed in Canada and worked without authorization. This accords with the jurisprudence referenced above and is not unreasonable. Nor did the officer unduly focus on the lack of status as the Brownes contend. The officer appropriately referred to the lack of status with respect to each of the Brownes in their discussion of establishment, and mentioned it again in undertaking their balancing at the conclusion of their analysis. I see no error in such an approach.

(b) *Education and employment*

[30] The Brownes argue it was unreasonable for the officer to refer to their efforts to upgrade their skills while noting they had not resulted in meaningful progress toward permanent employment. They say this amounts to the officer unreasonably minimizing what they had accomplished based on what they had not accomplished.

[31] I disagree. It was reasonable for the officer to assess both the positive aspects of the H&C application and those that were less supportive of the application. This is the type of balancing and individualized assessment called for on an H&C application. Contrary to the Brownes' submissions, I cannot read the officer's reasons as "minimizing" their educational accomplishments based on the lack of progress toward employment. Rather, the officer in considering their establishment recognized their efforts in education, while at the same time recognizing those efforts had not to date resulted in improving their employment status.

(c) *Exceptionality*

[32] The Brownes next argue the officer effectively required them to demonstrate an "exceptional" level of establishment, an approach this Court has found unreasonable: *Osun* at paras 16–17, citing *Sivalingam v Canada (Citizenship and Immigration)*, 2017 FC 1185 at para 13.

[33] The primary difficulty with this argument is that the reasoning the Brownes criticize is not found in the officer's reasons. The officer refers to the various aspects of their establishment, giving certain aspects of it favourable weight and others less favourable weight. At no point does the officer state or even suggest that they did not consider the Brownes' establishment to be a positive factor because it did not arise to an exceptional level. In this regard, I do not accept the Brownes' argument that the officer's reference to matters such as the lack of progress toward permanent employment implies an exceptionality standard. Simply because an officer reviewing an H&C application refers to elements of an applicant's establishment that are less favourable or less persuasive does not mean they are implicitly requiring the applicant to show an exceptional level of establishment.

(d) *Financial establishment*

[34] Finally, the Brownes argue that by discounting their financial establishment, the officer failed to consider the broader equitable picture, namely that they were using their financial means to support their church in Canada and their families in St. Vincent. Again, I believe this misreads the officer's reasons, which must be the starting point of the reasonableness analysis.

[35] The officer gave limited weight to the Brownes' financial establishment largely owing to the lack of evidence, which made it difficult to assess their finances. In particular, the officer noted that the Brownes filed notices of assessment only from 2018 and after, bank statements only from 2014, and that the documents regarding remittances to St. Vincent and the Grenadines ended in 2014. The Brownes bore an onus to establish the facts on which they relied for their H&C application, and it was reasonable for the officer to conclude that the limited evidence before them regarding their financial situation meant that only limited weight could be placed on this factor: *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45.

[36] I am therefore unpersuaded by any of the Brownes' arguments that the officer's assessment of their establishment was unreasonable.

(3) The officer's assessment of the hardship factor was reasonable

[37] The Brownes argue the officer's analysis of hardship was also unreasonable. They focus on two main elements of hardship: their poverty and the difficulty they would have in finding employment in St. Vincent and the Grenadines; and difficulties they would face in obtaining ongoing cancer treatments after Ms. Browne's surgery. Again, the Brownes raise several arguments.

(a) *Timing of medical evidence*

[38] The Brownes suggest the officer unreasonably dismissed their supporting medical evidence as outdated. They argue the evidence was timely when it was filed, and that delays in

processing their H&C application should not be held against them, citing *De Roldan v Canada (Minister of Citizenship and Immigration)*, 2005 FC 40 at para 8(v).

[39] On my review of the decision, however, I agree with the Minister that the officer did not dismiss the Brownes' medical reports as outdated. To the contrary, the officer noted that Ms. Browne's status at the time of those reports was simply that she required medication indefinitely and that she might require further surgery. The officer then noted that the Brownes had not submitted any further evidence "to indicate that the situation has changed since then, or submitted any other updated information on her healing process or medical situation overall." The officer therefore concluded there was no persuasive evidence Ms. Browne was likely to require further treatment, such as surgery. In other words, the officer accepted the medical information filed as still reflecting Ms. Browne's status in the absence of any subsequent information. They did not dismiss that medical information on grounds that it predated the decision.

[40] Since the officer did not dismiss the medical evidence as outdated, I need not consider whether it would have been unreasonable for them to do so in the circumstances.

[41] Nor was the officer's assessment of the evidence that was provided unreasonable. The Brownes point to a medical letter dated November 20, 2018 that states Ms. Browne "will likely also require additional surgery as well as radioactive iodine treatment [RAI] for her papillary thyroid cancer" and if that treatment is required, it would require a thyroid hormone replacement. However, a subsequent report dated January 16, 2019 stated that Ms. Browne's risk was not

clear, and that a recommendation would be made in the future between either close monitoring or further surgery with or without RAI. On my review, the officer's assessment of what the medical evidence said about Ms. Browne's condition, namely that there was no persuasive evidence that she was likely to require further interventions, was reasonable.

[42] I note in this regard that Ms. Browne filed on this application further updated medical records. These documents were not before the officer, and mostly post-date the decision, and therefore cannot affect the reasonableness of the decision. In any event, the most recent report simply refers to the need for ongoing surveillance, which does not contradict the officer's assessment that there was no evidence that further surgery would be required.

(b) *Availability and cost of care in St. Vincent and the Grenadines*

[43] The Brownes also challenge the officer's conclusions regarding the availability of health care in St. Vincent and the Grenadines and the impact of that issue on their H&C application.

[44] In their discussion of hardship, the officer noted the Brownes' stated concerns regarding the lack of cancer care in St. Vincent and the Grenadines. They reviewed the supporting evidence filed, consisting of news articles and a letter from a retired public servant. They provided their assessment of that evidence, including both its contents and its reliability. The officer noted that none of the evidence showed that the medicine Ms. Browne needed was unavailable in St. Vincent and the Grenadines, or set out its comparative cost there and in

Canada. The officer concluded the Brownes had not provided persuasive evidence that the medicine was prohibitively expensive or unavailable in St. Vincent and the Grenadines.

[45] The Brownes point to elements of the evidence showing, for example, that cancer treatments are expensive in St. Vincent and the Grenadines, that there were high rates of cancer illness and death, and that chemotherapy and radiotherapy services were not available. However, they have not satisfied me that the officer's analysis of the totality of the evidence regarding health care and cancer care in St. Vincent and the Grenadines was unreasonable. Absent such unreasonableness, it is not for this Court to attempt to reassess the evidence or the amount of weight to give to it in the H&C assessment.

[46] The officer's finding that Ms. Browne had not provided persuasive evidence that she would require further interventions was reasonably open to them on the record. This led the officer to conclude that little weight could be given to this factor on the H&C application, despite the evidence regarding the state of health and cancer care in St. Vincent and the Grenadines. It was for the H&C officer to conduct this assessment based on the evidence before them, and I conclude their assessment was reasonable.

(c) *Economic conditions*

[47] Finally, the Brownes challenge the officer's analysis of the adverse economic conditions in St. Vincent and the Grenadines. The officer noted the unemployment rate in the country and gave some weight to the potential challenges in finding employment, acknowledging the economic situation in the country was not ideal. However, the officer noted that little evidence

was filed to show that the Brownes would have particular difficulty finding work, and thus did not give much weight to this factor. The Brownes argue this amounts to dismissing evidence of generalized adverse country conditions because those conditions would be faced by everyone in the country, an approach found unreasonable in *Diabate v Canada (Citizenship and Immigration)*, 2013 FC 129 at paras 32–36.

[48] Contrary to the Brownes' arguments, I do not find the officer fell into the error described in *Diabate*. In my view, there is a difference between, on the one hand, rejecting evidence of hardship or risk because it is faced generally by everyone in the country and, on the other, concluding that an applicant had not adequately established a link between adverse country condition evidence and their own situation. The former is the error described in *Diabate*. The latter is an assessment of the individual circumstances of an applicant, and has been accepted by this Court as reasonable: *Uwase v Canada (Citizenship and Immigration)*, 2018 FC 515 at paras 41–43; *Arsu v Canada (Citizenship and Immigration)*, 2020 FC 617 at paras 16–17. In my view, the officer's analysis in this case falls in the latter category.

[49] The officer's reasons must also be assessed in the context of the submissions made by the Brownes: *Vavilov* at paras 127–128. The Brownes' original application made little reference to employment beyond submissions expressing a "worry about not being able to support themselves" and a reference in Ms. Browne's statement about the high unemployment rate and having no job to go back to. In updated submissions filed after Ms. Browne's surgery, they contended that she would have no job if required to return, given the general unemployment rate and the fact that they had not been in St. Vincent and the Grenadines for 15 years made them

"less desirable employees." They also filed a letter from a business owner indicating that she does not hire applicants with a history of illness. The officer assessed these arguments and supporting evidence, concluding it did not establish that Ms. Browne would be routinely denied employment as she had contended. The officer's reference to the evidence not demonstrating the Brownes would have "particular difficulty" finding work must therefore be considered as reasonably responsive to their limited argument that they would face a difficulty greater than the average in finding employment.

[50] I am therefore not satisfied that the officer's analysis of the hardship factors presented by the Brownes was unreasonable.

B. *The officer did not breach the duty of procedural fairness*

[51] The Brownes' procedural fairness arguments pertain to the question of the timeliness of the medical evidence, as discussed above. They argue it was unfair for the officer to discount the medical evidence as outdated without requesting updated information. This argument must be rejected for three reasons.

[52] First, as discussed above, the officer did not discount the medical evidence because it was outdated. They simply noted that there had been no further records provided which would change the information in the reports that had been filed.

[53] Second, to the extent that there was further medical evidence that showed a change in Ms. Browne's status or prognosis, it was incumbent on the Brownes to file that evidence, not on

the officer to ask for it. As the Brownes fairly and correctly concede, this Court has previously held that an applicant bears the burden of supplying necessary documentation to support their claim and that an officer is not required to request updated information: *Rodriguez Zambrano v Canada (Citizenship and Immigration)*, 2008 FC 481 at paras 39–40; *Law v Canada (Citizenship and Immigration)*, 2009 FC 79 at para 18. This principle applies and it is not affected by the Brownes' arguments about the length of time their H&C application took to process. I note that the Brownes were clearly aware of the possibility to update their H&C application with more information, and did so when Ms. Browne was diagnosed with cancer and underwent surgery. If there had been additional relevant medical information to provide, the Brownes could have and should have provided it.

[54] Third, as discussed above, the updated medical evidence filed by the Brownes on this application indicates there was not any new medical information that would have conflicted with the officer's findings in any event. The officer addressed the Brownes' submission that Ms. Browne might require further surgery, concluding there was no persuasive evidence such surgery would be needed. The updated medical evidence filed with the Court shows simply that Ms. Browne required ongoing surveillance. There was no additional evidence of a need for further cancer surgery, nor any evidence from before the decision was made that could have changed the officer's conclusion.

[55] I therefore conclude that the process leading to the officer's decision on the Brownes' H&C application was fair in all the circumstances.

IV. Conclusion

[56] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-91-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-91-21
STYLE OF CAUSE:	MONIQUE CASSANDRA NICOLE BROWNE ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 22, 2021
JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	APRIL 11, 2022

APPEARANCES:

Daniel Kingwell	FOR THE APPLICANTS
Erin Estok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk & Kingwell LLP Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT