Federal Court  Cour fédérale

Date: 20230713

Docket: IMM-4684-22

Citation: 2023 FC 941

Ottawa, Ontario, July 13, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

LEVAN BEKAURI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

Background

[1] The Applicant, Levan Bekauri, is a citizen of Georgia. He entered Canada on May 4th, 2015, and later that month submitted a claim for refugee protection asserting that he was at risk in Georgia because of his membership in the United National Movement [UNM]. He alleged that officials from the prosecutor's officer of the Georgian Dream government asked him to provide false testimony against a man named Giorgi Udesiani [Udesiani]. Specifically, that Udesiani had

recruited martial arts athletes to form plainclothes punishment squads to assault opposition members. When he refused, he was threatened and later was kidnapped and beaten. In a decision dated April 15, 2016, the Refugee Protection Division [RPD] denied the Applicant's claim; the determinative issue was credibility.

[2] The Applicant subsequently submitted an application for permanent residence based on humanitarian and compassionate [H&C] grounds pursuant to s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. On March 23, 2022, a Senior Immigration Officer [Officer] refused the Applicant's H&C application. The negative H&C decision is the decision now under review.

[3] For the reasons that follow, I am dismissing this application for judicial review.

Decision Under Review

[4] The Officer considered the Applicant's submissions pertaining to hardship upon return to Georgia, his medical condition and his establishment in Canada, and ultimately concluded that these factors did not provide a sufficient basis to grant a s 25(1) exemption.

[5] With respect to hardships in Georgia, the Officer found that the Applicant's claim relating to his asserted membership in the UNM was a reiteration of the same material allegations that the RPD had previously assessed and found not to be credible. The Applicant had not provided a sufficient evidentiary basis to overcome the RPD's determination. The Officer also considered the Applicant's submission that the political situation had worsened since he fled

the country and that he would be ostracized and face political discrimination because of his previous membership with UNM. The Officer found that the Applicant had not proven, on a balance of probabilities, that his political affiliations and the position he would have held within the UNM would make him a person of interest if he were to return to Georgia now.

[6] As to hardship arising from the Applicant's medical conditions, the Officer considered the Applicant's submissions that his health condition will be exacerbated if he returns to Georgia because the health care system there is inadequate in comparison to Canada. The Officer ultimately found that the Applicant provided limited and conflicting evidence of having a previous medical procedure outside Georgia, had not provided documentation corroborating his claim of unprofessional or erroneous care in Georgia or that he travelled to Russia for treatment because it was unavailable or would be negligently provided in Georgia. The Officer found that the objective documentary evidence indicated that, after the Applicant left Georgia, the health care system there had likely vastly improved because of the implementation of the Universal Health Care [UHC] system. The Officer concluded that the Applicant had not presented sufficient probative evidence to confirm, on a balance of probabilities, that he would not be able to access adequate health care in Georgia.

[7] The Officer also considered the Applicant's submission that he has no family ties in Georgia that would be able to assist with his care and afforded this favourable weight. Additionally, the Officer considered the Applicant's submission that he would face financial hardship if returned to Georgia, as his health condition does not allow him to work. The Officer concluded, based on evidence adduced by the Applicant and the Officer's own research, that

there is assistance available to citizens based on their disability level and that the UHC should assist him with his medical expenses.

[8] With respect to hardship due to establishment in Canada, the Officer did not grant any favourable weight to employment or financial establishment as the Applicant has been unemployed for the entirety of his seven years in Canada, which the Applicant states is because of his open heart operation and his diagnosis of artery disease. The Officer also afforded modest favourable weight to the Applicant's volunteer activities as a Wushu martial arts coach twice a week from December 2016 to December 2017, as it was only performed for one year. With respect to the Applicant's community ties, although he produced numerous unique and detailed letters from friends, community members, and his cousin outlining that they consider him to be a valuable member of society, the Officer afforded this modest favourable weight as he had not proven that his ties are exceptional in comparison to other individuals of a similar immigration profile. Finally, despite raising concerns about the physical proximity of the Applicant and his cousin – she resides in Kitchener, Ontario while the Applicant resides in North York, Toronto, Ontario – the Officer afforded moderate favourable weight to the letter of support from the Applicant's cousin indicating that she regularly assists him in his day-to-day requirements and would continue to do so if he remained in Canada.

[9] The Officer ultimately concluded that the collective consideration of the Applicant's factors did not provide a sufficient basis to grant H&C relief.

Issue and Standard of Review

[10] The sole issue in this matter is whether the Officer's decision was reasonable.

[11] The parties submit, and I agree, that the standard of review applicable to the merits of the Officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*]).

The Decision was Reasonable

[12] I note, as a preliminary observation, that the Applicant's written submissions as well as his reply submissions essentially take issue with every sentence in the Officer's decision and identify multiple purported errors. They are a textbook example of a line-by-line treasure hunt for error. While I have read and considered all of these assertions, these reasons will not address each and every one of them. Rather, I will structure these reasons to correspond with the H&C factors addressed by the Officer and the most compelling of the Applicant's submissions with respect to each of these factors. I would add that when appearing before me, counsel for the Applicant largely concentrated on the Applicant's medical issues.

Hardship in Georgia

[13] The Applicant submits that the Officer erred by fettering their discretion. According to the Applicant, the Officer afforded the RPD's findings considerable weight but the Officer was required to make their own determination with respect to hardship, independent of the RPD's

findings. The Applicant also submits that the Officer failed to engage with his submissions with respect to the risk he would face on return. Further, that the Officer conflated the refugee claim test with the H&C test and improperly assessed the country conditions documentation which supported that former UNM members would be targeted by the ruling Georgia Dream party. Additionally, the Officer misunderstood that the purpose of the two letters relied upon by the Applicant, which letters had previously been considered by the RPD, and evidence of membership in the UNM, was not to raise an issue of procedural fairness but to explain that because he fell ill, he had not challenged the demonstrably flawed RPD decision by an appeal to the RAD.

i. Fettering of discretion

[14] In my view, the Applicant has not established that the Officer erred by fettering their discretion in assigning considerable weight to the findings of the RPD.

[15] This Court has held that H&C officers may take into account adverse credibility findings made by the RPD and RAD regarding fear of removal to a country of origin (*Sanabria v Canada (Citizenship and Immigration)*, 2020 FC 1076 at para 14 [*Sanabria*]).

[16] As stated by Justice Grammond in *Zingoula v Canada (Citizenship and Immigration)*, 2019 FC 201 at paragraph 9, while the facts in a claim for refugee protection and an H&C application may overlap, they are not subject to the same legal criteria. However, if an applicant presents essentially the same story that had been found not to be credible as a whole by the RPD or the RAD, the H&C officer is entitled to reject it (paras 10-11). In that case, like the matter

before me, the applicant argued that the H&C officer fettered their discretion by fully accepting the RPD and RAD's credibility determinations. Justice Grammond rejected this stating, "I disagree. The case law of this Court recognizes that an H&C officer may reject evidence that the RPD and RAD have found not to be credible" (para 23).

[17] And, as Justice McVeigh held in *Demetrio v Canada (Citizenship and Immigration)*, 2021 FC 1139:

> 15 I find no error in the decision-maker's determination on the evidence contained in the Certified Tribunal Record ("CTR"). In *Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73, Justice Diner wrote that **that it is a difficult task to overcome a previous negative credibility finding when applicants seek to present a story which was already not found to be credible by the RPD. This is particularly the case when the Applicant's new evidence is merely a corroborative of a story already found not to be credible** (*Gomez v Canada (Minister of Citizenship & Immigration*), 2005 FC 859 at para 5). This is what happened here. The Officer did not refer to every single piece of new evidence before him, or deal with each instance of hardship, and he did not need to. Rather, he was deferential to the RPD's credibility findings, and found the Applicant's story as a whole not to be credible. If the story as a whole is not credible, further evidence or argument which merely doubles down on this story will not "move the needle" of credibility so to speak unless it provides sufficient linkage to establish that the claims which were previously non-credible now appear to be credible (*Gomez v Canada (Minister of Citizenship & Immigration)*, 2005 FC 859).
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> [Emphasis added.]

[18] Further, "[t]he RPD's decision may not simply be ignored, particularly where it speaks to the alleged hardship and has serious credibility concerns with the Applicants' allegations" (*Nwafidelie v Canada (Citizenship and Immigration)*, 2017 FC 144 at para 22).

[19] Here the Officer noted that the Applicant cited allegations that were previously examined by the RPD with respect to his refugee claim as a reason why he cannot leave Canada and, therefore, found it was appropriate to examine the adjudication and outcome of the RPD hearing. The Officer also pointed out that the Applicant's claim was rejected by the RPD with the determinative issue being credibility. The Officer acknowledged that they were not bound by the RPD's decision, but afforded it considerable weight. The Officer acknowledged that different legal tests apply for a claim for refugee protection versus an application on H&C grounds, but also that facts for each are established on a balance of probabilities, and as such, placed considerable weight to the RPD's findings.

[20] The Officer noted the Applicant's submission that, after the RPD rendered its decision, he fell ill and was unable to appeal the decision. The Applicant had indicated that this was why he was resubmitting the same two letters that were already considered by the RPD. These were a letter from Mr. Mamuka Chikovani who lists himself as the "Head of the United National Movement" and writes that the Applicant was "a leading member of the party". The second letter came from a lawyer whom the Applicant says gave him advice after he was approached to give false testimony. The Officer found that the Applicant had not been denied procedural fairness by the RPD. The Officer noted that the Applicant had been granted two hearings eight months apart, he was informed about the RPD's concerns regarding the subject letters and was granted an opportunity to respond verbally to the concerns in both hearings as well as to make further submissions for consideration. He was also granted an additional opportunity to make final submissions regarding the letters after the final hearing. These opportunities pre-dated his hospitalization and afforded him the opportunity to raise any concerns he had with the RPD's

assessment of that evidence. Further, the RPD's assessment of the two letters was exhaustive and thoroughly detailed in its decision. Nor were the letters determinative of his refugee claim or the RPD's only credibility concerns.

[21] I would point out, as noted by the Officer, that the RPD utilized resources available to it to verify the issuance of the letters and found several reasons to doubt their authenticity. I would add, having read the RPD decision, which is in the record, that the RPD sent the letters to the RCMP for forensic analysis which raised concerns and concluded that the authenticity remained inconclusive. The Applicant was informed of this finding and offered an opportunity to, and did, respond. After the end of the second sitting, the RPD provided the Applicant with the response received from the Canadian Embassy in Ukraine, which had also been unable to verify the authenticity of the letters. The Applicant was again afforded the opportunity to respond and did so. The RPD concluded that, having assessed the documents and the submissions of the Applicant's counsel, that it was more likely than not that the letters were fraudulent.

[22] As the Officer set out, the two letters relied upon by the Applicant were found by the RPD, more likely than not, to be inauthentic. The Applicant points to no evidence provided to the Officer attempting to that overcome that finding, he merely disagrees with it.

[23] Further, in considering the H&C application, the Officer found that merely reiterating the same material allegations for the H&C application, which had already been determined to lack credibility by the RPD, did not provide a sufficient evidentiary basis on which the determination of the RPD could be overcome.

[24] In these circumstances, it was not unreasonable for the Officer to defer to the RPD's credibility findings and the Officer did not fetter their discretion.

[25] The Applicant also asserts that the Officer misses the point in stating that procedural fairness was followed by the RPD in its consideration of the two letters, as the Applicant was not raising an issue of procedural fairness. Rather, his point was to explain why he did not seek judicial review of the RPD's decision, due to illness, and as a result lost the opportunity to challenge the RPD's assessment of the two letters.

[26] However, the Officer's reasons demonstrate that the Officer understood why the Applicant was again attempting to rely on the discredited letters in his H&C application. Further, even if the Applicant's illness prevented him from seeking judicial review of the RPD decision, this does not mean that the RPD erred or that the Officer erred in not granting the H&C application. I note that it was open to the Applicant to have sought leave to file an application for judicial review late due to illness. However, it is not open to him to attempt to sidestep or collaterally attack the RPD's credibility assessment of the subject letters in his H&C application on the premise that he failed to seek judicial review of the RPD's decision. Nor does an H&C officer sit in appeal of the RPD's decision (*Nkitabungi v Canada (Citizenship and Immigration),* 2007 FC 331 at para 8; *Kouka v Canada (Citizenship and Immigration),* 2006 FC 1236 at para 27; *Sanabria* at para 14). Moreover, the Officer did consider the content of the letters and their treatment by the RPD in the context of the H&C application before them and, given the circumstances, reasonably viewed the Applicant's explanation of why he was attempting to rely on the discredited letters through the lens of procedural fairness. Again, no error arises.

[27] Further, and contrary to the Applicant's submissions, the Officer did not fail to engage with the Applicant's submissions with respect to risk upon return or conflate the refugee claim test with the H&C application test. The Applicant was required to demonstrate that in his personal circumstances he would suffer hardship if returned to Georgia (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 21). The Officer reasonably found that the Applicant had failed to tie his personal circumstances to his evidence of the Chief Prosecutor's subsequent decision to charge Udesiani. That is, how that decision demonstrated forward-looking hardship for the Applicant. Similarly, the Officer did not err in requiring the Applicant to demonstrate how he would personally be affected by the general country conditions he asserted as a source of hardship on return.

[28] In sum, the Officer provides transparent and intelligible justification for their deference to the RPD's credibility findings and, given that the burden lies with the Applicant, the Officer also reasonably found that his evidence post-dating the RPD decision was to be afforded little weight.

ii. Country conditions

[29] I also do not agree with the Applicant that the Officer erred by finding that the country documentation does not show evidence of the ruling Georgia Dream party targeting former and current UNM members with widespread and prevalent violence and/or arbitrary arrests. In support of this assertion, the Applicant refers to Responses to Information Requests [RIR] which he says was quoted by the Officer (it was not) and which states, in part, that "[s]ources report that there have been acts of violence against UNM members" and cites 10 such incidents

between 2012 and 2015. However, read in whole, that portion of the RIR referred to by the Applicant states:

> Sources note that after the 2012 parliamentary elections, there were reports of harassment against UNM members…. "at the local level". Sources report there have been acts of violence against UNM members…. According to the HRIDC representative, "[t]hough UNM members sometimes experience violence because of their political affixations, these [incidents] are not wide spread"…

[30] This supports the Officer's finding.

[31] Further, this determination was made within the Officer's finding that the Applicant had adduced limited evidence that general members of the UNM, being those that would have a similar profile to the Applicant's personal profile, would face hardships in Georgia in the present day. In that regard, the Officer stated that they had reviewed the documents submitted, as well as conducted their own independent research into the current country conditions as they would relate to the Applicant. The Officer found no evidence of widespread and arbitrary arrests of UNM members by the authorities or government, as alleged by the Applicant. Nor did the Officer find evidence of widespread and prevalent violence against current and former members of the UNM by the government or society. Based on all of the evidence reviewed, the Officer found that the conflict and animosity that exists between the Georgia Dream and the UNM parties does not demonstrate that UNM members are widely discriminated against or ostracized. The Officer granted some favorable weight to this concern as it appears there is some political unrest between the opposing parties that may result in some general hardship. However, they noted that those members most affected appear to be higher-up in the political structure of the

party. Since the Applicant did not hold a prominent position in the party, he was not likely to face hardship upon return in this regard.

[32] Given this, the Applicant has failed to persuade me that the Officer erred in their treatment of the country conditions evidence when assessing hardship upon return to Georgia.

iii. Medical condition

[33] The Applicant's many assertions under this heading include, but are not limited to, his view that the Officer erred in the following ways: by concluding that the Applicant provided limited and conflicting evidence of having his previous medical procedure outside of Georgia; by focussing on the fact that the Canadian medical reports do not have specifics of the Applicant's medical history, rather than focussing on whether the Applicant would receive adequate medical care if he was forced to return to Georgia and determining whether the hardship of returning to Georgia with these medical conditions favours granting H&C relief; by not being responsive to arguments with respect to the lack of support the Applicant would receive in his daily activities because of his medical conditions if he were returned to Georgia; by focussing solely on what medical care the Applicant could access if removed to Georgia and failing to consider the effect of the removal on the Applicant's health; in their treatment of the articles provided by the Applicant and in painting a rosy picture of the UHC universal health care system in Georgia; by recognizing the mental hardship caused by the dislocation, but then focusing on the availability of mental health supports available to the Applicant as opposed to the consequences of the hardship; and, by not explaining on what basis the mere availability of universal social security plans and disability benefits would mean the Applicant would have access to them.

[34] As a starting point, with respect to the Applicant's prior medical care in Georgia, the Officer set out submissions of the Applicant's counsel asserting that the Applicant's health conditions will be exacerbated if he returns to Georgia because the health care system is inadequate in comparison to Canada's due the complexity of his medical conditions, that he has had to seek care outside of Georgia in the past and has twice been the victim of inappropriate medical care in Georgia. The Officer noted that the Applicant provided limited and conflicting evidence of having his previous medical procedures outside of Georgia. He provided no dates for the procedures or any details of where they occurred. His Canadian medical reports did not address this. The Officer noted that the Applicant appears to have contact with his parents and lawyer in Georgia that may have assisted him in obtaining the documents, but he had not stated why he was not able to submit them.

[35] The Applicant submits that this finding was unreasonable because the treatments were a very long time ago and the Applicant could not have known when he fled Georgia to come to Canada to make a refugee claim that he would need his complete medical profile. However, in my view, the Officer's finding is justified in light of the record before them as the Applicant offered no explanation for the limited supporting evidence. I fail to see how the Officer erred by considering the sufficiency of the evidence to support the Applicant's assertions.

[36] Further, and as the Respondent submits, the onus was on the Applicant to provide evidence that the unavailability of health care would cause hardship upon return (*Robinson v Canada (Citizenship and Immigration)*, 2021 FC 1416 at para 47 [*Robinson*]; *Kaur v Canada (Citizenship and Immigration)*, 2022 FC 686 at para 14 [*Kaur*]). The Officer raised the concern

of a lack of medical records from Georgia and Moscow in response to the Applicant's submissions that "the doctors in Georgia were not able to help him" and "the closest medical centers" are in Moscow or Ankara. Contrary to the Applicant's submissions, the Officer did not unreasonably expect that the Canadian physician reports would state more than the existing conditions of the Applicant – the Officer merely noted that these reports, in light of the information they contained, were not sufficient to confirm the specifics of the Applicant's asserted prior medical care received outside of Canada. Significantly, however, the Officer found that none of the medical documents provided by the Applicant's doctors in Canada, aside from the Applicant's psychological evaluation, dealt with separately by the Officer, state that his medical issues would be exacerbated if he were to return to Georgia.

[37] The Officer noted that the Applicant provided translated articles from various news sources, which mainly appear to be based in Georgia, which outline general issues with health care funding and support in Georgia, the prevalence of low-quality medication, lack of treatments and the high cost of access to health care. The Officer noted that the Applicant had provided URL links to the articles but that the Officer had been unsuccessful in using the links to access the referenced articles online. The Officer also found that there were concerns with the produced articles, including that the majority of the statistics and data within them were absent corroborating sources, the authors or origins of the articles were not provided in many of the documents, about half of the articles had no date of publication and the Applicant provided only small portions of whole articles in a few instances. These concerns negatively impacted the probative value of the information.

[38] The Officer then addressed their own independent research into the country conditions as they relate to the Applicant's allegations regarding health and medical care. This included a 2018 World Bank document which indicated that Georgia enacted a UHC program in 2013, which the Officer quoted as follows:

> Georgia has made significant progress in improving access to health services under the UHC Program. The introduction of the UHC Program in February 2013, aimed at improving the general population's access to good quality health care, has benefited more Georgians, particularly those relatively less well-off, by improving access to health services when ill and reducing the likelihood of impoverishment or catastrophic out-of-pocket (OOP) spending on health care.
>
> The UHC Program extended publicly financed entitlement to health care coverage to the entire population. The nature of the program is noncontributory, in the sense that Georgians do not have to contribute for enrollment. Enrollment involves registering with the primary care provider of choice. The benefits package covers a range of primary and secondary care services and limited essential drugs (Table 2.1). Administratively, the reform transferred responsibility for purchasing health care services from private insurance companies to the SSA under MoLHSA, thus putting in place a platform to shift from passive to active purchasing…The health financing reforms introduced since 2013, and backed up by significant increases in public health spending, have moved Georgia closer to European norms. These include: (i) near universal population entitlement to publicly financed health care; (ii) free visits to family doctors; (iii) referral and prescribing systems; (iv) a single purchasing agency; and (v) higher public spending on health (WHO 2016). Sustaining the coverage achieved to date and deepening coverage through better financial protection against OOP costs are the policy priorities for the Government of Georgia.

[39] The Officer also quoted two other documents concerning the UHC. The Officer assigned greater weight to this objective evidence than to the articles produced by the Applicant, given the concerns they had identified with the latter. The Officer also noted that although the Applicant did not identify exactly when he claims to have received substandard medical care in Georgia, it

would have pre-dated the enactment of the UHC. The Officer found, based on the information reviewed, that the health care system in Georgia is more likely than not to be vastly improved from the one the Applicant left in 2015. And significantly, given the Applicant's view that the Officer failed to note sections of these documents that refer to existing ongoing deficiencies in the medical care available in Georgia, the Officer found that while there are numerous areas for improvement that appear in both the Applicant's documents, as well as the Officer's own research, there are also more numerous indicators of improvements since the implementation of UHC, including reforms to pharmaceutical requirements, increases in professional accreditation and increased access to various treatments and medical plans for all citizens.

[40] In my view, while the Applicant points to portions of the country conditions reports that are not quoted by the Officer and which indicate that there are remaining concerns with the medical care available in Georgia, the Officer acknowledged this but found, on balance, it had vastly improved since the Applicant left Georgia. The Officer noted that there will almost always be differences in the quality of health care provided from country to country. While the health and medical care in Canada is most likely objectively superior to that offered in Georgia, the Officer found that they had not been presented with sufficient probative evidence to confirm, on a balance of probabilities, that the Applicant would be unable to access adequate health care in Georgia for his needs.

[41] In light of the Officer's reasons, I do not agree with the Applicant that the Officer erred by providing misleading excerpts to suggest that the medical care situation in Georgia has improved. Rather, as the Respondent submits, the onus was on the Applicant to provide evidence

that the unavailability of health care would cause hardship upon return (*Robinson* at para 47; *Kaur* at para 14). That is, the burden was with the Applicant to demonstrate that he would suffer hardship as a result of his medical conditions if returned to Georgia, and not with the Officer to demonstrate that he would not, as the Applicant seems to suggest. Here, the Applicant did not meet his burden. For the same reason, I also do not agree that the Officer erred by considering a "hypothetical situation" by finding the Applicant would be able to receive suitable care in Georgia.

[42] Nor do I agree with the Applicant's assertion that the Officer failed to consider how the disruption in medical treatment the Applicant has received in Canada would affect the Applicant. The Officer's reasons demonstrate that they did consider the effect of disruption on the Applicant and gave it favourable weight: "the [A]pplicant has a solid network of doctors and treatments in Canada that have been providing care for him since 2015. I find that it would be a hardship to leave this established care plan and re-institute this in Georgia and grant this favourable weight". The Officer also found that the Applicant would be able to convey the medical treatments and plans he has received in Canada to medical professionals in Georgia. While the Applicant disputes this, I note that he was able to gather his Canadian medical information in support of his H&C application and he provided no evidence to support that he would be unable to have his doctors here transmit his medical history and treatment to medical care professionals he would engage with in Georgia. In my view, the Applicant is simply disagreeing with the overall weighing of the factors by the Officer.

[43] With respect to the letter from the Applicant's long-term psychologist, the Officer found that this outlines his medical issues and the anxiety and cardiac phobia he experiences as a result of his unstable immigration status and states the psychologist's belief that this would be greatly mitigated if the Applicant were to remain in Canada. The Officer afforded some favorable weight to this information, as it would be difficult for the Applicant to leave the mental health support and therapists he has connected with in Canada. Nevertheless, the Officer also found that there are medical and mental health professionals in Georgia that would be available to the Applicant if he were to return.

[44] The Applicant submits that the Officer erred by recognizing the mental hardship caused by the dislocation, but then focussing on the availability of mental health supports available to the Applicant as opposed to the consequences of the hardship (citing *Deng v Canada (Citizenship and Immigration)*, 2021 FC 1075 at para 23 [*Deng*] and *Natesan v Canada (Citizenship and Immigration)*, 2022 FC 540 at para 39 [*Natesan*]). I note that both *Deng* and *Natesan* found that an officer errs by ignoring the psychological effect of removal from Canada and focussing on what treatment is available on return. Here, however, the Officer did consider the effect of removal and granted this factor some favourable weight. Moreover, also unlike this matter, in both *Deng* (paras 7, 21-23) and *Natesan* (para 40), the psychological reports submitted in support of the H&C applications made conclusions on the effect of removal on the Applicant. Accordingly, I do not agree that the Officer erred in this regard.

[45] As to the Applicant's submissions asserting that the Officer was not responsive to his submissions concerning the lack of support he would receive in his daily activities because of his

medical conditions if he were returned to Georgia, this is also without merit. As the Respondent notes, the Officer did engage with the Applicant's evidence regarding his parents' age and his finances, and granted some favourable weight to this. And, while the Applicant asserts that the Officer speculated on the availability of disability benefits to the Applicant, the Officer stated that they had noted numerous references to universal social security plans and disability benefits in the documents they reviewed. And, while the Applicant claimed he would not be eligible for such benefits, the Officer found that his eligibility would require an assessment by the government of Georgia, which offers multiple levels of disability support, depending on the level of disability. In my view, the Officer engaged with the Applicant's submissions but determined that the Applicant failed to meet his onus of establishing that he would not be eligible for disability and other benefits in Georgia. Significantly, however, the Officer granted a moderate amount of favourable weight to the Applicant's financial hardships and to the general level of hardships that comes from re-integration into a country.

[46] The Applicant also asserts that the Officer's weighing of the evidence lacked transparency. I would first note that considerable deference is owed to the weight given to the assessment of H&C factors made by an officer. As long as all of the evidence has been properly examined, the question of weight remains entirely within the expertise of the officer (*Braud v Canada (Citizenship and Immigration)*, 2020 FC 132 at para 52). Unlike *Abdi v Canada (Citizenship and Immigration)*, 2018 FC 475, referenced by the Applicant, here the Officer, throughout their reasons, refers to the evidence before them, intelligibly outlines shortcomings or concerns with that evidence, and then affords weight accordingly. The burden is on the Applicant, on a balance of probabilities, to demonstrate that the Officer's decision is

unreasonable. The Applicant failed to do so with respect to the Officer's weighing of evidence (*Vavilov* at para 100; *Ohwofasa v Canada (Citizenship and Immigration),* 2020 FC 266 at para 16).

Establishment

[47] The Applicant submits that the that the Officer erred by comparing the Applicant's establishment to other individuals of a similar immigration profile, as the test does not concern how the Applicant compares to others but rather, whether his situation is such that the circumstances "would excite in a reasonable [person] in a civilized community to desire to relieve the misfortunes of another" (citing *Chirwa v (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 at p 350). Further, that the Officer erred in being vague, arbitrary and not transparent in affording a moderate amount of favourable weight to the Applicant's relationship with his cousin, a modest amount of weight to the Applicant's other community and volunteer ties, but then in totality, assigning the establishment factor an overall weight of "modest".

[48] In my view, the Officer did not err in their analysis of the Applicant's establishment in Canada by finding that, given the length of time the Applicant has resided in Canada, a certain level of community ties is to be expected and that the Applicant had not established that his level of community ties are exceptional compared to other individuals of a similar immigration profile.

[49] As noted by the Respondent, this Court has previously found that an officer does not err in comparing the level of establishment of an H&C applicant to those who have resided in

Canada for a similar period of time as long as the officer does not invoke a more stringent legal standard of "exceptional" into the establishment analysis (see e.g. *Del Charo Pereira v Canada (Citizenship and Immigration)*, 2022 FC 799 at paras 50-55 [*Del Charo Pereira*]). In *Del Charo Pereira*, Justice Roy found that the officer there did not err in noting that the Applicant's establishment is not exceptional compared to those who have been in Canada for a comparable period, as they were using the term "exceptional" descriptively. This is a similar circumstance. I would also note that the Officer afforded a modest amount of weight to this factor.

[50] I also do not agree with the Applicant that the Officer's assignment of weight is without transparency. The Officer specifically notes that they assign modest weight to the Applicant's volunteer activities because he only volunteered for one year of the nearly seven he has been in Canada. They also explain that they afford modest weight to the Applicant's community ties because a certain level of community ties is to be expected. Moreover, they assign moderate weight to the Applicant's relationship with his cousin because although she submits that she would continue to help him in his day-to-day requirements, she resides in Kitchener whereas the Applicant resides in North York. To the extent the Applicant submits that the Officer erred by then assigning the establishment factor an overall weight of "modest", in my view, he is asking the Court to reweigh evidence, which is not the role of the Court on judicial review (*Vavilov* at para 125). As such, the Officer's assignment of weight with respect to their establishment analysis is reasonable.

Other Submissions

[51] The Applicant makes various other assertions throughout his submissions. I will not address all of these specifically. Suffice it to say, I do not agree that the Officer's reasons lacked transparency or justification. In that regard, the Applicant submits that an example of this is that the Officer assigned "modest", "moderate", and "medium" favourable weights to various factors but then arrived at a negative outcome. However, as explained by Justice McHaffie in *Mebrahtom v Canada (Citizenship and Immigration)*, 2020 FC 821:

> 19 In the present case, the H&C officer's assessment was that, while the children's best interests were to remain in Canada with their mother, this was not a very strong factor in favour of the application, given the situation they would be in if removed to Italy. The H&C inquiry is not simply whether this one factor is then "outweighed" by other factors. **It is an assessment of whether all of the circumstances, including in particular the best interests of the children, are such that they "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" so as to justify relief from the provisions of the IRPA:** *Kanthasamy* at para 21, citing *Chirwa v. Canada (Minister of Manpower & Immigration)* (1970), 4 I.A.C. 338, [1970] I.A.B.D. No. 1 (Imm. App. Bd.) (QL/Lexis). **This involves an assessment of not only whether factors are "positive" or "negative," but also the degree to which they speak in that direction. It is not necessarily inconsistent for an H&C officer to conclude that the BIOC factor speaks somewhat in favour of relief, as do other factors, and yet conclude that based on the overall assessment H&C relief is not justified.** Were it otherwise, even the slightest difference in country conditions would favour an H&C application and would have to be "outweighed" by negative (as opposed to insufficiently positive) factors. This would be contrary to the *Chirwa* test, and the affirmation in *Kanthasamy* that subsection 25(1) is not to be "applied so widely as to destroy the essentially exclusionary nature" of the IRPA: *Kanthasamy* at para 14.
>
> [Emphasis added.]

(See also *Gonzalez De Barragan v Canada (Citizenship and Immigration)*, 2022 FC 902 at paras 19-20).

[52] Here, it is clear that the Officer found that the degree to which the various H&C factors supported granting the Application was not sufficient. The Officer found: “In my view, the collective consideration of the applicant’s factors is neither extensive nor significant, and does not provide a sufficient basis to grant relief”. As such, the Officer did not err in this regard.

[53] Further, the Applicant’s submission that the Officer erred by not engaging with the Applicant’s core concerns, namely, the belief that he is not safe in Georgia, that he will not be able to access or afford the medical care he needs for his medical conditions, and that he feels safe in Canada, is wholly without merit as the Officer clearly addresses these submissions in their reasons.

[54] Finally, I am not persuaded, as the Applicant submits, that the Officer erred by starting from a presumption that the Applicant will be returning to Georgia, on the basis that they first considered hardship and then, lastly, considered establishment in Canada. In other words, in my view, the Officer did not err by viewing the matter through a lens of hardship.

Conclusion

[55] For all of the reasons above, I find that the Officer’s decision was reasonable.

JUDGMENT IN IMM-4684-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4684-22
STYLE OF CAUSE:	LEVAN BEKAURI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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