Federal Court  Cour fédérale

Date: 20240130

Docket: IMM-11386-22

Citation: 2024 FC 150

Ottawa, Ontario, January 30, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

GERSET FRANCIS

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Gerset Francis [Ms. Francis], seeks judicial review of a decision of a Senior Immigration Officer, dated August 31, 2022, which refused her application for permanent residence based on humanitarian and compassionate [H&C] grounds. The Officer found that this exemption from the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], pursuant to section 25 of the Act, was not warranted.

[2] For the reasons that follow, the Application is dismissed. The Court cannot reweigh the evidence or remake the decision. The Court's role is to determine if the Officer reasonably exercised their discretion in finding that the H&C exemption was not warranted. The Court cannot find any fatal flaw in the Officer's decision.

I. Background

[3] Ms. Francis, a citizen of Jamaica, arrived in Canada in 2013 on a visitor's visa. She previously worked as a caregiver in the Bahamas.

[4] Ms. Francis has worked almost continuously, but without authorization, as a caregiver to the elderly and as a housekeeper since her arrival in Canada. She recounts that she is involved in her church and volunteering in her church community. She also explains that she previously hired a consultant to file an H&C application, but the consultant failed to do so.

[5] Ms. Francis attests that she has supported herself financially and, over the last decade, has sent more than $75,000 to her family in Jamaica, and contributed more than $55,000 to her church and other charities. She explains that the contributions to her family have helped provide for her sons' university education, home renovations for her oldest son and for her sister, transportation costs, and other household expenses for her family in Jamaica, in addition to contributing to her granddaughter's special education needs.

[6] Ms. Francis submits that her gender and age will impede her ability to find work in Jamaica, especially in the context of the COVID-19 pandemic economic recovery. She fears the

impact for her family without her financial support. She also fears returning to Jamaica due to the level of gang violence.

II. The Decision under Review

[7] The Officer identified the considerations relevant to and raised in Ms. Francis's application, including her establishment in Canada, the best interests of her grandchildren, and the hardships upon return, including due to poor economic conditions in Jamaica.

[8] The Officer noted that Ms. Francis had stayed in Canada for nine years without status. The Officer noted, "the concept of a person becoming so established in Canada that it would be untenable for them to leave, is based on the premise that the reason for staying in Canada for an extended period was beyond their control." The Officer found that, apart from securing employment in Canada to financially support herself and family members in Jamaica, Ms. Francis did not establish any circumstances beyond her control that prevented her return to Jamaica.

[9] The Officer accepted that Ms. Francis had made meaningful friendships, actively participated in her church, and earned income to provide support to her family in Jamaica. However, the Officer noted:

> … the Applicant's submissions do not establish her annual earnings or income tax deductions or what her wages would be after deductions. The Applicant's employment letter from Senior Support Services merely confirms that the Applicant has been employed with the company since July 21, 2021. Furthermore, the Applicant's housing in Canada was part of her live-in employment; … the Applicant does not pay rent, but contributes to household

> expenses and provides cooking and cleaning services. In other words, I find that the Applicant's submissions do not establish the extent of the Applicant's earnings in Canada, which is at root of the Applicant's humanitarian and compassionate application.

[10] The Officer found that the best interest of the children [BIOC], which in this case relate to Ms. Francis's grandchildren, is a significant factor. The Officer noted that Ms. Francis had not raised specific considerations about the grandchildren's best interests aside from special programming for one of her grandchildren, Jahliah, who is developing below her chronological age. The Officer found that it is in the grandchildren's best interests to be raised in a loving home, where they are supported emotionally and financially for their developmental needs. The Officer found that the grandchildren were well cared for by their parents and the education system in Jamaica. The Officer was not satisfied that the lack of Ms. Francis' financial support would create serious consequences for her grandchildren.

[11] The Officer noted Ms. Francis's submission that the money she sends to Jamaica is necessary to pay for special programming for Jahliah. However, the Officer also noted that she had not provided any details regarding the cost of the special educational supports or the future costs, if any. The Officer found that the evidence did not establish that the child's parents would bear the cost of her special education.

[12] The Officer further noted that the assessment of the BIOC is only one of many important factors considered in an H&C application and does not outweigh all other factors.

[13] The Officer also considered the country conditions in Jamaica, citing the US Department of State [DOS] report, which notes, among other things, life-threatening conditions in prisons, corruption, lack of investigation of gender based violence, lack of accountability for human rights abuses, and discrimination of women in the workforce. The Officer noted that, while Ms. Francis could reasonably experience an adjustment period and the hardships associated with re-establishing herself, she would likely have the support of her family, friends and others, given the evidence provided from her family regarding their close relationship.

[14] The Officer found that there was insufficient evidence to conclude that adverse country conditions would have a direct negative impact on Ms. Francis, but added that some weight had been placed on the adverse country conditions given the "general struggles" faced by women.

[15] Based on considering all the relevant factors, the Officer concluded that, cumulatively, there were not sufficient H&C considerations to justify granting the exemption.

III. The Issues and Standard of Review

[16] The overall issue is whether the Officer's decision is reasonable, which entails consideration of whether the Officer erred in assessing Ms. Francis's establishment in Canada, the best interests of her grandchildren, and the hardships she would face if removed from Canada.

[17] H&C decisions are discretionary decisions and are reviewed on the reasonableness standard (*Baker v Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817 at paras

57–62, 174 DLR (4th) 193 [*Baker*]; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]).

[18] The reviewing court must ensure that the decision bears the hallmarks of reasonableness, notably that the decision is justifiable, intelligible, and transparent (*Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 at para 95 [*Vavilov*]).

[19] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reasonableness standard is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102); decisions are not assessed "against a standard of perfection" (*Vavilov* at para 91).

[20] In *Vavilov*, at para 100, the Supreme Court of Canada noted that decisions should not be set aside unless there are "sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that "[t]he court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable".

[21] Importantly, *Vavilov* also instructs reviewing courts to refrain from reweighing and reassessing the evidence before the decision-maker (at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55).

IV. The Applicant's Submissions

[22] Ms. Francis submits that the Officer's decision does not reflect the principles of justification, transparency, or intelligibility. Ms. Francis submits that the Officer failed to grapple with several key submissions and the evidence in support, which would have had an impact on the weight attached to the relevant factors. She further submits that the reasons do not permit the Court to determine whether the Officer considered certain key submissions and evidence, how the Officer weighed the relevant factors, and how the relevant factors were considered in the overall assessment.

A. *The Officer erred in assessing the BIOC*

[23] Ms. Francis submits that the Officer erred by failing to indicate whether and how the BIOC was weighed in the overall H&C assessment. She submits that the Officer generally stated that the BIOC was a significant factor, but did not indicate the weight attributed to the BIOC.

[24] Ms. Francis submits that the Officer's conclusion that the loss of her financial support to her grandchildren would not create serious consequences is unreasonable because it ignores the evidence of the significant impact of her financial contribution to her grandchildren's quality of life.

[25] Ms. Francis submits that, more particularly, this finding ignores the evidence about the cost of the special educational program for her granddaughter Jahliah, and her family's dependence on her contributions.

[26] Ms. Francis submits that the Officer did not consider her son's letter stating "my mother has been supportive in contributing financially to my daughter's day-to-day care" and that "I will not be able to afford the help [Jahliah] needs without [my mother's] assistance as to care for a child with special needs is very expensive in Jamaica and from observation it seems that she's going to need one on one help for her total development". Ms. Francis attests that her son uses most of the money she sends to him for this purpose because special education in Jamaica is expensive, and the costs must be paid by the parents.

[27] Ms. Francis submits that the Officer also did not consider her affidavit, but rather, relied only on the letter from Jamaica's "Early Stimulation Programme" to erroneously conclude that there was insufficient evidence about the cost of the educational supports. She submits that the Officer unreasonably assumed that the special education would be funded. She reiterates that there will be further assessments and additional one-on-one support needed in addition to whatever the Early Stimulation Programme provides.

[28] Ms. Francis disputes the Officer's finding that she had not raised other specific considerations regarding her grandchildren's best interests. She notes that the evidence before the Officer indicated that the money she sends is used to benefit all her grandchildren, including for their daycare, toys, and to contribute to the family, which in turn, provides day-to-day necessities for her grandchildren.

B. *The Officer erred in assessing establishment*

[29] Ms. Francis argues that the Officer failed to grapple with one of the key grounds for her H&C application; namely, her establishment in Canada, and more particularly, her long-term employment as a caregiver for the elderly. She submits that the Officer's reasons do not indicate how her establishment was assessed and what weight, if any, was given to her establishment. Ms. Francis argues that this is an error (*Nunez Guillen v Canada (Citizenship and Immigration)*, 2022 FC 1158 at para 18 [*Nunez Guillen*].

[30] Ms. Francis submits that the Officer failed to consider her role as a caregiver to the elderly, particularly during the COVID-19 pandemic, and mischaracterized her more recent employment history by only noting her role as a housekeeper. She notes that the extensive evidence before the Officer highlighted her contribution as a caregiver and included several letters from those she helped. She submits that her role as a caregiver is an important factor given the beneficial nature of this work to Canadian society.

[31] Ms. Francis also disputes the Officer's finding that she did not establish the extent of her earnings in Canada, which the Officer noted was the "root" of her application. She acknowledges that the record does not include proof of her annual earnings, but submits that other information, including bank statements, remittances, and charitable donation receipts, demonstrates her financial stability and her ability and willingness to support her family and community, which supports her H&C application.

[32] Ms. Francis argues that, although it is not clear, the Officer appeared to weigh her positive establishment in Canada against her choice to remain in Canada without status. She submits that if the Officer attributed negative weight to her establishment because she remained without status, the Officer committed an error (*Santana v Canada (Citizenship and Immigration)*, 2022 FC 1552 at para 22; *Samuel v Canada (Citizenship and Immigration)*, 2019 FC 227 at paras 17-19 [*Samuel*]). She notes that in *Samuel* at paras 17-18, the Court found that positive H&C factors should not be discounted due to non-status given the various reasons for an applicant to lack status.

[33] Ms. Francis further argues that the Officer's reasons do not indicate what weight (if any) was given to her establishment in Canada. She submits that it is an error for the Officer to fail to indicate whether positive or negative weight is attributed to her establishment (*Uwaifo v Canada (Citizenship and Immigration)*, 2022 FC 679 at para 23 [*Uwaifo*]).

C. *The Officer erred in the assessment of hardship*

[34] Ms. Francis argues that the Officer erred by finding that there was insufficient evidence to assume that the adverse country conditions would have a direct and personal impact on her. She submits that the Officer merely cited excerpts from the country conditions and failed to consider how she would suffer hardship in light of the country conditions. She submits that the Officer only noted gender discrimination and ignored her evidence that she would be unable to find work due to the economy, given the post-pandemic economic situation and her age.

[35] Ms. Francis disputes that she could be supported by her family in Jamaica, noting that all the evidence points to her supporting her family and not *vice versa*. She reiterates that she will suffer hardship, as will her family, without the financial support she provides.

V. The Respondent's Submissions

[36] The Respondent submits that the Officer's decision, read holistically and in the context of the evidence and submissions, is reasonable. The Respondent submits that an officer's reasons need not be perfect, as long as the Court can discern a reasoned explanation for the decision as a whole (*Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 35).The Respondent notes that the Officer's reasons begin with excerpts from Ms. Francis's submissions, which signals that the Officer considered the key submissions regarding establishment, BIOC, and hardship, and each factor was also addressed in the Officer's analysis.

A. *The Officer considered the best interests of the grandchildren*

[37] The Respondent notes that the Officer gave significant weight to the best interests of Ms. Francis's grandchildren.

[38] The Respondent submits that the Officer's finding that Ms. Francis failed to establish that there would be future costs for Jahliah's special education was based on the evidence provided. The Respondent notes that the letter from the "Early Stimulation Programme" does not indicate that there are additional costs, rather, that Jahlia had been evaluated, admitted to the intervention program, a plan had been developed, and she was transferred to the "Stimulation Plus Child Development Center and will receive individual and group intervention sessions". The letters

from Ms. Francis's son do not set out any specific costs to parents but more generally state that special education and assessments are expensive.

[39] The Respondent submits that the Officer's conclusion that the Applicant's grandchildren are well cared for by their parents is supported by the facts. The Respondent notes that Ms. Francis has supported her two sons in achieving their education, renovating their homes, and achieving their goals (as they have attested), and who will now presumably use their education and good fortune to provide for their own children.

B. *The Officer reasonably assessed establishment and did not ignore Ms. Francis's career as a caregiver*

[40] The Respondent submits that there is no basis to assume that the Officer ignored Ms. Francis's employment as a caregiver for the elderly. In addition to acknowledging her submissions regarding her long time employment, the Officer specifically noted the "Applicant's employment letter from Senior Support Services … confirms that the Applicant has been employed with the company since July 21, 2021".

[41] The Respondent submits that the Officer considered the relevant factors and evidence submitted. The Respondent notes that it was open to the Officer to attribute less weight to the establishment factor given that Ms. Francis could have left Canada (citing *Santos v Canada (Citizenship and Immigration)*, 2019 FC 1332 at para 28; *De Faria Peniche v Canada (Citizenship and Immigration)*, 2022 FC 854 at para 14). The Respondent adds, however, that the Officer did not identify her failure to leave Canada as a negative factor.

[42] The Respondent further submits that it was open to the Officer to consider that Ms. Francis had not established her annual earnings (*Sinnette v Canada (Citizenship and Immigration)*, 2022 FC 685 at para 20; *Perez Fernandez v Canada (Citizenship and Immigration)*, 2019 FC 628 at paras 6, 18-20). However, the Officer clearly acknowledged that she had earned wages, noting her live-in employment, her remittances to her family and donations.

[43] The Respondent submits that Officers are not required to identify positive and negative factors and clinically calculate the balance, but rather, to consider all the factors and determine if the exemption should be granted.

C. *The Officer reasonably assessed hardship*

[44] The Respondent disputes that the Officer failed to consider the evidence of the hardship Ms. Francis would face in light of the country conditions. The Respondent submits the Officer considered the situation in Jamaica, acknowledged that it was not ideal, and that Ms. Francis may experience a period of adjustment and hardship.

[45] The Respondent submits that the evidence on the record supports the Officer's conclusion that Ms. Francis would be supported by her family upon her return to Jamaica, given the contributions she has made to their circumstances and due to the close relationships.

[46] The Respondent adds that although the Officer concluded that the adverse country conditions would not have a direct negative impact on Ms. Francis, the Officer gave some weight to hardship.

VI. The Decision is Reasonable

[47] The Court notes that the evidence submitted to the Officer and the Court demonstrates that Ms. Francis is a hard working and selfless person that has put her family first. It appears that the priority she places on sending money to her family in Jamaica has undermined her establishment in Canada, which is one of the key factors in an H&C application.

[48] Although the Court has much sympathy for Ms. Francis and the impact of the refusal of her H&C application, the Court's role is to review the Officer's decision, not to re-weigh the evidence or remake the decision (*Buitrago Rey v Canada (Citizenship and Immigration)*, 2021 FC 852 at para 67 [*Buitrago Rey*]). In the absence of a "fatal flaw" or "sufficiently serious shortcomings" that are "sufficiently central" (*Vavilov* at para 100) – in other words, that undermine the justification, transparency, and intelligibility of the Officer's decision – the Court defers to the Officer's exercise of discretion and the decision must stand.

[49] The Officer did not ignore or misconstrue the evidence or the governing jurisprudence. The Officer considered the relevant factors and then cumulatively assessed them, concluding that an H&C exemption was not warranted in the circumstances.

[50] Section 25 of the Act provides that an exemption from the criteria or obligations of the Act may be granted on the basis of H&C considerations, "taking into account the best interests of a child directly affected". The jurisprudence confirms that the exemption is "exceptional".

[51] In *Kanthasamy*, the Supreme Court of Canada provided extensive guidance about how section 25 should be interpreted and applied. In *Kanthasamy*, the Supreme Court of Canada endorsed the approach previously set out in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, which described H&C considerations as "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at para 13).

[52] However, the Supreme Court of Canada added that the H&C process is not an alternative immigration scheme and that "[t]here will inevitably be some hardship associated with being required to leave Canada" (at para 23), which on its own is generally not sufficient to warrant H&C relief.

[53] The Court explained that what will warrant relief under section 25 varies and depends on the facts and context of each case.

[54] In *Buitrago Rey*, this Court reviewed the principles guiding H&C applications as established in the jurisprudence and summarized them at para 86:

> The post-*Kanthasamy* jurisprudence confirms the following principles, among others:
>
> - An H&C exemption is discretionary and exceptional relief;
> - Reviewing courts must not substitute their discretion for that of the Officer;
> - While undue, undeserved and disproportionate hardship is not required, hardship can be considered;
> - Some hardship is the normal consequence of removal and, on its own, does not support the exemption;

- Applicants must demonstrate with sufficient evidence that the misfortunes or hardships they will face are relatively greater than those typically faced by others seeking permanent residence in Canada;

- The BIOC is an important consideration but is not necessarily determinative of an H&C application; and

- All relevant factors must be considered and weighed.

As Justice Roy noted in *Shackleford*, more than a sympathetic case is required.

A. *The BIOC analysis is reasonable*

[55] The Officer's assessment of the BIOC is reasonable based on the evidence provided to the Officer and the Officer's application of the law.

[56] The BIOC principles established in *Baker* continue to apply (*Kanthasamy* at paras 38–39). In *Baker* at para 75, the Supreme Court of Canada noted:

> [75] . . . for the exercise of the discretion to fall within the standard of reasonableness, the decision-maker should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them. That is not to say that children's best interests must always outweigh other considerations, or that there will not be other reasons for denying an H & C claim even when children's interests are given this consideration. However, where the interests of children are minimized, in a manner inconsistent with Canada's humanitarian and compassionate tradition and the Minister's guidelines, the decision will be unreasonable. [Emphasis added]

[57] The Officer assessed the best interests of Ms. Francis's grandchildren and attributed "significant weight" to the BIOC. Contrary to Ms. Francis submission that the Officer stated this

only as a general proposition, the Officer stated, “I consider the best interest of the Applicant’s grandchildren to be a significant factor in this application” [emphasis added].

[58] Also, contrary to Ms. Francis’s submission that the Officer failed to consider the overall best interests of all her grandchildren, including her contribution to their daycare, gifts, and her support to her oldest son, which in turn supports her grandchildren, the Officer considered the available information regarding their best interests.

[59] The Officer reasonably noted that, apart from the submissions about the anticipated costs of Jahliah’s special education programming, “more specific considerations to establish what would be in the best interest of the children involved were not raised”. This reflects the Officer’s application of the jurisprudence governing the assessment of the BIOC, which notes that the starting point is to identify what is in a child’s best interest, which in turn depends on what has been presented by an applicant. The Officer acknowledged Ms. Francis’s submissions regarding the BIOC, in particular regarding Jahliah. The Officer also acknowledged Ms. Francis’s financial contributions to her son, which her son had used for his education, household, day care and other expenses. The Officer found that based on the evidence, the three grandchildrens’ best interests were to be raised in a loving home with their parents.

[60] The Officer reasonably concluded that the evidence did not establish that Jahliah’s parents would be responsible for the cost of her special education. The Officer’s finding does not contradict the letters from Ms. Francis’s son or Ms. Francis’s affidavit, as these did not provide any details of the costs of other supports. The Officer reasonably relied on the letter from the

Ministry of Labour and Social Security Early Stimulation Program, which does not suggest that there is any cost to parents.

[61] With respect to Ms. Francis's argument that the Officer erred by ignoring the evidence and submissions, a decision-maker is not required to specifically refer to each document relied on, and the failure to do so does not suggest that the Officer ignored evidence. Ms. Francis provided a voluminous application with a number of supporting documents for each H&C consideration. The Officer stated that they reviewed the application, all submissions, including the affidavits and letters of support and objective evidence. It was not necessary for the Officer to address each letter or news article provided by Ms. Francis in the reasons.

[62] In *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1554 at paras 35-36, Justice Gascon considered the question about whether an decision-maker's failure to mention a specific piece of evidence is unreasonable and provided some common sense clarification of the oft cited case of *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667:

> [35] … An administrative decision-maker's failure to mention evidence does not necessarily make a decision unreasonable (*Valencia* at para 25; *Khir v Canada (Citizenship and Immigration)*, 2021 FC 160 [*Khir*] at para 48; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 24). It is a well-settled principle that administrative decision makers are presumed to have weighed and considered all the evidence before them unless proven otherwise (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). In the same vein, a failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

> [36] It is true that, when an administrative decision maker does not properly deal with evidence squarely contradicting its findings of fact, the Court may intervene and infer that the decision maker overlooked the contradictory evidence when reaching its conclusion (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 (QL) at para 17). However, the failure to consider specific evidence must be viewed in context, and it is only when the evidence is critical and squarely contradicts the decision maker's conclusion that the reviewing court may determine that the tribunal disregarded the material before it (*Khir* at para 48; *Torrance v Canada (Attorney General)*, 2020 FC 634 at para 58). I have not been convinced that this is the case here. [Emphasis added]

[63] The letter from Ms. Francis's son does not contradict the Officer's finding that there was insufficient evidence to show that that the costs of Jahliah's special education needs would fall to her parents. Although Ms. Francis's affidavit and her son's letter stated that special education is costly, there were no details about the costs or the specific programming that differed from that provided by the Ministry of Labour and Social Security Early Stimulation Program. The Officer's finding does not suggest that critical or contradictory evidence was ignored.

[64] Ms. Francis appears to argue that more than "significant" weight should have been given to the BIOC, but it is not the role of the Court to re-weigh the BIOC or other relevant H&C factors.

[65] Moreover, even where significant weight is given to the BIOC, as in this case, it is not necessarily determinative of an H&C application.

[66] The Officer correctly noted that the BIOC factor is one of the several important factors considered in the overall H&C application and does not outweigh the other factors. The weight attached to the BIOC in the overall H&C determination is within the Officer's discretion. The Officer ultimately concluded that the significant weight given to the BIOC factor was not sufficient – on its own – to justify the exemption.

B. *The Officer considered Ms. Francis's establishment*

[67] The Officer considered Ms. Francis's long-term employment, charitable activities, and church involvement. The Officer acknowledged that she had established relationships in Canada and provided support to her family in Jamaica from the money she earned from her employment in Canada. The Officer also noted that her housing was generally provided as part of her live-in caregiving employment. The Officer's comment that Ms. Francis had not established the extent of her earnings in Canada is an accurate statement, but does not suggest that the Officer ignored her financial information; the Officer clearly accepted that she earned money in Canada and sent significant amounts to her family in Jamaica and her church.

[68] Although the Officer noted that Ms. Francis had remained in Canada without status for many years, the Officer does not suggest that this was a negative factor in considering establishment or that negative weight was given to the establishment factor.

[69] Ms. Francis's reliance on *Samuel* does not support finding that the Officer erred in this case. In *Samuel*, Justice Simpson addressed the issue of lack of status in an H&C application, noting at para 17:

> [17] When an officer takes an applicant's lack of status into consideration (which he is entitled to do), the officer must balance the need to respect Canada's immigration laws with the fact that section 25 of the IRPA will frequently involve applicants who are without status. In my view, it is contrary to this need for balancing and therefore unreasonable to repeatedly discount positive H&C factors related to establishment because of non-status.

In this case, the Officer did not "repeatedly discount" positive establishment factors due to non-status. The Officer does not suggest this at all. As noted in *Samuel*, the Officer was entitled to consider lack of status. However, the Officer also acknowledged that Ms. Francis explained that she remained without status due to economic hardship and added that she "benefitted from securing employment in Canada in order to financially support herself in Canada and her family members in Jamaica".

[70] Contrary to Ms. Francis's submission, the Officer acknowledged, at the outset of the reasons, her submission that she had worked as a caregiver for the elderly during the pandemic. The Officer also specifically noted that she had submitted a letter from Senior Support and that she sent money to Jamaica from her earnings as a caregiver and housekeeper. Ms. Francis appears to submit that additional weight should have been attributed to her role as a caregiver for the elderly, particularly her employment throughout the pandemic. However, employment is a factor considered in the context of establishment, and her employment was clearly considered. The nature of the employment and how it supports an applicant's establishment in Canada will vary.

[71] In *Sivalingam v Canada (Citizenship and Immigration)*, 2017 FC 1185 at para 13, Justice Grammond explains that "[i]ndeed, "establishment" is reviewed to assess whether the applicant deserves H&C relief, [and is] not an award for a special contribution to society."

[72] Contrary to Ms. Francis's submission that the Officer erred by failing to grapple with key issues, in particular her employment as a caregiver for the elderly, the Officer did not overlook her employment or other establishment indicators. Ms. Francis relies on *Nunez Guillen* to argue that the Officer made the same error found in that case. In *Nunez Guillen* at para 18, Justice Fothergill found on the facts of the case before him:

> [18] The Officer did not address Ms. Nunez Guillen's personal history or her reasons for coming to Canada. The Officer failed to meaningfully grapple with the key issues or central arguments raised by Ms. Nunez Guillen in her request for H&C relief, calling into question whether the decision maker was actually alert and sensitive to the matter under consideration (*Vavilov* at para 128).

[73] In the present case, the Officer did not fail to address Ms. Francis's reasons for coming to Canada or the grounds raised in support of her H& C application. The Officer addressed the key issues, but did not come to the conclusion Ms. Francis seeks.

[74] With respect to Ms. Francis's reliance on *Uwaifo*, to argue that the officer erred by not indicating the weight attributed to establishment, in that case, Justice Go stated:

> [23] I find first of all, it is unclear what, if any, weight the Officer gave to the Applicants' establishment. The Respondent submits the Officer gave the Applicants' establishment positive weight. I see no such findings made in the Decision. The Officer stated in the Decision that they have given "some consideration to the applicant's establishment in Canada" without explaining what that consideration was. Was it positive or negative? How much weight was the Applicants' establishment worth? Instead, the only

> discernable reason the Officer gave in this regard was that the Officer did not find the Applicants' establishment to be "exceptional." Read as a whole, I find that the Officer erred either by making a decision that is unintelligible, or by failing to give the Applicants' establishment much weight simply because it was found not to be exceptional, without giving any explanation: *Sivalingam* at para 13.

[75] In my view, this passage does not stand for the proposition that Officers are required to attach specific weight to each factor. Rather, Justice Go found on the facts of the case before her that the Officer's reference to "some consideration" was not intelligible.

[76] Moreover, no two cases are the same and the Court's role is to determine whether the particular decision is reasonable based on the facts and the law. The same legal principles are applied, but may lead to different outcomes due to the facts.

[77] Although the Officer does not clearly state the nature of the weight attached to Ms. Francis's establishment, this is not a "fatal flaw". The Officer is not required to attach a score to each factor or deduct the negative considerations from the positive to reach a score. The Officer notes that the elements (i.e., factors) were assessed individually and cumulatively to determine whether the H&C exemption should be granted.

[78] While it would be preferable for the Officer to have indicated the nature of the weight given to establishment, as the Officer did for the other factors (e.g., some weight was given to hardship and significant weight was given the BIOC), perfection is not the standard for an officer's reasons. The Court can discern, from the reasons as a whole, that the weight attached to

establishment, along with the other factors, was not sufficient in the Officer's exercise of discretion to grant the application.

[79] As this Court noted in *Palencia v Canada (Citizenship and Immigration)*, 2021 FC 1301 at para 36:

> [36] The determination of whether an H&C exemption is justified is based on a global assessment of all relevant factors. An Officer could find several positive factors yet still conclude that the exemption is not warranted. There is no rigid formula or score assigned to each factor. The weight given to each factor or consideration is within the Officer's discretion and it is not the role of the Court to reweigh.

C. *The Officer considered hardship upon return to Jamaica*

[80] The Officer considered the hardships that Ms. Francis raised, including gender discrimination relating to employment. The Officer did not ignore the country conditions, but rather, considered how the country conditions related to Ms. Francis. There was no evidence that she would be impacted by corruption, human rights abuses, gang violence, or the other societal problems noted. The Officer reasonably noted that there are inevitable hardships associated with leaving Canada after a long period and adjusting to life again in the home country. The Officer also reasonably concluded that Ms. Francis would likely have the support of her family, particularly given the letters that demonstrated the close and supportive relationships between family members and given that she has assisted her family in meeting their educational goals, renovating their houses and in several other ways.

[81] The Officer assigned “some weight” to these factors, despite finding that there was no conclusive evidence to suggest that Ms. Francis would be negatively impacted by the country conditions given the support from her family.

[82] The Officer’s reasons note that individual factors were considered, and a global assessment was conducted. This is the appropriate approach to the assessment of an H&C application. As noted, the Court does not re-weigh the evidence, the individual factors or the overall assessment.

JUDGMENT in IMM-11386-22

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11386-22
STYLE OF CAUSE:	GERSET FRANCIS v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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JUDGMENT AND REASONS:	KANE J.
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