Kanthasamy v. MCI [2015] SCJ No. 61

The "Test" for Compassion

I. Overview:

The Supreme Court of Canada fundamentally altered the decision making process of s. 25 applications for permanent residency by expanding the test to be applied by front line immigration officers. Previously, these officers had adhered rigidly to a hardship standard which they had applied out of its original context, and which resulted in the rejection of deserving applications. Identified by the Court as a fettering of discretion, the triumvirate of hardship standards of unusual, undeserved or disproportionate, has now been relegated to a more limited role as descriptive language, rather than legal standard. In this decision, the Supreme Court has opened up compassion to include equitable principles, and in so doing has reinvigorated the s.25 process.

Section 25(1) of the *Immigration and Refugee Protection Act* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of the *Act* if the Minister is of the opinion that such relief is justified by humanitarian and compassionate considerations. Those considerations are to include the best interests of a child directly affected. At the relevant time, s. 25(1) stated:

- **25.** (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this *Act*, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this *Act* if the Minister is of the opinion that *it is justified by humanitarian and*

compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

II. *Chirwa v. Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338

After reviewing the legislative history of humanitarian and compassionate provisions in various immigration enactments, the Supreme Court concluded that the overall purpose of the provision had been and is, to offer equitable relief in circumstances that would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another. This is the *Chirwa* standard, developed by Janet Scott of the Immigration Appeal Board in 1970. This definition was inspired by the dictionary definition of compassion, which covers "sorrow or pity excited by the distress of misfortunes of another, sympathy."

This is now the general frame work for humanitarian and compassionate relief. It is a section about equity and relief from misfortune. It is, at its purpose, about compassion. Although there is some ambiguity concerning whether or not the test set out in *Chirwa* was identified by the majority of the Supreme Court as being the standard to apply, the dissent led by Moldovar J. leaves no doubt.[1] Here is what he says:

> My colleague discusses the *Chirwa* test at length. She acknowledges that it was developed for a different decision-making context than the hardship test (para. 20), but appears to conclude nonetheless that the correct approach is to import it into s. 25(1) and apply it in conjunction with the hardship test (paras. 30-33). In her view, the requirements of the hardship test -- that the hardship must be unusual and undeserved or disproportionate -- should be treated as "instructive but not determinative", so that s. 25(1) may "respond more flexibly to the equitable goals of the provision" (para. 33). (emphasis added).

[1] Kanthasamy v. MCI [2015] SCJ No. 61, p. 26

The *Chirwa* standard is now part of a s. 25 consideration. But so is the hardship test, described by Abella J. as being a description of what compassion can mean, not new thresholds of relief separate and apart from the humanitarian purpose of s. 25(1). She describes her approach in paragraphs 30 and 31 of her decision. *Chirwa*, she says, is co-extensive with the Immigration guidelines. The guidelines, and the hardship considerations, also provide assistance, but humanitarian relief is not limited to cases of hardship. The Federal Court cases she cites with approval on these points are important to note. They set the rubric of what is to come.

Chen v. MCI

In one such decision cited by Justice Abella, *Chen v. MCI [2003] FCJ No. 630,* the court applied a standard of compassion, over one of hardship. The foreign national was a 76 year old man. He came to Canada to be with his biological daughter, who he had put in the care of his sibling for over 35 years. Now, the father wanted to unite with his daughter, after all this time. He filed 3 previous H & C applications – all refused. He had been in Canada only 4 years after arriving. Mr. Chen had originally placed his infant daughter into the care of his sister and husband. This was in 1959. He did not see with her again, until 1993 in Canada. In rejecting the H & C application, the officer found that Mr.Chen had not demonstrated disproportionate or undue hardship if he had to return to China, nor was he sufficiently established in Canada. Mr. Chen's daughter was 39 years old. The Court agreed that there was no evidence of a nurtured relationship until 1993, prior to coming to Canada. After that, however, there was extensive

evidence. (over a period of 6 to 7 years). Although not a case of hardship, it was one of compassion. The Court held:

> I understand that the legislation provides a definition of the term "father" to impeach potential scams. However, in the case at bar, I believe that the presence of a bona fide desire to reunite with a biological relative and that the evolution of the relationship since that reunification are sources of compassion for which the immigration officer should have considered more seriously. In my opinion, our society is now more open to various family situations and the fact that a person may have two fathers, one adoptive and one biological, is highly possible in present days.

Or, if compassion is the issue, a person may have two fathers; one biological and one defacto. Defacto family members had been expressly noted in previous guidelines as being highly relevant to an exercise of compassion. Although no longer present, under the new focus, the concept becomes reignited. The previous guidelines read:

> These situations refer to any family situation other than those involving spouses (which are described under Public Policy Situations), e.g. parents, children and other relatives or family members of Canadian residents. This may also apply to a person, not necessarily related by blood to the Canadian resident, but who is a **de facto** part of the family.

The present Immigration Guidelines (IP 5), and the descriptive language of unusual, undeserved or disproportionate hardship, remain useful in assessing what constitutes a reasonable interpretation, but they are not mandatory requirements; not new thresholds of relief. Officers should not look through the lens of theses adjectives as discrete and high thresholds. They are relevant, but even if that standard is not met, as in *Chen*, an exercise of compassion may still be required.

Moldavor's dissent

In his dissent, Justice Moldavor warned that this approach could turn into an alternate immigration scheme, or an appeal mechanism for good faith refugee claimants. He said:

> Even more problematic, by introducing equitable principles, it runs the risk of watering down the stringency of the hardship test. Relief could be granted in cases which arouse strong feelings of sympathy in an individual decision maker, but which do not reach the stringent standard that the hardship test demands.

IAD Cases

Indeed, it is a much broader approach. The *Chirwa* standard of equity in informing compassion has been used since 1970 at the Immigration Appeal Division. The IAD has a developed body of case law on what it considers to be humanitarian grounds warranting the exercise of relief. An example of such cases includes *Gomes v. Canada [2001] IADD No. 558,* where the Board allowed an appeal on humanitarian grounds citing the following factors:

- the stable and ongoing work history of the appellant
- the birth in Canada of a child (requiring special care)
- the support of family in Canada, who were her brothers
- the benefit to family members by the presence of the appellant in Canada

Another case of note is *Inigo v. Canada [1996] IADD No. 314*. At paragraph 8, the Board held as follows:

> In considering compassionate or humanitarian grounds, the panel could not fail to be impressed by the way this particular appellant has demonstrated her ability to adjust to Canadian circumstances and to be able to stand on her own feet as well as to continue to support her family. She has done extremely well since coming to Canada. In the panel's view this in an appropriate case where compassionate or humanitarian grounds exist warranting the granting of special relief.

Standing on her own feet and supporting a family, were grounds for an exercise of compassion under *Chirwa*. Indeed, as we move beyond the hardship ceiling, or floor, establishment factors such as these become that much more important. The guidelines remain

relevant to this end and are a sound starting point. What is important is that they may be either relevant to a hardship analysis, or simply as an assessment of compassion.

III. Establishment

The establishment reference in the guidelines (IP 5) is as follows;

> The degree of the applicant's establishment in Canada may include such questions as:
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> > Does the applicant have a history of stable employment?
> > Is there a pattern of sound financial management?
> >
> > -Has the applicant integrated into the community through involvement in community organizations, voluntary services or other activities?
> >
> > -Has the applicant undertaken any professional, linguistic or other study that shows integration into Canadian society?
> >
> > -Do the applicant and family members have a good civil record in Canada (e.g., no interventions by police or other authorities for child or spouse abuse, criminal charges)?

a. What was expected

In rigidly applying a hardship standard, officers have often rejected cases on the criteria of disproportionate hardship even though a person may have answered yes to all of the above questions. Officers often discounted evidence of financial establishment in Canada by saying the applicant had merely "*reached a level of establishment that was expected in their circumstances*", given the length of time and other factors. It was normal for them to be so established, officers would conclude, and so not reach the threshold of disproportionate, and certainly not hardship. To overcome this perspective in decision making, arguments had to be put forward such as in *Raules v. MCI [2003] FCJ No. 532,* where it was argued that the applicants had achieved more than the normal, given their particular circumstances. This type of

comparative approach had led to refusals simply because a person had done alright in Canada, but not above the norm. This was not about compassion. This was about selecting the highest achievers possible.

b. Done well here, therefore will do well at home!

Another favorite of some immigration officers in rejecting an application was to say; you have done well in Canada, and established. The skills you have acquired will allow you to find work and flourish in your home country. Therefore, it would not be an undue hardship to return. Yes, but would it be an act of compassion to force a family to give up everything gained over 10 or 15 years to start over in a new country? That is a different question. The focus of the question under the *Kanthasamy* criteria is broader, and less harsh.

c. Queue Jumper

Another means of rejecting applications was in deciding that it would not create a hardship to have to leave Canada to apply from abroad. This reference is also found in the new guidelines, which I will refer to. Reference to this consideration was wrong from the start. Its history was in assessing whether spouses who were in Canada should be permitted to stay in Canada to proceed with a sponsorship, or merely leave and wait outside Canada. The premise was that they would come back to Canada; the question was when and the issue on humanitarian grounds was how long they would remain outside.

The first use of the humanitarian exemption in immigration law appears to have been for the purpose of the sponsorship of a spouse from within Canada. Section 9 of the *Immigration Act, 1976*[2] provided that all immigrants and visitors were required to apply for a visa before arriving in Canada. However, the Act also contained a provision which allowed for an exemption from

[2] *Immigration Act, 1976*, 25-26 Elizabeth II, C. 52, s. 9.

this or other provisions in the Act due to the existence of compassionate or humanitarian circumstances.[3]

In *Minister of Employment and Immigration et al. v Jimenez-Perez*[4], the Federal Court in a decision ultimately upheld by this Court, decided that s. 115 (2) obligated Canada Immigration to consider a request from a sponsored spouse for permission to apply for landing from within Canada. Prior to this decision, a Canadian sponsor could not sponsor his or her spouse from inside Canada as a visa had to be issued outside Canada and the application could only be processed outside. This decision then cleared the way for a sponsor and spouse to apply from inside Canada, notwithstanding the absence of a visa for his spouse. Keeping spouses united in Canada while they waited for sponsorship processing was seen as a humanitarian and compassionate factor.

Applications for humanitarian exemptions were soon used for more than keeping spouses together. They were also the means for regularizing the status of applicants who, for any number of reasons, had remained without status in Canada. This Court in Baker described the exemption as follows;

> In addition, while in law, the H & C decision is one that provides for an exemption from regulations or from the Act, in practice, it is one that, in cases like this one, determines whether a person who has been in Canada but does not have status can stay in the country or will be required to leave a place where he or she has become established. It is an important decision that affects in a fundamental manner the future of individuals' lives. In addition, it may also have an important impact on the lives of any Canadian children of the person whose humanitarian and compassionate application is being considered, since they may be separated from one of their parents and/or uprooted from their country of citizenship, where they have settled and have connections.
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> *Baker v. MEI [1999] S.C.J. No. 39*

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[3] *Immigration Act, 1976*, 25-26 Elizabeth II, C. 52, s. 9, s. 115(2)

[4] *Minister of Employment and Immigration et al. v Jiminez-Perez*, [1984] 2 SCR 565, 1984 CanLII 127 (SCC).

Following the decision in *Jiminez-Perez***,** an assessment of a s. 115(2) request followed two distinct steps. The first step involved an assessment of the humanitarian and compassionate grounds to permit processing an application for permanent residency inside Canada. If approved for processing inside Canada, the application then proceeded to the second step which involved an assessment of permanent residency. At this stage, an applicant would be landed unless found inadmissible for any number of admissibility grounds, save and accept not having legal status in Canada or not applying for a visa to come to Canada before arriving.

Canada Immigration promulgated a manual to assist immigration officers, and applicants, in understanding the parameters of humanitarian applications. In a manual produced by Employment and Immigration Canada in 1986, the following definition is indicated:

> Humanitarian and compassionate grounds exist when unusual, undeserved or disproportionate hardship would be caused to a person seeking consideration, or to persons in Canada with whom the immigrant is associated, if he were not allowed to remain in Canada while his application for landing is in process.

The assessment of humanitarian grounds was oriented from inception on why the applicant should be permitted to remain in Canada to apply for landing; landing being the second step and the pro forma part of the process. The issue was not whether or not it would cause an undue hardship to apply through the "normal" manner, which was from outside Canada. However, this last issue could be a factor for consideration in <u>some cases</u>.

The bottom line on this issue is that with hardship now only one of the factors for consideration, having to leave Canada and apply from abroad may not be relevant, unless a person qualifies under some program allowing for return. In such a case, the person is indeed a queue jumper, as the Federal Court has called it, and unworthy of compassion. It is always relevant to indicate the limitations of an applicant's qualifications in other immigration programs, and so undercut any possible finding that they can merely leave the country and apply from abroad.

IV. Ribic Factors[5]

Also now imported into a s. 25 consideration are the Ribic factors, developed by the IAD on removal type appeals, usually concerning issues of criminality. The Ribic factors were developed as equitable principles for consideration under the IAB's humanitarian jurisdiction. As they are principles of equity, they are relevant to s. 25 determinations. They are of particular relevance to issues of balancing or exemption from inadmissibilities. These factors are as follows;

- The seriousness of the offence leading to the deportation order;

- the possibility of rehabilitation;

-the length of time spent in Canada and the degree to which the appellant is established here;

- the family in Canada and the dislocation to the family that deportation would cause;

- the support available to the appellant, not only within the family but also within the community;

-the degree of hardship that would be caused to the appellant by his return to his country of nationality.

These are now factors for consideration as part of the mix of a s. 25 application for humanitarian relief. Of particular importance is the notion of rehabilitation. With the equitable *Ribic* factors, comes the jurisprudence surrounding rehabilitation. An applicant need not demonstrate rehabilitation, merely that it is possible and that he has made efforts to rehabilitate himself.[6] Other factors identified in assessing rehabilitation are also relevant.

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[5] Adopted by the SCC in *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84

[6] *Kanagaratnam v. MCI*

Rehabilitation:

Section 17 of the ENF 14 Manual outlines the rehabilitation factors that are useful in determining a recommendation for rehabilitation. They direct the officer to make an assessment of an applicant's criminal profile by using specific descriptors such as:

- relatively stable lifestyle;
- offence generally motivated by an isolated event and may be viewed as a temporary lapse;
- unlikely to get involved in further criminal activity;
- minimal offence history;
- well-established in the community;
- whether history includes sexual offences, drug or alcohol abuse, serious emotional disturbance, assault offences, etc.;
- lack social and vocational skills;
- display a fair degree of comfort with the criminal lifestyle.

The Supreme Court decision in Kanthasamy has opened up a wide range of factors for consideration in s . 25 application. As many of these factors have been around and subject to judicial consideration, reliance on them will lead to more consistency in decision making, not less.

V. New Guidelines

The guidelines posted on CIC web site add little. The most important feature is that they reinforce that there is no hardship "test" but that hardship is relevant.

> What warrants relief will vary depending on the facts and context of the case, but officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them *(Kanthasamy v. Canada (Citizenship and Immigration),* 2015 SCC 61; *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817). Furthermore, individual H&C factors should not be considered in isolation; there must be a global assessment of all the relevant factors.

> As of December 10, 2015, there is no hardship "test" for applicants under subsection 25(1); however the determination of whether there are sufficient grounds to justify granting an H&C request will generally include an assessment of hardship. Therefore, hardship continues to be an important consideration in determining whether sufficient humanitarian and compassionate considerations exist to justify granting an exemption and/or permanent resident status.
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> In many cases, hardship will arise as a result of the requirement in section 11 that foreign nationals apply for a permanent resident visa before entering Canada. In other words, a decision maker would consider the extent to which the applicant, given their particular circumstances, would face hardship if they had to leave Canada in order to apply for permanent residence abroad. Although there will inevitably be some hardship associated with being required to leave Canada, this alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under subsection 25(1) *(Kanthasamy*

v. Canada (Citizenship and Immigration), 2015 SCC 61; Rizvi v. Canada (Minister of Citizenship and Immigration), 2009 FC 463).

No reference is made to *Chirwa* or other factors, but they remain highly relevant.

SUMMARY OF THE SECTION 25 STANDARD

Post *Kanthasamy*, the following descriptive principles (not including issues around children) may be of relevance in a s. 25 humanitarian application:

- Do the circumstances of the applicant excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another? Do the circumstances evoke a desire to extend sympathy to the applicant or others directly affected? If they do, then the application should be approved.

- Will the applicant, or others directly affected, suffer unusual, undeserved or disproportionate hardship if their application is refused. If the answer is no, this does not necessarily mean the application is to be denied. Other issues of compassion may be present warranting a grant of relief.

- Is the applicant so established in Canada such that it would be unfair for him to leave? Hardship may or may not be a consideration in this factor. This incorporates principles of equity and jurisprudence from the IAD.

- Does the applicant qualify for any program allowing him to return to Canada if removed? If not, then the application should not be refused on the ground that it is not a hardship to leave Canada and apply from outside.

Best Interests Assessment

Section 25 of IRPA expressly directs immigration to consider the best interests of children in its assessment of H & C factors. The factors relevant to such an assessment to date, have included;

i. The best interest's assessment is highly contextual and must be applied in a manner responsive to each child's particular age, needs and maturity.

ii. It is a decision about the kind of environment in which a child has the best opportunity for receiving the needed care and attention.

iii. The best interests of a child are a primary consideration

iv. Decision maker must state more than that the interests of the child have been considered. The interests must be well defined and examined with a great deal of attention.

Kolovos

The Supreme Court then referenced a decision of the Federal Court from Mr. Justice Campbell, called *Kolovos,* citing paragraphs from that decision which were an attempt by Justice Campbell to focus decision makers and to define the terms in Baker of the requirement of being alive, alert and attentive to the interests of a child. Justice Campbell said that an immigration officer must first be alert to the interests of the child, by noting the ways in which those interests are implicated. The starting point, he said was in the G*uidelines* at s. 5.19,

> **5.19. Best interests of the child**
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> The *Immigration and Refugee Protection Act* introduces a statutory obligation to take into account the best interests of a child who is directly affected by a decision under A25(1), when examining the circumstances of a foreign national under this section. This codifies departmental practice into legislation, thus eliminating any doubt that the interests of a child will be taken into account. Officers must always be alert and sensitive to the interests of children when examining A25(1) requests. However, this obligation only arises when it is sufficiently clear from the material submitted to the decision-maker that an application relies, in whole or at least in part, on this factor.
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> ....
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> Generally, factors relating to a child's emotional, social, cultural and physical welfare should be taken into account, when raised. Some examples of factors that applicants may raise include:
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> - the age of the child;
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> - the level of dependency between the child and the H&C applicant;
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> - the degree of the child's establishment in Canada;
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> - the child's links to the country in relation to which the H&C decision is being considered;
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> - medical issues or special needs the child may have;

- the impact to the child's education;
- matters related to the child's gender.

The second criteria he examined was the requirement to be alive to the child's interests. He said that simply listing the best interest factors in play without providing an analysis on their inter-relationship is not being alive to the factors. In order to be alive to a child's best interests, it is necessary for a visa officer to demonstrate that he or she well understands the perspective of each of the participants in a given fact scenario, including the child if this can reasonably determined.

The final criteria of sensitivity to those interests means demonstrating a clear understanding of the suffering of a child that will result from a negative decision, and then say whether, together with a consideration of other factors, the suffering warrants humanitarian and compassionate relief.

This criteria is now to be followed when officers assess the interests of children. In addition, according to the Supreme Court, the concepts of unusual or undeserved hardship are **never applicable** to the assessment of a child's best interests.

Recent Decision

The recent decision of the Federal Court in *Lu v. MCI* [7] is A prime example of the changes afoot. Not only did the Federal Court chastise the Minister's counsel for not consenting to the judicial review, it also came within a hair of issuing a directed verdict, unheard of in immigration law. All of this arose because of the new principles of humanitarian relief espoused through the *Kanthasamy* decision of the SCC.

[7] (2016) FC 175

The facts in Lu are as follows:

Mr. Lu applied for permanent residency in Canada under the Alberta Nominee Program and was accepted along with his wife and small child. He had a second child, however, and did not tell Canada Immigration about him because he was afraid that Chinese authorities would discover that he had violated their strict one child policy and be subjected to severe repercussions and financial penalties. After gaining permanent residency in Canada, Mr. Lu tried to bring his son to Canada. He first saved enough money, working as a meat cutter in Canada, to pay the fine imposed by the Chinese government to register his son as a legal child in China. That fine cost him the equivalent of Can $15,000.00. The boy is now 8 years old and lives with care givers in China who are paid by Mr. Lu from his work in Canada. The family in Canada return to China as often as possible to visit their son, but the distance and cost are prohibitive. After becoming a Canadian citizen, Mr. Lu submitted an overseas humanitarian application. The boy's care givers in China faced serious age related health concerns and could no longer care for him. He was about to be abandoned. In rejecting the humanitarian application the visa officer stated that the 8 year old would not suffer hardship by remaining in China because his suffering was a direct result of the actions of his parents in keeping him off their permanent residency applications. This fixation by the officer with the actions of the boy's parents was harshly condemned by the

court, stating that “a very young boy can do nothing about the hard choices his family feels it had to make to leave China.” Noting that the law had changed considerably since the SCC decision in *Kanthasamy,* the court quashed the decision and had this to say:

> It is troubling to the Court that the Minister would choose to defend a decision that contains such obvious reviewable errors and is so inhumane in its impact upon a young child, as well as immediate family.

Other Evidentiary Issues and Best Practices.

The Supreme Court focused on 6 factual findings of the immigration officer which led it to conclude that the decision was unreasonable. They are outlined as follows:

i. Psychological Findings. In discussing the effect removal would have on Jeyakannan Kanthasamy's mental health, the Officer said she "[did] not dispute the psychological report" and "accept[ed] the diagnosis". The report concluded that he suffered from post-traumatic stress disorder and adjustment disorder with mixed anxiety and depressed mood resulting from his experiences in Sri Lanka, and that his condition would deteriorate if he was removed from Canada. The Officer nonetheless inexplicably discounted the report:

> ... the applicant has provided insufficient evidence that he has been or is currently in treatment regarding the aforementioned issues or that he could not obtain treatment if required in his native Sri Lanka or that in doing so it would amount to hardship that is unusual and undeserved or disproportionate.

The Court held that it was unreasonable for the officer to require the applicant to adduce further evidence of treatment, once she had accepted his psychological condition. The Court held:

> Once she accepted that he had post-traumatic stress disorder, adjustment disorder, and depression based on his experiences in Sri Lanka, requiring further evidence of the availability of treatment, either in Canada or in Sri Lanka, undermined the diagnosis and had the problematic effect of making it a conditional rather than a significant factor.

ii. Psychologist report as hearsay. The officer discounted the psychological report as it was based on the applicant's statements to her. The Court said this was unreasonable, as it is a rare event for a psychologist to be present during the traumatizing events.

iii. Discrimination. The officer had decided that evidence of discrimination would not be considered as it fell within s. 25(1.3) of IRPA, and was pertaining to persecution and torture pursuant to s. 96 and 97 of IRPA. In addition, the officer decided that evidence of discrimination against other young Tamil males was not relevant as it was not specific to the applicant.

Section 25 (1.3) of IRPA reads:

> In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national

The Court held that the office can and must consider evidence of persecution, such as discrimination, or torture through the lens of the humanitarian and compassionate factors under s. 25. To ignore them is an error.

In addition, requiring that the applicant demonstrate evidence that he personally had been subjected to acts which were discriminatory is an error, both inconsistent with the guidelines and with Supreme Court Jurisprudence such as *Andrews* on what constitutes discrimination. The situation of persons similarly situated to the applicant was highly relevant to his own situation and ought to have been given weight.

iv. Concerning the best interests assessment, the Court held that the officer had erred in failing to consider the effect on the applicant of being separated from a community in Canada he had developed relations with as a teenager. This factor should be given significant weight.

v. The hardship standard has no place in an assessment of the interests of children. Children will rarely, if ever, be deserving of hardship.

Best Practices on humanitarian applications:

1. Be cognizant of the many descriptions of compassion to address: hardship; CIC Guidelines; Chirwa and Ribic factors, and anything else relevant to equity and compassion.

2. Address the descriptions with evidence such as affidavits and other objective documents.

3. Address the issue of whether the applicant qualifies under any other program and would be able to return and if so, when.

4. Human rights documentation and other evidence concerning s. 96 and 97 elements should be included as part of H & C factors.

5. With respect to children, address issues relating to the development of their relationships in Canada during formative years such as the teen age years.

6. Psychological reports are valuable and should be obtained, if possible.

7. Economic establishment is an important factor and should be fully addressed with employment letters and other proof of economic stability.