

Federal Court



Cour fédérale

Date: 20160506

Docket: IMM-1745-15

Citation: 2016 FC 511

Toronto, Ontario, May 6, 2016

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SHERYL YUTUC PEREZ

Applicant

and

**MINISTER OF CITIZENSHIP,
IMMIGRATION & MULTICULTURALISM**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Sheryl Perez applied for permanent residence and asked, on humanitarian and compassionate grounds, for an exemption from the usual requirement to apply from outside Canada. Ms Perez was working in Nova Scotia at the time and caring for her three-year-old Canadian-born daughter. She also has a child in the Philippines.

[2] The officer reviewing Ms Perez's application found that she had not shown that the best interests of her daughter would be negatively affected if she were required to return to the Philippines and make her permanent residence application from there. Ms Perez argues that the officer's decision was unreasonable because it overlooked important evidence relating to her child's best interests. She asks me to overturn the officer's decision and order another officer to reconsider her application.

[3] I agree with Ms Perez that the officer's decision was unreasonable and will, therefore, allow this application for judicial review.

[4] The sole issue is whether the officer's analysis of the child's best interests was unreasonable.

II. Was the officer's analysis of the child's best interests unreasonable?

[5] The officer found that the only evidence relating to the best interests of Ms Perez's daughter was a court document describing the co-parenting arrangements between Ms Perez and her daughter's father. On that basis alone, the officer was unable to conclude that Ms Perez's daughter's best interests would be adversely affected by Ms Perez's removal from Canada. The officer noted that the daughter is a Canadian citizen and not subject to removal.

[6] In my view, the officer's analysis of the daughter's best interests was inadequate and led to an unreasonable conclusion.

[7] There was evidence before the officer that the daughter maintains a relationship with her father through visitation rights. If the child moves to the Philippines with her mother, her relationship with her father would be severed and it is unlikely that she will continue to receive child support payments.

[8] In addition, the evidence showed that Ms Perez had left the Philippines without her older child because she was unable to provide for him financially. She went to work in the United Arab Emirates so that she could earn enough to support her child back home. This evidence raised a question about whether Ms Perez would be able to support both of her children if she returned to the Philippines.

[9] In my view, the officer's analysis was incomplete because it failed to consider these two important factors. In turn, her conclusion that the best interests of the child would not be negatively affected was unreasonable.

III. Conclusion and Disposition

[10] The officer failed to take account of important evidence relating to Ms Perez's Canadian-born child which supported her request for humanitarian and compassionate relief. This rendered the officer's conclusion unreasonable. I must, therefore, allow this application for judicial review and order another officer to reconsider Ms Perez's application for permanent residence. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, and the matter is returned to another officer for reconsideration.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1745-15

STYLE OF CAUSE: SHERYL YUTUC PEREZ v MINISTER OF
CITIZENSHIP, IMMIGRATION &
MULTICULTURALISM

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: NOVEMBER 12, 2015

JUDGMENT AND REASONS: O'REILLY J.

DATED: MAY 6, 2016

APPEARANCES:

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FOR THE RESPONDENT

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