Federal Court  Cour fédérale

Date: 20161021

Docket: IMM-1220-16

Citation: 2016 FC 1183

Toronto, Ontario, October 21, 2016

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

TEGA ODUGBA
ELOHOR ODUGBA
OREZI ODUGBA (A MINOR)
OREVA ODUGBA (A MINOR)

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

(Judgment given orally from the bench on October 17, 2016)

[1] The Applicants are citizens of Nigeria, Tega Odugba, Elohor Odugba, Orezi Odugba (minor), Oreva Odugba (minor) and a Canadian born son Jayden Odugba. The Applicants challenge an officer's refusal to defer the Applicants' removal from Canada to Nigeria that was scheduled for March 24, 2016.

[2] By a stay dated March 23, 2016, Mr. Justice Campbell granted the stay until this application was determined.

[3] The Applicants had applied for refugee status in Canada and after a hearing before the Refugee Protection Division, were rejected on April 10, 2015. Their appeal to the Refugee Appeal Division was denied and leave to judicially review that decision was refused by the Federal Court.

[4] The Applicants have asked for the deferral because their Canadian born son Jayden, then 7 months old, suffered from a viral condition with a rash and a fever called roseola. The child Orezi would also be in the middle of her academic year so a delay to allow her to finish school was reasonable in the Applicants' deferral request. The Applicants say that the children were endangered even though the officer said she was alive and alert and sensitive to the children's interests, she was not.

[5] Soon after, the Applicants were given the direction to report. They filed an H&C application (Humanitarian and Compassionate).

I. Issue

[6] The issue to determine is whether the officer's decision was reasonable.

[7] On Judicial Review, I must determine if the officer's decision with respect to issues of mixed fact and law is reasonable (confirmed in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]). That was the standard I was reviewing it at.

[8] The boundaries of an enforcement officer's discretion to defer a removal is circumscribed by the Court in *Wang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148 [*Wang*], where Justice Pelletier found that "deferral should be reserved for those applications or processes where the failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment in circumstances".

[9] Subsection 48(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, requires officers to enforce removals "as soon as possible". Removal officers have limited discretion in assessing requests to defer removal (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81).

[10] Applying these principles to the case at hand, in combination with the thorough analysis by the officer of all the relevant facts, I conclude her decision was reasonable. It is not for me to re-weigh the evidence and arrive at a different conclusion. The onus is on the Applicants to provide the evidence. I find at the core of this decision that there is insufficient evidence before the officer.

[11] The Applicants argue the decision was not reasonable because the officer unreasonably treated the medical evidence regarding Jayden.

[12] The Applicants say that the officer unreasonably treated letters from Dr. Saito dated March 15, 2016, and Dr. Lui dated January 15, 2016. The Applicants characterized that the "Officer failed to look at the matter commutatively or as a whole but went on a voyage of technicality to claim that the Canadian-born was well and fit to travel." Further the Applicants argued that the officer was unreasonable to have found that there was insufficient evidence regarding the Nigerian health care system.

[13] I cannot agree after reviewing the medical doctors' letters. The letter from Dr. Lui is three sentences and says that he is Jayden's doctor for regular baby checkups and "provide assessment and management of his acute health concerns." This letter provides no evidence that would make the determination that the child can fly unreasonable.

[14] Further a review of the letter from Dr. Saito of a different medical centre after stating his qualifications says "Jayden Odugba was examined on March 15, 2016. He recently suffered a viral illness (roseola). He had a fever for the past few days with a rash characteristic of roseola. It is unadvisable for him to travel by plane for the next three weeks. He needs to convalesce at home." The officer reasonably concluded that though unadvisable the doctor did not say the child could not travel and it does not appear any follow up was needed for the viral illness.

[15] The doctor ordered tests apparently but it's not referenced in the letter, nor is there any reference to any follow up medical treatment being needed in any of the two medial reports that was found. Cumulatively, I do not see this rendering the decision unreasonable.

[16] I do not find the officer was unreasonable in his assessment regarding the Nigerian health care system. Again, the onus is on the Applicants to present the evidence. Given what the officer had, it was a reasonable decision that the child "would be denied medical care or treatment needed would not be available for the child in Nigeria." Without the Applicants providing further specific evidence regarding either the child medical condition or that it was not available, specifically the treatment in Nigeria, we cannot ask the officer to speculate.

[17] The officer fully considers the impacts of disrupting Orezi's schooling. She notes that there is no evidence that Orezi could not continue schooling in Nigeria. Further, the officer puts great weight on the love and support of her parents to help through the difficult transition back to Nigeria.

[18] Orally, and in the written material filed, it was argued that it was unreasonable for the officer to not defer given Jayden did not have a visa and it was not within the Applicants. I must only consider the evidence that was before the officer and not what might have been before the stay judge.

[19] In the Certified Tribunal Record at page 23, the officer's note of January 23, 2016 says:

> - Removal ready
>
> - Inform me they have a 7 month old CC son
>
> - Booked removal for 24 Mar 2016 for the 4 of them, call in notice for 2 FEB to provide proof that passport applied for CC son. Inform they must get appropriate visa from Nigeria High Comm.
>
> - They will inform me if they want CBSA to purchase tkt for CC son.

[20] Then on January 31, 2016, the note to file indicates:

> spoke to client on phone this morning. He confirms PPT application for CC son will be submitted as directed and he will receive in 10 days. He asked that CBSA purchase ticket for him as he cannot afford...

[21] Further, there is a note that the father called in on February 18 "PPT has been applied for CC son – will notify when in".

[22] Again on March 16, statutory declaration of the father at paragraph 8:

> Furthermore, Jayden does not currently have a visa to go to Nigeria. They delay resulted from the fact that I only recently (late last week) received Jayden's Canadian passport. I have contacted the Nigerian High Commission, Ottawa and have applied for Jayden's visa. The Nigerian officials have informed me that they need to validate my own documents from Nigeria before they can issue Jayden a visa and they have not finalized that process.

[23] I do not agree with the Applicant's arguments that it was an error they were removal ready because Mr. Tega Odugba told the removal officer that the visa would be issued before the family traveled back to Nigeria. Given the timelines which I have just read and what was before the deferral officer, I do not find it unreasonable, that he would not defer when the evidence was that Jayden would have a visa to travel with the family.

[24] The Nigerian High Commission did require the documentation to be provided, given all the evidence that was before, it was still reasonable that the officer would continue on. Again, this is the material that was in the Certified Tribunal Record, in the evidence, not what was transpired post the Certified Tribunal Record.

[25] Reasonableness requires that the decision must exhibit justification, transparency and intelligibility within the decision-making process and also that the decision must be within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir*, above, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

[26] Viewing the decision as a whole, I cannot find that it is a reviewable decision and will dismiss the application.

[27] No question was presented for certification and none arose so none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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