Federal Court  Cour fédérale

Date: 20161020

Docket: IMM-1637-16

Citation: 2016 FC 1174

Ottawa, Ontario, October 20, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

Alain JEAN FRANÇOIS
Josette JEAN FRANÇOIS CHARLOTIN
Rachelle JEAN FRANÇOIS
Dieuvenson JEAN FRANÇOIS
Marc Evens JEAN FRANÇOIS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act, or IRPA], of a decision by an Immigration Officer (the

Officer) dated March 30, 2016, rejecting the Applicants' application for Permanent Residence on Humanitarian and Compassionate (H & C) grounds.

[2] The Applicants argue that the Officer failed to give enough weight to the Government of Quebec's positive establishment assessment and to the situation of women in Haiti while also failing to reasonably assess the best interests of the children.

[3] A review of the Officer's decision reveals no reviewable error and, as such, the application is dismissed.

I. Background

[4] The Principal Applicant, his wife, daughter (22 years old) and two sons (one minor son presently 14 years old and one 19 years old) (collectively, the Applicants) are citizens of Haiti. The Principal Applicant has two older daughters who are permanent residents of Canada.

[5] The Applicants arrived in Canada and applied for refugee status on February 6, 2014. Their claim was rejected by the Refugee Protection Division (RPD) on April 22, 2014.

[6] The Applicants applied for judicial review of this decision on May 13, 2014. This application was rejected on August 13, 2014.

[7] In May 2015, the Applicants applied for permanent residence on H & C grounds citing the best interests of the children, their establishment in Canada, the hardship they would endure

due to adverse country conditions, and the risk of sexual violence faced by the Principal Applicant's wife and daughter.

[8] As Haitians in Canada prior to December 1, 2015, the Applicants were under unenforceable removal orders, the Applicants were able to submit applications for "certificats de sélection du Québec" (CSQ) at the same time as their application for permanent residence.

[9] The Applicants successfully received CSQs but their H & C application was rejected by the Officer in a decision dated March 30, 2016.

[10] The Officer concluded that the Applicants would not suffer unusual, undeserved or disproportionate hardship. The Officer gave little weight to their establishment as it was very recent, especially in comparison to their establishment in Haiti. The Officer found minimal evidence that the Applicants would be personally affected by generalized risk in Haitian society as they had never been so personally affected in the past. The Officer also found that the female applicants did not fit the profile of women at risk of sexual violence. The Officer also found no evidence demonstrating that the children's well-being would be compromised if returned to Haiti.

II. Issues

[11] The application raises the following issues:

1. Did the Officer grant enough weight to the Government of Quebec's positive determination with regards to the Applicants' CSQ?

2. Did the Officer fail to properly apply the framework for the best interests of the child and engaged in an unreasonable assessment of this factor?

3. Did the Officer fail to grant enough weight to the situation of women in Haiti in its assessment of hardship?

III. Standard of Review

[12] The standard of reasonableness applies to the Officer's weighing of factors in an H&C application (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]. The Court will not intervene unless the Officer's conclusions fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

A. *Did the Officer grant enough weight to the Government of Quebec's positive determination with regards to the Applicants' CSQ?*

[13] Under the Canada-Quebec accord, Quebec is responsible for selecting foreign nationals wishing to settle there as permanent residents. It does so by granting a CSQ. In granting a CSQ, the Ministère de l'Immigration, de la Diversité et de l'Inclusion (MIDI) considers establishment factors similar to those relevant to an H & C application.

[14] While Quebec selects who may settle in its province as a permanent resident, it is Canada that continues to decide on the issue of the admissibility of chosen candidates. It is well

established that admissibility usually requires an application for permanent residence to be filed from outside Canada. To be exempt from this requirement, regardless of the presence of a CSQ or not, an applicant must obtain an exemption under ss 25(1) of the IRPA on H & C grounds from the Respondent.

[15] In this case, as the Applicants were part of the group of persons affected by the lifting of the temporary suspension of removals for Haiti, they were able to apply for an H & C exemption and a CSQ at the same time. As per *Operational Bulletin 600*, in these circumstances, the Respondent must take the CSQ into account in making its own determination:

> If the MIDI issues a CSQ, CIC will examine the application for H&C consideration as per existing provisions in the program delivery instructions on H&C consideration taking into account the assessment by the MIDI.

[16] The Officer states at pages 2, 5, and 8 of his decision that he has taken the CSQ into account but the Applicants argue that MIDI's assessment of establishment was not truly taken into account. It is argued that the Applicants' establishment, notably the employment of the Principal Applicant, his wife and his daughter, should have been granted more weight given the positive MIDI determination. Further, it is argued that the Officer should have relied on the MIDI determination as evidence of establishment rather than assuming that it takes years in Canada to become established.

[17] The Respondent submits that, as per *Operational Bulletin 600*, the Officer took the CSQ into account but that he still made his own H & C assessment as he was required to. As the

Officer was not privy to the MIDI's reasons for issuing a CSQ, all he could do was acknowledge the CSQ as evidence that the MIDI had conducted a positive assessment of Quebec establishment factors, before proceeding to examine the Application on H & C grounds as the issuance of a CSQ, and even the Applicants' establishment in Canada more broadly, cannot be determinative of an H & C application (*Kanthasamy*, *supra* at para 28).

[18] The Officer considered the employment of the Principal Applicant, his wife and his daughter, but noted that the evidence did not show if this employment was permanent or temporary. The Officer also considered their income and savings. The Officer noted that the Applicants' integration into the Canadian job market was relatively recent, since August 2014, and that, this was insufficient, in itself, to warrant an H & C exemption.

[19] The Officer considered the Applicants' church letter of recommendation but noted that, beyond highlighting their membership in its congregation, it did not describe their involvement in the community. The Officer concluded that, given the short time the Applicants have been in Canada, he could not find that establishment would be a sufficient basis for an H & C claim especially when compared with the Applicants' level of establishment in Haiti.

[20] The CSQ's evaluation considers the Applicants' integration into Quebec society, while an H & C assessment considers the situation more broadly in terms of the effects of return of the Applicants to Haiti, which includes hardship related to the comparative integration in both societies. I find that the Officer granted enough weight to the CSQ decision and reasonably

concluded that the Applicants' establishment should not be granted significant weight in the overall H & C decision.

B. *Did the Officer fail to properly apply the framework for the best interests of the child and engaged in an unreasonable assessment of this factor?*

[21] The Applicants submit that the Officer failed in his application of the framework for assessing the best interests of the children. They argue that the Officer has not truly assessed what is in the children's best interests and how much this may be compromised by being forced to return to Haiti. Further, they submit that the Officer erred by not granting significant weight to the fact that the children's sisters are permanent residents of Canada and the family separation that would occur should the Applicants be sent back to Haiti.

[22] The Officer considered the impact on the Principal Applicant's two sons. He considered their integration into the school system. He also considered that there was no evidence of health problems or special needs or that they had suffered from adverse conditions or a deficient education while in Haiti. The Officer also considered that their older sister had received continuous education in Haiti. For these reasons, while acknowledging that country conditions are not optimal, the Officer concluded that the children would not lack access to education or that their well-being would otherwise be compromised upon return.

[23] The Officer also considered the fact that their two older sisters had permanent residence status in Canada. He considered that they did not submit letters supporting the H & C application nor describe the nature of their relationship or the impact of eventual family separation. He also

considered that, prior to the Applicants' arrival in Canada; the Applicants had been separated from the two older sisters. But based on the personal effect on family that this would have, gave minimal weight to the impact of family separation.

[24] I find that the Officer applied the correct test in assessing the best interests of the children and his assessment contained no reviewable error, as to what evidence was considered or the weight it was given. The decision was reasonable given the lack of evidence of hardship suffered by the children prior to coming to Canada and the Applicants' failure to put forward evidence that would support the allegation that the children's well-being would be compromised upon their return to Haiti.

C. *Did the Officer fail to grant enough weight to the situation of women in Haiti in its assessment of hardship?*

[25] The Applicants submit that it was unreasonable for the Officer not to have granted significant weight to the situation of women in Haiti and the hardship the Principal Applicant's wife and daughter would face upon their return to Haiti.

[26] The Respondent submits that the Officer appropriately considered the fact that the Principal Applicant's wife and daughter would not be living in areas affected by the earthquake and that they would be accompanied by a spouse or living with family. As such, they did not fit the profile of women typically at risk of sexual violence in Haiti and failed to establish, on the evidence of adverse country conditions before the Officer, that they would likely be affected by sexual violence or discrimination.

[27] The Officer clearly examined the objective country conditions documentation submitted by the Applicants. He also considered this Court's decision in *Josile v Canada (Citizenship and Immigration)*, 2011 FC 39 submitted as evidence of the adverse situation women face in Haiti. Notably, the Officer cited paragraph 39 of this decision as supporting the importance of considering the Applicants' personal circumstances:

> Naturally, the geographical location (whether outside of Port-au-Prince or areas not affected by the earthquake) and the applicant's personal situation (whether she will be accompanied by a spouse or living with family) if returned to Haiti are relevant factors to consider.

[28] With this view, the Officer considered the evidence of the personal circumstances of the Principal Applicant's wife and daughter in living with male protection and in areas not affected by the earthquake. On this basis, the Officer concluded that while some weight should be granted to the general adverse circumstances women face in Haiti, the Applicants did not satisfy the Officer that these circumstances would have a negative impact on the female applicants themselves, given their personal situation.

[29] I find that the Officer reasonably granted little weight to the situation faced by women in Haiti given the female applicants' personal profile and the objective country condition evidence before him.

V. Conclusion

[30] The application is dismissed and no question is certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified for appeal.

"Peter Annis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	ALAIN JEAN FRANÇOIS, JOSETTE JEAN FRANÇOIS CHARLOTIN, RACHELLE JEAN FRANÇOIS, DIEUVENSON JEAN FRANÇOIS and MARC EVENS JEAN FRANÇOIS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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