

Federal Court



Cour fédérale

Date: 20180302

Docket: IMM-3500-17

Citation: 2018 FC 242

Ottawa, Ontario, March 2, 2018

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

SEAN ANDREW WALTERS

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This judicial review concerns an officer's refusal to grant an application for an exemption for humanitarian and compassionate [H&C] considerations [the Decision].

[2] The Applicant argued that the Decision is unreasonable due to the treatment of the best interests of the child, his criminal charges, and his establishment in Canada.

II. Facts

[3] The Applicant came to Canada on two temporary work visas. He fathered a son and remained in Canada after his visa expired, allegedly to be part of his son's life.

He has separated from his son's mother and they share joint custody. The son is now six years old.

[4] In December 2015, the Applicant was charged with possession of cocaine for the purpose of trafficking. Those charges have not been resolved even now.

The Applicant was detained on an immigration warrant and released on a bond.

[5] The Decision afforded minimal weight to the Applicant's establishment in Canada because, such as it was, it was acquired while he was not authorized to be in Canada. There was insufficient evidence of hardship in severing relationships in Canada or in returning to Jamaica.

[6] In considering the best interests of the son and the two children of the Applicant's former spouse, substantial weight was given to the son's interests. While the son was experiencing difficulties in school, the cause was unknown. It was acknowledged that his father's removal would affect the son, but this was ameliorated in part by the continued support of his mother, his half-siblings and the community.

[7] The Applicant's illegal status and criminal charges were of significant concern in the Decision. It was noted that the Applicant only came to the attention of immigration authorities as

a result of his criminal charges. The Decision found that the H&C factors “do not overcome the actions knowingly undertaken by the applicant for his benefit which show a complete disregard for the immigration and criminal laws of Canada”.

[8] Having weighed the various factors, the Decision dismissed the H&C application.

III. Analysis

[9] Given the highly discretionary nature of H&C decisions, it is well settled law that the standard of review is reasonableness.

[10] The Applicant submitted that various parts of the best interests of the child analysis were deficient. However, this argument essentially asked this Court to re-weigh the H&C factors. The Decision dealt with all the relevant factors in a reasonable manner and this Court should not interfere in that analysis.

[11] The only matter deserving of further comment is the above quote concerning the Applicant’s disregard for immigration and criminal laws. This statement has a reasonable basis in regards to his illegal immigration status, but is at minimum overblown in regards to his criminal charges, as they have not yet been adjudicated.

[12] The question is whether the comment on criminal charges taints the remainder of the H&C analysis. I have concluded that it does not.

[13] There is more than a sufficient basis for the decision, even excluding the criminal law comment. I cannot see, when the decision is read as a whole, that the officer's analysis was tainted or twisted by what is argued as equating criminal charges with criminal guilt.

[14] Lastly, the Applicant's establishment in Canada was fairly assessed. There was nothing remarkable about the establishment that accrued over the time of his illegal stay.

IV. Conclusion

[15] Therefore, I will dismiss this judicial review.

[16] There is no question for certification.

JUDGMENT in IMM-3500-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3500-17

STYLE OF CAUSE: SEAN ANDREW WALTERS v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 14, 2018

JUDGMENT AND REASONS: PHELAN J.

DATED: MARCH 2, 2018

APPEARANCES:

Daniel L. Winbaum FOR THE APPLICANT

Rachel Hepburn Craig FOR THE RESPONDENT

SOLICITORS OF RECORD:

Klein, Winbaum & Frank FOR THE APPLICANT
Barristers and Solicitors
Windsor, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario