Federal Court  Cour fédérale

Date: 20180412

Docket: IMM-756-17

Citation: 2018 FC 398

Ottawa, Ontario, April 12, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SECAY SAYGILI

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Secay Seygali (the "Applicant") seeks judicial review of the decision of an Officer (the "Officer"), refusing his application for permanent residence in Canada.

[2] The Applicant, a citizen of Turkey and adherent of the Alevi faith, arrived in Canada in 2011. He unsuccessfully sought protection under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[3] The Applicant applied for permeant residence in Canada on humanitarian and compassionate ("H&C") grounds pursuant to subsection 25(1) of the Act, based on his establishment in Canada and the hardship if returned to Turkey.

[4] The Officer refused his application, noting credibility concerns expressed by the Immigration and Refugee Board, Refugee Protection Division (the "Board"). The Officer referred to the Applicant's children in Turkey but assigned little weight to the Applicant's evidence about his children on the grounds that they had a vested interest in the outcome of the H&C application.

[5] The Officer's decision is reviewable on the standard of reasonableness. See the decision in *Niculescu v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 733. According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, that means that the decision must be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible upon the law and the facts.

[6] In my opinion, the decision of the Officer does not meet this test.

[7] In my opinion, the Officer unreasonably relied on the negative credibility findings of the Board. The focus of an H&C application is very different from that of a claim for protection.

[8] Likewise, the Officer unreasonably dismissed the evidence presented about the Applicant's children. That evidence should not have been discounted simply because the children have an interest in the outcome. In my opinion, such an approach ignores the teaching of

the Supreme Court of Canada in *Kanthasamy v. Canada (Citizenship and Immigration)*, [2015] 3 S.C.R. 909.

[9] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different Officer for re-determination. There is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different Officer for re-determination. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-756-17
STYLE OF CAUSE:	SECAY SAYGILI v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
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