Federal Court  Cour fédérale

Date: 20211015

Docket: IMM-1186-20

Citation: 2021 FC 1085

Vancouver, British Columbia, October 15, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

WINTA GHEBRE
JOEL GHEBRE (BY HIS LITIGATION GUARDIAN WINTA GHEBRE)
YUNAEL GHEBRE (BY HIS LITIGATION GUARDIAN WINTA GHEBRE)
LUKAS GHEBRE (BY HIS LITIGATION GUARDIAN WINTA GHEBRE)
DELINA AALIYAH GHEBRE (BY HER LITIGATION GUARDIAN WINTA GHEBRE)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Winta Ghebre (the "Principal Applicant") and her minor children Joel Ghebre, Yunael Ghebre, Lukas Ghebre and Delina Aaliyah Ghebre (collectively "the Applicants") seek judicial review of the decision made by an Officer (the "Officer"), refusing their application for

permanent residence in Canada made on Humanitarian and Compassionate ("H and C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (the "Act").

[2] The Principal Applicant and her children arrived in Canada in November 2015, as visitors. The Principal Applicant received an extension of her visitor status until August 5, 2017 but a subsequent application for an extension was refused on November 10, 2017. The Applicants' H and C application was received on November 15, 2017. The application was refused on January 31, 2020.

[3] The Principal Applicant is a Swiss citizen of Eritrean descent. Her eldest child was born in the United States of America, her other children were born in Switzerland, and all children hold Swiss citizenship.

[4] The Applicants based their H and C application upon their establishment in Canada, mental health considerations of the Principal Applicant, best interests of the child considerations, adverse country conditions, including discrimination, and related hardships that they would suffer in Switzerland.

[5] The Officer addressed each of these elements, in detail.

[6] With respect to hardship upon return to Switzerland, including adverse country conditions and discriminatory treatment by members of the population, even towards the

children by their schoolmates, the Officer found that there was insufficient objective evidence to support the Applicants fears, as alleged.

[7] The Officer addressed the submissions about establishment of the Applicants in Canada, including that of the children. The Officer concluded that although there was evidence that the Applicants enjoyed stability of life in Canada, the evidence showed that they could adapt to life and re-establish themselves in Switzerland.

[8] The Officer considered the submissions made about the Principal Applicant's mental health issues and her fear that her children will be removed from her, by state authorities, if she is require to return to Switzerland. The Officer acknowledged and commented upon the report of Dr. Agrawal, a psychiatrist, and noted the comments of that physician about the potential negative effects upon the children if the H and C application were refused. The Officer assigned no weight to these comments.

[9] The Officer acknowledged the concerns of the Principal Applicant about the potential apprehension of her children by state authorities in Switzerland. The Officer noted the earlier involvement by Swiss child protection authorities with the children. The Officer observed a lack of objective documentary evidence about that involvement.

[10] The Officer addressed the best interests of the children, independently and in terms of their relationship with their mother, the Principal Applicant. The Officer noted that the best interests of the children is an important, but not determinative, factor in deciding the H and C

application. The Officer concluded that the best interests of the children would be “negatively impacted to an extent that warrants humanitarian and compassionate relief when weighted with all other factors”.

[11] The Officer noted that there was a lack of evidence about the involvement of the state in the temporary apprehension of the children in Switzerland. The Officer also noted that the children had been removed from the care of the Principal Applicant during their sojorn in Toronto and that their return to her care was a sign that the child welfare authorities in Toronto were satisfied that she could properly care for them.

[12] The Officer addressed the mental health issues of the Principal Applicant. The Officer noted the lack of objective evidence as to the treatment of those issues overseas. The Officer noted that the Principal Applicant suffered from suicidal ideation and had a history of two suicide attempts. The Officer noted the lack of objective evidence that the Principal Applicant would be unable to access appropriate treatment for her mental health issues in Switzerland.

[13] The Applicants now argue that the Officer erred in the analysis of the psychological report, erroneously dismissed the sworn evidence as set out in the affidavit of the Principal Applicant, specifically the lack of evidence about her suicidal ideation, and erroneously assessed the best interest of the children. They submit that the Officer failed to follow the decision in *Kanthasamy v. Canada (Minister of Citizenship and Immigration)*, [2015] 3 S.C.R. 909.

[14] The Minister of Citizenship and Immigration (the "Respondent") submits that the Applicants have failed to show any palpable and overriding error in the Officer's assessment of the evidence.

[15] Further to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C), the Officer's decision is reviewable on the standard of reasonableness. In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov, supra* at paragraph 99.

[16] In spite of the lengthy detailed submissions of the Applicants, I am not persuaded that they have shown any reviewable error in the Officer's treatment of the evidence.

[17] On the basis of the submissions made in support of the Applicants' H and C application, that Officer reasonably found a lack of objective evidence about the Principal Applicant's interaction with the child welfare authorities in Switzerland.

[18] The Officer reasonably considered the report about the Principal Applicant's mental health issues. The Officer apparently accepted the diagnosis expressed by the psychiatrist but rejected the recommendations about the best interests of the children.

[19] That does not give rise to a reviewable error. The Officer, not the psychiatrist, is mandated to assess the best interests of the children, on the basis of the evidence submitted.

[20] The Officer acknowledged the Principal Applicant's suicidal ideations, as recounted by the psychologist. The Officer noted the lack of evidence that resources are not available in Switzerland to address these issues.

[21] The Officer's decision is reviewable on the standard of reasonableness. The decision is to be reviewed, as a whole, not piecemeal.

[22] The principal conclusion of the Officer to the issues raised by the Applicants was the lack of evidence.

[23] The Officer, not the Court, is mandated to assess the sufficiency of evidence. The Court is to assess the reasonableness of the conclusions, against the evidence submitted.

[24] In my opinion, the Officer's decision meets the applicable standard of review, that is reasonableness. There is no basis for judicial intervention and the application for judicial review will be dismissed.

[25] However, I note that the allegations of the Principal Applicant about her mental health are serious. Those concerns cannot be dismissed by the Respondent and his agents and

employees in further interactions with the Principal Applicant. She is at liberty to make another H and C application, supported by new and current evidence.

[26] In the result, the application for judicial review is dismissed. There is no question for certification arising.

JUDGMENT in IMM-1186-20

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, there is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1186-20
STYLE OF CAUSE:	WINTA GHEBRE, JOEL GHEBRE (BY HIS LITIGATION GUARDIAN WINTA GHEBRE), YUNAEL GHEBRE (BY HIS LITIGATION GUARDIAN WINTA GHEBRE), LUKAS GHEBRE (BY HIS LITIGATION GUARDIAN WINTA GHEBRE), DELINA AALIYAH GHEBRE (BY HER LITIGATION GUARDIAN WINTA GHEBRE) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN TORONTO, ONTARIO AND ST. JOHN'S, NEWFOUNDLAND AND LABRADOR
DATE OF HEARING:	JULY 21, 2021
JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	OCTOBER 15, 2021

APPEARANCES:

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Stephen Jarvis	FOR THE RESPONDENT

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