Federal Court  Cour fédérale

Date: 20211216

Docket: IMM-3812-21

Citation: 2021 FC 1428

Ottawa, Ontario, December 16, 2021

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

ARNEL SICOMEN LASUDEN
JECA DION LASUDEN

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are spouses. They are challenging a refusal of their application for permanent residence based on humanitarian and compassionate grounds ("H & C Application"). The Applicants argue that the Senior Immigration Officer ("Officer") failed to give sufficient

consideration to their arguments about the best interests of their Canadian son, who was approximately two years old at the time of the decision.

[2] I find that the determinative issue is the Officer's failure to respond to a key concern in the Applicants' submissions. The Officer did not address the Applicants' submissions asking that they consider the child's inability to sponsor his parents as a minor as a breach of his *Charter* equality rights and that the granting of humanitarian relief to his parents was a way to remedy this breach. It is not my role on judicial review to assess the merits of these submissions. The reasons do not demonstrate that the Officer turned their mind to these submissions, which formed a substantial part of the argument, and therefore it must be sent back to be re-determined.

[3] For the reasons set out below, I am allowing this judicial review.

II. Background Facts

[4] The Applicants, Arnel Lasuden and Jeca Lasuden are spouses. They are citizens of the Philippines. They have been residing as temporary residents in Canada since 2016. In Canada, Arnel has worked as a farmer and carpenter and Jeca as a server at a fast food restaurant. Both have valid work permits and are employed. Their son was born in Canada in September 2019.

[5] On January 15, 2021, the Applicants submitted an H & C Application, primarily based on the best interests of their Canadian-born son.

III. Issues and Standard of Review

[6] The determinative issue for me on judicial review is whether the Officer's decision on the best interests of the child adequately considered and responded to the Applicants' submissions.

[7] In reviewing the decision of the Officer, I will apply a reasonableness standard of review. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[8] Foreign nationals applying for permanent residence in Canada can ask the Minister to use their discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because of humanitarian and compassionate factors, including the best interests of any child directly affected (IRPA, s. 25(1)). The Supreme Court of Canada in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is "to offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (at para 21).

[9] Given that the purpose of humanitarian and compassionate discretion is to "mitigate the rigidity of the law in an appropriate case", there is no proscribed and limited set of factors that warrant relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but "officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them" (*Kanthasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74-75). The best interests of any children directly impacted by the application are a "singularly significant focus and perspective" and must be "'well-identified and defined' and examined 'with a great deal of attention' in light of all the evidence" (*Kanthasamy* at paras 39, 40).

[10] The Applicants argued on judicial review that a factor that they raised in their best interests of the child submissions was not addressed by the Officer in their reasons.

[11] I will refer to the factor that the Applicants argue was not addressed as the "Discrimination Submission." The Discrimination Submission consisted of the following: sections 130(1)(a) and 133(j) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], that require a sponsor of a parent be at least 18 years of age and have a minimum income, discriminate against minors like the Applicants' child. According to the Applicants, this is relevant to the Officer's task on this H & C Application because the only way to remedy the breach of the child's equality rights (under s. 15 of the *Charter*) in this case, where the parents have no other way to achieve permanent status in Canada, is to grant relief based on humanitarian and compassionate grounds. The Applicants also referenced the rights of the child

in international law under Article 3 of the Convention on the Rights of the Child and family reunification objectives in IRPA (s 3(1)(d)).

[12] A decision-maker's reasons must be responsive to the parties' submissions. This requirement does not mean that a decision-maker has to refer to every line of argument. However, where a submission or argument relates to a central issue or concern, the failure to address it will compromise the transparency and justification of the decision (*Vavilov* at paras 127, 128).

[13] There are two key considerations in evaluating the argument that a decision-maker has failed to grapple with a key concern or issue raised in the submissions of a party. First, there needs to be an evaluation of the reasons to determine whether the claim is accurate that the decision-maker failed to meaningfully address the submission.

[14] In this case, both parties agree that the Discrimination Submission was made by the Applicants and that the Officer did not address it in any way in their reasons.

[15] The second consideration is whether the submission that was not addressed could be characterized as a key issue or concern and not a subsidiary one.

[16] Upon reviewing the submissions of the Applicants, I find that the Discrimination Submission was a key argument raised as a part of the Applicants' best interests of the child submissions. The argument made up a substantial part of the submissions and it was a basis on

which the Applicants were seeking relief. The Respondent has not explained its view that this is not the sort of argument that required a response from the Officer, except to submit generally that the Officer was not obligated to refer to each piece of evidence or every argument and it can be presumed that they considered the materials before them.

[17] While it is certainly true, as the Respondent argued, that a decision-maker need not respond to every line of argument made, in this case, I have determined that the Discrimination Submission formed a key part of the Applicants' submissions to the Officer. There is no mention of the submission or response to it, calling "into question whether the decision maker was actually alert and sensitive to the matter before it" (*Vavilov* at para 128). It is not my role on judicial review to determine the merits of the Discrimination Submission. The Officer's failure to grapple with a central issue raised by the Applicants renders their decision unreasonable as it is neither transparent nor justified.

[18] The Applicants made other arguments on this judicial review about the Officer's best interests of the child analysis. I need not decide those issues as I have already found that the decision was unreasonable for its failure to be responsive to the Applicants' submissions and requires a redetermination on that basis.

[19] Neither party raised a question for certification and I agree none arises.

JUDGMENT IN IMM-3812-21

THIS COURT'S JUDGMENT is that:

1. The application is granted;

2. There is no question for certification.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3812-21
STYLE OF CAUSE:	ARNEL SICOMEN LASUDEN ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	DECEMBER 1, 2021
JUDGMENT AND REASONS:	SADREHASHEMI J.
DATED:	DECEMBER 16, 2021

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