Federal Court  Cour fédérale

Date: 20220221

Docket: IMM-3405-20

Citation: 2022 FC 227

Ottawa, Ontario, February 21, 2022

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

ETAFOH GEOFFREY ABUYA
OMONTESELE GREATER ABUYA
IBOLONOIFO ONOSEDEBA JACE ABUYA (MINOR)
OSEREJEMHEN THEODORE ABUYA (MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a decision by a senior immigration officer [Officer] denying the Applicants' humanitarian and compassionate [H&C] application under s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]. The H&C application followed

on a failed refugee claim by the Refugee Protection Division [RPD], a failed appeal of the RPD decision and a failed attempt to judicially review thereof. The Applicants are currently the subject of a removal order.

II. Background

[2] The Applicants are a family and citizens of Nigeria – a father [Principal Applicant], mother and two children. A third child was born in Canada and is a Canadian citizen.

[3] In reviewing the H&C factors, the Officer concluded that:

a) In respect of establishment, despite involvement in youth organizations with other members of the community, there was little evidence of interdependence. The Officer also found insufficient evidence of the Principal Applicant's support of family members in Nigeria nor a reason such support could not continue post reintegration into Nigeria.

b) Regarding the best interests of the children [BIOC], it was difficult to understand why the parents would leave their 3 year old Canadian born son behind if they are returned to Nigeria. The two other children are academically established, though capable of adapting to studies in Nigeria. There was insufficient evidence supporting counsel's submission that the children may need to drop out of school due to economic hardship based on the Officer's finding that the parents could financially support their children in Nigeria. The Officer noted that comparing country conditions such as health care and also pollution, Canada was more advanced but there was little evidence that the Applicants' health would be

compromised or that they would be particularly adversely affected by pollution or climate.

c) In terms of country conditions, the Officer noted that the Applicants had not submitted sufficient information on impacts of the health care system, general homelessness or other elements of societal abuse, persecution, unemployment or security challenges.

III. Analysis

[4] There is no issue that the standard of review is "reasonableness" as defined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[5] It is difficult to see anything which could be suggested as unreasonable in the Officer's analysis and overall conclusions. The Applicants want the Court to reweigh the matters of BIOC and hardship – a task which the Court cannot and ought not perform.

[6] There is no merit in the argument that the reasons are inadequate and form the basis for a finding of breach of procedural fairness. The reasons are clear, intelligible and address the issues raised by the Applicants.

[7] The establishment analysis noted the positive elements as well as the insufficiency of details. The Officer was entitled to make a cumulative analysis of the establishment factor, as he can with respect to other factors.

[8] The Officer's BIOC analysis was reasonable as he considered each of the elements raised by the Applicants. He considered such factors as age, family, time in each country and schooling. The Applicants did not make out a case that removal would have disproportionate effect on the children. It is almost axiomatic that Canada has better systems than many other countries to which people must return. Any impacts were not beyond that which could reasonably be expected and are not disproportionate, harsh or unfair.

[9] Other than vague assertions about country conditions, the Applicants gave the Officer little with which to work. The deficiencies in the Applicants' record were identified.

[10] The Officer did not fall into the trap of requiring that the Applicants prove exceptional circumstances. The analysis stayed focussed on hardship being disproportionate before relief by way of exception should be granted.

IV. Conclusion

[11] For these reasons, I can find nothing unreasonable in this decision. This judicial review will be dismissed.

[12] There is no question for certification.

JUDGMENT in IMM-3405-20

THIS COURT'S JUDGMENT is that:

1. the application for judicial review is dismissed;

2. there is no question for certification; and

3. the name of the Respondent is corrected to the Minister of Citizenship and Immigration.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	ETAFOH GEOFFREY ABUYA, OMONTESELE GREATER ABUYA, IBOLONOIFO ONOSEDEBA JACE ABUYA (MINOR), OSEREJEMHEN THEODORE ABUYA (MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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