Federal Court  Cour fédérale

Date: 20220929

Docket: IMM-398-21

Citation: 2022 FC 1366

Toronto, Ontario, September 29, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

PREMNARINE SHEORATTAN
GAITRI DEVI SHEORATTAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a January 4, 2021 decision [Decision] of a Senior Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada, refusing an application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, the application is dismissed, as I find no reviewable error in the Officer's analysis.

I. Background

[3] The principal Applicant, Premnarine Sheorattan, is a 36-year old citizen of Guyana. In February 2008, he was in a car accident and suffered a brain injury, which led to him suffering from seizures that require medical treatment.

[4] He came to Canada in 2010 as a student and began a program in Electromechanical Engineering Technology at Humber College, which he completed in 2013. He has worked in Canada since graduation on a work permit, which expired in 2019. He has now started his own business.

[5] The principal Applicant married the co-Applicant, Gaitri Devi Sheorattan, during a summer trip back to Guyana in 2012 and in June 2013, she joined him in Canada on a temporary resident visa. She has not had status in Canada since 2016.

[6] The Applicants have two Canadian born children. Their eldest son, now age 8, has asthma, which requires medical treatment.

[7] The Applicants submitted two H&C applications in March 2016 and May 2017, which were both refused. On June 28, 2019, the Applicants submitted a further application for permanent residence on H&C grounds. The application was based on establishment, the health

needs of the principal Applicant and the Applicants' eldest son, the best interests of their children [BIOC], and the hardships they would face if they were to return to Guyana.

[8] On January 4, 2021, the Officer refused the application. Among other findings, the Officer found there to be insufficient evidence that the Applicants would face discrimination that would result in the Applicants not reasonably being able to obtain employment if they returned to Guyana, and that there was insufficient evidence that the principal Applicant and the Applicants' eldest son would be unable to obtain suitable medical treatment in Guyana. The Officer was also not persuaded that the children would be unable to adapt or reintegrate in Guyana and was satisfied that the BIOC would be met if they continued to benefit from the support and care of their parents.

II. Issues

[9] The following issues are raised by this application:

A. Did the Officer err in assessing the discrimination the Applicants would face?

B. Did the Officer err in engaging with the evidence regarding the availability of medical care in Guyana for the principal Applicant and his son?

C. Did the Officer err in assessing the BIOC?

[10] The standard of review of an Officer's H&C decision is reasonableness. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17.

[11] In conducting a reasonableness review, the Court must determine whether the decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

A. *Did the Officer err in assessing the discrimination the Applicants would face?*

[12] The Applicants assert that the Officer erred by restricting the analysis of whether the Applicants would face discrimination to the narrow issue of whether the Applicants would be able to obtain employment. They argue that the Officer failed to engage with central arguments that the principal Applicant would face social discrimination related to his seizures and the co-Applicant would face societal discrimination and gender-based violence.

[13] The Respondent argues that there has been no error. The Officer noted and addressed the concerns raised by the Applicants, but provided more lengthy reasons relating to employment because this was the focus of the Applicants' submissions. I agree.

[14] In the Applicants' submissions on the H&C application, they provided a section on "Adverse Country Conditions: Gender-Based and Disability-Based Discrimination and Limited Employment Opportunities". The submissions in this section discussed difficulties the Applicants would face in locating employment due to "the discrimination they face because of

Premnarine's history of seizures, and in the case of Gaitri, because of her status as a woman." The Applicants referred to a United States Department of State 2018 Human Rights Report, discussing the lack of enforcement of laws prohibiting discrimination in employment in Guyana and a United Nation report on the "Elimination of Discrimination against Women" and its observations relating to stereotyping in Guyana. The submissions cited to the principal Applicant's affidavit where the principal Applicant referred to the "strong stigma in Guyana" toward his condition and to his experiences, and cited to an article from the Guyana Chronicle that discussed societal discrimination in Guyana towards those with epilepsy. However, the submissions referred to this evidence in the context of an overall discussion of the principal Applicant's employment opportunities. As stated in the conclusion of this section of the submissions, "...in light of the above, a return to Guyana would mark a return to destitution and poverty. It is clear that the economy of Guyana is in shambles, and that there is little hope of meaningful employment that pays a living wage for either of the couple, based on Premnarine's disability and Gaitri's status as a woman."

[15] In the Decision, the Officer outlines and acknowledges the concerns raised by the Applicants. The Officer notes that the principal Applicant might face social prejudice because of his seizures and notes the negative interfamilial experiences of the co-Applicant growing up and how that might affect her in future, along with her more general concerns regarding discrimination. However, the Officer addresses these assertions in the same manner they were raised in the Applicants' submissions. As the assertions on discrimination were made in conjunction with an overall submission on the impact of discrimination on the Applicants' ability to find employment, they were addressed in this same manner in the Decision. In my view, the

Officer has not erred in structuring their analysis to follow the Applicants' submissions; nor has the Officer ignored the Applicants' evidence.

[16] The Applicants further argue that the Officer required them to establish prior discrimination in order to demonstrate that discrimination was a live issue. They refer to the following remark made in the Decision:

> Premnarine is concerned that he will face discrimination because of his seizure disorder if he were to seek employment in Guyana. I have reviewed the adduced documentation and I am sympathetic to the fact that seizures are still frequently misunderstood in Guyana and the applicant may face social prejudice. However, I note that the applicant was employed prior to moving to Canada at a time when he already had a seizure disorder… [Emphasis added]

[17] The Applicants assert that this approach is contrary to the Minister's Guidelines [Guidelines] regarding the assessment of H&C applications, which states:

> In assessing whether an applicant will be affected by discrimination, discrimination can be inferred where an applicant shows that they are a member of a group that is discriminated against. Evidence of discrimination experienced by others who share the applicant's profile is relevant under subsection 25(1), whether or not the applicant has evidence that they have been personally targeted.

[18] I do not find this argument persuasive as it takes the Officer's comments out of context.

[19] In accordance with the Guidelines, the Officer acknowledges that some social prejudice may exist because of the principal Applicant's seizure condition. However, the Officer refers to the principal Applicant's prior ability to obtain employment in Guyana with his seizure condition as a factor for consideration of how the Applicant's seizure condition may affect his future

employment opportunities. In my view, this does not equate to a requirement for the Applicant to establish prior discrimination for discrimination to be found. Rather, it merely considers the prior impact of social prejudice arising from the principal Applicant's seizure condition on employment as a consideration for how social prejudice might affect the Applicant's employment in the future.

[20] I find no reviewable error in this aspect of the Officer's analysis.

B. *Did the Officer err in engaging with the evidence regarding the availability of medical care in Guyana for the principal Applicant and his son?*

[21] The Applicants argue that the Officer fettered their discretion by too strictly adhering to the Guidelines relating to the onus on an Applicant to establish hardship arising from a medical condition, instead of engaging with the Applicants' evidence and indicating why it was insufficient. As set out in the Guidelines, if applicants allege they will suffer hardship if returned to their country of origin because of a medical condition, the onus is on the applicant to provide:

> a) documentary evidence from the applicant's doctor(s) confirming the applicant has been diagnosed with the condition, the appropriate treatment, and that treatment for the condition is vital to an applicant's physical or mental wellbeing; and
>
> b) confirmation from the relevant health authorities in the country of origin attesting to the fact that an acceptable treatment is unavailable in the applicant's country of origin.

[22] In this case, the Applicants provided a consultation report relating to the principal Applicant's seizure condition. The report notes that the Applicant suffered a traumatic contusion in 2008 resulting in a seizure disorder that requires treatment. The report, which is summarized in the Decision, indicates that the Applicant was placed on the medicine carbamazepine for over

a year and then, after he moved to Canada, his carbamazepine was stopped. He had a breakthrough seizure in 2013 and was placed on the drug Dilantin, which is managing his condition well.

[23] The report does not indicate whether Dilantin is available in Guyana and the Applicant has acknowledged that he is not aware of its availability in Guyana. Nor does the report provide any comparison between treatment with carbamazepine and treatment with Dilantin.

[24] In the Decision, the Officer notes the Applicant's evidence and acknowledges the Applicant's preference for Dilantin instead of carbamazepine. However, the Officer states that the evidence does not support a finding that the medication available to the Applicant in Guyana was inadequate. In view of the fact that carbamazepine was stopped in 2009 and that the Applicant appears to have been without any medication when he had his breakthrough seizure in 2013, I do not consider this finding to be unreasonable. Nor do I consider it unreasonable for the Officer to have concluded that the evidence was inadequate to establish that the Applicant would be denied or unable to obtain acceptable medication in Guyana.

[25] As set out in the Guidelines, the onus rests with the Applicant to establish that an acceptable treatment is not available in Guyana. In my view, the summary provided by the Officer outlines sufficient justification and transparency for the conclusion reached.

[26] In the case of the Applicants' son, the Applicants provide a letter from their son's physician stating that the son "is suffering from Bronchial Asthma and is currently on Flovent

and Teva-salbutamol to relieve his shortness of breath. However, the above-mentioned medications are not available in Guyana."

[27] In the Decision, the Officer notes that this letter "has not ruled out alternative medications used for treating asthma". The Officer also refers to projects at two of the hospitals in Guyana for diagnosing and treating patients with asthma. Based on these factors, the Officer finds the evidence insufficient to establish that the Applicant's son would be unable to obtain acceptable medication.

[28] I agree with the Respondent, the facts are distinguishable from those in *Kadje v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 102 at paragraphs 24-25, cited by the Applicant. The evidence in this case was not that the drugs required to treat the applicant were not available in the country of origin, but instead that the drug currently used to treat the Applicant was not available. The evidence was silent as to whether other treatments might be possible. The Officer is pointing out that this possibility is not addressed in the Applicants' evidence.

[29] In my view, the analysis given is sufficiently justified and transparent and highlights why the evidence provided was considered deficient.

[30] The Applicants further argue that the Officer restricted their analysis to the availability of pharmaceuticals and did not engage with evidence regarding the general state of healthcare in Guyana. However, I do not consider this argument persuasive.

[31] The Officer's analysis indicates consideration of the country condition evidence, but notes several developments in the available treatment; namely, that the Epilepsy Foundation of Guyana has been raising awareness and recently acquired an EEG machine and as mentioned earlier, refers to projects at two of the hospitals in Guyana for diagnosing and treating patients with asthma.

[32] While the Applicant may have preferred the Officer to weigh the evidence differently, this does not constitute a reviewable error.

C. *Did the Officer err in assessing the BIOC?*

[33] The Applicants assert that the Officer erred in their BIOC analysis by focussing on a hardship analysis rather than stating what was in the children's best interests and applying the approach set out in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraphs 35-40:

> [35] The "best interests" principle is "highly contextual" because of the "multitude of factors that may impinge on the child's best interest": *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4 (CanLII), [2004] 1 S.C.R. 76, at para. 11; *Gordon v. Goertz*, 1996 CanLII 191 (SCC), [1996] 2 S.C.R. 27, at para. 20. It must therefore be applied in a manner responsive to each child's particular age, capacity, needs and maturity: see *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 (CanLII), [2009] 2 S.C.R. 181, at para. 89. The child's level of development will guide its precise application in the context of a particular case.
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> [36] Protecting children through the "best interests of the child" principle is widely understood and accepted in Canada's legal system: *A.B. v. Bragg Communications Inc.*, 2012 SCC 46 (CanLII), [2012] 2 S.C.R. 567, at para. 17. It means "[d]eciding what . . . appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and

attention": *MacGyver v. Richards* (1995), 1995 CanLII 8886 (ON CA), 22 O.R. (3d) 481 (C.A.), at p. 489.

[37] International human rights instruments to which Canada is a signatory, including the *Convention on the Rights of the Child*, also stress the centrality of the best interests of a child: Can. T.S. 1992 No. 3; *Baker*, at para. 71. Article 3(1) of the *Convention* in particular confirms the primacy of the best interests principle:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, *the best interests of the child shall be a primary consideration*.

[38] Even before it was expressly included in s. 25(1), this Court in *Baker* identified the "best interests" principle as an "important" part of the evaluation of humanitarian and compassionate grounds. As this Court said in *Baker*:

> . . . attentiveness and sensitivity to the importance of the rights of children, to their best interests, and to the hardship that may be caused to them by a negative decision is essential for [a humanitarian and compassionate] decision to be made in a reasonable manner. . . .
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> . . . for the exercise of the discretion to fall within the standard of reasonableness, the decision-maker should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them. That is not to say that children's best interests must always outweigh other considerations, or that there will not be other reasons for denying [a humanitarian and compassionate] claim even when children's interests are given this consideration. However, where the interests of children are minimized, in a manner inconsistent with Canada's humanitarian and compassionate tradition and the Minister's guidelines, the decision will be unreasonable. [paras. 74-75]

[39] A decision under s. 25(1) will therefore be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered: *Baker*, at para. 75. This means that

> decision-makers must do more than simply *state* that the interests of a child have been taken into account: *Hawthorne*, at para. 32. Those interests must be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence: *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 (CanLII), [2002] 4 F.C. 358 (C.A.), at paras. 12 and 31; *Kolosovs v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 165 (CanLII), 323 F.T.R. 181, at paras. 9-12.
>
> [40] Where, as here, the legislation specifically directs that the best interests of a child who is "directly affected" be considered, those interests are a singularly significant focus and perspective: *A.C.*, at paras. 80-81. ...

[34] As asserted by the Applicants, a lack of hardship cannot serve as a valid substitute for a BIOC analysis: *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 [*Singh*] at para 30. A determination must first be made as to where the children's best interests lie: *Patousia v Canada (Citizenship and Immigration)*, 2017 FC 876 at paras 53-56.

[35] However, a BIOC analysis need not follow a specific formula: *Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 at paras 18-21. As long as it is clear that the best interests of the children have been considered in the analysis, a flexible framework can be used.

[36] When read as a whole, in this case, I agree with the Respondent that the analysis does not suggest a hardship-centric approach. Rather, the Officer considered the best interests of the children (their emotional/psychological, familial, medical, and educational stability) within the framework presented in the Applicants' submissions, and responded to these factors in their analysis. Overall, the Officer found that the children's best interests could be maintained by the children remaining with the personal care and support of their parents.

[37] While the Officer acknowledged that the educational system in Guyana was not as favourable as the one in Canada, the Officer examined the evidence indicating that Guyana is committed to providing free and compulsory education for pre-primary to secondary levels, and has an average school life expectancy of 11 years. The Officer considered that with their parents' support, the children would get the most out of this system and that it would not compromise their best interests. As noted by the Officer, the option would also be open to the children, who are Canadian born, to return to Canada when they are older if they so wished. In light of the evidence and submissions provided. I do not find this analysis unreasonable.

[38] The Applicants assert that the Officer erred by ignoring articles cited by the Applicants concerning the effects that removal from stable environments can have on small children. They contend that the Officer's finding that the children are more resilient and adaptable at their ages is contrary to this evidence and has been found problematic by the Court: *Singh* at para 31, citing *Edo-Osagie v Canada (Citizenship and Immigration)*, 2017 FC 1084 [*Edo-Osagie*].

[39] However, I do not consider the Officer's analysis to be so limited. As in *Edo-Osagie,* the Officer in this case went on to consider factors that alleviated the difficulty of readjusting such as the support of the children's parents. While the Officer does not mention the articles referenced by the Applicants specifically, the Officer acknowledges that leaving Canada may be difficult on the children and require some readjustment. However, the Officer balances this against the specific characteristics of the children, the support they will receive from their parents, and their extended family ties in Guyana. In my view, there was no deficiency in the analysis given.

[40] For all of these reasons, the application is dismissed.

[41] There was no question for certification proposed by the parties and I agree that none arises in this case.

JUDGMENT IN IMM-398-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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