Federal Court Cour fédérale

Date: 20221216

Docket: IMM-558-21

Citation: 2022 FC 1744

Ottawa, Ontario, December 16, 2022

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

JUAN MORENO RAMIREZ
ANA ALVARADO CANIZALES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Juan Moreno Ramirez and Ana Alvarado Canizales [Applicants] seek judicial review of a senior immigration officer's [Officer] January 5, 2021 decision denying their application for permanent residence on humanitarian and compassionate [H&C] grounds pursuant to section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Decision]. The Officer

concluded that there were insufficient H&C grounds to warrant an exemption from the permanent residency requirements.

[2] The application for judicial review is allowed. The Officer's analysis of the best interests of the child [BIOC] is unreasonable.

II. Background

[3] The Applicants are citizens of Mexico. Mr. Moreno Ramirez, the principal applicant [PA], came to Canada on February 1, 2011 on a visitor visa that expired on May 15, 2011. Ms. Alvarado Canizales, the female applicant [FA], came to Canada in June 2012 on a visitor visa issued on March 20, 2012. After several extensions, her last issued visa expired on January 31, 2015.

[4] The Applicants are a common law couple who met in Canada in 2014. On November 10, 2016, while in Canada, the Applicants' daughter, Camila, was born.

[5] The Applicants submitted their H&C application on or about August 30, 2019. On January 5, 2021, the application was refused.

III. The Decision

[6] The Officer concluded that the Applicants would face some degree of hardship if returned to Mexico; however, their hardship was not to an extent to warrant H&C relief.

[7] First, the Officer considered the Applicants' submission that there are few employment opportunities for them in Mexico because of their age (33 and 32). Considering their experience and skills in both Mexico and Canada, including their ability to learn English in Canada, the Officer concluded that there was insufficient evidence to demonstrate that the Applicants would not find employment in Mexico.

[8] Next, the Officer considered the Applicants' submission that there is increasing drug related activities and violence in Mexico and that the Applicants' families believed that the FA would be the target of threats aimed at the FA's ex-boyfriend. The Officer found these assertions speculative, and that regardless of whether the Applicants' families in Mexico could not support them financially, it was reasonable to assume that they would assist them emotionally. The Officer also considered the Applicants' evidence about kidnappings and their fear that Camila would fall victim to kidnapping, but found that the Applicants failed to explain why she would be kidnapped. Finally, the Officer considered the general country condition evidence, stating:

> Several pages of news articles and reports have been provided detailing the general country conditions in Mexico, including violence, poverty, gender-related issues, the "*machismo*" culture, and human rights violations; specific sections for review have not been highlighted by the applicants. While these articles demonstrate that country conditions in Mexico may not be ideal, the country conditions described in the submissions are general in nature and would be applicable to most similarly situated persons in Mexico. The applicants have not demonstrated that the adverse country conditions in Mexico will have a direct, negative impact on them such that the requested exemption is justified.
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> [Emphasis in original.]

[9] The Officer proceeded to turn their mind to the Applicants' establishment in Canada, noting their lengthy residence in Canada, occupations, community involvement, and friendships.

However, the Officer gave little weight to the Applicants' establishment because they remained in Canada illegally (*Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904). The Officer also considered the Applicants' relationship with the FA's sister, who resides in Canada. The Officer noted that, while the FA's sister lives with severe depression and the FA helps watch her nephews while her sister receives treatment, there was insufficient evidence that the FA's sister could not arrange alternative childcare. The Officer held that the Applicants could maintain their relationship with the FA's sister from Mexico through "several forms of communication".

[10] Finally, the Officer conducted a BIOC analysis. The Officer stated:

> The applicants have requested that the best interests of their Canadian born child Camila (4), be considered in this assessment. It is stated that Camila has grown up in the presence of her extended family in Canada and she sees her cousins as her brothers. The applicants assert that Camila would be "*devastated*" to leave her aunts and her cousins as they are the only family she knows. In Canada, Camila enjoys participating in family activities and community programs. The submissions indicate concerns over Camila's potential quality of life, should she accompany her parents to Mexico, specifically with regard to differences in the quality of education and poor conditions for women and children; several articles and reports regarding education in Mexico have been included in the submissions. While these submissions demonstrate that the education system in Mexico has room for improvement in some regards, the applicants have provided insufficient evidence to demonstrate that Camila would be unable to access adequate schooling in Mexico or that her quality of life will be negatively affected.
>
> Submissions discuss the effects on children when their parents are deported persons, including stress and psychological and physical repercussions; several articles have been included for consideration. While it is recognized that a departure from Canada may be difficult, the evidence provided does not demonstrate that Camila would be unable to access adequate medical or psychological care in Mexico, should it be required.
>
> [Emphasis in original.]

[11] The Officer also noted that, despite Camila having lived in Canada her whole life, "it is reasonable to conclude, absent evidence to the contrary, that she has been exposed to the language, culture, and traditions of Mexico via her parents" and would likely be entitled to Mexican citizenship. Ultimately, the Officer gave "significant weight" to Camila's best interests, but held that the Applicants failed to establish that "the general consequences of returning to Mexico will have a negative impact on Camila."

IV. Issues and Standard of Review

[12] The sole issue in this proceeding is whether the Decision was reasonable. The relevant sub-issues are:

1. Did the Officer reasonably assess the best interests of the child?
2. Did the Officer reasonably assess the general country evidence?

[13] The appropriate standard of review is reasonableness. None of the exceptions warranting a departure from the presumption of reasonableness are engaged in this matter (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at paras 42-44 [*Kanthasamy*]).

[14] H&C exemption decisions are "exceptional and highly discretionary, warranting significant deference to the deciding officer" (*Alghanem v Canada (Citizenship and Immigration)*, 2021 FC 1137 at para 20; *Miyir v Canada (Citizenship and Immigration)*, 2018 FC

73 at para 12; *Li v Canada (Citizenship and Immigration)*, 2017 FC 841 at para 15; *Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at paras 2-3).

[15] In assessing the reasonableness of a decision, the Court must consider "the outcome of the administrative decision in light of its underlying rationale to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). For a decision to be reasonable, a decision-maker must adequately account for the evidence before it and be responsive to the Applicants' submissions (*Vavilov* at paras 125-28). A decision will be unreasonable if it contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

V. Analysis

A. *Did the Officer reasonably assess the best interests of the child?*

(1) Applicants' Position

[16] The Officer's BIOC analysis was unreasonable for two reasons. First, the Officer discounted evidence that Camila would suffer psychological harm because she could obtain treatment in Mexico (*Kanthasamy* at para 48; *Saidoun v Canada (Citizenship and Immigration)*, 2019 FC 1110 at para 21 [*Saidoun*]). The Officer also failed to consider how deportation could adversely affect Camila's mental health as a child (*Kanthasamy* at para 41). The Officer's focus on mental health supports in Mexico indicates that the Officer failed to consider whether the

harm caused by removal itself warrants H&C intervention (*Davis v Canada (Citizenship and Immigration)*, 2011 FC 97 at para 18 [*Davis*]).

[17] Further, personalized medical documentation is unnecessary because: (1) the risk to Camila's mental health is forward facing; and (2) the evidence sufficiently speaks to Camila's personal circumstances, as it discusses the mental health of similarly situated children. This case is distinguishable from *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 [*Owusu*] because, in that case, the only evidence related to the children was one sentence. Here, the Applicants provided specific evidence about the mental health of child deportees and clearly articulated its relevance.

[18] Second, the Officer's BIOC analysis was unreasonable because the Officer concluded that Camila would have access to adequate education despite evidence in the record squarely contradicting that conclusion (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, [1998] FCJ 1425 [*Cepeda-Gutierrez*].

[19] The Applicants disagree with the Respondent's assertion that a comparison between life in Canada and Mexico cannot be determinative of a BIOC analysis. Rather, such a comparison is at the heart of an H&C determination and this Court has overturned decisions that fail to consider different education systems (*Aguirre v Canada (Citizenship and Immigration)*, 2014 FC 274 at paras 22-24).

(2) Respondent's Position

[20] The Officer was “alert, live and sensitive” to Camila’s needs. While it may be more desirable for a child to live in Canada, this is not enough to warrant an H&C exemption. The onus is on the Applicants to provide sufficient evidence of Camila’s specific circumstances (*Owusu*; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45).

[21] The Officer adequately considered Camila’s mental health. The Applicants submitted insufficient evidence for the Officer to conclude that Camila’s quality of life and mental health would be negatively impacted if returned to Mexico.

[22] The mere fact that Canada has a better education system is not enough to warrant H&C relief on BIOC grounds (*Serda v Canada (Minister of Citizenship and Immigration)*, 2006 FC 356 at para 31). The Officer is presumed to know that living in Canada would offer Camila more opportunities. Failure to state this does not render the Decision unreasonable (*Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at para 5; *Bradshaw v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 632 at para 125).

(3) Conclusion

[23] I find that the Officer’s BIOC analysis is unreasonable. The Officer failed to engage with the evidence concerning the adverse mental health impacts of children removed to Mexico and Camila’s particular circumstances.

[24] The Applicants submitted evidence demonstrating that children forced to return to Mexico with their parents are more likely to experience mental health problems than children

whose parents remained in the United States without status and were not subject to removal proceedings. The Applicants also submitted evidence that children's mental health is suffering due to widespread violence in Mexico. Finally, the Applicants cited a study comparing the mental health of children in Mexico and Texas. That study found that "prevalence of issues like depression, aggression, anxiety, withdrawal and attention deficit disorder were three times higher in children living in Juarez. Children in the Mexico group had significantly high scores even when compared to children with brain injuries, hearing impairments and those whose parents abused cocaine, alcohol and other drugs."

[25] In addition to the general evidence on the adverse impacts of children removed to Mexico, the Applicants' H&C submissions reflect the importance of Camila's Canadian aunts and cousins in her young life. The Officer briefly references these circumstances, but fails to engage with how Camila herself would be impacted by the removal.

[26] Instead of engaging with the above evidence, the Officer focuses on the availability of mental health resources in Mexico:

> Submissions discuss the effects on children when their parents are deported persons, including stress and psychological and physical repercussions; several articles have been included for consideration. While it is recognized that a departure from Canada may be difficult, the evidence provided does not demonstrate that Camila would be unable to access adequate medical or psychological care in Mexico, should it be required.

[27] The Applicants acknowledge that, unlike the present case, the applicants in *Kanthasamy*, *Saidoun*, and *Davis* provided personalized evidence regarding their mental health (such as psychologist reports) (*Kanthasamy* at para 46; *Saidoun* at para 20; and *Davis* at para 19).

Notwithstanding this difference, I agree with the Applicants that the Officer never took issue with this deficiency and that the Respondent cannot buttress the Officer's reasons now. Here, the Officer failed to explain why general evidence of similarly situated children was insufficient to establish that Camila's mental health would suffer if removed to Mexico or why such hardship did not warrant H&C relief. Accordingly, the Court is unable to discern why the Officer reached their conclusion, rendering the Decision unreasonable (*Vavilov* at para 96).

[28] I also agree with the Applicants that there is evidence in the record that contradicts the Officer's conclusion about the education system in Mexico (*Cepeda-Guiterez* at para 17). Despite the contradictory evidence, the Officer states:

> While these submissions demonstrate that the education system in Mexico has room for improvement in some regards, the applicants have provided insufficient evidence to demonstrate that Camila would be unable to access adequate schooling in Mexico or that her quality of life will be negatively affected.

[29] Here, the Officer fails to explain why they have disregarded the contradictory evidence. The Court is left guessing as to why the evidence tendered by the Applicants was "insufficient". Accordingly, in my view, the Officer's BIOC analysis lacks justification.

[30] These errors are sufficient to allow the application for judicial review. There is no need to address the remaining sub-issue.

VI. Conclusion

[31] The application for judicial review is allowed. The Officer's BIOC analysis is unreasonable.

[32] The parties do not propose a question for certification and I agree that none arise.

JUDGMENT in IMM-558-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted to a different officer for re-determination.
2. There is no question of general importance for certification.
3. There is no order for costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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