Federal Court  Cour fédérale

Date: 20240627

Docket: IMM-7409-22

Citation: 2024 FC 1005

Ottawa, Ontario, June 27, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SHOOK KWAN CHANG

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Shook Kwan Chang, applied for permanent residence based on humanitarian and compassionate considerations ("H & C") in order to be able to live permanently in Canada with her daughter and her two grandchildren. An officer at Immigration, Refugees and Citizenship Canada [IRCC] refused the application. Ms. Chang challenges this decision on judicial review.

[2] I am allowing the judicial review because I agree with Ms. Chang that the Officer did not reasonably address her related submissions on family separation and the best interests of her two grandchildren.

[3] Ms. Chang is a citizen of Hong Kong Special Administrative Region. She has two grandchildren, now aged thirteen and fifteen. She has been a key daily caregiver for the children since they were born in Hong Kong. After Ms. Chang's husband died approximately eight years ago, she lived full-time with her daughter's family in Hong Kong and then accompanied them to Canada as a visitor in 2020 when her daughter's family moved to live permanently in Canada.

[4] 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 (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).

[5] Given that the purpose of humanitarian and compassionate discretion is to "mitigate the rigidity of the law in an appropriate case", there is no 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 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74-75 [*Baker*]).

[6] Subsection 25(1) of the IRPA directs officers considering applications for H&C relief to consider “the best interests of the child directly impacted” and that the Supreme Court of Canada in *Kanthasamy* confirmed that officers considering H & C applications must make the best interests of the child a “singularly significant focus and perspective” (*Kanthasamy* at para 40). The Supreme Court of Canada re-affirmed its finding in *Baker*, that “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” (*Kanthasamy* at para 38, citing *Baker* at para 75). The Court also re-affirmed that a reasonable best interests of the child (“BIOC”) analysis requires that a child’s interests be “‘well-identified and defined’ and examined ‘with a great deal of attention’ in light of all the evidence” (*Kanthasamy* at para 39, citing *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 (CanLII), [2002] 4 FC 358 (CA) at paras 12, 31; *Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165 at paras 9-12).

[7] As noted above, this decision directly affects the lives of two children, who are now fifteen and thirteen years old. The approach taken by the Officer did not demonstrate that the children’s interests had been “‘well-identified and defined’ and examined ‘with a great deal of attention’ in light of all the evidence” (*Kanthasamy* at para 39). The consequences that were set

out by the grandchildren of not being able to live permanently with a key caregiver who has been with them since birth was not examined "with a great deal of attention" as is required.

[8] The Officer acknowledges that it is in the children's best interests to be with their grandmother but such little detail is given about their circumstances and the consequences of not having their grandmother permanently present in their day-to-day lives that it is difficult to understand how the Officer took this into account in their overall determination. While it is well-established that children's best interests are not necessarily determinative of the H & C application (*Baker* at paras 74-75), in this case, I am not satisfied that there was a meaningful assessment of the impact of rejecting Ms. Chang's application on the children. I cannot find that the Officer made the children's interests a "singularly significant focus and perspective" as is required.

[9] Further, the Officer's heavy reliance on alternative applications is flawed and impacted their assessment of family separation. The Officer finds that low weight should be given to the factor of family separation because though the family is not currently eligible to apply for parental sponsorship, they may be able to do so in the future, and Ms. Chang may also apply for a super visa and apply to have her temporary visitor status renewed.

[10] The Officer accepted that the family could not currently apply for the sponsorship program because they are not financially eligible. Yet, without any evidence to suggest this could change in the near future, the Officer concluded "there is little evidence submitted to suggest they cannot qualify to sponsor Ms. Chang in the future." The Officer further speculated that she

could apply for a super visa or extend her stay. Again, given the financial evidence in the record, there is no basis for the Officer to make this speculation regarding the super visa. With respect to the extension of the visitor visa, the nature of temporary status is insecure; the outcome of an application is certainly not in the Officer's control or Ms. Chang's control. In these circumstances, the Officer's heavy reliance on alternatives that are currently not available to her or temporary in nature was unreasonable (See *Polinovskaia v Canada (Citizenship and Immigration)*, 2022 FC 696 at paras 28 and 29); *Akinkugbe v Canada (Citizenship and Immigration)*, 2022 FC 819 at paras 12-15; *Antoun v Canada (Citizenship and Immigration)*, 2022 FC 612 at para 13; *Bernabe v Canada (Citizenship and Immigration)*, 2022 FC 295 at paras 4 and 33 (citing *Rocha v Canada (Citizenship and Immigration)*, 2022 FC 84 at para 31); *Greene v Canada (Citizenship and Immigration)*, 2014 FC 18 at paras 9-10).

[11] The application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-7409-22

THIS COURT'S JUDGMENT is that:

1. With consent of the parties, the style of cause is amended with immediate effect to reflect the correct spelling of the name of the Applicant: *Shook Kwan Chang v Minister of Citizenship and Immigration*;
2. The application for judicial review is allowed;
3. The decision dated July 20, 2022 is set aside and sent back to a different decision-maker for redetermination; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7409-22
STYLE OF CAUSE:	SHOOK KWAN CHANG v MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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