Federal Court Cour fédérale

Date: 20240819

Docket: IMM-9660-23

Citation: 2024 FC 1287

Vancouver, British Columbia, August 19, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

AYORIDE JOEL FRANCIS,
BOLANLE AMINAT FRANCIS,
FELICIA OLUWAGBEMISOLA FRANCIS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

Delivered Orally from the Bench on August 19, 2024

[1] The Applicants seek judicial review of a decision made by an immigration officer [Officer] refusing their permanent residence [PR] application on humanitarian and compassionate grounds [H&C]. For the reasons below, this application is granted.

[2] The Applicants are a married couple and along with their 15-year old daughter, and are citizens of Nigeria.

[3] They lived in the USA from 2017 until 2018, at which point they entered Canada through an irregular border crossing. Their refugee claim, and subsequent leave request before this Court, were refused.

[4] While living in Canada, the Applicants had two other children born in 2019 and 2020 – thus both impacted by the issue of whether their parents can obtain a successful outcome. The two children are both Canadian citizens, who are not part of this application, and who have only ever lived in Canada.

[5] The Applicants made their application for PR on H&C grounds in April 2022, based on their establishment and ties in Canada, their contribution to Canada as essential workers during COVID-19, the best interest of their children, and the personalized hardship they would face if removed from Canada.

[6] The sole issue before the Court is whether the Officer's decision to refuse their PR application on H&C grounds was reasonable (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–63; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). The Applicants argue that the Officer erred in the assessment of their establishment in Canada, the best interest of the children [BIOC] and the personalized hardship they would face upon removal.

[7] I agree with the Applicants that the Officer's BIOC analysis was unreasonable. BIOC is an important aspect of any H&C analysis: *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraphs 37-40 [*Kanthasamy*]; ***Baker v. Canada (Minister of Citizenship and Immigration)***, [1999] 2 S.C.R. 817 [***Baker***]); more recently, see *Henry-Okoisama v. Canada (Citizenship and Immigration)*, 2024 FC 1160 at para 26).

[8] Both of the leading SCC cases state that the humanitarian and compassionate component must be central in the officer's assessment (*Kanthasamy* at para 17, *Baker* at para. 66). Given the central importance of the BIOC component to any H&C analysis as outlined by the SCC, the failure of this Officer to have properly considered BIOC went beyond a minor misstep, rendering the Decision unreasonable (*Vavilov* at para 100).

[9] To be specific, when assessing BIOC, the Officer "should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them" (*Baker* at para 75). In this case, however, the Officer unreasonably substituted the BIOC analysis with a hardship one, and consequently failed to assess the <u>best</u> interests of the children. Notably, the Officer states:

> […]
>
> There is little information provided to show that Felicia would face challenges other than those generally associated with re-integration if she were to return to Nigeria.
>
> […]
>
> I acknowledge that the children will face some adjustment if they go to Nigeria, however, children are generally adaptable and there is little evidence provided to show that the children would be negatively impacted if they go to Nigeria.

> […]
>
> While I accept general conditions in Nigeria tend to be less favourable than conditions in Canada, there is little indication that there are adverse conditions in Nigeria which would have a direct impact on the children.
>
> […]
>
> Though I acknowledge general conditions in Nigeria may impact the children's interests to some extent, I find their best interests are served by remaining with their primary caregivers, their parents, who would reasonably be able to mitigate the difficulty of relocating to Nigeria and continue to support them.

[10] This is not a reasonable BIOC assessment for the Nigerian-born child, and the two very young Canadian-born children of the adult applicants (ages 3 and 4 at the time of the Decision that was made just over a year ago).

[11] First, the observation that because children are generally adaptable, these three young person will be able to adjust in their relocation to Nigeria, is problematic (see, for instance, *Singh v. Canada (Citizenship and Immigration)*, 2019 FC 1633 at para. 31, and more recently, *Igreja Ferreira de Campos v. Canada (Citizenship and Immigration)*, 2024 FC 1193 at para 22). The resiliency and adaptability of children is not a substitute for their best interests.

[12] Second, the Officer failed to conduct a personalized evaluation assessing key factors, such as the children's ages or their lack of connection to Nigeria in the case of the two younger children, and or where the older child (the minor applicant) spent her formative academic years as a tween and teenager, and seemingly jumped to the conclusion that their best interest is best served by accompanying their parents to a country where they have little to no connection. This

renders the BIOC assessment unreasonable (*Li v Canada (Citizenship and Immigration)*, 2020 FC 848 at para 33; *Kanthasamy* at para 35).

[13] In my view, the Officer unduly focused their BIOC analysis on hardship without assessing the H&C factors in the broader sense, including what the Applicants submitted regarding why BIOC favoured them remaining in Canada, such that the Officer was not alert, alive and sensitive to the evidence submitted in the H&C application (*Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 33).

[14] Given that the BIOC analysis described above was effectively generic without truly assessing the best interests of the three children - with its central place in this claim – this criterion alone fatally flaws this Decision. Accordingly, I find no need to address the two other grounds raised by the Applicants (see, for instance, *Osipova v. Canada (Citizenship and Immigration)*, 2024 FC 1055 at paras 12 and 15).

JUDGMENT in file IMM-9660-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is granted.
2. There is no question to certify.
3. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9660-23
STYLE OF CAUSE:	AYORIDE JOEL FRANCIS, BOLANLE AMINAT FRANCIS, FELICIA OLUWAGBEMISOLA FRANCIS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 19, 2024
JUDGMENT AND REASONS:	DINER J.
DATED:	AUGUST 19, 2024

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