Federal Court  Cour fédérale

Date: 20090924

Docket: IMM-1532-09

Citation: 2009 FC 964

Ottawa, Ontario, September 24, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

BALWAAN CHAND
CAMEL CHAND
CAYNOR CHAND
JAVIER CHAND

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Balwaan Chand, his wife and two children fled Guyana in order to seek refuge here. They were the victims of a home invasion, there were two incidents in nearby villages where more than a score were murdered, crime is widespread and they may be targeted more than others because of

their Indo-Guyanese ethnicity and relative wealth. Although they were found to be credible, their refugee claim was dismissed and their pre-removal risk assessment was negative.

[2] They applied for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds. This is an exception to the Regulations which require applicants to apply from outside Canada. However, pursuant to s. 25 of the *Immigration and Refugee Protection Act* the Minister may exempt applicants from any requirement on H&C grounds, and must take the best interests of children directly affected into consideration. Their application was denied. This is the judicial review thereof.

[3] The Chands submit that there were three reviewable errors. The best interests of the children (the two born in Guyana and the one subsequently born in Canada) were not properly taken into account; the psychological report by a Dr. Pilowski with respect to both the children and their parents was either ignored, dismissed or considered on irrelevant grounds and the Officer assessed their likely situation should they return to Guyana on the basis of risk, rather than hardship.

[4] Although it is quite understandable in the circumstances that the Chands would prefer to remain in Canada and while there is no reason to believe that they would not make a positive contribution to our society, I cannot find that the Officer's decision that there would be no unusual, undeserved or disproportionate hardship if the Chands were to apply for a permanent resident visa from outside Canada to be unreasonable. Their Canadian-born child is a citizen and, of course, is not subject to a removal order. Nor do I find that the Officer was not, to use the words of Madam

Justice L'Heureux-Dubé in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, "alert, alive and sensitive" to the best interests of all three children.

[5] The Chands have been here two years. Their elder two children began their schooling in Guyana. The infant child's best interests are obviously to remain with his parents.

[6] In considering the best interests of the children, the Officer not only took into account Dr. Pilowski's opinion but also country conditions. He accepted that both the children and the parents might suffer trauma if returned to Guyana and are acutely afraid about their future. However, the point the officer made, which was quite reasonable, is that there are a great many victims of crime in Guyana and if, as country reports indicate, abuses are rampant in the schools, the Chands would not find themselves in an unusual situation. They should not be in a better position because they left Guyana, while others had to stay behind. As stated in *Ramatar v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 362,[2009] F.C.J. No. 472, it is not enough to be a likely victim of generalized crime. There must be something more.

[7] The Officer whose decision is in question also carried out the pre-removal risk assessment. Counsel submits that while the PRRA is determined by risk, the issue in an H&C application is hardship. While there may well be a risk factor, the risk need not be as elevated as one which would justify a favourable PRRA. There is ample authority for that proposition in the abstract. Mr. Justice de Montigny clearly explained the distinction in *Ramirez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1404, 304 F.T.R. 136 at paragraph 41 and following.

[8] In this case the Officer did balance establishment in Canada against hardship in Guyana, not risk. While another officer might have come to a different conclusion on the same facts, the standard of review is reasonableness. There may be more than one reasonable decision. This decision was not unreasonable, and the Supreme Court has warned against the tendency to substitute one's opinion for that of the decision maker (*Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748 at para. 80).

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1532-09
STYLE OF CAUSE:	*Balwaan Chand et al v. The Minister of Citizenship and Immigration*
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 17, 2009
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
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APPEARANCES:

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