Federal Court  Cour fédérale

Date: 20100211

Docket: IMM-3815-09

Citation: 2010 FC 142

Ottawa, Ontario, February 11, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

AMIN PIYARALI BHAI KHOJA
MINAZ SADRUDINBHAI MAMDANI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] When applying the standard of reasonableness, a court must show deference to the reasoning of a decision under review and must be cognizant of the fact that certain questions before administrative entities and tribunals do not lend themselves to one specific result. As the Supreme Court of Canada explained, reasonableness is concerned with "the existence of justification, transparency and intelligibility within the decision-making process", as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, [2008] SCC 9, [2008] 1 S.C.R. 190 at para. 47).

II. Introduction

[2] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a May 28, 2009 decision of an immigration officer on a humanitarian and compassionate (H&C) grounds application refusing to grant an exemption from the requirement that the Applicants must apply for permanent residence from outside of Canada.

III. Background

[3] The Applicants, Mr. Amin Piyarali Bhai Khoja and his wife, Mrs. Minaz Sadrudinbhai Mamdani, came to Canada from the state of Gugarat, India. The Applicants belonged to the minority Ismaili Muslim community in Gugarat. Gugarat has been the scene of brutal religious violence in the past. In 2002, riots broke out in Gugarat which led to the Applicant, Mr. Khoja, being beaten by a Hindu mob. In May 2005, armed gunmen broke into the Applicants' home, robbed them and injured Mrs. Mamdani. The injuries resulted in Mrs. Mamdani suffering a miscarriage.

[4] The Applicants came to Canada on visitor's visas in 2005, to hear the Aga Khan, the spiritual leader of Ismailis, speak in Toronto, but also with the desire to leave India permanently (Tribunal Record (TR) at pp. 139, 360).

[5] On June 12, 2005, the Applicants were detained by the Canadian Border Service Agency (CBSA) for attempting to cross the border into the United States without valid visas.

[6] The Applicants made a refugee claim on July 19, 2005, which was declared abandoned on October 4, 2006.

[7] The Applicants' son, Kamish Khoja, was born on May 8, 2006.

[8] Mr. Khoja injured his back at work on August 7, 2007 and is undergoing rehabilitation.

IV. Decision under Review

[9] The immigration officer was not persuaded that the Applicants would suffer unusual and undeserved or disproportional hardship due to risk if they were returned to India.

[10] The immigration officer accepted the evidence that Mr. Khoja was beaten during the riots in 2002 and that the Applicants were robbed in May 2005, an incident which resulted in Mrs. Mamduri being injured and suffering a miscarriage. The immigration officer was not satisfied that the May 2005 attack was perpetrated by Hindu extremists, as they found a lack of corroborative evidence on this point. As a result of this finding, the immigration officer found there was insufficient evidence establishing a personalized risk from Hindu extremists throughout the entirety of India.

[11] The immigration officer found that a number of security options were open to the Applicants in India, including requesting state protection and moving to a part of the country with a large Muslim population, such as Hyderabad.

[12] The immigration officer examined the best interests of the Applicants' Canadian-born son, Kamish Khoja, and held that he would not face disproportionate hardship if he relocated to India with his parents. The immigration officer held that medical care in India is adequate to deal with Kamish's condition and that he would likely quickly adjust to life in India, especially with the help of family members.

[13] The officer also noted that the Applicants chose to have a child in Canada at a time when their immigration status was insecure.

[14] The immigration officer held that although the Applicants provided some evidence of establishment in Canada, this connection does not mean that they would suffer disproportionate hardship if returned to India. The immigration officer also noted that the majority of the Applicants' family reside in India and could be expected to provide support and assistance in their attempts to re-establish their lives in India.

[15] The immigration officer noted that Mr. Khoja was injured on the job and was presently undergoing rehabilitation. The immigration officer found that there exist adequate rehabilitation services in India to assist Mr. Khoja in finding employment.

[16] The immigration officer also found that Mr. Khoja possesses skills that would assist in finding employment in India, such as an understanding of Gugarati and English, education and

work experience. The immigration officer also held that Mr. Khoja received over $35,000 in compensation for his injury and that these funds would aid in the re-establishment of his family.

V. Issues

[17] Did the immigration officer make an unreasonable assessment of the best interests of the child?

a) Did the immigration officer make an unreasonable decision by failing to take into account the impact of the education system in India on the child's best interests?
b) Did the immigration officer make an unreasonable decision when it determined the Applicants had an Internal Flight Alternative (IFA) in Hyderabad?
c) Was the immigration officer's assessment of the long-term ability of the Applicant, Mr. Amin Khoja, to support his family reasonable?
d) Did the immigration officer err by noting that the Applicants chose to have a child at a time when their status in Canada was uncertain?
e) Did the immigration officer err by stating that the child and his parents could apply for a visa to come to Canada to seek medical treatment for the child?

VI. Relevant Legislative Provisions

[18] H&C determinations are made pursuant to subsection 25(1) of the IRPA:

Humanitarian and compassionate considerations	Séjour pour motif d'ordre humanitaire
25. (1) The Minister shall, upon request of a foreign national in Canada who is	**25.** (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est

inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative or on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.	interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative ou sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

VII. Positions of the Parties

Applicant's Position

[19] For the purpose of the officer who determines whether to grant an application under H&C grounds, the Applicants submit that the Federal Court has grafted additional indicia of reasonableness to the applicable legal test.

[20] The Applicants submit that the officer must "consider the children's best interests as an important factor, give them substantial weight and be alert, alive and sensitive to" the best interests of the child. The Applicants cite the case of *Kolosovs v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 165, 166 A.C.W.S. (3d) 352 where the Federal Court elaborated on the terms "alert, alive and sensitive" in the context of the best interests of the child and submit that the

officer was obliged to use the definitions as specified in this case when assessing the best interests of the child (*Kolosovs* at para. 8).

[21] The Applicants also cite the Federal Court of Appeal in the cases of *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, 288 N.R. 174 and *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 F.C. 555 for the proposition that the officer was obliged to identify and define the child's interests and to examine them with "a great deal of attention" (*Hawthorne* at para. 32). If the child's interests are "minimized" in a manner that is inconsistent with Canada's humanitarian tradition, the decision will be unreasonable. Also, the Applicants cite the Federal Court of Appeal in the case of *Hawthorne* for the proposition that the interests of the child must be specifically identified and examined attentively (*Hawthorne* at para. 32).

[22] The Applicants argue that an officer must not be dismissive of the interests of a child, or conduct a "trite analysis" of the interests. The Applicants also submit that it is an error for an officer not to consider, or assess the impact on the emotional or physical well-being of the child in addition to any special needs in the child's regard.

[23] According to the Applicant, the officer "must incorporate" the Minister's Guidelines contained in the Inland Processing 5 Manual (IP 5 Manual) into its analysis of the best interests of the child and it is a reviewable error to fail to address the Guidelines.

1a) Did the immigration officer make an unreasonable decision by failing to take into account the impact of the education system in India on the child's best interests?

[24] The Applicants submit the officer failed to assess the best interests of Kamish with regard to the education he could expect to receive in India and that which he could expect to receive in Canada. The Applicants cite evidence showing that India does not provide free, universal primary education and that only 60% of children aged 6-14 are enrolled in school and also that Muslim children have lower levels of school attendance than children of other groups.

[25] The Applicants submit the officer erred by failing to address this issue. Specifically, the Applicants argue that the failure of the officer to address the issue of education violates the requirement that an officer must assess the impact on the emotional or physical well-being and special needs of the child. Also, the Applicants submit that paragraph 5.19 of the IP 5 Manual state that an officer must take into account the impact on the child's education when assessing an H&C application.

1b) Did the immigration officer make an unreasonable decision when it determined the Applicants had an IFA in Hyderabad?

[26] The Applicants submit the officer's finding that the Applicants had an IFA in Hyderabad is unreasonable on three grounds. First, the officer did not determine whether Hyderabad was a safe IFA for Kamish. Second, the Applicants provide evidence showing that Hyderabad is not a safe city, as it has recently been the scene of acts of terrorist violence. Third, the Applicants state the officer erred by failing to consider the best interests and safety of Kamish independently of his

family's safety. The Applicants also submit the officer erred by failing to cite evidence that ran contrary to its determination that Hyderabad is safe.

1c) Was the immigration officer's assessment of the long-term ability of the Applicant, Mr. Amin Khoja, to support his family reasonable?

[27] The Applicants argue that the officer failed to adequately assess the long-term ability of the Applicant, Mr. Amin Khoja, to support his family, especially the medical treatment for and education of Kamish.

[28] According to the Applicants, the officer made an unreasonable decision in determining that Mr. Khoja would be able to find work in India in spite of his disability, as well as to receive assistance from the government of India.

[29] The Applicants argue the officer erred in making these determinations by only selectively examining the evidence regarding the treatment of disabled persons in India.

1d) Did the immigration officer err by noting that the Applicants chose to have a child at a time when their status in Canada was uncertain?

[30] The Applicants cite the case of *Mulholland v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 597, 206 F.T.R. 77 for the proposition that the best interests of the child must be given substantial weight in spite of the fact that his or her parents chose to have a child at a time when their status in Canada was uncertain (*Mulholland* at para. 29).

1e) Did the immigration officer err by stating that the child and his parents could apply for a visa to come to Canada to seek medical treatment for the child?

[31] The Applicants submit the officer's finding that Kamish's parents could apply for a visitor's visa to return to Canada to obtain medical treatment for Kamish was "sheer speculation", as it is highly unlikely that such a request would be granted in light of their immigration history.

[32] The Applicants conclude by stating that the officer did not adequately address all of the factors put forward by the Applicants with respect to the best interests of Kamish. Specifically, the Applicants state the officer erred by not conducting an independent analysis of Kamish's physical well-being should he relocate to Hyderabad, nor any analysis of his access to education.

Respondent's Position

[33] The Respondent cites the cases of *Hawthorne* and *Legault*, above, for the proposition that the best interests of the child are just one factor to be weighed when making a decision under subsection 25(1) (*Legault* at para. 12, *Hawthorne* at para. 32). The Respondent submits this Court is not to re-weigh the factors considered by the H&C officer and that an officer applies the correct test when he or she examines the best interests of the child "with care."

1a) Did the immigration officer make an unreasonable decision by failing to take into account the impact of the education system in India on the child's best interests?

[34] The Respondent submits the officer did not err by failing to address the issue of Kamish's education. The Respondent cites the case of *Ebebe v. Canada (Minister of Citizenship and*

Immigration), 2009 FC 936, [2009] F.C.J. No. 1146 (QL) where the Federal Court held that the IP 5 Manual is a useful indicator of the reasonableness of a decision, but it is not binding on the officer. The court also held that an applicant has no expectation of a particular outcome or the application of any legal test in an H&C decision (*Ebebe* at para. 10).

1b) Did the immigration officer make an unreasonable decision when it determined the Applicants had an IFA in Hyderabad?

[35] The Respondent submits the officer did not have to assess the safety of Hyderabad for Kamish, as the Applicants have not provided any evidence to demonstrate that Kamish would be treated differently than his parents if they were to relocate to India. The Respondent also submits the Applicants have provided no evidence to demonstrate they would not be safe in Hyderabad.

1c) Was the immigration officer assessment of the long-term ability of the Applicant, Amin Khoja, to support his family reasonable?

[36] The Respondent submits it was not unreasonable for the officer to find that Mr. Khoja could find work in India. The Respondent accepts that Mr. Khoja's injury may prevent him from performing heavy lifting, but submits there was no evidence before the officer that he could not do other work. Also, the Respondent notes there was evidence before the officer relating to Mr. Khoja's skills, such as his education, work experience and command of English and Gugarati, all of which add to his employability.

1d) Did the immigration officer err by noting that the Applicants chose to have a child at a time when their status in Canada was uncertain?

[37] The Respondent argues the Applicants' use of *Mulholland*, above, is incorrect on the grounds that *Mulholland* was interpreted by the Federal Court of Appeal in *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, 392 N.R. 163 to stand for the proposition that it is incorrect for an officer to effectively ignore the interests of the child because it was the parents' "choice" to have a child during a transitory time in their lives. The Respondent submits this did not happen in this case, as the officer took the best interests of the child into consideration.

1e) Did the immigration officer err by stating that the child and his parents could apply for a visa to come to Canada to seek medical treatment for the child?

[38] The Respondent argues it was reasonable for the officer to find the Applicants could obtain visas to return to Canada for further medical treatment for Kamish. The Respondent also submits the officer reasonably found that there is adequate medical care in India and the Applicants have not provided evidence to challenge this finding.

VIII. Standard of Review

[39] The parties agree that the standard of review for an H&C decision is reasonableness. Justice Robert Barnes of the Federal Court confirmed that reasonableness is the proper standard of review in the case of *Ebebe*, above.

[40] When applying the standard of reasonableness, a court must show deference to the reasoning of the decision under review and must be cognizant of the fact that certain questions before administrative entities and tribunals do not lend themselves to one specific result. As the Supreme Court of Canada explained, reasonableness is concerned with "the existence of justification, transparency and intelligibility within the decision-making process", as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47).

IX. Analysis

[41] It is important that this Court properly orient itself in the law and prevailing jurisprudence when reviewing a decision of this nature. A logical starting point for a discussion of the best interests of the child is the case of *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 89 A.C.W.S. (3d) 777 wherein the Supreme Court of Canada held that an H&C decision, while discretionary, must be made with sensitivity to the best interests of the child (*Baker* at para. 71). The Supreme Court also held that the Minister's Guidelines are useful indicators of whether a decision is a reasonable exercise of discretion (*Baker* at para. 72). The Supreme Court ruled that the decision under review was unreasonable because the officer disregarded the interests of the Canadian-born children (*Baker* at para. 73). The Supreme Court concluded its discussion on the best interests of the child by stating:

> [75] … The principles discussed above indicate that, 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 an H & C 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.

[42] Lower courts have clarified the approach to be taken when H&C officers assess the best interests of the child. The most recent pronouncement from the Federal Court of Appeal is the case of *Kisana*, above, where the court cited the judgment of Justice Robert Décary in the earlier case of *Hawthorne* and held:

> [4] The "best interests of the child" are determined by considering the benefit to the child of the parent's non-removal from Canada as well as the hardship the child would suffer from either her parent's removal from Canada or her own voluntary departure should she wish to accompany her parent abroad. Such benefits and hardship are two sides of the same coin, the coin being the best interests of the child.
>
> [5] The officer does not assess the best interests of the child in a vacuum. The officer may be presumed to know that living in Canada can offer a child many opportunities and that, as a general rule, a child living in Canada with her parent is better off than a child living in Canada without her parent. The inquiry of the officer, it seems to me, is predicated on the premise, which need not be stated in the reasons, that the officer will end up finding, absent exceptional circumstances, that the "child's best interests" factor will play in favour of the non- removal of the parent. In addition to what I would describe as this implicit premise, the officer has before her a file wherein specific reasons are alleged by a parent, by a child or, as in this case, by both, as to why non-removal of the parent is in the best interests of the child. These specific reasons must, of course, be carefully examined by the officer.
>
> [6] To simply require that the officer determine whether the child's best interests favour non-removal is somewhat artificial - such a finding will be a given in all but a very few, unusual cases. For all practical purposes, the officer's task is to determine, in the circumstances of each case, the likely degree of hardship to the child caused by the removal of the parent and to weigh this degree of hardship together with other factors, including public policy considerations, that militate in favour of or against the removal of the parent.
>
> [7] The administrative burden facing officers in humanitarian and compassionate assessments - as is illustrated by section 8.5 of Chapter IP 5 of the *Immigration Manual* reproduced at para. 30 of my colleague's reasons - is

> demanding enough without adding to it formal requirements as to the words to be used or the approach to be followed in their description and analysis of the relevant facts and factors. When this Court in *Legault* stated at paragraph 12 that the best interests of the child must be "well identified and defined", it was not attempting to impose a magic formula to be used by immigration officers in the exercise of their discretion. (Emphasis added).

[43] The cases of *Hawthorne* and *Legault*, above, state that an applicant is not entitled to a positive decision even if the best interests of the child would favour such an outcome. In the majority of circumstances, the best interests of the child would favour residing in Canada with his or her parents, but this is only one factor to be weighed by the H&C officer in reaching a decision.

[44] The Court is mindful of the decisions of the Federal Court regarding the best interests of the child, but also acknowledges that the Federal Court of Appeal's judgments in *Kisana* and *Hawthorne*, above, are the binding authorities on the subject.

1a) Did the immigration officer make an unreasonable decision by failing to take into account the impact of the education system in India on the child's best interests?

[45] As has been stated by the Respondent, the Court is not to re-weigh the factors considered by the H&C officer. That being said, the question is whether the officer failed to consider a relevant factor and whether that failure constitutes a reviewable error.

[46] The Court finds that the officer's failure to explicitly consider Kamish's education does not render the decision unreasonable. The officer wrote extensively about the best interests of Kamish and examined several different factors including medical care, family support, parental care, establishment in Canada and the hardship that moving to India might cause.

[47] It is possible for an officer to be "alive, alert and sensitive" to the best interests of a child without explicitly examining everything related to the growth and development of a child. As the Federal Court of Appeal stated in *Hawthorne*, above, there is no "magic formula" to show that an officer was alert, alive and sensitive to the best interests of the child (*Hawthorne* at para. 7). A decision made under subsection 25(1) of the IRPA is discretionary and the standard of reasonableness dictates that this Court is to have respect for the reasoning of the decision-maker.

[48] The Court does not find that an officer making a decision on H&C grounds must incorporate the IP 5 Manual into his or her analysis of the best interests of the child. In the case of *Hawthorne*, above, the Federal Court of Appeal refused to impose formal requirements regarding the words to be used "or the approach to be followed in their description and analysis of the relevant facts and factors" (Emphasis added) (*Hawthorne* at para. 7). It is true that the IP 5 Manual may be used to inform a court's review of a decision; however, the decision-making process in H&C is discretionary and cannot be constrained in the manner that is suggested by the Applicants.

1b) Did the immigration officer make an unreasonable decision when it determined the Applicants had an IFA in Hyderabad?

[49] It is noted that the case of *Alie v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 925, [2008] F.C.J. No. 1149 states that it was unreasonable for the officer to determine the best interests of the child by considering the hardship that removal from Canada would have on the family unit (*Alie* at para. 8). The court held that the determination of the officer in regard to the best interests of the child required focus on the child and hardship that removal of the family would have on her (*Alie* at para. 9). Likewise, in the case of *Bocerri v. Canada (Minister of Citizenship and*

Immigration), 2008 FC 1021, 74 Imm. L.R. (3d) 274 the court held that the officer was not alert, alive and sensitive to the best interests of the child because the officer did not provide an independent assessment of whether it was in the best interests of the child to be removed to Albania (*Bocerri* at paras. 5, 6).

[50] When the reasons are read as a whole, it is clear that the decision did not turn on the officer's determination that the Applicants had an IFA in Hyderabad. The finding that the Applicants would not suffer disproportionate hardship if returned to India was based on a variety of factors such as the lack of evidence regarding the identity of the men who attacked the Applicants in 2005, the lack of a personalized risk arising from Hindu extremists and the availability of state protection. In spite of the officer's remarks regarding the potential safety of Hyderabad, it is clear that the cases of *Alie* and *Bocerri* are distinguishable from this case. As has been noted, the officers in *Alie* and *Bocerri* effectively ignored the best interests of the children. In this case, while it is true that the officer did not assess the safety of Hyderabad specifically for Kamish, it is also true that Kamish's best interests have not been lumped together with those of his parents.

1c) Was the immigration officer's assessment of the long-term ability of the Applicant, Mr. Amin Khoja, to support his family reasonable?

[51] The Applicants allege the officer made an error of fact by failing to ascribe sufficient weight to evidence showing that persons with disabilities face discrimination in India with regard to employment. In particular, the Applicants state the officer erred by not quoting more fully from the US Department of State (DOS) report regarding conditions faced by disabled persons in India.

[52] It is noted that administrative agencies are presumed to have considered all of the evidence before them and their reasons are not to be read hypercritically (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 at para. 16). It is also noted that the standard of reasonableness directs a reviewing court to be deferential to the agency's factual findings and to not interfere unless they are outside a range of possible, acceptable outcomes (*Dunsmuir*, above, at para. 47).

[53] It is relevant that in this case the officer took a number of factors into account when determining whether Mr. Khoja will be able to find employment in India, including his language skills, education and work experience, not merely its finding that disabled persons in India are protected. The Court finds that it was not unreasonable for the officer to come to the conclusion that Mr. Khoja will be able to find employment in India.

1d) Did the immigration officer err by noting that the Applicants chose to have a child at a time when their status in Canada was uncertain?

[54] The Applicants' cite the case of *Mulholland*, above, for the proposition that it is improper to fail to give appropriate weight to the best interests of the child on account of the parents' decision to have a child at a time when their immigration status was uncertain. The Respondents, however, note that the Federal Court of Appeal in *Kisana*, above, interpreted *Mulholland* as standing "for the proposition that it is unreasonable for an immigration officer to effectively ignore the interests of a child on the basis that it was the parents' "choice" to have the child in the first place" (*Kisana* at para. 26).

[55] Although it is unfortunate that the officer noted this fact, it is clear that it does not compromise the analysis of the best interests of the child, as there is ample evidence that the officer was alert, alive and sensitive to the best interests of Kamish. The fact that the Applicants have a Canadian-born child during a period of instability with regard to their immigration status, while not an excuse for minimizing the best interests of that child, does not entitle the Applicants to a certain outcome on an application for H&C.

1e) Did the immigration officer err by stating that the child and his parents could apply for a visa to come to Canada to seek medical treatment for the child?

[56] The Applicants take issue with the officer's suggestion that Kamish could return to Canada for medical treatment if it is unavailable in India. The Applicants submit that it was "sheer speculation" for the immigration officer to suggest this, as Kamish's family would have to obtain visitor's visas in order to return to Canada with their son, the issuance of which is not guaranteed.

[57] It is noted that the discussion of returning to Canada for medical care consists of two sentences in a large section regarding the possibility of obtaining adequate medical attention for Kamish. The reasons mention a return to Canada only as a possibility. This is not part of a core finding in regard to the best interests of the child as it does not, in its outcome, compromise medical care to his person. Whether the officer was correct in his aside, outside of his core finding, is not detrimental, as it was ascertained in his decision that medical care in the child's regard was available on relocation to India.

X. Conclusion

[58] The Court notes that the standard of reasonableness and the Federal Court of Appeal's formulation of the approach to be followed when determining the best interests of the child appear amorphous, yet, allowing for flexibility. This approach is complementary of the child's multi-faceted best interests; nevertheless, sight should not be lost of the whole picture to which the legislation and the jurisprudence point: the standard of reasonableness centers on respect for the decision-making process of administrative bodies (*Dunsmuir*, above, at para. 48). Likewise, the process for determining the best interests of the child is based around a decision-maker being alert, alive and sensitive to the child's interests, but, as the ruling in *Hawthorne*, above, shows, it does not go so far as to impose strict formal requirements.

[59] In the case of the Applicants, the officer examined the evidence regarding the availability of medical treatment in India, their safety in India as well as the treatment of disabled persons and employment prospects; after having weighed that evidence, the officer reached a reasonable conclusion based on that evidence. It is not for the Court to re-weigh the evidence subsequently. As the H&C decision appears reasonable, the Court defers to the determination of the officer.

[60] Although it is unfortunate that the officer chose not to address the education of Kamish in the reasons, that does not render the decision unreasonable. It is true that an examination of the potential education of the child is noted in the IP 5 Manual, but the Manual is not a binding statutory instrument and ought not to be construed in that manner. As long as the reasons given indicate that the officer was alert, alive and sensitive to the best interests of the child, as is the case in the

determination, then it is accepted that, as in this case, there is more than one way to reach a decision that is reasonable.

[61] For all of the above reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3815-09
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