Federal Court  Cour fédérale

Date: 20120926

Docket: IMM-8343-11

Citation: 2012 FC 1133

Ottawa, Ontario, September 26, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

MICHAEL ANTHONY PERSAUD
ZORINA PERSAUD
MICHAEL BRUCE ANTHONY PERSAUD
MARISSA ASHANA PERSAUD
MIRIAN ANN TRICIA PERSAUD

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of a Citizenship and Immigration Canada (CIC) immigration officer (the officer), dated November 2, 2011, wherein the applicants' permanent residence applications were refused (the decision). This decision was based

on the officer's finding that there were insufficient humanitarian and compassionate (H&C) grounds to warrant an exemption under subsection 25(1) of the Act.

[2] The applicants request that the officer's decision be quashed and the matter be referred back for redetermination by a differently constituted tribunal.

Background

[3] The principal applicant is Michael Anthony Persaud. The other applicants are related to the principal applicant as follows: his wife, Zorina Persaud; his son, Michael Bruce Anthony Persaud; his daughter, Marissa Ashana Persaud; and his daughter, Mirian Ann Tricia Persaud. The family is Indo-Guyanese by ethnicity and Christian by religion. They are all citizens of Guyana.

[4] The applicants have an extensive family network in Canada. This includes the principal applicant's parents and siblings (and their families) and his wife's mother and siblings (and their families). The applicants do not have any close relatives remaining in Guyana.

[5] In Guyana, the applicants were seriously affected by the rise in criminality in the country. The principal applicant received death threats and he and his family were attacked by criminals. The principal applicant approached the police for help but they did not investigate his complaint. In fear of their safety, the applicants left Guyana.

[6] On departure from Guyana, the applicants were first issued a visitor visa in the Port of Spain on December 14, 2000. Almost two months later, they came to Canada and entered as visitors on February 7, 2001.

[7] On October 26, 2002, the applicants filed a claim for refugee protection. This claim was rejected on June 3, 2004. Leave to seek judicial review of the refugee decision was denied. The applicants then filed H&C applications on February 1, 2008. These were refused on October 30, 2008.

[8] On December 15, 2008, the applicants filed their second H&C applications based on the hardship that they would face in Guyana by Afro-Guyanese criminal gangs, their successful establishment and integration in Canada, their close ties to Canada and the best interests of the children.

[9] On September 24, 2010, the applicants filed pre-removal risk assessment (PRRA) applications. They were rejected on November 24, 2010.

Officer's Decision

[10] In a letter dated November 2, 2011, the applicants were notified that their H&C applications for permanent residence from within Canada were denied. The reasons were outlined in the H&C grounds, reasons for decision written by the officer on the same day. These latter reasons form part of the decision.

[11] In rendering the decision, the officer considered the applicants' allegations of risk on return to Guyana, degree of establishment in Canada and best interests of the children.

[12] At the outset, the officer noted that in a letter dated August 15, 2011, the applicants were provided with thirty days to submit updated information. On November 2, 2011, no response had yet been received to this request.

[13] The officer noted the applicants' stated risks in Guyana. However, aside from their statements that they were seriously affected by criminality, had been subject to several threats and attacks and that the police would not investigate their complaints, the officer noted that no specific details were provided. On review of the record, the officer concluded that the applicants had not provided sufficient evidence to support their fear of risk in Guyana. Thus, the officer found that the hardship of returning to Guyana and applying for permanent residence from there would not constitute unusual and undeserved or disproportionate hardship.

[14] The officer then noted the applicants' employment in Canada, the applicant daughter's school documentation and the evidence on community involvement. In addition, the officer noted the principal applicant's statement that his parents rely on him for financial, emotional and moral support. The officer considered this in light of the letter of support from the principal applicant's father. However, the officer observed that the principal applicant's father did not state that he and his wife relied on the applicants as alleged by them.

[15] The officer also noted that the principal applicant had been charged with two counts of assault and one count of forcible confinement under subsection 279(2) of the *Criminal Code*, RSC 1985, c C-46. At the time of the decision, these charges were outstanding.

[16] The officer acknowledged the applicants' attempts to become established in Canada since their arrival. However, the officer was not satisfied that the applicants had a reasonable expectation of being allowed to remain in Canada permanently. In addition, the officer noted that there was insufficient evidence that the applicants remained in Canada due to circumstances beyond their control. Although the officer acknowledged the level of establishment made until November 2008, the officer found that the applicants had not established that severing these ties would have such a significant negative impact that would constitute unusual and undeserved or disproportionate hardship.

[17] In addition, although the principal applicant's father was supportive of the family remaining in Canada and that the hardship of being physically separated from the Canadian family would cause some dislocation, the officer found that the applicants would be able to maintain contact with their family and friends in Canada through internet, telephone and/or letters.

[18] The officer also noted the submissions on the applicant children. However, the officer highlighted the lack of specific details or information on their best interests. Thus, the officer was not satisfied that the applicants had established that the general consequences of relocating and resettling back to Guyana would have a significant negative impact on the best interests of the applicant children.

[19] In summary, although the officer acknowledged that the applicants may face difficulties in readapting to life in Guyana, the officer was not satisfied that this hardship would be unusual and undeserved or disproportionate. The officer therefore refused the applicants' H&C application.

Issues

[20] The applicants submit the following points at issue:

1. Did the officer err in law in her assessment of the applicants' establishment and integration in Canada?

2. Did the officer err in law in the assessment of the best interests of the applicants' children and by applying the wrong standard?

3. Did the officer breach the duty of procedural fairness?

[21] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the officer err in assessing the applicants' establishment?

3. Did the officer err in assessing the best interests of the children?

4. Did the officer breach procedural fairness?

Applicants' Written Submissions

[22] The applicants submit that the officer erred in the assessment of establishment and the best interests of the children.

[23] First, the applicants submit that the officer failed to make any reasoned assessment of establishment. Rather, the officer simply concluded that their establishment was not sufficient to constitute undue hardship. The reasons did not indicate how the officer came to this conclusion. Thus, the applicants submit that the officer's evaluation of the case was inadequate.

[24] The applicants submit that they described a number of positive establishment factors that show that they have worked hard to establish and integrate themselves into Canadian society. The principal applicant has been employed since August 2001. In July 2005, he opened his own auto repair shop. He currently works as an auto service manager. The principal applicant's wife has been employed as a quality controller since April 2004. The family has also been active volunteers in their community and they are involved in various church activities. Concurrently, the children have grown up in Canada and consider Canada as their home. Neither the principal applicant nor his wife have any family in Guyana.

[25] The applicants submit that when considered cumulatively, these factors indicate that they have successfully established themselves and integrated into the Canadian community. The applicants submit that the officer failed to properly apply the guidelines in Immigration Manual IP-5 (the IP-5 Manual) and unreasonably concluded that the applicants would not suffer hardship if returned to Guyana.

[26] The applicants also submit that the officer erred in law by making unreasonable findings that were not supported by the evidence on the record. First, the officer noted that the principal applicant had a father and mother outside Canada. This was a wrong finding of fact because the record

showed that the principal applicant's parents are citizens of and reside in Canada. Second, the officer erred in noting that in his letter of support, the principal applicant's father did not state that he and his wife depend on the applicants for financial, emotional or moral support. The applicants cite portions of the letters from the principal applicant's father and sister that they submit do support their statements.

[27] Second, the applicants submit that the officer inadequately assessed the best interests of the three applicant children, especially those of the youngest daughter, Mirian, who is seventeen years old. The applicants submit that the officer completely failed to assess: the fact that the applicant children have been in Canada for over a decade and have grown up and spent their years of maturity here, their degree of establishment in Canada, their strong links to Canada given that their entire extended family is here and the impact that removal would have on them. The applicants note that as the best interests of the children clearly mitigated in their favour, the officer was required to provide cogent reasons why other factors led to a negative determination.

[28] The applicants submit that the officer minimized the interests of the children. The officer provided brief reasons and failed to consider the various factors relating to the children's emotional, social, cultural and physical welfare and the impact that removal would have on them. In addition, the applicants submit that the officer erred by applying the undue and undeserved or disproportionate hardship and the significant negative impact tests when assessing the best interests of the children.

[29] The applicants also submit that the officer breached the duty of procedural fairness by not granting them an extension of time to file updated submissions in accordance with the opportunity provided in the officer's letter dated August 15, 2011. The applicants did not respond within the required timeline because at that time, they had moved from the house owned by the principal applicant's sister (the address to which the letter was sent). The applicants failed to immediately notify immigration officials about their change in address. In addition, when the letter was sent, the principal applicant's sister and her family were abroad.

[30] On her family's return, the principal applicant's sister gave the letter to the principal applicant and he immediately responded with a request for an extension of time to submit updated documents. The applicants did not receive a response to this request. The applicants submit that in their particular circumstances, this refusal to grant a brief extension of time constitutes a breach of fairness.

[31] Finally, the applicants note that the principal applicant's criminal charges of assault and forcible confinement were withdrawn in November 2011.

Respondent's Written Submissions

[32] The respondent submits that non-citizens do not have an unqualified right to enter or remain in Canada. The requirement for a foreign national to apply for a visa before entering Canada is a cornerstone of Canada's immigration law. Recourse to an exemption from this requirement is exceptional. The IP-5 Manual also provides guidelines on the meaning of H&C grounds: applicants

must prove that they would face unusual, undeserved or disproportionate hardship if required to file permanent residence applications from abroad. Hardship inherent in having to leave Canada is insufficient to constitute disproportionate hardship.

[33] The respondent further notes that applicants bear the onus of satisfying the decision maker that their personal circumstances are such that the hardship of having to obtain a permanent resident visa from abroad would be unusual and underserved or disproportionate. The decision maker is under no duty to request further submissions or to highlight weaknesses in the applications.

[34] The respondent submits that this Court should not intervene with the officer's decision unless it does not fall within the range of possible acceptable outcomes that are defensible in respect of the facts and the law. As long as the officer considered the relevant and appropriate factors from an H&C perspective, this Court should not interfere with the weighing of the different factors. In addition, the reasons for the decision should not be read microscopically but rather as a whole.

[35] The respondent submits that the officer's finding on establishment was entirely reasonable in light of existing jurisprudence that hardship, in the context of an H&C application, should be something more than that which is inherent in being asked to leave after having been in a place for a period of time. This includes maintaining employment and integrating in the community.

[36] The respondent also submits that the officer's assessment of the children's interests was reasonable. The respondent notes that the best interests of children do not dominate an H&C assessment and officers must determine what weight to grant these interests.

[37] The respondent notes that the best interests of the children analysis requires evidence on the potential impact on the child, supported by proper documentation. Here, the applicants' submissions were cursory and unsupported by cogent evidence. In addition, the applicants' submission that the officer used a significant negative impact test is not an arguable issue. The respondent highlights that the reasons for the decision cannot be read microscopically and that the applicants have not demonstrated that any evidence was ignored or overlooked by the officer.

[38] The respondent also submits that the officer examined the risk factors presented by the applicants under the lens of unusual and undeserved or disproportionate hardship. However, the applicants' statements on life in Guyana were vague and no details were provided on specific incidents that occurred to the family there or their attempts to seek state protection. Thus, after thoroughly reviewing the application, the officer was not satisfied that there was sufficient evidence to support any fear of risk at any level.

[39] Finally, the respondent notes that there is no evidence in the CIC file of any request for further time to respond to the officer's August 15, 2011 letter.

Analysis and Decision

[40] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[41] It is well established that assessments of an officer's decision on H&C applications for permanent residence from within Canada is reviewable on a standard of reasonableness (see *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2009] FCJ No 713 at paragraph 18; *Adams v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1193, [2009] FCJ No 1489 at paragraph 14; and *Garcia De Leiva v Canada (Minister of Citizenship and Immigration)*, 2010 FC 717, [2010] FCJ No 868 at paragraph 13). The review of an officer's assessment of establishment and the best interests of the children are questions of fact or of mixed fact and law that are also reviewable on a reasonableness standard (see *Pierre v Canada (Minister of Citizenship and Immigration)*, 2010 FC 825, [2010] FCJ No 1169 at paragraph 22).

[42] In reviewing the officer's decision on the standard of reasonableness, the Court should not intervene unless the officer came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 59). It is not up to a reviewing court to substitute its own view of a preferable

outcome, nor is it the function of the reviewing court to reweigh the evidence (see *Khosa* above, at paragraphs 59 and 61).

[43] Conversely, it is well established that the appropriate standard of review for issues of procedural fairness is correctness (see *Wang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 798, [2008] FCJ No 995 at paragraph 13; and *Khosa* above, at paragraph 43). No deference is owed to decision makers on these issues (see *Dunsmuir* above, at paragraph 50).

[44] **Issue 2**

Did the officer err in assessing the applicants' establishment?

The assessment of the degree of establishment allows for a proper determination on whether an applicant would suffer hardship if required to apply for permanent residence from abroad (see *Raudales v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 385, [2003] FCJ No 532 at paragraph 19). This Court has quashed H&C decisions where establishment has been assessed without adequate reference to the particular circumstances of the applicant (see *Singh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1062, [2009] FCJ No 1322 at paragraph 11; and *Amer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 713, [2009] FCJ No 878 at paragraphs 12 and 13).

[45] In this case, the officer considered the applicants' employment, community involvement and education in Canada. These factors were all relevant to the assessment of the degree of establishment, as provided in the IP-5 Manual. However, it is notable that maintaining employment and integrating into the community does not necessarily constitute an unusually high degree of

establishment (see *Ramotar v Canada (Minister of Citizenship and Immigration)*, 2009 FC 362, [2009] FCJ No 472 at paragraph 33).

[46] The officer did acknowledge the letter of support from the principal applicant's father, but noted the absence of a statement therein on the parent's dependence on the applicants for financial, emotional or moral support. In his letter, the principal applicant's father described all his children as having done very well and as "well established law abiding decent citizens of Canada". He noted that all his children own their homes and vehicles. He also stated that:

> Michael and his family are of great assistance to our family especially myself and his mom, he has chosen to live close by so he could help with our many doctor's appointments since we are advancing in age, he is most definitely our first call in case of emergency.
>
> Michael has always been self-sufficient, dilegent [sic] and industriousl [sic] however should he require assistance of any sort, be it financial or otherwise the entire family is ready, willing, and able to render same.

[47] The applicants also submitted a letter from the principal applicant's sister in which she stated:

> Michael and his family have been very supportive to me and my family. They have provided counselling and advice to help with conflict resolution and provide encouragement to me on a daily basis.

[48] This evidence clearly indicates that the applicants have a strong support network in Canada. The evidence also indicates that the applicants also support their family by living close to the principal applicant's parents and helping them with their medical appointments and by counselling and advising the principal applicant's sister.

[49] However, recalling the deference owed to immigration officers on their assessment of the evidence, I do not find that the officer erred in finding that the evidence insufficiently supports the applicants' alleged level of support. Notably, in the letters from the principal applicant's father and sister, these relatives actually offered financial support to the applicants should they ever need help.

[50] An applicant's criminal record is also relevant to an assessment of establishment. At the time of the decision, the officer noted that the principal applicant had outstanding criminal charges against him. These were allegedly withdrawn in November 2011. However, no evidence of the withdrawn charges was submitted to the officer before the date of the decision.

[51] The officer also noted that there was insufficient evidence that the applicants had remained in Canada due to circumstances beyond their control or based on a reasonable expectation that they would be allowed to remain. This latter point is clearly supported by the applicants' immigration history, in which their different applications have repeatedly been denied.

[52] I also note the applicants' submission that the officer erred by stating that the principal applicant's parents resided abroad. Admittedly, on the first page of the reasons for decision, the principal applicant's parents are listed under the heading of family members residing outside of Canada. However, the reasons themselves clearly show that the officer understood that the principal applicant's parents reside in Canada. This is implicit in the officer's reference to the father's letter and the physical separation that the applicants' removal would cause to the relationship between the father and the applicant family.

[53] It is trite law that reasons should not be read microscopically but rather as a whole. I therefore do not find that this error in a different section of the decision renders the officer's decision as a whole erroneous.

[54] Based on the amount of evidence filed in the H&C application, I find that the officer reasonably concluded that the applicants had not established that severing the ties they made in Canada would constitute unusual and undeserved or disproportionate hardship. In addition, contrary to the applicants' submissions, I find that the officer sufficiently conveyed the underlying reasons for the establishment findings. Thus, I find that the officer conducted a reasonable assessment of the establishment factor in reviewing the applicants' H&C applications.

[55] **Issue 3**

Did the officer err in assessing the best interests of the children?

The applicants submit that the officer inadequately assessed the best interests of the three applicant children, especially those of the minor applicant, Mirian.

[56] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, [1999] SCJ No 39, Madame Justice L'Heureux–Dubé described an immigration officer's role in assessing the best interests of the children in an H&C application (at paragraph 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.

[57] Examples of factors to take into account in the assessment of the best interests of the children include the following (see IP-5 Manual and *Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165, [2008] FCJ No 211 at paragraph 9):

- the age of the child;
- the level of dependency between the child and the H&C applicant;
- the degree of the child's establishment in Canada;
- the child's links to the country in relation to which the H&C decision is being considered;
- medical issues or special needs the child may have;
- the impact to the child's education; and
- matters related to the child's gender.

[58] It is well established that the unusual, undeserved or disproportionate hardship test has no place in the best interests of the child analysis (see *Beharry v Canada (Minister of Citizenship and Immigration)*, 2011 FC 110, [2011] FCJ No 134 at paragraph 11). However, the mere use of the words unusual, undeserved or disproportionate hardship does not automatically render an H&C decision unreasonable (see *Beharry* above, at paragraph 12). What this Court must determine on judicial review is whether the officer assessed the degree of hardship likely to result from the removal of the children from Canada and then balance that hardship against other factors that might mitigate the consequences of removal (see *Beharry* above, at paragraph 14).

[59] In this case, the officer noted at the outset the school documentation filed for the minor daughter. The officer also noted that although there would be hardships in being physically separated from the family in Canada, the applicants would be able to maintain contact with friends and family through internet, telephone and letters. The officer stated the following specifically on the best interests of the children:

> The applicant stated that his children were in school and they are excellent students. He stated that if his children return to Guyana they suffer emotional, mental and academic hardship and that they will be displaced in school. Other than these statements, no specific details or information were provided regarding the best interests of the child. I have considered the statements made by the applicant and I am not satisfied that the applicant has established that the general consequences of relocating and resettling back to their home country would have a significant negative impact on the best interests of these children.

[60] The applicants submit that this was an inadequate assessment of the best interests of the children. Specifically, the applicants submit that the officer completely failed to assess that the children have: been in Canada for over a decade, grown up and spent their years of maturity here, a degree of establishment in Canada and strong links to Canada given their entire extended family is here. The applicants also submit that the officer failed to consider the various factors relating to the children's emotional, social, cultural and physical welfare and the impact that removal would have on them. In addition, the officer erred by applying the wrong tests when assessing the best interests of the children.

[61] At the outset, I disagree with the applicants' characterization of the officer's assessment as being an application of the undue and undeserved or disproportionate hardship test. On review of

the officer's decision, I do not find that the officer erred in applying that test to the best interests of the applicant children.

[62] Turning to the officer's assessment, I acknowledge the applicants' criticism of it as being very brief. However, this alone does not render the assessment unreasonable. The question is whether the officer adequately assessed the degree of hardship likely to result from the removal of the children from Canada based on the evidence on the record.

[63] In their H&C submissions, the applicants cited various well-established legal principles intended to guide the assessment of the best interests of the children. These have largely been incorporated in the discussion above. However, as explained by the Federal Court of Appeal in *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] FCJ No 158, an applicant bears the burden of adducing proof in support of an H&C claim based on the best interests of the children (at paragraph 5):

> An immigration officer considering an H & C application must be "alert, alive and sensitive" to, and must not "minimize", the best interests of children who may be adversely affected by a parent's deportation: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 75. However, this duty only arises when it is sufficiently clear from the material submitted to the decision-maker that an application relies on this factor, at least in part. Moreover, an applicant has the burden of adducing proof of any claim on which the H & C application relies. Hence, <u>if an applicant provides no evidence to support the claim, the officer may conclude that it is baseless</u>. [emphasis added]

[64] Applicants must provide evidence regarding the adverse effects on the children should they leave. Officers are then required to consider any such evidence submitted (see *Liniewska v Canada*

(Minister of Citizenship and Immigration), 2006 FC 591, [2006] FCJ No 779 at paragraph 20). In *Castillo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 409, [2009] FCJ No 543, Deputy Justice Maurice Lagacé noted that sufficient evidence needed to be provided to allow the officer to know in concrete terms how and why the applicants' grandchild would be better served by the continuous presence of his grandparents (at paragraph 15). Reasons of family reunification alone are not sufficient. Applicants must demonstrate that applying for permanent residency from abroad would expose them to unusual, undeserved or disproportionate hardship (see *Castillo*, above at paragraph 21).

[65] In their H&C application, the applicants stated that they feared hardships if returned to Guyana. However, no details were provided on the specific events that they had previously suffered or the risks they now faced. Several reference letters were also submitted, however, aside from some support on their establishment in Canada, these letters did not specifically pertain to the interests of the applicant children.

[66] Based on this review of the evidence, I find that the officer made a reasonable assessment of the best interests of the children. The scope of this assessment was limited by the amount of evidence filed by the applicants. In light of this evidence, I find that the officer made a reasonable assessment of the best interests of the children.

[67] **Issue 4**

Did the officer breach procedural fairness?

The applicants also submit that the officer breached procedural fairness by not granting them an extension of time to file additional updated submissions. In a letter dated August 15, 2011, the officer did grant the applicants thirty days to file additional submissions. However, when the letter was sent out, the applicants had moved and not yet notified CIC of their change of address. The principal applicant's sister, to whose residence the letter was mailed to, was abroad at the time. When she returned, she delivered the letter to the applicants. The applicants allegedly wrote to CIC requesting an extension of time to make additional submissions. However, the applicants did not provide evidence of this letter. In the decision, the officer stated that on November 2, 2011, no response had yet been received to the August 15, 2011 letter.

[68] It is well established that applicants bear the burden of establishing their case (see *Thandal v Canada (Minister of Citizenship and Immigration)*, 2008 FC 489, [2008] FCJ No 623 at paragraph 9). As a result, officers are under no duty to request further submissions. As explained by the Federal Court of Appeal in *Kisana* above, at paragraph 45:

> It is trite law that the content of procedural fairness is variable and contextual (see: *Baker*, *supra*, para. 21; and *Khan v. Canada (MCI)*, 2002 FCA 413). The ultimate question in each case is whether the person affected by a decision "had a meaningful opportunity to present their case fully and fairly"(see: *Baker*, *supra*, para. 30). In the context of H&C applications, it has been consistently held that the onus of establishing that an H&C exemption is warranted lies with an applicant; an officer is under no duty to highlight weaknesses in an application and to request further submissions (see, for example: *Thandal v. Canada (MCI)*, 2008 FC 489 at para. 9). In *Owusu*, *supra*, this Court held that an H&C officer was not under a positive obligation to make inquiries concerning the best interests of children

> in circumstances where the issue was raised only in an "oblique, cursory and obscure way" (at para. 9). The H&C submissions in that case consisted of a 7-page letter in which the only reference to the best interests of the children was contained in the sentence: "Should he be forced to return to Canada, [Mr. Owusu] will not have any way to support his family financially and he will have to live every day of his life in constant fear" (at para. 6).

[69] In the circumstances of this case, I do not find that the officer breached any procedural fairness. As indicated, the officer is under no duty to request further submissions. Nevertheless, the opportunity to file updated submissions was granted to the applicants in mid-August 2011. Their lack of awareness of this opportunity arose from their failure to notify CIC of their new address. Although they alleged that they wrote to the officer when they eventually did received the August 15, 2011 letter, no evidence of this correspondence was filed with this judicial review application. Concurrently, the officer explicitly noted that no responses were received to the August 15, 2011 letter. I therefore do not find that there was a breach of procedural fairness in the circumstances of this case.

[70] In summary, I do not find that the officer's weighing of the different H&C factors was unreasonable or that the officer erred in the assessment of establishment or the best interests of the children. I find that the officer's decision was transparent, justifiable and intelligible and within the range of acceptable outcomes based on the limited evidence on the record. I also do not find that there was any breach of procedural fairness. For these collective reasons, I would dismiss this judicial review application.

[71] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible or does not meet the requirements of this Act, and may, on request of a foreign national outside Canada who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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