Federal Court  Cour fédérale

Date: 20130201

Docket: IMM-5111-12

Citation: 2013 FC 116

Ottawa, Ontario, February 1, 2013

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

EDWARD SARIAN MONJE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of an immigration officer (Officer), dated 7 March 2012 (Decision), which refused the Applicant's application for permanent residence on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the Act.

BACKGROUND

[2] The Applicant is a citizen of the Philippines. His wife is a permanent resident of Canada. The couple has a daughter, born in 2008, who is a Canadian citizen.

[3] When the Applicant's wife obtained permanent residence on 15 August 2006, she never declared the Applicant as her husband. As such, when she attempted to sponsor him under the family class, he was declared ineligible pursuant to paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, (SOR/2002-227) [Regulations].

[4] The Applicant's wife filed a new application to sponsor him in May, 2011. In this application, it was conceded that he was inadmissible, but an exemption was sought pursuant to section 25 of the Act, on humanitarian and compassionate grounds (H&C).

[5] It was submitted in the H&C application that it would be in the best interests of the couple's daughter for the family to be reunited in Canada and for her to grow up here. Country documentation was submitted stating that the daughter would have better access to health care and education and, as the family is from a humble socio-economic background, her standard of living would generally be much higher in Canada. It was submitted that the wife and daughter are already established in Canada, and the Applicant has demonstrated an ability to find work and adapt easily.

[6] The Officer considered the Applicant's submissions and refused his application on 7 March 2012. The Officer notified the Applicant of the Decision by letter dated 7 March 2012 (Refusal Letter).

DECISION UNDER REVIEW

[7] The Decision in this case consists of the Refusal Letter and the Officer's notes in the Global Case Management System (Notes).

[8] The Officer reviewed the country documentation and accepted that the overall standard of education in Canada is higher than that in the Philippines. However, the Officer stated that "Many educated and well-adjusted children are raised in the Philippines, and little has been submitted by the applicants to demonstrate that they would not be able to avail themselves of the quality education institutes that are available…"

[9] The Officer also accepted that the standard of health care is higher in Canada than in the Philippines, but found that there was nothing to suggest the health care in the Philippines is inadequate or that this family would be particularly at risk. He or she also found that issues around child exploitation and security did not suggest a particular risk to the Applicant's family.

[10] The Officer noted that the minor child would either have to relocate to the Philippines or be separated from her father should the Applicant be refused a visa, and stated as follows:

> I am not disputing that the best interests of the child dictate that she be reunited with both parents; however, it must be established that this necessarily entails the reunification take place in Canada. I find the points raised by the representative to be insufficient in establishing the grounds for a favourable H&C decision. While I do not disagree with the content of the reports, I am not satisfied that it has been established that those particular hardships – whether it be poverty, lack of access to education and health care, a poor security situation – would be suffered by the applicants.

[11] The Officer noted that the sponsor is seeking relief from her own choices; she chose to come to Canada in 2003 as a live-in caregiver, and she chose to conceal her marriage on her permanent residence application, as well as when she was granted permanent residence. The Officer found there were not sufficient H&C factors to warrant special relief in this case, and refused the application.

ISSUES

[12] The Applicant raises the following issue in this application:

a. Whether the Officer erred by assessing the interests of the Applicant's child using a "hardship" test, as opposed to a best interests test.

STANDARD OF REVIEW

[13] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[14] The Respondent asserts that the Decision is to be reviewed on a standard of reasonableness, but the issue as the Applicant frames it is whether the correct legal test was applied. As stated in *B.L. v Canada (Minister of Citizenship and Immigration)*, 2012 FC 538 at paragraphs 11-12:

> The standard for determining the issue of whether the proper legal test was applied by the H&C officer has been said to be correctness in several decisions of this Court: *Sinniah v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1285 at para 26; *Osegueda Garcia v Canada (Minister of Citizenship and Immigration)*, 2010 FC 677 at para 7; and *Khalil Markis v Canada (Minister of Citizenship and Immigration)*, 2008 FC 428 at para 19.
>
> As stated in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 50, when applying the standard of correctness "a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer."

[15] As such, the issue in this application will be determined on a standard of correctness.

STATUTORY PROVISONS

[16] The following provision of the Act is applicable in this proceeding:

25. (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, 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 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	**25.** (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, 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.

child directly affected.

ARGUMENTS

The Applicant

[17] The Applicant submits that the Officer had an obligation to be "alert, alive, and sensitive" to the best interests of the child affected by his application (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817). A child's best interests are not necessarily determinative, but they must be considered and weighed along with other H&C factors (see *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475).

[18] In the Officer's Decision, the best interests of the child must be "well identified and defined" and "examined… with a great deal of attention… The mere mention of the child is not sufficient. The interests of the child is a factor that must be examined with care and weighed with other factors." A child's interest must not be "minimized" (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 [*Legault*]).

[19] The Applicant submits that the Officer applied the wrong legal test to the assessment of the best interests of the child. Instead of considering the child's best interests, the Officer considered whether she or her parents would suffer "hardship" if the Applicant's H&C application were not granted. After considering the country documentation presented by the Applicant, the Officer said "I am not satisfied that it has been established that those particular hardships – whether it be poverty, lack of access to education and health care, a poor security situation – would be suffered by the applicants."

[20] The Applicant submits that it is well-established that the hardship test is the wrong test for assessing the best interests of the child (*Shchegolevich v Canada (Minister of Citizenship and Immigration)*, 2008 FC 527 [*Shchegolevich*]; *Mangru v Canada (Minister of Citizenship and Immigration)*, 2011 FC 779; *Sinniah v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1285; *Williams v Canada (Minister of Citizenship and Immigration)*, 2012 FC 166; *Sun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 206; *E.B. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 110 [*E.B.*]). As stated in *B.L.*, above, the correct legal test must be applied for the Decision to stand.

[21] In *Shchegolevich*, above, the Court held at paragraph 12:

> It is clear that the Officer erred by requiring that Mr. Shchegolevich establish that the adverse effects of his removal upon his spouse and his stepson would be unusual, undeserved, or disproportionate. This standard is only to be applied to the assessment of hardship experienced by an applicant from having to apply for admission to Canada from overseas; it does not apply to the assessment of the best interests of a child affected by the removal of a parent.

[22] The Court also said, at paragraph 14 of *Arulraj v Canada (Minister of Citizenship and Immigration)*, 2006 FC 529:

> It is apparent that the Visa Officer felt that, in considering the best interests of the two Canadian children, it was necessary to find that they would be irreparably harmed by their father's "temporary" removal from Canada. This was an incorrect and, therefore, unreasonable exercise of the officer's discretion. There is simply no legal basis for incorporating a burden of irreparable harm into the consideration of the best interests of the children. There is nothing in the applicable Guidelines (Inland Processing 5, H & C Applications (IP5 Guidelines)) to support such an approach, at least insofar as the interests of children are to be taken into account. The similar terms found in the IP5 Guidelines of "unusual", "undeserved" or "disproportionate" are used in the context of considering an applicant's H & C interests in staying in Canada and not having to apply for landing from abroad. It is an error to incorporate such

> threshold standards into the exercise of that aspect of the H & C discretion which requires that the interests of the children be weighed. This point is made in *Hawthorne v. Canada (Minister of Citizenship and Immigration)* [2003] 2 FC 555, 2002 FCA 475 (F.C.A.) at para. 9 where Justice Robert Décary said "that the concept of 'undeserved hardship' is ill-suited when assessing the hardship on innocent children. Children will rarely, if ever, be deserving of any hardship".

[23] In *E.B.*, above, the Court held that "the unusual, undeserved or disproportionate hardship test has no place in the best interests of the child analysis." The Court went on to say that the mere use of this language does not automatically render an H&C decision unreasonable, "if it is clear from the decision as a whole that the officer applied the correct test and conducted a proper analysis." The Applicant submits that there is no indication that the Officer applied the correct test in this case – the Decision indicates that the child's interests were assessed only from a hardship perspective.

[24] The Applicant submits that the Officer never considered or examined whether it was in the child's best interests that she grow up with both her parents in Canada, as opposed to the Philippines. The Officer did not dispute that Canada's standard of living is higher than that of the Philippines, but did not squarely address this issue. While the Officer did refer to the country documentation, the Officer's consideration of the evidence was from a hardship perspective and not a best interests perspective.

[25] The Applicant points out that the Officer found it sufficient that adverse conditions for children in the Philippines were not "universal" and that some or many of the children experienced good living conditions in the country. The Applicant submits that to apply a criterion that some children in the Philippines live well was to set up a test that was virtually impossible to meet – one

that requires all children in the country to be universally affected by adverse conditions. He submits that, instead, the Officer should have examined the likely quality of life in the Philippines for a child in his daughter's position, on a balance of probabilities.

[26] The Applicant submits that the Officer's analysis should have considered the family's humble socio-economic background when examining the likely quality of life for the child in the Philippines. In addition, the test could not be properly applied without drawing a comparison between conditions in the Philippines and those in Canada, and assessing which country would offer a better quality of life to the child.

[27] The Applicant states that where the Officer did compare conditions between the two countries, he or she acknowledged that conditions in Canada were better. The Officer found that the standards of education and health care were higher in Canada than the Philippines, but did not consider whether this made Canada a better choice for the child than the Philippines. The Officer determined that health care in the Philippines is "adequate;" this is not the same as determining what is in the child's best interests. The Officer also said that the child's life would not be "endangered" by health conditions in the Philippines. The Applicant submits that this indicates the Officer was applying a test that was more onerous than best interests.

[28] The Applicant submits that an examination of the child's best interests may not have been determinative of his application, but the Officer was required to give it proper consideration. As this did not happen, the Decision cannot stand.

The Respondent

[29] The Respondent points out that for the Applicant to obtain an exemption from exclusion by way of paragraph 117(9)(d) of the Regulations he must put forward a compelling explanation as to why he was not declared or examined as part of his wife's permanent residence application (*Pascual v Canada (Minister of Citizenship and Immigration)*, 2008 FC 993 at paragraph 19 [*Pascual*]; *Sultana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 533 at paragraph 27). The Applicant's H&C submissions did not provide any further explanation as to why his wife chose to conceal her marital status, or why she continued to conceal it for the three years it took to process her application. Accordingly, the Respondent submits the Decision to refuse the H&C application falls within the range of possible and acceptable outcomes.

[30] In the present case, the separation of the family is entirely due to the Applicant's own actions and the actions of his wife. If she had been truthful from the beginning, reunification in Canada would not be an issue. It was reasonable for the Officer to find that the factors behind the concealment of the Applicant's marriage did not favour granting an H&C exemption. The Federal Court of Appeal has held that the misrepresentation leading to a paragraph 117(9)(d) exclusion is a relevant public policy consideration in an H&C assessment (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 [*Kisana*]).

[31] The Respondent points out that in *Kisana*, above, the Federal Court of Appeal states that the mere fact that an officer focuses on hardship does not mean that a child's best interests have not been considered. At paragraphs 30-31:

> I now turn to the appellants' third argument that the officer limited her consideration of the best interests of the children to hardship, without regard to the other relevant factors. The fact that the officer focused her consideration of the children's best interests on the question of hardship does not necessarily lead to the conclusion that she failed to consider their best interests. In *Hawthorne v. Canada (M.C.I.)*, 2002 FCA 475, [2003] 2 F.C. 555, a majority of this Court (Décary J.A., with whom Rothstein J.A. (as he then was) concurred), held at paragraph 5 that an officer did not assess the best interests of children "in a vacuum" (para. 5 of the Reasons) and that an officer was presumed to know that living in Canada will generally provide children with many opportunities that are not available to them in other countries and that residing with their parents is generally more desirable than being separated from them.
>
> For the majority in *Hawthorne*, supra, an officer's task in assessing the best interests of a child will usually consist in assessing the degree of hardship that is likely to result from the removal of its parents from Canada and then to balance that hardship against other factors that might mitigate their removal.

[32] Further, at paragraph 6 in *Hawthorne*, the Federal Court of Appeal comments that it can be assumed that the officer knew that in most cases, the best interests of the child favours the child and his or her parents being in Canada:

> 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.

[33] The Federal Court of Appeal also held in *Legault*, above, that the requirement to consider the best interests of the child does not mandate a specific result. At paragraph 12, it is emphasized that it is but one factor to be considered:

> In short, the immigration officer must be "alert, alive and sensitive" (*Baker*, para. 75) to the interests of the children, but once she has

> well identified and defined this factor, it is up to her to determine what weight, in her view, it must be given in the circumstances. The presence of children, contrary to the conclusion of Justice Nadon, does not call for a certain result. It is not because the interests of the children favour the fact that a parent residing illegally in Canada should remain in Canada (which, as justly stated by Justice Nadon, will generally be the case), that the Minister must exercise his discretion in favour of said parent.

[34] The Federal Court of Appeal says in the above two cases that, for practical purposes, the task of an H&C officer is to determine the likely degree of hardship to the child caused by the removal of the parent, and to weigh this hardship, together with other factors, including public policy considerations, that militate in favour of or against the parent being in Canada with the child (*Hawthorne* at paragraph 6, *Legault* at paragraph 12).

[35] The Respondent submits that a review of the Officer's reasons demonstrate that she was alert and alive to the best interest of the child. She considered all of the Applicant's submissions in regards to heath care, education, and security. She also considered whether the family would be able to financially support themselves in the Philippines. While the Applicant contends that his child would be better off in Canada, this has been rejected by the Court as the relevant test because the result of such a test would almost be a foregone conclusion (*Li v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1292 at paragraphs 29-30, *Yue v Canada (Minister of Citizenship and Immigration)*, 2006 FC 717 at paragraph 9).

[36] In addition, the Officer's reasons did explicitly consider whether reunification should occur in Canada or the Philippines – it was recognized that the best interests of the child favoured reunification. However, it was the deficiency in the Applicant's H&C submissions that led the

Officer to conclude that the Applicant had failed to show that this reunification had to occur in Canada.

[37] The Court has held that the principle of family reunification cannot trump the basic requirement that Canada's immigration laws must be respected (*De Guzman v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1276 at paragraph 36, aff'd 2005 FCA 436). Moreover, when conducting an H&C assessment, reunification of a family does not necessarily outweigh the public policy consideration of upholding exclusions that result from the prior misrepresentation (*Kisana*, above).

[38] Accordingly, the Respondent submits the Officer's conclusion that the best interests of the child did not warrant reunification in Canada falls within the range of possible and acceptable outcomes. In light of the misrepresentation and the Applicant's failure to put forward a compelling reason for the concealment of his marriage, the Decision was reasonable.

The Applicant's Reply

[39] The Applicant submits there was no requirement on him to "put forward a compelling reason" for his "misrepresentation." He conceded that he was described by paragraph 117(9)(d), and was thus rendered inadmissible to Canada, and he was entitled to submit that he had a compelling reason to be allowed to immigrate to Canada based solely on issues on family reunification and on the best interests of his daughter.

[40] The Applicant points out that paragraph 117(9)(d) does not require concealment or misrepresentation. A family member is inadmissible under this section for not having been

mentioned on his relative's application for permanent residence as a family member and for not having been examined, irrespective of the reason for not having been mentioned.

[41] The IAD did not find that the Applicant or his wife intentionally concealed her marital status. The Applicant's wife's evidence before the IAD was that she did not mention the Applicant in her application for permanent residence because she did not consider herself married to him at the time of applying. She believed they had a "marriage contract," that had been registered as a marriage after she applied for permanent residence. In 2008, on petition of the Applicant and his wife, a Philippine court ordered the marriage certificate cancelled, but the IAD found that the marriage was still valid at the time of the wife's application for permanent residence. The IAD did not make a finding that there had been misrepresentation, nor was there any evidence the Applicant's understanding of the situation was any different than his wife's understanding.

[42] Contrary to the Respondent's submission, the IAD did not find that the Applicant's wife had "concealed" her marital status. The IAD did not take issue with the wife's evidence that she was not aware that she was married at the time of her application. However, according to the IAD, this did not change the fact that she was indeed married.

[43] The Applicant submits that the Respondent is not entitled to put forward findings of fact that the IAD did not make. To the extent that the Officer may have made findings on this issue that conflict with those of the IAD, it is submitted that the Officer exceeded his or her jurisdiction. The only issue for the Officer to determine was whether there were sufficient H&C factors to overcome this inadmissibility.

[44] As such, the Applicant submits that the Respondent's submissions that the Applicant's wife "chose to conceal her marital status," that this "continued" for some period of time, that the Applicant did not explain or justify this concealment, and that somehow this was fatal for the Applicant's H&C application, are incorrect and should be disregarded as not having any evidentiary foundation.

[45] The Immigration Policy Manual states that in an H&C application an applicant may rely on a compelling reason as to why he or she was not disclosed in his or her relative's application. This was pointed out in the *Pascual* case, above, cited by the Respondent. However, contrary to the Respondent's submission there is no requirement that the H&C application be based on a compelling reason arising from the non-disclosure. The application may be based on any compelling H&C factor. This is specifically stated at paragraphs 49 and 51 of *De Guzman*, above:

> Nor does paragraph 117(9)(d) preclude other possible bases on which Ms. de Guzman's sons may be admitted to Canada. In particular, they could apply to the Minister under section 25 of IRPA for a discretionary exemption from paragraph 117(9)(d), or for permanent resident status. Discretion may be exercised positively when the Minister is of the opinion that it is justified by humanitarian and compassionate circumstances relating to the applicant, taking into account the best interests of a directly affected child, or by public policy considerations…
>
> […]
>
> I do not agree. Ms. de Guzman could have made a section 25 application on behalf of her sons. The application could rely on the hardship to them of being separated from their mother. It is not realistic in this context to distinguish too sharply between the distress of the mother and that of her sons resulting from the separation, especially since "public policy considerations" may also be taken into account.

[46] The Applicant submits that to the extent that the Officer may have viewed the non-disclosure of the Applicant as a misrepresentation, the Officer erred. The Officer had not only the IAD decision before him or her but also the documentary evidence that had been presented to the IAD as to the circumstances of the non-disclosure.

[47] The Applicant concedes that the best interests of the child do not necessarily trump the other H&C factors, but it is something the Officer must consider. The Officer can only look at the entire picture if this factor is given proper consideration. The Officer did not do this, and so any other findings in relation to other issues arising on the H&C application are immaterial.

[48] The Respondent suggests the Applicant has omitted reference to the *Kisana* decision. This decision is referred to in *Hawthorne*, as well as the *Arulraj* decision. The Applicant submits that it is the Respondent that has omitted referring to any of the numerous cases from the Federal Court interpreting *Hawthorne* as requiring an H&C officer to consider the best interests of the child, and not only hardship to a child.

[49] The point made in *Kisana* is a matter of substance, not form. The Court found that because an officer focuses her consideration of a child's best interests on the question of hardship does not necessarily lead to the conclusion that she failed to consider their best interests. The Respondent has failed to point out how the Officer in the present case considered the child's best interests. The Respondent has also not distinguished the cases the Applicant cites, post-*Kisana*, which found that officers have erred by applying a hardship test rather than a best interests test.

[50] The *Li* and *Yue* cases cited by the Respondent merely stand for the proposition that was already conceded by the Applicant – that a child's best interests do not act as a trump to other

factors. However, the Officer must still examine the child's best interests with a great deal of care, and must do so from a best interests perspective and not a hardship perspective.

ANALYSIS

[51] The Applicant refers to and relies upon the jurisprudence of this Court in cases where an H&C Officer has imported the "unusual, undeserved or disproportionate hardship test" into a consideration of the best interests of the child. That is not the case with the present Decision. The Officer does not refuse the H&C application because the child would not suffer unusual, undeserved or disproportionate, or any other degree of hardship.

[52] The Officer simply considers hardships that the child might suffer along with other factors placed before him. Hardship is an obviously relevant factor in deciding best interests. As the Federal Court of Appeal pointed out in *Kinsana*, above, even a focus on hardship does not mean that a child's best interests have not been considered.

[53] A reading of the Decision as a whole reveals that the Officer considered a wide range of factors relevant to the child's best interests, including factors not mentioned by the Applicant. The use of the word "hardship" is merely a shorthand for the various disadvantages brought up by the Applicant. It is not a test that is applied to the best interests of the child. The Officer is, in fact, addressing the points raised by the Applicant in his application. The Applicant's submissions to the Officer were to the effect that, generally speaking, Canada is a better place to live than the Philippines when a range of factors, such as education, healthcare and security are taken into account. However, the Officer felt that these submissions were generalizations and did not necessarily apply to this particular child, and it is the best interests of this particular child that are

relevant to the H&C assessment. It is obvious that a child will usually be better off in Canada than in the Philippines, but the Officer had to look at the particulars of what this child faces in order to make meaningful comparisons between the Philippines and Canada. The child's best interests are not conclusive, so that, in deciding what weight should be given to the child's interests in the overall balance, the Officer had to assess what this particular child will face if family reunification takes place in the Philippines.

[54] In my view, the Officer's approach is consistent with paragraph 6 of *Hawthorne*, above. It is assumed that the child's best interests lie in Canada, but the Officer is attempting to ascertain the degree of hardship that a return to the Philippines would involve before weighing that hardship against the other factors mentioned in the Decision.

[55] In my view, where the Officer goes wrong, however, is in overlooking or playing down the evidence and submissions regarding the humble socio-economic of this family. This factor is crucial because, as the evidence shows, it will affect the child's educational future and her access to healthcare and general security.

[56] In the submissions to the Officer, it was pointed out that the Applicant works as a bus driver and a painter, his wife works as a nanny, and they are from a humble socio-economic background. The Officer was right to focus on the personal circumstances of this family. However, I see nothing in the Decision to suggest that the humble socio-economic background of the family and its impact upon the future of this child was reasonably taken into account.

[57] My reading of the Decision suggests that the Officer is not alert and alive enough to this issue. Hence, the hardship analysis does not sufficiently take this crucial factor into account. In my view, this is so important that it renders the Decision unreasonable.

[58] Both parties agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The decision is quashed and the matter is referred back to a different officer for reconsideration.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-5111-12
STYLE OF CAUSE:	**EDWARD SARIAN MONJE**
	- and -
	THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, ON
DATE OF HEARING:	January 10, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	February 1, 2013

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