Federal Court  Cour fédérale

Date: 20150116

Docket: IMM-786-14

Citation: 2015 FC 64

Ottawa, Ontario, January 16, 2015

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

ANTHONIA ONOWU
EMMANUEL ONOWU IN HIS OWN RIGHT, AND AS LITIGATION GUARDIAN TO THE MINORS, DAVE ONOWU, JOEL ONOWU AND EMMANUELLE ONOWU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicants seek judicial review of a decision made by a Senior Immigration Officer [Officer], dated January 14, 2014, whereby she refused their application for permanent residence

from within Canada, based on humanitarian and compassionate grounds [H&C], pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] For the reasons that follow, this application for judicial review will be dismissed.

II. Background

[3] This application is filed by the principal applicant, a 51 year-old male, citizen of Nigeria, and his dependants: a 41 year-old female Nigerian spouse, a 12 year-old son born in Nigeria, together with an 11 year-old son and a 5 year-old daughter born in Hong Kong. The principal applicant and his spouse also have a 2 year-old Canadian born son who is not included in their application.

[4] In February 2010, the applicants arrived in Canada from Hong Kong. They later filed a first H&C application and refugee claim which were both refused; they were denied refugee status in September 2012 by the Immigration and Refugee Board for reason of being excluded by Article 1E of the Convention relating to the Status of Refugees, as they had permanent resident status in Hong Kong.

[5] In their first H&C application form, it was disclosed that the principal applicant had permanent status in Hong Kong while his spouse and 12 year-old son held dependent visas; the 5 year-old daughter and 11 year-old son both held the right to abode, and were born in Hong Kong.

[6] In March 2013, the applicants filed a second H&C application for which they received a negative determination by letter dated January 14, 2014. This is an application for judicial review of that decision.

III. Decision Under Review

[7] The Officer concluded that the applicants had not shown they would face undue, disproportionate, or unusual hardship should they have to leave Canada to make an application for permanent residence under subsection 11(1) of the Act; the factors raised by the applicants were insufficient to warrant exceptional consideration for exemption.

[8] According to the Officer's application summary, the applicants had expressed "establishment" and "the best interests of the children" as two factors at issue.

[9] The Officer listed all the documentation submitted by the applicant family and remarked before beginning her analysis that "an essential part of an application for Humanitarian and Compassionate grounds is backing up statement with evidence, whenever possible."

A. *Best Interests of the Children (BIOC)*

[10] The Officer acknowledges that an H&C decision must consider the best interests of the children [BIOC]; she duly notes that such interests, as they exist in the legislation, do not outweigh all other factors in a case, but nevertheless should be given substantial weight. She notes the age of the children applicants, that there was a Canadian born child and considers the principal applicant's views as regards the children's interests: (i) that departure from Canada

would be detrimental because it would cause them "severe economic and/or educational disruption" as remaining children in Canada, as they are dependent on him to fulfill their financial, material, educational, psychological and emotional needs; (ii) that his child has sickle cell anaemia and cannot receive care for his condition in Nigeria; and (iii) that their children would be deprived of opportunities in Canada, and if left behind, would undermine the thriving family environment in which they have grown accustomed to.

[11] The Officer notes the evidence demonstrating the two applicant boys are performing well academically but that no doctor's letter is submitted in support of Dave's sickle cell anaemia nor any documentation provided to support the assertion that medical treatment could not be obtained in Nigeria.

[12] The Officer reasons that there is little chance the applicants would be separated against their will in the event of removal because "generally speaking if a family leaves Canada, they would go as a group" and as regards the Canadian born child, the parents still have an option of choosing whether the child would accompany them to Nigeria.

[13] At the end of the analysis, the Officer wrote as follows:

> It is generally accepted that children are best situated if they remain with their family. In addition, Canada has a good school and medical system. I accept that the children would benefit from living in Canada permanently.

B. *Establishment*

[14] According to the Officer, the level of establishment which the applicants have shown is "no more than would be seen in anyone who is in Canada on a work or study authorization". She does not consider three years long enough to demonstrate "a deep seated attachment and rooting in Canada" which would lead them to suffer hardship should they leave to apply for permanent residence through the usual legislative course.

[15] The Officer first discusses how the hardship envisioned under the "establishment factor" is "based upon the premise that the reason for staying in Canada for an extended period of time was beyond their control". She cites, as an example, the scenario where a home country experienced unsafe conditions and removals to that country are suspended.

[16] Second, the Officer accepts the submission that the children applicants would suffer educational disruption should they leave Canada but does not accept that economic disruption would result; "it is my opinion based upon his work history that the male Applicant would be successful in finding work to support his family wherever he wishes to live." As such, the Officer notes the principal applicant's submission that he has a history of stable employment accompanied by good financial management, business practice in Canada, home ownership and integration in the community of their church. This included paying taxes, contributing to the Canadian economy and being "very honest, hard working and law abiding with no criminal charges".

C. *Hardship*

[17] In the final section of her decision, the Officer concludes that the applicants have not demonstrated the level of hardship envisioned by the legislation. She summarizes her view of the evidence before her:

> The overall picture placed before me shows that the Applicant family has been working in Canada, paying taxes, running a small business, going to Church, attending school, receiving medical treatment and volunteering. The hardship of returning to their country, include uprooting the children, and finding work and a place to live in Nigeria.

[18] She notes the methodology in reaching a decision; considering "the individual elements and the cumulative effect of those elements" as assessed by weighing together all of the H&C considerations submitted by the applicants and the fact that the onus is on the applicants to show how their personal circumstances would either result in unusual and undeserved or disproportionate hardship in the event of having to apply for a permanent resident visa from outside of Canada. Citing Pelletier J. in *Irimie v Canada (Minister of Citizenship and Immigration)*, 2000 FCJ No 1906 [*Irimie*] at para 12, the Officer seemed to consider the applicants' level of hardship as analogous:

> […] [T]he hardship which would trigger the exercise of discretion on humanitarian and compassionate grounds should be something other than that which is inherent in being asked to leave after one has been in place for a period of time. Thus, the fact that one would be leaving behind friends, perhaps family, employment or a residence would not necessarily be enough to justify the exercise of discretion.

[19] The Officer accepts Nigeria as the home country of the applicants, notwithstanding the lack of evidence before her supporting the applicants' submission that: "[h]aving left Hong Kong

in February 2010 and arriving in Canada in February 2010 with the intention to make Canada their permanent residence, all the applicants have lost their status in Hong Kong – regardless of whether it is a right of abode or a temporary residence based on a dependent visa."

IV. Issues and Standard of Review

A. *Written Submissions vs. Oral Submissions*

[20] The applicants' written submissions are somewhat unclear and they are implicitly revised in their reply.

[21] At the hearing however, counsel for the applicants articulated the following issues:

(1) Did the Officer apply the wrong test in determining the applicants' establishment in Canada?

(2) Did the Officer apply the wrong test to assess the BIOC?

(3) Did the Officer err in providing inadequate reasons?

[22] All three issues are reviewable on a standard of reasonableness (for the first two issues, see *Blas v Canada (Minister of Citizenship and Immigration)*, 2014 FC 629 at paras 15-16; *Serrano Lemus v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 114) and *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 [*Kanthasamy*] per Stratas J. at para 36-37, discussing *Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36; and for the third issue, see *Newfoundland & Labrador Nurses` Union v Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62 [*N.L.N.U.*] and *Jnojules v Canada (Minister of Citizenship and Immigration)*, 2012 FC 531 at para 15).

[23] Therefore, the task in the case at bar is to determine whether the Officer's legal tests and reasons demonstrate "the existence of justification, transparency and intelligibility" and allow the decision to fall within "the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 [*Dunsmuir*] at para 47 and *Canada (Minister Citizenship & Immigration) v Khosa*, 2009 SCC 12 at para 59).

V. Analysis

A. *Preliminary Remarks*

[24] Some of the applicants' arguments and the evidence on which they rely was not before the Officer and are found in an affidavit sworn by the principal applicant. This includes purporting to new H&C considerations, such as fear of persecution in Nigeria (I note their submissions to the Officer discussed persecution in Hong Kong rather) and the health conditions of his Canadian child.

[25] With the exception of issues related to procedural fairness and jurisdiction, it is trite law that the Court must assess a decision based upon the record before the decision-maker. Therefore, no consideration will be given to those findings of facts or arguments which were not initially elaborated in the application before the decision-maker (*Ribeiro Gadelha Simas Reis v Canada (Minister of Citizenship & Immigration)*, 2012 FC 179 at para 58; *Smith v Canada*, 2001 FCA 86 at paras 5-8; see also *Rodriguez Quiroa v Canada (Minister of Citizenship & Immigration)*, 2007 FC 495 at para 28).

(1) Did the Officer apply the wrong test in determining the applicants' establishment in Canada?

[26] The applicants submit that the Officer applied the wrong test in determining their establishment in Canada by choosing a standard which: (i) compares or assesses their establishment against that of "anyone who is in Canada on a work or study authorization"; (ii) refers to "a demonstration of a deep seated attachment and rooting in Canada"; and (iii) considers the individual elements and the "cumulative effects of those elements" –a test only appropriate for determining persecution in refugee and Pre-Removal Risk Assessment [PRRA] cases. The applicants argue there is no basis for the test applied by the Officer; her analysis should have been guided by Appendix B of the Inland Processing Policy Manual, Chapter 5, "Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds" [Guidelines].

[27] Pointing to pages 45-36 of the Tribunal Record, the respondent argues that from his perspective, the real problem lies with the applicants' failure to discharge the onus required by subsection 25(1) of the Act, a high threshold (*Landazuri Moreno v (Minister of Citizenship and Immigration)*, 2014 FC 481 at para 22; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, at para 28; and *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 [*Owusu*] at para 8).

[28] Accordingly, the respondent argues, the Federal Court of Appeal has held that the hardship faced, "should be something other than that which is inherent in being asked to leave

the country after one has been in place for a period of time. Thus, the fact that one would be leaving behind friends, perhaps family, employment or a residence would not necessarily be enough to justify the exercise of discretion" (*Ahmad v Canada (Minister of Citizenship and Immigration)*, 2008 FC 646 at para 49; see also *Kanthasamy* at para 41).

[29] The respondent also asserts the Officer chose and applied the correct test — "hardship as outlined in the legislation" and no new test is created. No formulaic approach exists and by considering the "overall picture" placed before her, the Officer balanced the positive and negative factors.

[30] In my view, when the analysis is considered as a whole, the Officer considered the applicants' establishment in Canada in a way that is defensible and acceptable on the facts before her as presented by the applicants' submissions and supporting documentation. Her language of reference, or various modes of expression and comparison, in saying that the applicants' establishment was not exceptional for the purposes of an H&C application does not, in and of itself, create a wrong standard. The Officer reasoned by analogy to Pelletier J. in *Irimie*—that she did not see the hardship that would result from the applicants' establishment in Canada to be beyond asking one to "leav[e] behind friends, perhaps family, employment or a residence". And it was fully reasonable for her to adopt such an approach.

[31] The legislator has chosen not to prescribe a particular test to be applied by a decision-maker when determining whether to grant H&C relief. As Noël J. noted in *Paz v Canada (Minister of Citizenship & Immigration)*, 2009 FC 412 [*Paz*] at para 28, the Supreme Court of

Canada has confirmed in *Suresh v Canada (Minister of Citizenship & Immigration)*, [2002] 1 SCR 3 that applicants have "no right to a particular outcome or to the application of a particular test" He continues: "[t]he lack of official test or strict parameters is not justification for a judicial review of the decision of a Minister's delegate; it is simply the nature of a discretionary decision". Subsequently, *Paz* has been read as standing for the proposition that an applicant does not have an absolute right to the application of a particular legal test in the evaluation of his or her H&C considerations (*Iamkong v Canada (Minister of Citizenship & Immigration)*, 2011 FC 355 at para 36).

[32] In *Kanthasamy* at paras 50-52, Stratas J., writing for the Federal Court of Appeal, specified that the factors enumerated in the Guidelines are reasonable types of matters that an officer must consider on H&C grounds when raised by an applicant, but they are not law. The Guidelines cannot fetter the discretion of decision-makers. Therefore, there is no mechanical way in which an officer must approach such factors. Though he or she must consider them depending on the context and the factual circumstances.

[33] For the decision-maker, the purpose of the administrative factors is to promote consistency in decision-making, shedding light on how he or she is to meaningfully understand "usual and undeserved, or disproportionate hardship" which has recently been explicitly stated by the Federal Court of Appeal as the only "appropriate standard" which can be understood to exist for purposes of drawing structural boundaries around a decision-maker's discretion in H&C decisions (see *Kanthasamy*, paras 45-47 vis-à-vis *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817 [*Baker*], at paras 53-54). With respect to the factors

particularly, as mentioned in the foregoing, in order to meet the appropriate standard of subsection 25(1), the Officer was not required to approach them in a mechanical fashion.

[34] This conclusion can be easily extrapolated from *Kanthasamy*, above, at paragraph 53; in the same way the Federal Court of Appeal saw fit to say the manual does not present a closed list of factors to consider under subsection 25(1), neither can it be said that whatever list is said to exist ought to be approached formulaically by decision-makers.

[35] As for this Court, it has been held that the Guidelines are useful in evaluating the reasonableness of an officer's exercise of discretion on an H&C application (*Baker*, at paras 53 and 72). In addition, the factors "encompass the sort of consequences that, depending on the particular facts of particular cases, might meet the high standard of hardship associated with leaving Canada, associated with arriving and staying in the foreign country, or both" (*Kanthasamy* above, at para 50).

(2) Did the Officer apply the wrong test to assess the BIOC?

[36] The applicants submit the Officer applied the wrong test to determine the BIOC. Accordingly, they argue that while some interests were mentioned, the approach employed is not "alive, alert or sensitive" to the interests of the applicant children and the Canadian born child; the analysis does not weigh the BIOC against other factors and as such, the interests of the children are minimized, which makes the decision unreasonable. They argue the test set out by this Court in *Williams v Canada (Minister of Citizenship and Immigration)*, 2012 FC 166 [*Williams*] at para 63 should have been employed.

[37] The applicants cite the following from the Officer's reasons, in which appears her assessment of the BIOC:

> It is generally accepted that children are best situated if they remain with their family. In addition, Canada has a good school and medical system. I accept the children would benefit from living in Canada permanently.

[38] The applicants argue that the passage nowhere demonstrates if and how the Officer balanced the BIOC with other factors; that being the educational interests of the children and the child who has sickle cell anaemia. The applicants also note the Canadian child has a medical condition, which was not submitted to the Officer because the child is excluded from the H&C application. The applicants concede the Officer mentioned the child with sickle cell anaemia in her reasons, but argue that notwithstanding the lack of documentation: a) the applicant submitted to the Officer that treatment was unavailable in Nigeria; b) documentary evidence was submitted proving the child was receiving specialized treatment in Canada; and c) the same Officer took it upon herself to make assumptions, absent documentary evidence, in other circumstances; for instance, as mentioned above, the fact the principal applicant "would be successful in finding work to support his family wherever he wishes to live."

[39] Therefore, they argue the Officer was not justified in dismissing the submission that treatment was unavailable in Nigeria and that she failed to appreciate how the children had never lived in Nigeria, as they were previously in Hong Kong, a location they could not return.

[40] The respondent argues that the Officer applied the right approach by being simply alert, alive and sensitive to the BIOC, which is in line with *Baker*; no formulaic approach as set out in *Williams* is required.

[41] The respondent submits that given the evidence before her, the Officer not only chose the right test, but applied it effectively; the Officer was alert, alive and sensitive as she adequately stated the law on the BIOC, the age of the applicants and quoted the submissions of the applicants, an accurate summary, in conjunction with whatever evidence supported, including the child with sickle cell anaemia, and the concerns of being separated from the Canadian child. Secondly, the respondent points the Court to *Owusu* at paras 5 and 8:

> [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 & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.) 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, if an applicant provides no evidence to support the claim, the officer may conclude that it is baseless.
>
> [...]
>
> [8] H & C applicants have no right or legitimate expectation that they will be interviewed. <u>And, since applicants have the onus of establishing the facts on which their claim rests, they omit pertinent information from their written submissions at their peril.</u> In our view, Mr. Owusu's H & C application did not adequately raise the impact of his potential deportation on the best interests of his children so as to require the officer to consider them. [Emphasis added]

[42] Accordingly, the respondent argues that the submissions of the applicants were deficient because they did not provide enough supporting documentation; the evidence supporting the best interests of the ill children is deficient.

[43] I recognize that the children's best interests were not first identified as the starting point (*Chandidas v Canada (Minister of Citizenship & Immigration)*, 2013 FC 258 at para 63).

[44] However, I agree with the respondent, the caselaw is clear: there is no requirement that a decision-maker employ the *Williams* approach in order to demonstrate she was "alert, alive and sensitive" to the "best interests of a child", as required by *Baker*. Consistent with *Hawthorne v Canada (Minister of Citizenship and Immigration)*, [2003] 2 FC 555 [*Hawthorne*], this Court has upheld a variety of different approaches and has explicitly confirmed the *Williams* test as only one of those several methods available to decision-makers in assessing the "best interests of the child" (*Webb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1060 [*Webb*] at para 13).

[45] In *Webb*, the applicant similarly relied on paragraph 63 of *Williams* to argue there was a reviewable error. Mosley J. found that the approach was not practical; in a comparable way to the case at bar, it is difficult to see how the Officer could have assessed the degree to which the interests of the applicant children, including the Canadian child, would be compromised by a negative decision given the focus of the submissions, their minimal length and lack of supporting documentation relating to Dave's disease and unavailable treatment in Nigeria. The submissions focus, on a vague and general basis, the negative impact leaving Canada would have on the

children's future as regards their desirability to learn, opportunities, separation and living adaptability.

[46] The question is not whether the decision-maker chose and applied the right test but rather whether he or she chose and applied a reasonable approach. In order for an approach to be reasonable, the Officer's analysis must demonstrate that he or she is "alert, alive and sensitive" to the BIOC (*Baker*, above at para 75).

[47] An officer cannot duly satisfy this requirement if he or she fails to separate analytically the BIOC assessment from the H&C analysis, the latter underscored by the "usual and undeserved, or disproportionate hardship" standard. The source of the duty exists jointly in subsection 25(1) of the Act, unlike the factors which stem from the Guidelines. This Court has set aside decisions on the mere basis that the BIOC was measured against a standard of "usual and undeserved, or disproportionate hardship" (see for example, *Medina Moya v Canada (Minister of Citizenship and Immigration)*, 2012 FC 971 at paras 27-28).

[48] The Federal Court of Appeal has held that an officer is not "alert, alive and sensitive" if he or she fails to well identify and define the child's best interests (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 12). At that point, the obligation is fulfilled, and pursuant to his or her discretion, it is up to the officer to determine what weight, in his or her view, which must be given in the circumstances.

[49] However, the officer's capacity to well identify and define the BIOC is subservient to the onus which lies on the applicants, with a caveat. I agree with the respondent that the paragraph cited above is key (*Owusu* above, at para 5). The intensity of the BIOC analysis will depend on the length and focus of the applicant's submissions and the evidence adduced, but the latter is not absolute. In *Owusu*, the Federal Court of Appeal had found the applicant omitted pertinent information at his own peril because he did not sufficiently raise the impact of his potential deportation on the best interests of his children. However, the Court later implied that in circumstances where not enough supporting documentation is adduced, a positive obligation can be imposed on the officer for further inquiry, that is, if the impact on the children is sufficiently raised in the submissions; the submissions must not be "oblique, cursory and obscure" (*Owusu* at para 9).

[50] In *Griffiths v Canada (Minister of Citizenship and Immigration)*, 2011 FC 434 [*Griffiths*], Near J. found that the decision-maker had a positive obligation to inquire and discuss the risk alleged by the applicant in his PRRA narrative, despite lack of evidence, because his submissions about being branded an informer after his refugee hearing were "not couched in comparable obscurity" to the submissions in *Owusu* (at para 18). But in that case, the decision-maker committed a reviewable error because he failed to consider the informer allegation as a risk whatsoever in his reasons, which the Court determined was not merely raised in passing by the applicant (*Griffiths* above, at paras 12 and 15). *Owusu* was distinguished from *Griffiths* in very different circumstances than the case at bar. Here, the Officer mentioned the applicant child's illness and the evidence submitted as a result. She seemed to have implied she could not fully consider the BIOC without a doctor's note.

[51] *Hussain v Canada (Minister of Citizenship and Immigration)*, 2006 FC 719 [*Hussain*] is however more useful in the case at bar. Lemieux J. had found that despite country conditions in Pakistan, the applicants had failed to raise lack of schooling, health care and employment opportunities in Pakistan before the decision-maker; as such, the submissions were too oblique, cursory and obscure to impose a positive obligation on the officer to inquire further into the BIOC.

[52] While I note the impugned decision provided a fuller analysis, the facts in that case are strikingly similar to those of *Hussain*: the applicants had demonstrated that the children of school age had developed bonds in Canada, they adapted well to living and integrating into the Québec French Public School Educational System, there was a Canadian born child who was seventeen months, and the principal applicant, who also did not provide evidence that he could not find work in Pakistan (at para 9). Among other submissions, the applicants argued the BIOC analysis was deficient for reason of ignoring the lack of educational opportunities in rural Pakistan and health services available to the children in that country.

[53] In the case at bar, I find that the substance of the applicants' submissions are "oblique, cursory and obscure" for the purposes of requiring the Officer to inquire further in the BIOC analysis, absent adequate evidence. I note that in *Owusu*, the Court commented on the length of the submissions, but I think the principle applies equally to the substance.

[54] First, the applicants' submission of the negative impact resulting from educational interruption is abstract and includes no discussion about the ability to continue education in

Nigeria. Second, in relation to separation from the Canadian child, contrary to the applicants' submission, the child was mentioned, and no reference to illness is made, only the following appears in the application form: "My son (Ikenna) is a Canadian citizen and he looks up to me. I have endeavoured to be the best father for him. Since he was born, I have been there for him and I have ensured that he receives the right care and guidance to make him not only a productive part of Canada but also a God fearing person." At page 55 of the Tribunal Record, counsel for the applicants submitted to the Officer the financial or emotional dependency of the Canadian child to his parents, saying "[t]here is more than a simple biological relationship. They have an ongoing relationship of care, support and interdependence"; and the discussion continues with a similar tone in the pages that follow. But as regards to substance, no details are provided. A statement of live birth was submitted as part of the application.

[55] I note the following from *Hawthorne* as particularly helpful:

> 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. [Emphasis added]

[56] I do not see any specific reasons submitted to the Officer which required her to engage in a fuller analysis; no reasons were given particularly explaining why the Canadian child could not

be cared for, in his best interests, in Nigeria. I also note that when Décary J.A. in *Hawthorne* discussed the hardship facing children as one side of the coin, the Federal Court of Appeal had not yet decided *Owusu* (and *Hawthorne* was not discussed in *Owusu*).

[57] This case, to some extent, resonates with *Hawthorne*, but with respect, it is distinguishable. In *Hawthorne*, the Federal Court of Appeal did not find the Officer's treatment of the BIOC well identified or defined notwithstanding the Officer's excuse that there was lack of proof—the Court found the Officer's analysis as dismissive. For one reason, the applicant had expressed concern that her child would live with her father, whom she believed was charged with the sexual abuse of his step-daughter. The Court found that the Officer committed a reviewable error by dismissing the submission for lack of evidence since no documents showed the father had been charged; the applicant however still provided evidence suggesting that a children's aid society had concerns about Mr. Allen's suitability as a parent.

[58] In the case at bar, the applicants did not give the Officer a real opportunity, through their submissions or supporting documentation to appreciate the medical condition Dave suffers, let alone the impact care in Nigeria would have on him. The principal applicant does not mention his son's illness in his application form, and when asked if him or his family members listed in the application for permanent residence "had any serious disease or physical or mental disorder" he did not check "yes" (Tribunal Record, p 28). The following is what appears in the submission made by his counsel, accompanying the application, at the very end (Tribunal Record, p 56) :

> I also ask the reviewing officer to consider the medical condition for Dave Onowu. I understand that he has sickle cell amenia and that he is unable to get in Nigeria the kind of medical treatment that he has been receiving in Canada.

[59] In conjunction an appointment slip from the SickKids hospital listing various tests to be done by the sick child Dave, was submitted, and an eye-doctor appointment notice. Nowhere is there a diagnosis or explanation of the illness or treatment, no details are given such that the Officer could have inquired further in the BIOC analysis. An officer cannot be expected to be well-versed in medical knowledge.

[60] In light of the foregoing, I am satisfied that the Officer was "alert, alive and sensitive" to the BIOC given the quality of the submissions raised and the amount of evidence before her; the approach employed was reasonable.

(3) Did the Officer err in providing inadequate reasons?

[61] The applicants contend the Officer's reasons are unreasonable because they do not appear logical, transparent or intelligible (*Dunsmuir*, above). Accordingly, counsel submits the reasons are vague; in saying the applicants did not demonstrate a deep seated attachment and rooting in Canada, the Officer did not explain how she reached her conclusion nor what "deep seated attachment and rooting" actually means. Particularly, the applicants argue the Officer should have described the type and extent of establishment which would be considered "deep seated and rooted".

[62] In a similar vain, the applicants argue the Officer did not provide a full-fletched comparison of the applicants' establishment to "someone who is on a study or work permit"—nor was the standard actually described.

[63] The applicants also submit the reasons do not show how the Officer balanced the positive and negative factors in determining establishment. Facts not favouring exemption were not discussed in the reasons; the applicants rely on the following extract in the reasons:

> The overall picture placed before me shows that the Applicant family has been working in Canada, paying taxes, running a small business, going to Church, attending school, receiving medical treatment and volunteering. The hardship of returning to their country, include uprooting the children, and finding work and a place to live in Nigeria.

[64] The applicants argue that in over 120 pages of documents submitted, the Officer's reasons are not a fair summary; the applicants rely on the following written by the applicants:

> "Since we came to Canada, we have been working and we have been self-supporting. We have been active within the community and the Church, we preach at the Church and we mentor young children. Within the community, people look up to us for guidance and direction. We have been able to raise our kids in an environment of Christian thinking and aspirations. We have been paying taxes and we contribute to the Canadian economy. We have our own business and we own our own house. Since our arrival in Canada, we have been very honest, hard working and law abiding with no criminal charges."

[65] Rather, they argue, the passage fails to appreciate the picture of children bearing a multitude of different citizenships, experiencing hardship and risk in a country they do not know, facing risks of hardship despite a failed refugee claim and a child with a serious medical condition; far beyond a situation akin to an individual on a study or work authorization.

[66] However, the applicants concede that no PRRA evidence was submitted before the Officer and that the only medical evidence of child illness is the appointment letter and a brief mention in counsel's letter submitted.

[67] They also scrutinize the conclusion that the principal applicant "would be successful in finding work to support his family wherever he wishes to live" because it is baseless—the reasons do not provide a justification for such a conclusion. Accordingly, by failing to state the evidentiary burden, the statement is speculative and inadequate.

[68] The respondent submits that the reasons are directly reflective of the amount and quality of evidence submitted by the applicants. As regards the Officer's conclusion about the principal applicant finding work, the respondent argues the Officer's reasons explicitly specify that his conclusion is drawn from the "work history" which includes the principal applicant's experience in Hong Kong, there is no speculation about his potential to work in Nigeria. The applicant did not provide documentation to support the claim that he could not find employment in Nigeria.

[69] Respectfully, I cannot agree with the applicants, they have isolated small sections in the reasons to assert lack of justification, transparency and intelligibility—but as a whole, the reasons are adequate: they reveal why the application was unsuccessful, somewhat the process by which the Officer arrived at her conclusions (she stated the facts, summarized the submissions, the state of the law), a basis for this Court to assess possible grounds for judicial review, and how she found the supporting documentation as insufficient.

[70] The reasoning process is not flawless, particularly the balancing of positive and negative factors, but this isn't a requirement—among other things, all that is required is that the reasons show the decision-maker followed a reasoning process that merely sets out and reflects consideration of the main relevant factors (*VIA Rail Canada Inc v Canada (National*

Transportation Agency), [2001] 2 FCR 25 at para 22). On a standard of reasonableness, the Officer's reasoning process falls within the acceptable range because it clearly shows explicit and thoughtful consideration of the main relevant factors.

[71] With sympathy, I can see how the Officer's choice of expressing the benchmark of establishment (i.e. concepts such as "deep seated and rooted") under the Act is not ideal nor meaningful in the eyes of the applicants who have found their hardworking activities and fruits of their labour canvassed in all but a couple of sentences. But this Court has held that "when notes are the method used to provide reasons, the threshold for adequacy of reasons is fairly low"; the law is clear that administrative officers are not required to provide detailed reasons for their decisions in a way similar to that expected of adjudicative administrative tribunals—such a requirement would be inappropriate (*He v Canada (Minister of Citizenship and Immigration)*, 2012 FC 33 at para 39 and *Ozdemir v Canada (Minister of Citizenship & Immigration)*, 2001 FCA 331 [*Ozdemir*] at para 11).

[72] Further, this Court is required to respectfully appreciate "that a wide range of specialized decision-makers routinely render decisions in their respective spheres of expertise, using concepts and language often unique to their areas and rendering decisions that are often counter-intuitive to a generalist" (*N.L.N.U.* above, at para 13).

[73] As regards the volumes of supporting documentation submitted by an applicant, "[d]ecision-makers are not bound to explain why they did not accept every item before them.

Much depends on the significance of that evidence when it is considered in light of the other material on which the decision was based" (*Ozdemir* above, at para 9).

[74] I am satisfied that the Officer discussed the evidence sufficiently in light of all the material submitted. The reasons show that she considered what was at stake for the family—given whatever supporting evidence and submissions presented. The reasons may not canvass hardship nor risk to the extent the applicants would have hoped, but that is because most of the documentation submitted is oriented towards showing self-sufficiency, adaptability, community outreach and educational performance in Canada—not the probability of hardship nor lack of medical treatment in Nigeria.

VI. Proposed Question for Certification

[75] At the hearing, counsel for the respondent submitted the following question for certification:

- In H&C applications is the Officer required to follow the test set out in *Williams v Canada (Minister of Citizenship and Immigration)*, 2012 FC 166 at para 64 in order to demonstrate that she is "alert, alive and sensitive" to the best interests of the child?

[76] The respondent has asked to certify this question on few occasions - to name a few: *Gomez Jaramillo v (Minister of Citizenship and Immigration)*, 2014 FC 744 at paras 76-77 and *Martinez Hoyos v Canada (Minister of Citizenship and Immigration)*, 2013 FC 998 at para 40. For this Court to certify a question, it must be a serious question of general importance that

transcends the interests of the parties to the litigation and dispositive of the matter (*Zazai v Canada (Minister of Citizenship & Immigration)*, 2004 FCA 89 at para 11). I am satisfied that in *Hawthorne*, the Federal Court of Appeal has already dealt with the crux of the issue, and no question of general importance arises.

VII. Conclusion

[77] For the reasons discussed above, the application for judicial review will be dismissed and no question of general importance will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Jocelyne Gagné"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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