

Federal Court



Cour fédérale

Date: 20211014

Docket: IMM-6626-20

Citation: 2021 FC 1070

Ottawa, Ontario, October 14, 2021

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

SEVIL HUSEYNOVA

Respondent

JUDGMENT AND REASONS

**(Delivered orally from the Bench by teleconference
at Ottawa, Ontario on September 29, 2021)**

I. THE PROCEEDING

[1] This application for judicial review is brought by the Minister of Citizenship and Immigration (the “Minister”) with respect to a decision of the Immigration Appeal Division (“IAD”) dated December 7, 2020 (the “Decision”), in which it allowed the appeal and restored the Respondent’s permanent resident status on humanitarian and compassionate (“H&C”)

grounds notwithstanding her failure to meet her residency obligation under s. 28 of *Immigration and Refugee Protection Act* (“IRPA”).

II. THE FACTS

[2] Before the IAD, the Appellant asked for H&C relief because her daughter in Canada was pregnant and she planned to reside with her daughter and her husband and the expected grandchild in order to care for the child so that her daughter could return to work. The IAD accepted that this was a *bona fide* plan.

III. DISCUSSION

[3] The Minister has agreed that there is no need to have the H&C application reconsidered because his concern is with the analysis undertaken by the IAD, not with its decision to allow the appeal and grant H&C relief.

[4] The Minister’s concern, with which I agree, is that the IAD conducted a Best Interests of the Child (“BOIC”) analysis and based its decision in large part on the best interests of the Applicant’s unborn grandchild. The IAD made the following finding and reached the following conclusions:

FINDING

[35] I find that the Appellant’s daughter’s unborn child would benefit from the Appellant residing in Canada. This is a strong positive factor in the appeal.

CONCLUSIONS

[37] ... the Appellant's daughter's unborn child would benefit from the Appellant residing in Canada.

[38] I find that the Appellant's family ties to her daughter and the best interests of her unborn grandchild outweigh the negative factors in this appeal.

[39] The Appellant did not make best efforts to integrate into Canadian society when she became a permanent resident. However, her Canadian family ties and the best interests of her unborn grandchild are significant positive factors that justify her retaining her permanent resident status.

[5] In my view, the decision of the Supreme Court of Canada in *Winnipeg Child and Family Services (Northwest Area) v DFG*, [1997] 3 SCR 925, [1997] 3 RCS 925, [1997] SCJ No 96, [1997] ACS no 96 makes it clear that an unborn child has no interests. That being the case, the IAD incorrectly considered the best interests of the Respondent's unborn grandchild. It had no interests.

IV. CONCLUSION

[6] The application for Judicial Review is dismissed.

V. CERTIFICATION

[7] No question was posed for certification for appeal.

JUDGMENT IN IMM-6626-20

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6626-20

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v SEVIL HUSEYNOVA

PLACE OF HEARING: BY TELECONFERENCE

DATE OF HEARING: SEPTEMBER 29, 2021

JUDGMENT AND REASONS: SIMPSON J.

DATED: OCTOBER 14, 2021

APPEARANCES:

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