Federal Court  Cour fédérale

Date: 20220718

Docket: IMM-3343-21

Citation: 2022 FC 1056

Ottawa, Ontario, July 18, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

ERKIN NURIDDINOV
MOKHIGUL NURIDDINOVA
MALIKA SIROJIDDINOVA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family, Erkin Nuriddinov ("Mr. Nuriddinov"), Mokhigul Nuriddinova ("Ms. Nuriddinova") and their minor child, Malika Sirojiddinova ("minor Applicant"), who is now eight years old. The Applicants applied to be able to remain in Canada

and become permanent residents on humanitarian and compassionate grounds ("H&C Application"). The adult Applicants have two more minor children: a five year old and a three year old, both Canadian citizens. As these children are Canadian citizens, they were not part of the underlying application under review, but their interests were nonetheless required to be assessed as children affected by the decision on their parents' and sister's application for permanent residence.

[2] The Applicants' application for permanent residence based on H&C grounds was refused by a Senior Immigration Officer ("Officer") in May 2021. This is a judicial review of that refusal.

[3] The Applicants raise a number of grounds challenging the refusal. I have found it unnecessary to address all the issues raised by the Applicants because I have found the Officer's failure to give sufficient consideration to the best interests of the children ("BIOC") requires that the application be redetermined.

[4] For the reasons set out below, the application for judicial review is granted.

II. Factual Content

[5] The Applicants are citizens of Uzbekistan. They came to Canada in March of 2017. At that time, the minor Applicant was three years old. Soon after arriving, the family filed a claim for refugee protection. Their refugee claims were dismissed in November of 2017. The Applicants appealed the refusal and the appeal was dismissed by the Refugee Appeal Division

[RAD] in November of 2018. Leave to judicially review the RAD's dismissal was not granted by this Court.

[6] In March 2019, the Applicants filed their H&C Application. The application was refused in January 2021. The Applicants challenged this first refusal by filing an application for leave and judicial review in this Court. The judicial review was ultimately discontinued when the parties agreed that the refusal should be set aside and that the application should be redetermined.

[7] The Applicants were then invited by the Officer to make further submissions and these were filed on April 25, 2021. On May 5, 2021, the Officer refused the application.

III. Issue and Standard of Review

[8] As I have noted above, the Officer's analysis of the children's best interests is the determinative issue.

[9] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[10] In *Vavilov*, the Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the starting point of the analysis

begins with the decision-maker's reasons (at para 13). A decision-maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103).

[11] The Court described a reasonable decision as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Administrative decision-makers, in exercising public power, must ensure that their decisions are "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

IV. Analysis

A. *H&C Application*

[12] Foreign nationals applying for permanent residence in Canada can ask the Minister to use their discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because of humanitarian and compassionate factors, including the best interests of any child directly affected (s 25(1)). The Supreme Court of Canada in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is "to offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (at para 21).

[13] Given that the purpose of humanitarian and compassionate discretion is to "mitigate the rigidity of the law in an appropriate case", there is no limited set of factors that warrant relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but "officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them" (*Kanthasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74-75 [*Baker*]).

B. *Best interests of the child analysis*

[14] Subsection 25(1) of the *IRPA* directs officers considering applications for H&C relief to consider "the best interests of the child directly impacted." The Supreme Court of Canada in *Kanthasamy* considered the subsection 25(1) best interests of the child requirement, finding: "Where, as here, the legislation specifically directs that the best interests of the child who is 'directly affected' be considered, those interests are a singularly significant focus and perspective" (*Kanthasamy* at para 40).

[15] The Supreme Court of Canada re-affirmed its finding in *Baker*, that "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" (*Kanthasamy* at para 38, citing *Baker* at para 75). The Court also re-affirmed that a reasonable BIOC analysis requires that a child's interests be "'well-identified and defined' and examined 'with a great deal of attention' in light of all the evidence" (*Kanthasamy* at para 39, citing *Legault v Canada (Minister of Citizenship and Immigration)*, [2002] 4 FC 358 (CA) at paras 12, 31; *Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165 at paras 9-12).

[16] This decision directly affects the lives of three children, who are now eight, five and three years old. The Officer's analysis of their best interests failed to grapple with the central concerns raised in the application. In particular, the Officer failed to address the Applicants' concern regarding the inconsistent and poor quality of education available to their children in Uzbekistan.

[17] The Applicants provided documentary evidence that described the impact of the budget crisis on schools, including overcrowded classrooms with underpaid teachers, where students attend in few hour shifts: "At the primary and secondary level, hundreds of thousands of students attend overextended schools in shifts. […] The limited number of teachers means that fundamental subjects such as mathematics are poorly taught or not taught at all. […] Many teachers are obliged to hold several jobs just to meet their family's basic needs."

[18] Though these passages in the documentary evidence were outlined by the Applicants in their submissions, it was not addressed anywhere in the Officer's decision. Instead, the Officer provided no evaluation of the issue except a conclusion that "there [was] insufficient objective evidence before me that having to return back to Uzbekistan would deny them their fundamental rights to attend school."

[19] The Officer recast the issue as being about the children's right to attend school, instead of the quality of the education being offered — this is neither a meaningful engagement with the evidence, nor with the Applicants' submissions (*Vavilov* at paras 127-128). As explained by Justice Barnes, in order to give meaning to the requirement in Kanthasamy to "substantively consider and weigh all the relevant facts and factors" (at para 25), "[w]here a child is to be sent

to a place where conditions are markedly inferior to Canadian standards and where the expected hardship is still found to be insufficient to support relief, there must be a meaningful engagement with the evidence" (*Aguirre Renteria v Canada (Minister of Citizenship and Immigration)*, 2019 FC 133 at para 8).

[20] The Officer also noted that the adult Applicants "themselves were born and educated in Uzbekistan"; the relevance of this statement to the Officer's overall analysis of the education available to the children was not explained. I cannot see how it is a relevant factor in assessing the quality of education available to these children now.

[21] The Respondent argues that section 25 of the *IRPA* is "not designed to make up for the difference in standards of living between Canada and other countries." Yet, this was not the Officer's analysis. The Officer did not do any analysis of the education system in Uzbekistan, except to say that the children would not be denied the right to attend school. Moreover, the Applicants' concern was about the markedly inferior standard of education in Uzbekistan and the impact on their children. This is certainly a relevant factor to be assessed by an officer tasked with evaluating the children's best interests. The quality of education in Uzbekistan was a relevant factor raised by the Applicants; the Officer's analysis of the issue failed to "substantively consider and weigh" this factor as is required. The approach taken by the Officer did not demonstrate that the children's interests had been "'well-identified and defined' and examined 'with a great deal of attention' in light of all the evidence" (*Kanthasamy* at para 39).

[22] Overall, I am not satisfied that the Officer gave sufficient consideration, as is required, to the interests of the three children affected by their decision. No question for certification was proposed by either party and I agree that none arises.

JUDGMENT IN IMM-3343-21

THIS COURT'S JUDGMENT is that:

1. The decision of the Senior Immigration Officer dated May 5, 2021 is set aside;

2. The matter is sent back to a different officer to be redetermined; and

3. No question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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