

Federal Court



Cour fédérale

Date: 20230526

Docket: IMM-2121-22

Citation: 2023 FC 737

St. John's, Newfoundland and Labrador, May 26, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ARMANDO PAJA AND ARMELA ZENELAJ

Applicants

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS AND JUDGMENT

[1] Mr. Armando Paja (the “Principal Applicant”) and his wife Armela Zenelaj (collectively “the Applicants”) seek judicial review of the decision of an Inland Enforcement Officer (the “Officer”), refusing their request for deferral of their removal to Albania. The removal was scheduled for March 11, 2022, the request was denied on March 9, 2022.

[2] The Applicants are citizens of Albania who entered Canada in 2016. They sought refugee protection but their claims were dismissed. Applications for leave and judicial review were also dismissed.

[3] Between 2016 and 2021, two children were born in Canada to the Applicants.

[4] The Applicants sought deferral of their removal on several grounds, including the treatment of mental health illnesses suffered by the wife of the Principal Applicant, the processing of an outstanding application for permanent residence on humanitarian and compassionate (“H and C”) grounds and the best interests of their Canadian born children.

[5] The Applicants argue that the Officer breached their right to procedural fairness by relying on evidence from the Borgen Project without disclosing it to their Counsel. The Borgen Project discusses the Albanian government’s initiatives in the healthcare sector.

[6] As well, the Applicants submit that the decision is unreasonable because the Officer failed to consider all of the evidence that they submitted, in particular the contents of the UK Home Office Report.

[7] The Minister of Public Safety and Emergency Preparedness (the “Respondent”) argues that the Officer committed no reviewable error and that the decision meets the applicable standard of review, that is reasonableness.

[8] The decision, on its merits, is reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.). Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[9] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra* at paragraph 99.

[10] Upon considering the materials filed, including the contents of the Certified Tribunal Record, and the submissions, both written and oral, of the parties, I am satisfied that this application for judicial review should be allowed.

[11] In my opinion, the Officer unreasonably ignored evidence about the limited availability of treatment for mental health in Albania, in particular, the UK Home Office Report.

[12] This failure means that the Officer’s decision is not “justified”. This error is a sufficient basis to grant this application for judicial review and it is not necessary for me to address the arguments about an alleged breach of procedural fairness.

[13] On April 25, 2023, after the hearing, Counsel submitted the following question for certification [*sic* throughout]:

“Notwithstanding an Applicant’s awareness of a particular issue, can an IEO rely heavily in its Reasons on specific research carried out on the internet, that is neither standard (“such as Human Rights Watch, Amnesty International or country reports issued under government authority” (Duda v. MCI 2010 FC 512), nor found in the NDP, without first disclosing it to the Applicant for comment.”

[14] The proposed question was sent to Counsel for the Respondent for comment. By letter dated April 25, 2023, Counsel for the Respondent opposed certification of the proposed question.

[15] In his reply to the observations of Counsel for the Respondent, Counsel for the Applicants repeated his submissions in favour of the proposed certified question and asked for leave to file a document that was referenced in the decision under review but does not appear in the Certified Tribunal Record.

[16] The reply from Counsel for the Applicants was filed beyond the delay set by the Direction issued on April 25, 2023. Counsel for the Respondent was given the opportunity to comment on the late filing of the reply.

[17] By letter dated May 15, 2023, Counsel for the Respondent expressed no opposition to the late filing of the Applicants’ reply about the proposed certified question, but objected to the request that the record be supplemented by the late filing of a report.

[18] I agree with the positions taken by Counsel for the Respondent, about the proposed question for certification and about the introduction, at a late stage, of further documentary evidence.

[19] The proposed question for certification does not meet the test in *Canada (Minister of Citizenship and Immigration) v. Zazai* (2004), 318 N.R. 365 (Fed. CA).

[20] In the result, this application for judicial review will be allowed, the decision of the Inland Enforcement Officer is set aside and the matter is remitted to a different officer for redetermination. There is no question for certification.

JUDGMENT in IMM-2121-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Inland Enforcement Officer is set aside and the matter remitted to a different officer. There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2121-22

STYLE OF CAUSE: ARMANDO PAJA AND ARMELA ZENELAJ v.
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 24, 2023

FURTHER SUBMISSIONS: APRIL 25, 2023; APRIL 28, 2023; MAY 2, 2023; AND
MAY 15, 2023

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MAY 26, 2023

APPEARANCES:

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