Date: 20080228

Docket: IMM-990-07

Citation: 2008 FC 264

Ottawa, Ontario, February 28, 2008

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

PETER ALEXANDER
LESLIE-ANN ALEXANDER
SHEPHAN NISA ALEXANDER

Applicants

and

THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision by an enforcement officer (the officer), dated March 8, 2007, which refused the applicants' request for a deferral of removal.

[2] The applicants' request that the decision be set aside and the matter be remitted for re-determination by a new enforcement officer.

Background

[3] Peter Alexander, Leslie-Ann Alexander and Stephan Nisa Alexander (the applicants) are citizens of Grenada. Peter and Leslie-Ann Alexander are the parents of two daughters, Stephan Nisa (13 years old) and Naysa (5 months old). Stephan Nisa (the minor applicant) was born in Grenada and is subject to a removal order. Naysa was born in Canada and is eligible to remain in Canada.

[4] The applicants' refugee application was denied, as was leave for judicial review. Subsequently, their pre-removal risk assessment (PRRA) application was also denied. The applicants are the subject of removal orders which were to be executed on March 14, 2007. On March 1, 2007 the applicants made a request to defer removal to Canadian Border Services. The officer commenced her response on March 7, 2007. In a decision dated March 8, 2007, the officer rejected the applicants' request for deferral. This is the judicial review of the officer's decision.

[5] The applicants have since filed an humanitarian and compassionate (H&C) grounds application, but this appears to have been done after the request for deferral.

Officer's Decision

[6] In a decision dated March 8, 2007, the officer stated that she had considered the applicants' request, but "did not believe that a deferral of the execution of the removal orders was appropriate in the circumstances of [the] case." The officer's notes provide her reasons for refusing the request.

[7] The officer considered the impact of the removal on the minor child subject to removal and stated that there was "insufficient evidence presented to suggest that Nisa would not be able to continue her grade 8 academic year upon return to Grenada." The officer noted that Grenada had a British education system within which schooling was conducted in English. The officer found that this would ease Nisa's transition. The officer also considered a psychological report from a Dr. Young, Ph. D., which concluded that Nisa's "'anxiety does not reach a diagnostic level, for it quite localized to one issue', that is, separation from her parents." The officer submitted that Nisa's feelings are a normal reaction associated with deportation.

[8] The officer also considered that the applicants had lived in Grenada for the majority of their lives and that they had an extensive family network still residing in Grenada who would presumably provide some assistance to the applicants upon their return. The officer also noted that in Grenada the applicants could work and benefit from any social, medical and community assistance available, whereas in Canada the applicants were no longer able to work legally and receive social assistance or publicly funded health care.

[9] Although not requested to do so by counsel, the officer considered the impact of the removal on the Canadian born child involved, Naysa. The officer noted that Naysa had every right to remain in Canada. The officer found that "considering her young age, Nasya is likely to adapt fairly quickly to a new environment should her parents chose to take her along to Grenada."

[10] After having considered all the factors presented in the case, the officer was not satisfied that sufficient reasons existed to defer removal.

Issues

[11] The applicant submitted the following issues for consideration:

1. Is the correct standard of review of a decision rendered by a removal officer reasonableness or patent unreasonableness?

2. Did the removal officer ignore or misconstrue evidence thus rendering unreasonable findings?

[12] I would rephrase the issues as follows:

1. Is this application for judicial review moot?

2. If so, should the Court nonetheless exercise its discretion to hear the case?

3. If so, what is the appropriate standard of review?

4. Was the officer required to do a full assessment of the best interest of the child before rendering a decision?

5. Is the officer's decision reviewable given the evidence before her?

Analysis and Decision

[13] Is this application for judicial review moot?

At the commencement of the hearing, the respondent raised the issue of mootness. The parties made oral submissions to me on the issue of mootness. Both parties submitted that they intended to rely on their written submissions if I found the application not to be moot or if I found it to be moot and exercised my discretion to hear the application nonetheless.

[14] There were two main reasons given by the applicants in making their request for deferral, the denial of which is the subject of this judicial review. The first reason was that the applicants' eldest daughter was part-way through her school year. The second reason was that the applicants had an outstanding motion to re-open their refugee hearing before the Immigration and Refugee Board.

[15] The parties informed me that these were no longer live issues. The applicants' eldest daughter had since finished her school year and the application to re-open was denied and all review routes were exhausted.

[16] The leading case on mootness is *Borowski* v. *Canada (Attorney General)*, [1989] 1 S.C.R. 342. At page 353, paragraphs 15 and 16, Justice John Sopinka stated:

> The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.
>
> The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term "moot" applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the "live controversy" test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

[17] In the present case, both reasons for seeking the deferral no longer exist. As a result, I am of the view no live issues or controversy exists between the parties. The application is therefore moot.

[18] **Issue 2**

Should the Court exercise its discretion and hear the case?

In *Borowski* above, Justice Sopinka discussed the criteria to consider when deciding whether to hear a moot matter.

[19] The first rationale or criteria to be assessed in deciding whether to hear a moot case is that a court's competence to resolve legal disputes is rooted in the adversarial system. In the present case, the adversarial relationship is no longer present since neither reason for seeking the stay exists. As well, there are no collateral consequences as there were in *Vic Restaurant Inc.* v. *City of Montréal*, [1959] S.C.R. 58.

[20] The second criteria to be assessed is the concern for judicial economy. In the present case, I cannot see where the determination of the judicial review will have any practical effect on the parties. As such, I do not believe that scarce judicial resources should be applied to the determination of this judicial review.

[21] The third criteria listed by Justice Sopinka in *Borowski* above at page 360, paragraph 40 is:

> [...] the need for [a] Court to demonstrate a measure of awareness of its proper law-making function. The Court must be sensitive to its role as the adjudicative branch in our political framework.

[22] Taking the above criteria into account, I am of the opinion that I should not exercise my discretion to hear a case which is moot.

[23] Because of my findings with respect to mootness, I need not decide the other issues raised in the application.

[24] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[25] **IT IS ORDERED that** the application for judicial review is dismissed for mootness.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27:

48.(1) A removal order is enforceable if it has come into force and is not stayed.	48.(1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.
(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable.	(2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être appliquée dès que les circonstances le permettent.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:	IMM-990-07
STYLE OF CAUSE:	PETER ALEXANDER LESLIE-ANN ALEXANDER SHEPHAN NISA ALEXANDER - and - THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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