Federal Court  Cour fédérale

Date: 20131029

Docket: IMM-10240-12

Citation: 2013 FC 1105

Ottawa, Ontario, October 29, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

JAE BOK NOH, EUN MI HWANG, MIN WOO NHO AND MIN JI NOH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The applicants comprise a family of two parents and two adult children – one male, one female – who are originally from Korea. In 2009, when the son was 21 and the daughter was 17, the family applied for permanent residence on humanitarian and compassionate grounds. They had been living in Canada, without status, since 2000.

[2] In support of their application, the applicants pointed to their firm establishment in Canada, the best interests of the children, and the hardship of returning to Korea. Their application was dismissed, but on judicial review, Justice James Russell ordered a reconsideration of the best interests of the children.

[3] The officer conducting the reconsideration contacted the applicants by telephone to give them a chance to update their submissions. She first spoke with the adult applicants but had trouble communicating with them. The officer then spoke to the son, who found the officer to be aggressive and, in his view, intent on dismissing their application. By contrast, the officer perceived the discussion to be polite and positive.

[4] Based on the son's perception of the conversation, the applicants asked the officer to recuse herself for an apprehension of bias. The officer did not respond to that request, but dismissed the applicants' application based on discrepancies in their evidence and a lack of corroborating evidence.

[5] There are two issues:

1. Did the officer's conduct give rise to a reasonable apprehension of bias?
2. Was the officer's decision reasonable?

II. The Officer's Decision

[6] The officer took note of the applicants' poor financial circumstances, their history of self-employment in Korea, their family ties in Korea, country conditions in Korea, the parents' lack of English language skills, the children's ability to communicate both in English and Korean, the applicants' limited community ties in Canada, the fact that the children were no longer in school, the pressure on the son to support the family, and the possibility of the applicants' returning to Canada in the future.

[7] The officer concluded, based on these factors, that the applicants would not endure undue, undeserved or disproportionate hardship if they had to apply for permanent residence from Korea, rather than from Canada.

III. Issue One – Did the officer's conduct give rise to a reasonable apprehension of bias?

[8] The applicants argue that the officer's conduct displayed bias and prejudgment. In particular, they refer to the tone of the telephone conversation with the officer, the officer's suggestion that they had not integrated into the mainstream of Canadian society, her reference to the fact that the applicants had lived illegally in Canada for several years, and her suggestion that the parents had not acted in the children's best interests when they moved to Canada in 2000.

[9] In my view, only one aspect of the officer's conduct is worrisome. Based on photographs supplied by the applicants, she found that they interacted solely within the Korean community in Canada and concluded that this showed that they had not become part of the mainstream of Canadian society. I see no reason why meaningful interaction within the expatriate Korean

community in Canada could not be regarded as participation in the mainstream of Canadian society. The question before the officer was the nature and degree of the applicants' community ties. It does not matter whether those ties are to a particular sector of the community. The officer seemed to believe that the applicants had to reach out to all sectors of Canadian life before their community ties could be regarded as favouring their application for permanent residence. Obviously, that is not the case.

[10] Still, I believe the officer simply made a poor choice of words and then, on cross-examination on her affidavit, felt bound to defend them. Looking at the applicants' circumstances as a whole, their ties to the community was a relevant factor to consider. The officer found those ties to be limited. While I disagree with the officer's statement that only broad connections to Canada's multi-cultural dimensions will operate in an applicant's favour, I do not believe her statement gives rise to an apprehension of bias. It was merely one factor among many cited by the officer in her thorough review of the applicants' circumstances.

IV. Issue Two – Was the officer's decision reasonable?

[11] In their previous application for judicial review, Justice Russell concluded that the officer had reached a reasonable conclusion regarding the applicants' lack of establishment in Canada. However, he found that inadequate attention had been given to the best interests of the children. Accordingly, that was the main issue in the officer's decision.

[12] The applicants argue that the officer erred in her analysis of the best interests of the children in a number of ways. In particular, the officer wrongly believed that one of the goals of the *Immigration and Refugee Protection Act* [IRPA] is to achieve family unification outside of Canada. Further, the officer unreasonably found that the children's best interests favoured their return to Korea where they would be relieved of their responsibility to support the family. In addition, the officer failed to recognize that the children would need time to enhance their Korean language skills. In particular, the officer failed to take into account the fact that, while the daughter speaks Korean at home, she cannot read or write Korean.

[13] In my view, the officer's analysis of the children's best interests was not unreasonable. The officer took account of their educational plans, their language skills, their work histories, their family responsibilities, and their ages. That said, the officer clearly erred in finding that IRPA promotes family unification outside Canada – it actually favours family unification within Canada. However, looking at the officer's analysis overall, that error did not materially contribute to the officer's assessment of the children's best interests.

[14] Therefore, I cannot conclude that the officer's decision was unreasonable.

V. Conclusion and Disposition

[15] The officer's decision is not without flaws. By noting the absence of interaction with all segments of the Canadian population, she set too high a standard for consideration of the applicants' community ties. Further, she wrongly believed that one of IRPA's objectives is to unite families

elsewhere than Canada. However, I cannot conclude that the officer's decision gives rise to a reasonable apprehension of bias. Nor can I find that the officer's analysis of the children's best interests was unreasonable. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for certification, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"James W. O'Reilly"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10240-12
STYLE OF CAUSE:	JAE BOK NOH, EUN MI HWANG, MIN WOO NHO AND MIN JI NOH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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