Federal Court  Cour fédérale

Date: 20150629

Docket: IMM-5706-14

Citation: 2015 FC 805

Ottawa, Ontario, June 29, 2015

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

RACHID FATHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr. Rachid Fathi, seeks judicial review of a decision issued on June 25, 2014, by a Visa Officer at the Canadian Embassy in Morocco. The Visa Officer denied Mr. Fathi's application for an exemption on humanitarian and compassionate [H&C] grounds from a previously made determination that he is inadmissible to Canada on security grounds. The judicial review application is made pursuant to section 72 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [IRPA] while the inadmissibility determination was made pursuant to paragraphs 34(1)(f) and 34(1)(c) of the IRPA.

I. Immigration history

[2] It will be necessary to refer at some length to the prior immigration history of the applicant.

[3] The applicant came to Canada in October 1992 on a visitor's visa in order to attend a martial arts competition. He did not leave the country at the expiration of his visa and stayed in Canada, without status, until March 2005. He has not been back to Canada since that time.

[4] During his time in Canada, the applicant married twice with Canadian citizens. The first marriage ended in divorce and he remains married to his second wife, whom he married in March 2004. From this marriage were born two children, a daughter born in 2006 and a son born in 2010. Both children were born in Canada and are Canadian citizens, as is Mr. Fathi's spouse.

[5] The applicant first filed an application for permanent residence in 1995 as he was then sponsored by his first wife. The application was not pursued as their marriage broke up. In November 2004, he made a new application for permanent residence, this time being sponsored by his present wife. It is in February 2005 that the applicant disclosed that he was in Canada without status and, on March 17, 2005, he presented himself to the immigration authorities and returned to Morocco on a previously arranged flight.

[6] The permanent residence application was pursued while he was in Morocco. Accordingly, he was interviewed at the Canadian Embassy in September 2005. The applicant's marriage was found to be genuine. Security checks were also requested at that time. It is during these checks that certain concerns arose about the applicant's activities and contacts in Montreal, where he resided while living in Canada. The applicant attended a second interview in October 2006 where he was asked about these issues. His responses contained multiple falsehoods and misrepresentations. In January 2008, he requested a third interview in order to clarify the information he had provided. The interview was conducted in April of that year; the applicant admitted to having lied during his second interview and to having purchased and used false documents while living in Canada.

[7] It appears that the applicant purchased a fraudulent Canadian passport in 1996, as well as other documents, in the name of Rachid Farouq. These documents would have been purchased from a "Costa Rican". He travelled abroad on that passport on at least two occasions in the late 1990s, to Germany and Morocco. The applicant stated that after September 11, 2001, he destroyed the Farouq passport and documents and he resumed use of his real identity.

[8] During that same time period, the applicant associated with persons said to be linked to North African terrorist organizations, including a man named Abdellah Ouzghar. Mr. Ouzghar was eventually extradited to France for offences involving the forging of travel documents and membership in a terrorist organization (*France v Ouzghar*, 2009 ONCA 69).

[9] On May 26, 2010, a Citizenship and Immigration official at the Canadian Embassy in Morocco issued a decision refusing the applicant's sponsored application for permanent residence. It was determined that the applicant was inadmissible to Canada on security grounds as there were reasonable grounds to believe that the applicant engaged in terrorism and was a member of a terrorist organization. More specifically, the Officer asserted that he was associated with the Groupe Islamique Armé [GIA] and the Groupe Islamique Combattant Libyen [GICL]. The Officer also determined that the applicant was inadmissible to Canada for misrepresentation under paragraph 40(1)(a) of the IRPA for two years, as a result of the falsehoods he made in the interviews and for his use of fraudulent documents and the Farouq pseudonym.

[10] This determination was challenged on judicial review before this Court (the applicant did not counter the two year bar on admissibility for misrepresentation under paragraph 40(1)(a) of the IRPA).

[11] The judicial review application was dismissed (*Fathi v Canada (Citizenship and Immigration)*, 2011 FC 558). Although the Court found that there was no evidence on the record to show that the applicant was engaged in terrorism, the Court found that there was a "borderline but sufficient evidentiary basis" to uphold the admissibility determination under paragraph 34(1)(f) for membership in a terrorist organization as reasonable. In the view of the Court, the combination of the applicant's association with Mr. Ouzghar and other contacts in Montreal with his lies and use of false identity and passport met the "reasonable grounds to believe" threshold necessary for a finding under paragraph 34(1)(f).

[12] The two year period of inadmissibility having expired, a new application for permanent residence was made on or around February 27, 2013. The applicant is sponsored by his wife. The Court was advised during the hearing of this judicial review application that no attempt appears to have been made to seek an exception from the Minister of Public Safety and Emergency Preparedness from a finding that there is inadmissibility if the Minister is satisfied "that it is not contrary to the national interest" (subsection 42.1(1) of the IRPA).

[13] In July 2013, submissions and documentation were supplied in support of the application. The H&C submissions focused on the best interests of the applicant's children, the consequences of the separation of relatives and the hardship in Morocco. Regarding the children's interests, the applicant submitted that his children were deprived of his daily care and emotional support when they have the right to receive this from both parents. If they had to live in Morocco, they would have limited schooling and social development opportunities; indeed, when they tried to live in Morocco, his daughter encountered particular difficulty adjusting to life in Morocco, experiencing depression and isolation. The applicant submitted that his wife and children have already made three separate attempts to live with him in Morocco but had been unable to stay because of depression and isolation. Thus, unless the application is accepted, the family would face permanent separation.

[14] On the issue of hardship in Morocco, the applicant submitted that his wife and daughter would suffer particular hardship because of societal and governmental attitudes toward women. He also contended that health care in Morocco is deficient, claiming that users often have to pay their own expenditures and that the doctor to patient ratio is lower than elsewhere in Northern

Africa. Finally, the applicant submitted that the high unemployment rate in Morocco, including for educated women, is evidence of hardship that his family would face in the country. Given those circumstances, he submitted that the application justifies a positive H&C decision as it outweighs his inadmissibility to Canada.

II. Decision under review

[15] The decision on the H&C application came on June 25, 2014. A Visa Officer in the Canadian Embassy in Morocco denied the H&C application. The decision was reached on the following basis:

> I have formed this opinion because your family members can also be together in Morocco with you if you and your sponsor choose this option. You have a successful business here and can provide for your family. Your sponsor also has potential employment options here, and while not universal, good educational and health care options do exist in Morocco.
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> Many other couples with a Canadian-born or other third nationality spouse married to a Moroccan are able to live and to successfully bring up a family (with children of both sexes) and to have normal productive lives in Morocco. While there would no doubt be adjustments to make, as would be the case in moving to any other country, and while Morocco is different culturally, economically and socially from Canada, having to make these adjustments and experiencing these differences cannot be generalized as being undue hardships.
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> I note that there is no evidence other than what is stated by the submissions that your sponsor and eldest daughter suffered from depression and isolation while in Morocco or that they have any particular individual traits or conditions that would preclude them from eventually adapting to life in Morocco if you and your sponsor choose to live together here. They also have the ability to visit you at any time should they choose to remain in Canada.

It is from that decision that judicial review is sought.

III. The applicant's position

[16] The applicant argues that the best interests of the children favour the family reunification which, in turn, outweighs the finding of inadmissibility. He contends that the decision to deny the H&C application is unreasonable.

[17] First, the applicant takes issue with the conclusion reached about the hardship that relocating to Morocco would entail. Relying on the efforts made by the family members to live in Morocco for some periods of time, it is contended that the decision-maker speculates and ignores evidence; the Officer is said "to rely on his own undocumented experiences that others had adapted and to ignore the specific evidence of the Applicants" (Applicant's Memorandum of Fact and Law, para 22).

[18] Second, the applicant focuses on the best interests of the children. Citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*], we are reminded of the importance of the children's best interests. It is argued that the decision-maker was dismissive of the best interests. It is contended that the best interests were not identified, which would include the need to reunite the family. Furthermore, the decision lacked meaningful analysis which, in the view of the applicant, shows unreasonableness because the decision-maker should have assessed the degree to which the children's interests are compromised by a decision to not allow reunification in Canada.

[19] Finally, it is argued that the children, who are Canadian citizens, have a right to remain in Canada, which was not given weight in the decision rendered.

IV. Analysis

[20] This judicial review application must be dismissed. The applicant has not discharged his burden of showing on a balance of probabilities that the decision under review is unreasonable.

[21] Two preliminary matters must first be considered and disposed of. In its Memorandum of Argument, the respondent refers to subsection 25(1) of the IRPA as it currently reads:

Humanitarian and compassionate considerations — request of foreign national	Séjour pour motif d'ordre humanitaire à la demande de l'étranger
25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

[22] If that provision applies, the fact that the applicant has been ruled to be inadmissible under section 34 of the IRPA would appear to exclude him from the ambit of subsection 25(1): where a foreign national outside of Canada applies for a permanent residence visa, not only is the examination of the circumstances discretionary ("may", as opposed to "must", in the case of a foreign national in Canada), but that foreign national outside Canada must be someone "other than a foreign national who is inadmissible under section 34, 35 or 37".

[23] However, although the submissions in support of the application for permanent residence were sent on behalf of the applicant on July 13, 2013, after the coming into force of the provision in June 2013, the application itself was made on February 27, 2013 (Certified Tribunal Record [CTR], pages 1 and 65-66).

[24] The amendment to subsection 25(1) was included in the *Faster Removal of Foreign Criminals Act*, SC 2013, c 16, which was assented to on June 19, 2013. The statute provides that the old subsection 25(1) applies to requests made prior to the coming into force of the new subsection. Section 29 of the c 16 reads:

Humanitarian and compassionate considerations	Séjour pour motif d'ordre humanitaire
29. Subsection 25(1) of the Act, as it read immediately before the day on which section 9 comes into force, continues to apply in respect of a request made under that subsection 25(1) if, before the day on which section 9 comes into force, no decision has been made in respect of the request.	29. Le paragraphe 25(1) de la Loi, dans sa version antérieure à l'entrée en vigueur de l'article 9, continue de s'appliquer à toute demande présentée au titre de ce paragraphe 25(1) si aucune décision n'a été rendue relativement à cette demande avant l'entrée en vigueur de cet article 9.

[25] As long as the application was made before June 19, 2013, section 29 of c 16 applies. I consider that such application was made in February 2013, in spite of the fact the submissions were filed after June 2013. It follows that it is the old subsection 25(1) that governs. The applicant is not excluded from consideration.

[26] The second issue concerns the application of subsection 72(2) of the IRPA that provides, in part, that a judicial review application "may not be made until any right of appeal that may be provided by this Act is exhausted".

[27] A letter sent by Citizenship and Immigration Canada [CIC] on July 14, 2014 (CTR, pages 57-58) notifies the applicant's wife of the refusal to issue a visa to her husband, the applicant. The letter also indicates the availability of an appeal under subsection 63(1) for the sponsor of a foreign national "to appeal to the Immigration Appeal Board against a decision not to issue the foreign national a permanent resident visa." The Global Case Management System [GCMS] shows (CTR, pages 241-242) that an appeal would have been launched. Would that appeal prevent a judicial review application by operation of paragraph 72(2)(a) of the IRPA?

[28] For the purpose of this judicial review application, the availability of the appeal under subsection 63(1) appears to be taken away by the operation of subsection 64(1) of the IRPA which reads:

No appeal for inadmissibility	Restriction du droit d'appel
64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the	64. (1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour

foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.	atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant.

It follows that paragraph 72(2)(a) does not find application as there is not a right to appeal provided by the IRPA.

[29] That leaves the consideration of this case on its merits. The standard of review is not the subject of dispute: both the applicant and the respondent argue that reasonableness is the standard applicable. The case law is unanimous and the matter does not suffer much discussion (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*], at para 53; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559; *Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 [*Kanthasamy*]).

[30] Subsection 25(1) is somewhat unique. The description of the subsection given by the Federal Court of Appeal in *Kanthasamy* is a good starting point:

> [40] Seen in the wider context of the Act, subsection 25(1) is an exceptional provision. In the words of the Supreme Court, "an application to the Minister under s. 114(2) [now subsection 25(1)] is essentially a plea to the executive branch for special consideration which is not even explicitly envisioned by the Act": *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84 at paragraph 64. Subsection 25(1) is not intended to be an alternative immigration stream or an appeal mechanism for failed asylum claimants.
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> [41] The Federal Court has repeatedly interpreted subsection 25(1) as requiring proof that the applicant will personally suffer unusual and undeserved, or disproportionate hardship arising from

> the application of what I have called the normal rule: see, e.g., *Singh v. Canada (Minister of Citizenship & Immigration)*, 2009 FC 11. The hardship must be something more than the usual consequences of leaving Canada and applying to immigrate through normal channels: *Rizvi v. Canada (Minister of Employment and Immigration)*, 2009 FC 463.

[31] Here, the applicant raises the hardship that the children would suffer if the reunification had to take place in Morocco in case a permanent residence visa is not issued in spite of his inadmissibility in Canada. The decision-maker is faulted for suggesting that an alternative that is open to the family is reunification in Morocco. However, if the applicant considers that his family cannot join him in Morocco because of hardship, it is his decision. The applicant's wife and his children are not expelled from Canada. The Constitution guarantees them the right to enter, remain or leave this country (*Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, at section 6). No doubt it is unfortunate for the applicant that the exceptional provision that subsection 25(1) is was not applied in his case. But more than the hardship that comes from inadmissibility for security reasons is needed.

[32] The only true issue is whether the interests of the children are sufficient in this case to outweigh the inadmissibility finding. Put another way, it is the applicant's burden to show that it was unreasonable for the Minister to decline to grant the discretionary remedy that is subsection 25(1).

[33] In *Baker*, the Supreme Court held that "considerable deference should be accorded to immigration officers exercising the powers conferred by the legislation, given the fact-specific nature of the inquiry, its role within the statutory scheme as an exception, the fact that the

decision-maker is the Minister, and the considerable discretion evidenced by the statutory language" (para 62). However, the "failure to give serious weight and consideration to the interests of the children constitutes an unreasonable exercise of discretion" (para 65). A decision that is not "alive, attentive, or sensitive" to the interests of any children affected by an H&C application will not be reasonable (para 73).

[34] The Federal Court of Appeal, in *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 FCR 358 [*Legault*], clearly concluded that the interests of a child are not paramount. They are one factor that must be carefully considered:

> [11] In *Suresh*, the Supreme Court clearly indicates that *Baker* did not depart from the traditional view that the weighing of relevant factors is the responsibility of the Minister or his delegate. It is certain, with *Baker*, that the interests of the children are one factor that an immigration officer must examine with a great deal of attention. It is equally certain, with *Suresh*, that it is up to the immigration officer to determine the appropriate weight to be accorded to this factor in the circumstances of the case. It is not the role of the courts to reexamine the weight given to the different factors by the officers.
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> [12] In short, the immigration officer must be "alert, alive and sensitive" (*Baker*, *supra*, at paragraph 75) to the interests of the children, but once she has well identified and defined this factor, it is up to her to determine what weight, in her view, it must be given in the circumstances. The presence of children, contrary to the conclusion of Justice Nadon, does not call for a certain result. It is not because the interests of the children favour the fact that a parent residing illegally in Canada should remain in Canada (which, as justly stated by Justice Nadon, will generally be the case), that the Minister must exercise his discretion in favour of said parent. Parliament has not decided, as of yet, that the presence of children in Canada constitutes in itself an impediment to any "*refoulement*" of a parent illegally residing in Canada (see *Langner v. Canada (Minister of Employment and Immigration*) (1995), 29 C.R.R. (2d) 184 (F.C.A.), leave to appeal refused, [1995] 3 S.C.R. vii).

[35] In the circumstances of this case, it is evidently in the interests of the children that they have both of their parents with them, whether that be in Canada or Morocco. That much can be presumed. In *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 FCR 555 [*Hawthorne*], Justice Décary, speaking for himself and Justice Rothstein, made the point vividly:

> [5] The officer does not assess the best interests of the child in a vacuum. The officer may be presumed to know that living in Canada can offer a child many opportunities and that, as a general rule, a child living in Canada with her parent is better off than a child living in Canada without her parent. The inquiry of the officer, it seems to me, is predicated on the premise, which need not be stated in the reasons, that the officer will end up finding, absent exceptional circumstances, that the "child's best interests" factor will play in favour of the non-removal of the parent. In addition to what I would describe as this implicit premise, the officer has before her a file wherein specific reasons are alleged by a parent, by a child or, as in this case, by both, as to why non-removal of the parent is in the best interests of the child. These specific reasons must, of course, be carefully examined by the officer.
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> [6] To simply require that the officer determine whether the child's best interests favour non-removal is somewhat artificial--such a finding will be a given in all but a very few, unusual cases. For all practical purposes, the officer's task is to determine, in the circumstances of each case, the likely degree of hardship to the child caused by the removal of the parent and to weigh this degree of hardship together with other factors, including public policy considerations, that militate in favour of or against the removal of the parent.

[36] *Legault* and *Hawthorne* were concerned with the removal from Canada of a parent. The same principles apply where the matter concerns the decision to refuse to admit to Canada as a permanent resident the parent. Indeed, in the case at bar, the parent has been living outside Canada during the whole life of the children. No one doubts that the best interests of the children militate in favour of their father being allowed to come back to Canada. But without more, the

issue is whether the discretion exercised by the Officer, which is of considerable scope, can be said to be unreasonably exercised in that it would not fall "within a range of possible outcomes which are defensible in respect of the facts and the law" (*Dunsmuir*, para 47).

[37] Although the Decision letter issued to the applicant assessed his H&C application (including the best interests of his children) in three, relatively brief, paragraphs, the Visa Officer also made notes in the GCMS that provide insight into the Officer's assessment of the children's interests. This Court has repeatedly found that these notes form part of a Visa Officer's reasons (*Khowaja v Canada (Citizenship and Immigration)*, 2013 FC 823 at para 3 (per Justice Strickland); *Kontanyan v Canada (Citizenship and Immigration)*, 2014 FC 507 at para 26 (per Justice Noël), *Sithamparanathan v Canada (Citizenship and Immigration)*, 2013 FC 679 at para 29 (per Justice Russell)). The notes indicate that:

> … I have considered the best interests of the children. Both children are still young aged 8 and 3. I do not dispute that the best interests of the children would likely be for them to live with both parents. But the possibility exists for them to live with their father and mother in Morocco, and they have done so for certain stretches, although ostensibly the mother and daughter have had problems adapting to Morocco. I note there are double parent families who choose to either live together or to live apart and to make conjugal visits for various reasons (education, job, family commitments). A choice can be made for the family to stay together in Morocco. However if the sponsor believes that the best interests of the children are to remain in Canada, she also has this choice for them to remain in that environment, and to visit the PA when possible... (CTR at page 245)

[38] Contrary to the submissions by the applicant that the Officer was "entirely dismissive" and "failed to identify the children's interests" (Applicant's Memorandum of Fact and Law at para 30), the Officer was alive, attentive, and sensitive to the best interests of children. He or she

acknowledged that the children's best interests involved living with both of their parents, a matter that can be presumed, and that doing so in Morocco would require adjustments and adaptations on the part of the family members. The failure to find that the children's interests outweighed the other factors militating against granting H&C relief does not render the best interests of the child analysis unreasonable as per *Legault* and *Hawthorne*. The interests of the children were given serious weight and consideration.

[39] The submissions made by the applicant were not sufficient, in the opinion of the Officer, to outweigh what he or she described in the GCMS notes as a "serious inadmissibility". Given the nature of the applicant's immigration history including associating with suspected terrorists over a period of time and purchasing, using, and traveling with a fraudulent passport and identity documents, the exercise of discretion to deny the exemption is within the range of reasonable outcomes defensible in respect of the facts and law and the Court can understand why the Officer reached the decision and weighed the considerations as he or she did.

[40] In this judicial review application the applicant artfully seeks to turn the decision-making process on its head. The argument has three pillars. The inadmissibility finding is suggested to be marginal, the decision is attacked as being based on speculations and the best interests of the children are presented as being, in fact, paramount.

[41] However, the inadmissibility decision stands as the judicial review made concerning the inadmissibility finding failed. The applicant chose not to pursue a remedy that was available (subsection 34(2) of the IRPA, now replaced by section 42.1).

[42] The applicant attacked the alternative offered by the decision-maker of reuniting in Morocco. As the Court reads the reasons of the decision-maker, this constitutes no more than an attempt on his or her part to suggest that is possible a reunification if the family, after ten years of living without the daily presence of the father, decide to live in Morocco. If that is not their wish, for whatever reason, that does not make the discretionary decision that results from a "plea to the executive branch for special consideration" (*Kanthasamy*, para 40) unreasonable. The applicant claims that the alternative of living in Morocco is based on speculation. With all due respect, this is flipping the burden on its head. The applicant had to satisfy the decision-maker that he deserves the special consideration. When read as a whole, the decision is that subsection 25(1) does not apply in these circumstances; an alternative is for the family to reunite in Morocco where, in the view of the decision-maker located in Morocco, it is not impossible for families in like circumstances, to relocate. This family says that they could not live for long periods in Morocco. But that does not make reunification in Canada the only other possible outcome requiring that an H&C application be granted. Put another way, the non-availability of that alternative does not change the burden on the applicant to convince that the inadmissibility on security grounds ought to be lifted. The reasons make the point repeatedly that reuniting in Morocco is a matter of choice.

[43] I fail to see how suggesting, in response to an argument put to the decision-maker, that the availability to reunite in Morocco constitutes speculation because based on what has been witnessed in Morocco. The applicant would want the difficulty of his family to adjust to be dispositive of the issue. Not only does this approach flip the burden, but it is not what was

decided here. The decision-maker did not say that there was one alternative. The decision was much more nuanced. This passage from the decision deserves to be quoted at length:

> … I have considered the balance between the inadmissibility of the applicant and the H and C factors, including the best interests of the children. The applicant has associated with known terrorists, has used a false passport and a false identity, has misrepresented these facts to a Canadian visa officer, though apparently later came clean on the advice of his counsel. He has been found inadmissible under 34(1)(f) by a visa officer, a decision which was upheld by the Federal court [*sic*]. These are serious matters and the applicant's credibility re: his past is still questionable. There are also two children of this relationship now aged 8 and 3, and I am satisfied there is a bona fide marital relationship between this couple. I don't question that for a couple with children that the presence of both parents in the lives of the children may be preferable and may be in their best interests. That does not necessarily mean that this has to be in Canada. The family can also be together in Morocco if the applicant and sponsor choose, and while there would no doubt be adjustments to make, and while Morocco is different culturally, economically and socially from Canada, these adjustments and differences cannot be generalized as undue hardships. Some families also find it best for the partners to live apart, due to various reasons, but continue to remain connected via conjugal visits and via electronic communications. Granted this may not be the same as the nuclear unit being together, but it exists as an option based on circumstances. The option for the family to live together in Morocco is also there, and it must be reiterated that general country conditions cannot be construed as meaning that the family members would automatically be subjected to hardship. The PA has a business here, the sponsor is employable, there is access to good educational and health care though not to the same level as in Canada. The fact that Morocco is a feasible option is borne out by the number of mixed couples of Moroccan and third country origin, including Canadian, who live and raise their children (both girls and boys) successfully in Morocco including in Rabat. There has been no particular information provided to show that the sponsor and her children would undergo undue hardship by staying in Morocco with the PA. I understand that the sponsor and the children would have difficulties adjusting to a new society and culture, but this does not appear to be any different than what anyone else would experience in moving to a new country. Given all of the above, I am not satisfied that there are sufficient H and C grounds for me to

> use my discretion under A 25(1) to overcome what is a serious inadmissibility…

[44] As can be seen from the passage just quoted, and indeed from all the reasons given by the decision-maker, the best interests of the children were front and centre. The decision-maker was reacting to the argument made about the interests of the child. That the applicant be in disagreement with the assessment and the decision is understandable. But disagreement with the reasons, whether that be by the applicant or even the Court, does not constitute a reviewable error. Even more, the interests of children are not paramount.

[45] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland Nurses'*], the Court refers at paragraph 18, with specific approval, to the comments made by Justice Evans in *Public Service Alliance of Canada v Canada Post Corporation*, 2010 FCA 56, [2011] 2 FCR 221and the factum of the respondents:

> [18] … He notes that "perfection is not the standard" and suggests that reviewing courts should ask whether "when read in light of the evidence before it and the nature of its statutory task, the Tribunal's reasons adequately explain the bases of its decision" (para. 163). I found the description by the Respondents in their Factum particularly helpful in explaining the nature of the exercise:
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> > When reviewing a decision of an administrative body on the reasonableness standard, the guiding principle is deference. Reasons are not to be reviewed in a vacuum – the result is to be looked at in the context of the evidence, the parties' submissions and the process. Reasons do not have to be perfect. They do not have to be comprehensive. [para. 44]

[46] As reiterated recently by the Federal Court of Appeal in *Canada (Attorney General) v Boogaard*, 2015 FCA 150, "[u]nder reasonableness review, judges cannot interfere on the basis of their personal views about the harshness or otherwise of the decision" (para 81).

[47] As a whole, the Officer's decision may not be a model of perfection, although it is certainly better articulated than many other such decisions, but the decision to deny the applicant an exemption from his inadmissibility to Canada has not been shown to be unreasonable in light of the evidence and given the considerable discretion given by law to the Minister, "a plea to the executive branch for special consideration" (*Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 SCR 84). Administrative decision-makers have a margin of appreciation and it is not for reviewing courts to substitute their own view in the guise of concluding that administrative tribunals have not been sufficiently "alert, alive and sensitive" to the child's best interests. This Court is mindful of the admonition of the Supreme Court of Canada that "[r]eviewing judges should pay "respectful attention" to the decision-maker's reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful" (*Newfoundland Nurses'*, para 17).

[48] If every time the best interests of children are raised an H&C application must be granted, not only such an approach runs afoul of the Federal Court of Appeal decisions in *Legault* and *Hawthorne*, as well as *Dunsmuir*, by re-examining the weight to be given to the different factors but this would have the effect of amending subsection 25(1) of the IRPA by judicial fiat to make the interests of the child paramount, contrary to the text of the subsection. This judicial review application must be dismissed because the best interests of the children in having their father

come to Canada, which no doubt is preferable, would turn a discretion which must take into account the best interests of the children directly affected into the paramount factor decisive of an H&C application, that despite that "[t]he presence of children … does not call for a certain result" (*Legault*, para 12).

[49] As a result, the judicial review application is dismissed. No serious question of general importance was raised by the parties and none was found by the Court.

JUDGMENT

THIS COURT'S JUDGMENT is that the judicial review application is dismissed. No serious question of general importance was raised by the parties and none was found by the Court.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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