Federal Court  Cour fédérale

Date: 20150727

Docket: IMM-7531-14

Citation: 2015 FC 914

Ottawa, Ontario, July 27, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

JASMINE FLORE GOULE TAPIQUE
ERIC ARMAND NJANGA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act], Jasmine Flore Goule Tapique and Eric Armand Njanga [the Applicants] are seeking judicial review of a decision by an immigration officer [the Officer] to dismiss their application for permanent residence on humanitarian and compassionate grounds [H&C].

[2] For the reasons that follow, the application is dismissed.

II. Background

[1] Ms. Jasmine Flore Goule Tapique [the female Applicant] and her husband Mr. Eric Armand Njanga [the male Applicant] are citizens of Cameroon. The female Applicant first left Cameroon to attend university in Belgium and while she was there, she obtained multiple visitor visas to Canada between 2004 and 2008, most recently arriving in Canada in October 2007. The male Applicant entered Canada on August 31, 2005 after obtaining a student visa, but his immigration status became irregular after his visa expired in 2006. The Applicants have three young Canadian-born children who were aged six years, two years and seven months at the relevant time.

[2] The female Applicant sought refugee protection in January 2008, alleging that she feared returning to Cameroon because her father had agreed to a forced marriage for her, which she claims she became aware of in June 2007 and that this knowledge caused her to flee to Canada. The male Applicant applied for refugee protection in August 2009 alleging that he feared returning because of his membership in a particular social group (the female Applicant's family). Their claim was denied by the Refugee Protection Division [RPD] on April 21, 2010 on the basis of the RPD's concerns regarding their credibility, well-founded fear, and personalized risk.

[3] The Applicants applied for a Pre-Removal Risk Assessment [PRRA], which was refused on October 20, 2010. They applied for leave and for judicial review of the PRRA decision, which was denied by this court on September 13, 2011.

[4] The Applicants then submitted the H&C application on February 2, 2011 and a negative decision was rendered on March 18, 2013. They were granted leave for judicial review of that decision and the judicial review of the H&C decision was allowed on March 19, 2014.

[5] On July 7, 2014, the Applicants made additional submissions to update their H&C application, indicating that they have become established in Canada, were financially independent and that it is in their children's best interest to remain in Canada. They also identified that there was a risk upon return that the female Applicant would be forced into marriage.

III. Impugned Decision

[6] The H&C application was denied on October 16, 2014.

[7] On the issue of establishment, the Officer found that the Applicants had not submitted sufficient documentary evidence in support of their assertion that they would not be able to find employment in Cameroon given their knowledge and experience. The Officer found that they had not demonstrated that leaving their current employment would result in hardship or that they would not be able to financially support their family members in Cameroon. The Officer acknowledged that while their employment, financial independence, and efforts to integrate in Canada were positive, these factors were not sufficient to warrant an exemption or that severing ties with Canada could be qualified as causing unusual and undeserved or disproportionate hardship.

[8] Turning to the best interests of the Applicants' children, the Officer found it had not been demonstrated that the country condition documentation would apply to the children or that, given their education and work history, the Applicants would be unable to care for their children in Cameroon. The Officer concluded that it was not unreasonable to expect that the children would be able to adapt with their parents' support.

[9] The Officer found that the children would not lose their Canadian citizenship because they could elect to maintain either their Canadian or Cameroonian nationality at the age of 21. It had not been demonstrated how the fact that Cameroon does not recognize dual citizenship would compromise their future and development.

[10] In terms of risk, the Officer was not satisfied that the children would face a risk of forced marriage or kidnapping or that that they would not be able to access the educational or healthcare systems in Cameroon given that they would live with their parents who do not support such practices and would provide protection and opportunities for them.

[11] As for the educational system, the documentation submitted does not show that the children would not be able to access it. In addition, the government has taken measures to improve access to education. The Officer noted that their parents were able to attend university, study abroad and that nothing in the file demonstrates that the children could not obtain similar opportunities.

[12] Regarding the children's access to the health system, the Officer noted that the children have not had any medical concerns since birth and concluded that it was not demonstrated that the health system in Cameroon is not effective. Moreover, it was not demonstrated that the children require any particular health care or that they would not be able to access medical attention if it were needed.

[13] Regarding the alleged risks of harm in Cameroon, the Officer assigned little weight to the documents concerning the Applicants' assertions regarding forced marriage. The Officer concluded that their evidence did not refute the RPD's conclusions that this allegation was not credible and that it was insufficient to demonstrate the fears being alleged. The Officer acknowledged the risks due to general conditions in Cameroon (economic stability, human rights violations, gender inequality, violence against women, and impunity), but found that it had not been demonstrated how this evidence applied to their situation. The Officer concluded that the Applicants had not demonstrated that they would suffer undue, undeserved, or disproportionate hardship due to their profiles or the overall situation in Cameroon.

IV. Issues

[14] The Applicants have raised the following issues in this application:

1. Did the Officer err in his or her assessment of the best interests of the children?

2. Did the Officer err in his or her conclusion on establishment?

3. Did the Officer apply the wrong legal test when assessing hardship?

V. Standard of Review

[15] The standard of review of an immigration officer's H&C decision is reasonableness (*Dunsmuir* v *New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190, *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18, [2010] 1 FCR 360).

VI. Analysis

A. *Did the Officer err in his or her assessment of the best interests of the children?*

[16] The Applicants argue that the best interests of the children must be considered and weighed applying the formula set out in *Williams v Canada (Citizenship and Immigration)*, 2012 FC 166, 212 ACWS (3d) 207 and *Canada v Hawthorne (Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 FC 555. The failure to follow the two-step formula enunciated in *Williams* is a factor in the decision only if the Court has concerns that the best interests of the children have not been fully and appropriately considered. That is not the situation in this case where the Court finds that the Officer was "alert, alive and sensitive" and gave appropriate weight to the best interests of the children which were described fully in justified, transparent and intelligible reasons (*Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75, 174 DLR (4th) 193).

[17] It is clear from the Officer's reasons that she relied upon the parents' educational and employment background and the strong caring family unit they had formed with their children as an overriding factor in countering the Applicants' arguments that the Cameroonian state has difficulty protecting the rights of children and supporting their needs in terms of education, health and civil rights.

[18] The male Applicant has an undergraduate degree in applied mathematics from the University of Douala and studied at the Université de Montréal. He worked in Cameroon as a sales representative for Cameroon Airlines and in Canada he worked as a web programmer for various companies and opened his own business. The female Applicant began her studies in Cameroon at the University of Douala and continued them in Belgium at the École Supérieure de Communication et de Gestion, as well as obtaining a care-aid certificate from the Haute École Francisco Ferrer. She has worked in various capacities as a "home helper", personal care worker, maintenance worker, maid and salesperson, thereafter remaining at home to take care of her children and doing volunteer work.

[19] Therefore, I find that it was reasonable for the Officer to conclude that the Applicants did not demonstrate or explain why they would not be able to care for their children in Cameroon and support them in their social, economic, emotional and intellectual development. I find it similarly reasonable for her to conclude that the Applicants would likely be able to work upon their return to Cameroon and thus, would be able to continue to support their children.

[20] The Applicants say that the Officer did not consider that their children would not be able to acquire citizenship in Cameroon, as it does not recognize dual citizenship. However, while the Applicants complained about the Officer not addressing the problems children could face having only tourist visas while living in Cameroon, there was no evidence provided to support such allegations or to detail the hardship that this might cause the children. It is incumbent upon the Applicants to introduce persuasive evidence, including country conditions documentation to support their arguments on this issue (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paras 5, 8, 9, [2004] 2 FCR 635).

[21] The Applicants also argue that the Officer erred by concluding that it would not be contrary to the children's best interests to renounce their Canadian citizenship. This misstates the Officer's reasons, which indicate that it was the Applicants who stated that their children risk losing their Canadian citizenship and that the Officer found that the children will not lose their Canadian citizenship, because once they reach adulthood they will be able to choose which citizenship they wish to keep.

[22] The Applicants also took issue with the Officer's conclusion that the children will be able to adapt more easily to changes upon their return to their parents' country of origin being of a young age and considering that they will have their parents' support. I find the Officer's reasoning reasonable by reference to the children's ages, familiarity with the official languages of Cameroon, and the support they will receive from their caring and educated parents. The Officer found no indication of any potential breakup of the family unit by returning to Cameroon.

[23] I am satisfied that the Officer reasonably considered the best interests of the Applicants' children.

B. *Did the Officer err in his or her conclusion on establishment?*

[24] The Applicants argue that the Officer failed to arrive at any conclusion with respect to their establishment. I find this not to be the case, as after noting the positives aspects of their evidence regarding establishment, the Officer stated that "I find that the Applicants' establishment and integration in Canada are not sufficient in and of themselves to warrant an exemption."

[25] The Applicants take particular issue with the Officer's contention that because they decided to remain in Canada after their refugee protection claim was rejected in 2010 and subsequently filed their H&C application, that they should not be able to assert that hardship is unusual, undeserved or disproportionate. The Applicants contend that they were unable to leave because the CBSA could not obtain a tourist visa for their children. The evidence of who was responsible for the delays in obtaining visas, or being removed, such as by the delay caused by the female spouse becoming pregnant is controversial. In any event, I find this to be a collateral issue that does not impact on the Officer's ultimate decision.

[26] Overall, the Court is satisfied that the Officer's assessment of establishment was reasonable.

C. *Did the Officer apply the wrong legal test when assessing hardship?*

[27] I do not find that the Officer used the wrong legal test in respect of general conditions by confounding a section 97 risk analysis with an H&C hardship analysis. The Officer conducted a wide-ranging assessment of all the factors whereby her decision meets the *Dunsmuir* standard of reasonableness in respect of her rejection of the Applicants' claim.

VII. Conclusion

[28] The application is dismissed. There are no questions for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that application is dismissed and that there are no questions for certification.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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