

Federal Court



Cour fédérale

Date: 20170330

Docket: IMM-4312-16

Citation: 2017 FC 335

Montebello, Quebec, March 30, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**NDEY YAMA MBAYE NICOL
AJI SIRA NICOL (MINOR)
YUSUPHA NICOL (MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mrs. Ndey Yama Mbaye Nicol (the “Principal Applicant”) seeks judicial review of the decision of an Officer, refusing her Humanitarian and Compassionate (“H&C”) application that was made pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Principal Applicant is a citizen of Gambia. She is the mother of Aji Sira Nicol and Yusupha Nicol, minor children.

[3] The negative H&C decision is reviewable on the standard of reasonableness; see the decision in *Kanhasamy v. Canada (Minister of Citizenship and Immigration)*, [2015] 3 S.C.R. 909.

[4] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, and fall within a range of acceptable outcomes.

[5] Upon reviewing the materials filed and considering the submissions on behalf of the Applicants and the Minister of Citizenship and Immigration (the “Respondent”), and the guidance set in the decision of the Supreme Court in *Kanhasamy, supra*, particularly with respect to consideration by an officer of psychological reports, I am satisfied that the decision here is not reasonable.

[6] It is not clear from the decision that the Officer accepted or rejected the report prepared by the psychiatrist who attended upon the Applicant. In my opinion, the lack of a clear finding by the Officer on this issue renders the ultimate conclusion unintelligible.

[7] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another Officer for redetermination. There is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to another Officer for redetermination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4312-16

STYLE OF CAUSE: NDEY YAMA MBAYE NICOL ET AL v MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 29, 2017

JUDGMENT AND REASONS: HENEGHAN J.

DATED: MARCH 30, 2017

APPEARANCES:

Keith MacMillan FOR THE APPLICANTS

David Knapp FOR THE RESPONDENT

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