Federal Court Cour fédérale

Date: 20180425

Docket: IMM-2355-17

Citation: 2018 FC 446

Ottawa, Ontario, April 25, 2018

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

WEI HUANG

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] This application concerns a decision of a Canada Border Services Agency [CBSA] Inland Enforcement Officer [Officer] to refuse to defer the removal of the Applicant, Wei Huang, from Canada pending the finalization of his outstanding spousal sponsorship.

[2] Mr. Huang and his wife, Ms. Wei Lin, are the parents of a six-year-old Canadian child. Mr. Huang is a Chinese national with no Canadian immigration status. Ms. Lin is a Canadian

permanent resident. The couple have lived together for several years but did not qualify for a marital sponsorship until March 13, 2017. Their sponsorship application was filed on April 21, 2017 and, as of the date of the hearing of this application, it remained outstanding.

[3] Mr. Huang first entered Canada in 2003 as a student. In 2008, he married a Canadian spouse. This was a marriage of convenience and, in the result, the application for sponsorship was refused. Subsequently Mr. Huang was reported for misrepresentation and, in 2010, an Exclusion Order was made against him. It was at that point that Mr. Huang began his relationship with Ms. Lin. They cohabited from April 2011 and their child was born that December.

[4] In December 2013, the CBSA advised Mr. Huang that his removal from Canada would proceed and on April 20, 2017 the necessary travel documents were obtained from the Chinese consulate. He was then ordered to report for removal on May 29, 2017. On May 16, 2017, Mr. Huang requested a deferral of removal which the Officer refused on May 25, 2017. Justice Elizabeth Heneghan issued an Order on May 27, 2017 granting a stay of Mr. Huang's removal from Canada.

[5] Mr. Huang's request for a deferral of removal was based primarily on the principle of family unity and the prejudice to his young child arising from a lengthy separation. He asked that the removal be postponed until the outstanding family sponsorship application was fully processed. This would allow the family to remain intact and for Mr. Huang to provide child care while Ms. Lin worked.

[6] The Officer’s treatment of the best interests of the child is contained in the following passage from the deferral decision:

> In assessing whether to defer your scheduled removal, I acknowledge that the removals process is a challenging experience especially when it pertains to children being removed or that have loved ones deported from Canada. I acknowledge that according to your submissions, you have a Canadian born son, Jonathan, born in December 2011. Your counsel requests that you be allowed to remain in Canada due to the considerations for the best interest of Jonathan. This is a matter of great importance that requires serious consideration for his best interests. Please be rnindful that the depth of my discretion in assessing your request to defer your scheduled removal is of a very limited scope. In evaluating whether to defer your removal due to the child’s best interest, I reviewed the submissions received. As a Canadian citizen, Jonathan is not subject to any removal arrangements under the IRPA. He enjoys mobility rights to and within Canada; he is also entitled to publicly funded healthcare and education.
>
> There is no information available indicating that Jonathan will accompany you on your return flight to China. It is very likely that he will remain in Canada in the care of his mother, your wife, who is a permanent resident of Canada. I considered the information presented relating to the challenges your wife and child may experience as a result of your impending removal. You have not provided any evidence that your spouse will be unable or unwilling to seek out assistance if necessary to mitigate the challenges arising from your removal from Canada. Your evidence indicates that your spouse is currently employed and you also have received financial assistance from your family in China. You have not presented any evidence to establish that you may not provide financial assistance to your family in Canada following the enforcement of your removal order. I am not satisfied that you have presented compelling submissions to establish the enforcement of your removal order as scheduled will result irreparable and permanent separation from your family in Canada that may only be mitigated by the deferral of your removal as requested.

[7] I am not satisfied that the above analysis adequately addressed the evidence bearing on the child’s best interests in this case. The likely lengthy separation of Mr. Huang from his child

of tender years cannot be reasonably described on this record as routine or unexceptional. I accept that a stronger argument could have been made about the financial and care-giving hardships faced by this family in the event of Mr. Huang's removal. However, there was evidence that the family was surviving on Ms. Lin's modest income and repaying a relatively significant mortgage. Mr. Huang was also looking after the child care responsibilities while Ms. Lin worked.

[8] The suggestion in the Officer's decision that the best interests of the child threshold could only be met with satisfactory evidence showing "irreparable and permanent separation" vastly overstates the burden. There is no doubt that this separation would be prolonged and, therefore, hurtful to the child's formative needs. The lengthy separation of a parent from a child of tender years requires a far more nuanced assessment than this one.

[9] It is one thing for a deferral officer to limit the scope of a best interests analysis in circumstances where the child's interests have already been fully considered in an earlier review. It is quite another to conduct such a review where those interests have never been addressed before the proposed removal of a parent. In this latter situation, the review must be reasonably robust. Central to the exercise of that discretion must be a careful assessment of the length of the likely separation and the financial and emotional hardships that are expected to prevail over time. In my view, the analysis done here was perfunctory and inadequate and, therefore, unreasonable.

[10] The decision is accordingly set aside.

[11] By letter dated December 6, 2017, counsel for the Applicant proposed the following questions for certification:

> (1) Can the Federal Court order for the deferral to be granted as requested pursuant to s. 50 of the *Federal Courts Act*?
>
> (2) Can the Federal Court grant relief asked for in the deferral when it is in the interest of justice to do so such as, for instance, important issues such as the best interests of the child affected by the removal, have not received adequate consideration and can only be considered by the granting of the deferral.

[12] Having regard to the disposition of this application, there is no basis to certify these questions.

JUDGMENT IN IMM-2355-17

THIS COURT'S JUDGMENT is that the decision under review is set aside.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2355-17
STYLE OF CAUSE:	WEI HUANG v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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