Federal Court  Cour fédérale

Date: 20180731

Dockets: IMM-5343-17
IMM-5345-17

Citation: 2018 FC 806

Vancouver, British Columbia, July 31, 2018

PRESENT: The Honourable Mr. Justice Martineau

Docket: IMM-5343-17

BETWEEN:

HOPE SIBANDA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-5345-17

AND BETWEEN:

GRACE SIBANDA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants, Hope and Grace Sibanda, are challenging the legality of a decision of the High Commission of Canada, Visa Section in Pretoria, South Africa, refusing their permanent residence visa application based on humanitarian and compassionate considerations, essentially claiming that the visa officer ignored key elements of evidence, provided insufficient reasons and failed to consider the best interests of children involved.

[2] For the reasons that follow, the decision is reasonable, and these judicial review applications are dismissed.

I. Background

[3] Hope and Grace Sibanda are siblings, born respectively on March 3, 1990 and April 12, 1991. They are Zimbabwean nationals, but have been residing in South Africa since 2006 or 2007, first as refugees, and allegedly without legal status for a while, though there is no proof on record that they are at the risk of being removed to Zimbabwe in the near future. Hope works as a handyman and Grace as a hair dresser. The two live together, along with Grace's two children, Bridgette, born in 2007, and Junior, born in 2011. Bridgette goes to school and Junior attends daycare. Grace is in a relationship with Junior's father who lives nearby, and provides for them financially.

[4] The applicants' mother, Patience Magagula [Patience or sponsor], arrived in Canada in 2007 as a refugee from Zimbabwe along with then-husband Bongani Nyoni [Bongani], her

alleged son Emmanuel and Bongani's two daughters. Patience had joined Bongani's UNHCR claim. Hope and Grace were not listed as her children in Patience's initial permanent residence application, allegedly because Bongani refused to include them. Emmanuel was listed as Bongani's brother, not Patience's son. Following their arrival in Canada, Patience separated from Bongani, following years of physical, mental and sexual abuse. She is now a Canadian citizen, and lives with Emmanuel.

[5] Patience claims she tried bringing the applicants to Canada in 2007 or 2008 under the one-year window of opportunity provision, which allows refugees to bring in family members who were part of their permanent residence application overseas but could not travel with them to Canada, within one year after obtaining permanent residence in Canada. However, she allegedly missed the deadline, and the application was ultimately refused. The applicants explain that Patience had a difficult first year in Canada: she was ill, was diagnosed with HIV, and fled her abusive husband.

[6] On March 29, 2012, Patience filed an application to sponsor Hope, Grace and her two dependent children. In two letters dated December 4 and 5, 2012, Citizenship and Immigration Canada concluded that Patience was not an eligible sponsor. The letters first stated that Patience did not meet the minimum necessary income requirement as per subparagraph 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. In addition, the applicants were not part of the family class as they were not declared to Citizenship and Immigration Canada at the time of Patience's application for permanent residence or at the time

she became a permanent resident, thereby failing to meet the requirements listed in paragraph 117(9)(d) of the IRPR.

II. The H&C request and decision

[7] On December 5, 2012, Patience requested to overcome paragraph 117(9)(d) of the IRPR based on humanitarian and compassionate considerations.

[8] On April 16, 2013, the officer wrote a lengthy and detailed entry in the GCMS examining the reasons for the H&C request. Key elements noted are the following:

> • The applicants sought asylum in South Africa in 2007. They would have applied for refugee status with the UNHCR in 2011 in South Africa, but their claim failed. They could not renew their status;
>
> • The applicants live together. Grace has two children. Junior's father agrees that Grace should go to Canada with Junior;
>
> • The applicants both went to school in Zimbabwe. Grace is now a hairdresser and takes care of the children, and Hope does handy work;
>
> • Patience was forced by her parents to marry Bongani, who abused and raped her during the course of their marriage. Bongani had told her not to include the two applicants in her permanent residence application, apparently because he did not like them;
>
> • Emmanuel is the only one taking care of Patience. He wants to be reunited with his brother and sister. The forms submitted for the permanent residence application however listed Emmanuel as Bongani's brother. Patience apparently knew nothing about this, and claims he is her son;
>
> • Patience suffers from PTSD and depression, stemming from her rape and detention in Zimbabwe, and abuse by her husband before and after coming to Canada;

> • Patience has not been directly supporting the applicants financially: she receives disability support, money from a church and a support family;
>
> • In March 2012, Patience stated having been separated from the applicants for 11 years. She claims being forced to leave her children with her parents in 1998 when she married Bongani, but this is inconsistent with Grace's declaration that her mother visited frequently while she was in boarding school. The separation seems to have only occurred later, when she left Zimbabwe for South Africa in 2003. The officer noted that there is nothing unusual in Zimbabwean culture about leaving children with their grand-parents.

[9] In addition, still in the notes from April 16, 2013, the officer expressed concerns about some inconsistencies in the narrative. He had doubts about the truthfulness of the family relationship, about why Bongani would include Patience's son Emmanuel but not the applicants in their initial permanent residence application, and about the sponsor's explanations as to why the applicants were not included.

[10] The officer concluded that the applicants' birth certificates and identity first had to be verified before they could be invited to an interview.

[11] On June 3, 2013, the applicants submitted a letter and documents to the High Commission, invoking the following humanitarian and compassionate grounds:

> • Patience had done great work for HIV/AIDS awareness and had a strong support system in Canada to help her with her children and grandchildren. The application contains many letters attesting to Patience's advocacy work in Canada;
>
> • The applicants lacked legal status in South Africa and risked deportation to Zimbabwe, where the living conditions are poor;

- There are instances of violence against Zimbabweans in South Africa.

[12] On September 18, 2014, the High Commission notified the parties that it was unable to conduct a verification of their birth certificates. As such, they were invited to undergo DNA testing. Tests were scheduled for February 2015, but the applicants did not show. They were finally tested in March 2015. A letter dated March 25, 2016 confirmed that Patience was, in all likelihood the applicants' mother. An interview was then scheduled for November 28, 2016, but was postponed at the request of the applicants.

[13] A letter from the applicants, dated October 7, 2017, added the following grounds to their H&C request:

- The genuineness of the family relationship is now established through DNA testing;

- The only reason Hope and Grace were not examined at the time Patience became a permanent resident was because Bongani refused to include them in the application;

- The family is now in regular contact – they had the chance to see each other in November 2015 and January 2017 when Patience travelled to South Africa;

- Patience supports the applicants by contributing to their rent;

- Emmanuel has expressed wishes to have his siblings with him in Canada. Being separated from them has impacted his life – he has suffered from depression and anxiety. He was 14 at the time of the application, so his best interests should be considered;

- Junior and Bridgette's best interests should also be considered, by allowing young children to escape the hardship, danger and insecurity they face in South Africa, and giving them the opportunity to grow up in safety and stability in Canada with their grandmother and uncle.

[14] Statutory declarations of the applicants had also been filed in 2012 in support of the sponsorship application made by Patience, who also updated her application with a Statutory Declaration dated April 3, 2017. The applicants were finally interviewed on October 20, 2017. The application was also updated with relevant documentation, notably the sentence and reasons rendered by Mr. Justice Dillon with respect to the conviction of counts of aggravated sexual assault pronounced against Bongani in 2014.

[15] Decisions on the H&C request were rendered on January 10, 2018 (Hope) and February 13, 2018 (Grace). In both cases, the High Commission found that there were insufficient humanitarian and compassionate considerations to justify an exemption from the obligations of the Act. In both cases, the High Commission mentioned having considered the applicants' interviews from 2017, their relationship with their sponsor and siblings, and the evidence on file. In the case of Grace, her relationship with her boyfriend and children were also considered.

[16] The latest entry in the GCMS dated October 20, 2017, which will be analyzed in detail later, indicates that the officer considered the sponsor's abusive relationship; the applicants' relationship with the sponsor; the sponsor's efforts to bring her children back to Canada; the applicants' relationship with their brother Emmanuel; the applicants' living conditions in South Africa; the best interests of Bridgette and Junior; and the possibility for the sponsor to visit the applicants.

III. Applicable legal principles and standard of review

[17] Paragraph 117(9)(d) of the IRPR states that a foreign national cannot be considered a member of a family class by virtue of his relationship with a sponsor, if the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

[18] Subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA] allows the Minister to exempt foreign nationals applying for permanent residence visas outside of Canada from certain criteria or obligations of the Act, or even to grant them permanent resident status:

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.
[my emphasis]	[je souligne]

[19] Applying for H&C consideration is an exceptional measure – it is not simply another means of applying for permanent resident status in Canada (see Canada, Immigration, Refugees and Citizenship Canada, *Humanitarian and compassionate considerations: Assessment and processing* (Ottawa: Immigration, Refugees and Citizenship, 2017) [Program delivery instructions]). It specifies that the onus is on the applicant to provide all details related to his or her request including the reasons why he or she believes an exemption should be granted on H&C grounds, and to demonstrate that there are sufficient and compelling reasons for the exemption to be granted (see Program delivery instructions; *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5 [*Owusu*]).

[20] A visa officer's assessment for H&C relief is subject to a reasonableness standard, given the exceptional and discretionary relief sought (see e.g. *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]). As this Court recently mentioned in *Puri v Canada (Citizenship and Immigration)*, 2018 FC 132 at para 11, referring to the general principles stated by the Supreme Court in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61:

> Applicants must typically demonstrate the existence of "unusual or undeserved" or "disproportionate" hardship, which is defined as hardship that is "not anticipated or addressed" and the Immigration and Refugee Protection Act or its regulations and is "beyond the person's control" or hardship that would have "an unreasonable impact on the applicant due to their personal circumstances" (see *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 26 [*Kanthasamy*]). According to Guide 5291, the officer may in particular consider establishment in Canada; an inability to leave Canada that has led to establishment; ties to Canada; best interests of any children affected by the application; health considerations; family violence considerations; consequences of separation from relatives; factors in your country of origin (not related to seeking protection) or any

> other relevant factor (see Immigration, Refugees and Citizenship Canada, *Guide 5291 – Humanitarian and Compassionate Considerations*, Ottawa, Immigration, Refugees and Citizenship Canada, September 20, 2017 [Guide 5291]).

[21] When it comes to analyzing the best interests of children affected, the officer will generally consider, when raised, factors relating to a child's emotional, social, cultural and physical welfare (Program delivery instructions). This assessment has to be highly contextual, because of the "multitude of factors that may impinge on the child's best interest" (*Kanthasamy* at para 35). It must therefore be applied in a manner responsive to each child's particular age, capacity, needs and maturity (*Kanthasamy* at para 35). A decision under subsection 25(1) will therefore be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered (*Kanthasamy* at para 39 citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75; 174 DLR (4th) 193 [*Baker*]). At the same time, the applicants still have the burden of raising the arguments and factors they wish to see considered (Program delivery instructions). The best interest of the children affected will be an important, yet not determinative, factor in the assessment (see *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 12; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 24 [*Kisana*]; *Habtenkiel v Canada (Citizenship and Immigration)*, 2014 FCA 180 at para 46).

[22] I am satisfied in this case that the decision is reasonable and that the best interests of the children were duly taken into account.

IV. Analysis

[23] The decision to deny the H&C application was reasonable in this case. It is based on the evidence, the relevant factors have been considered and the officer paid reasonable consideration to the best interests of the children affected. The latter aspects (best interests of the children) will be treated separately.

A. *Findings based on the evidence on record and relevant factors*

[24] The applicants submit that the officer ignored important and contradictory evidence (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 1998 CanLII 8667 at para 17 (FC)). First, the officer never specifically considered the hardship of separation for the applicants and their mother. The officer ignored evidence of hardship for Patience, including the significant abuse she experienced and the serious impact on her mental health caused by family separation, as attested by numerous medical reports. Second, the officer ignored the applicants' relationship with their mother now. The officer overly focused on their relationship before Patience arrived to Canada. There is evidence on record that the relationship has improved since then. While it is undisputed that they had limited contact when all of the family was in Africa, the applicants submit that the officer failed to consider why it was so. Third, the officer ignored the evidence that Patience has been actively trying to bring her children back to Canada for nearly ten years. Lastly, the officer failed to appreciate that the reason the applicants are excluded from the family class is because of Bongani's actions: Patience was not responsible for failing to disclose the applicants. The purpose of paragraph 117(9)(d) is to deter applicants from withholding material facts about their dependants, while

here Patience did not make a conscious decision to exclude the applicants (see *de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 at para 32). This is precisely the kind of harsh situation section 25 of the IRPA seeks to remedy (see *De Guzman* at para 32).

[25] The respondent rather submits that officer did not ignore evidence and rendered a decision based on all relevant information presented. The GCMS notes set out a detailed account of the applicants' H&C submissions and reasons for denying their request. The officer specifically assessed the family separation, reasons for failing to declare the children, efforts to bring the applicants to Canada, and the applicants' relationship with the sponsor. The applicants simply disagree with the conclusions drawn by the officer and his weighing of the factors. In addition, the respondent notes that, while the mother's circumstances are relevant to assess her failure to declare the applicants, H&C considerations under section 25 of the IRPA require an examination of the foreign national's circumstances (see *Seshaw v Canada (Citizenship and Immigration)*, 2014 FCA 181 at para 23 [*Seshaw*]). This being said, the officer did consider the abuse and trauma experienced by the applicants' mother, but then reasonably focused on the circumstances of the applicants and the information they presented during their interviews: namely, their status and establishment in South Africa, their relationship to their mother; the applicants' relationship; and the interests of children.

[26] I agree with the respondent. The decision is based on the evidence on file. It is also sufficiently motivated. Read together, the decision-letters and the GMCS notes show detailed consideration of the arguments raised by the applicants in support of their H&C application, as well as the determinative factors to such claims. It is well established that GCMS notes form an

integral part of the reasons of a visa officer's decision (see generally *Baker* at para 44). Here, contrary to what the applicants contend, the notes indicate that the officer specifically considered the hardship of family separation; the applicants' relationship with their mother; the sponsor's efforts to bring children to Canada and the reasons for failure to disclose the applicants in the permanent residency application:

a) Hardship of family separation: According to the Program delivery instructions, consequences of the separation of relatives are indeed relevant considerations in a H&C application. At the same time, while the hardship suffered by Patience was somehow relevant to a holistic assessment of the claim, the H&C application had to be focused on the personal circumstances of the foreign nationals seeking relief, rather than on the sponsor's (*Seshaw* at para 23). Here, the applicants have not raised arguments as to the hardship they suffered from separation - the application was largely focused on Patience, which the officer specifically considered in his final entry from October 20, 2017, where he noted the abuse and trauma caused to the sponsor by her husband (CTR in Grace's file at p 12; CTR in Hope's file at p 9). Given the assessment still had to be focused on the foreign nationals' circumstances, it was therefore reasonable to only examine Patience's hardship summarily. He did not commit a reviewable error by not conducting a thorough review of Patience's medical reports on file;

b) Relationship of the applicants with their mother now: I agree that the officer could have conducted a more detailed examination of the current relationship between the applicants and their mother. However, I do not think his failure to do so is determinative. Unlike what the applicants argue, the weakness of the family relationship when they were in Africa was not the conclusive element for the officer. Rather, the discrepancies in the applicants' stories were: "there is too much divergence in Hope and Grace's story to make a finding of a strong [family] relationship" (CTR in Grace's file at p 12; CTR in Hope's file at p 10; see also the interview notes, CTR in Grace's file at pp 10-11; CTR in Hope's file at pp 8-9). In my opinion, this conclusion would stand, regardless of allegations of an improved relationship in recent years;

c) Efforts to bring children to Canada: In the notes from October 20, 2017, the officer specifically addressed the sponsor's alleged efforts for bringing her children to Canada. He noted some divergences in the applicants' and the sponsor's stories, and found that "there is insufficient evidence to indicate that she had taken significant steps to bring her children to Cda" (CTR in Grace's file at p 12; CTR in Hope's file at p 10). I would also note that the applicants have not provided any documentary evidence to provide traces of the alleged failed one-year window application; and

d) Reasons for failure to disclose the applicants in the permanent residence application: This factor was considered at the H&C application initially received in 2013. The notes from April 16, 2013 mention the following (both CTRs at pp 4, 6):

> Sponsor states that Mr. Nyoni told her not to mention PA or his sister at the time of their CR1 application and threatened her with violence if she did not obey him. He apparently did not like them and did not want to take care of them […] Sponsor […] did not tell anyone about her two children in Zimbabwe […].
>
> I find it very unusual that Mr. Bongani Nyoni would be prepared to include sponsor's son Emmanuel from her previous traditional marriage to Mr. Calvin Moyo, in his application but was not prepared to declare/include PA and his sister in the application, however, in my experience with similar cases, refugee applicants often do not declare/include their children if the children are living in another country because they know it would be necessary for these children to be medically examined and this may delay the processing of their own application. Given the fact that PA and her brother were still resident in Zimbabwe at the time sponsor and spouse applied as refugees, this may actually explain why there were not declared. My opinion is supported by the fact that PA indicates in her Stat Dec that sponsor told her after her arrival in Cda that Mr. Bongani Nyoni said that she and her "would be dealt with later" […].

e) The officer expressly considered the applicants' explanation as to why they were omitted from the sponsor's initial permanent residence application, but he simply doubted the truthfulness of that explanation. The officer was entitled to weigh the evidence, and to attach little weight to one of the arguments raised by the applicants. While the facts could

> very well have been interpreted differently, the officer's findings here fall within the range of acceptable outcomes (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[27] As such, there is no indication that the officer failed to consider key pieces of evidence. Rather, his assessment of the claim was based on the record, and the arguments raised by the applicants. In addition, at the risk of repeating myself, I agree with the respondent that it was reasonable for the officer to focus more on the applicants' personal circumstances rather than on the abuse and trauma experienced by the sponsor. The officer was right to focus his determination on the applicants' living conditions in South Africa, the violence they faced, their degree of integration in their community, the fact they have jobs, their relationship with each other and more: all relevant factors as per the Program delivery instructions. Based on these elements, he could reasonably find that, despite some precarious living conditions, there were no sufficient grounds to overcome paragraph 117(9)(d) of the IRPR.

B. *Best interests of the children considered by the officer*

[28] The applicants also submit that the best interests of the child were not adequately assessed. The officer did not identity or define with any clarity what he considered would be in the children's best interests, as directed by the Supreme Court in *Kanthasamy*. This includes considering whether reunification in Canada would be in each child's best interests. First, the officer failed to consider Emmanuel's best interests, given how much he suffered from being separated from his siblings. There is uncontradicted evidence that Emmanuel experienced depression and anxiety from separation. Second, the officer unreasonably assessed Junior and Bridgette's best interests given the family's precarious situation in South Africa. The officer

focused on the *status quo* of the applicants' lives in South Africa, rather than the possibility of life in Canada (see *Weng v Canada (Citizenship and Immigration)*, 2014 FC 778 at paras 31-33). Their best interest should be assessed even when looking at Hope's application: there is no principle establishing that the best interests of the child are only engaged in the context of a parent-child relationship.

[29] The respondent submits that the officer conducted a thorough examination of the best interests of each child. It found that the applicants did not have a strong relationship with Emmanuel who is already living in Canada and suffers no particular hardship: the applicants indeed indicated in their interview how they had very little communication with their half-brother Emmanuel. As for Junior and Grace, the officer considered the close relationship with their uncle Hope; the children's establishment in South Africa where they are going to school and have many friends; their close relationship with Junior's father; and Junior's father's financial support. The officer found that going to Canada would break the family apart. These were all relevant circumstances to consider: they demonstrate how the officer was alert and sensitive to the children's best interests. This being said, the best interests of Grace's children should have little impact on the assessment of Hope's application, as they are his niece and nephew. Moreover, although a factor to consider, the best interest of the child alone is not determinative (see *Kanthasamy* at para 23; *Kisana* at para 24). Finally, the Federal Court of Appeal explained in *Kisana* that, although children would generally benefit from more opportunities in Canada, staying with their parents is generally more desirable than separation (see *Kisana* at paras 30-31; 33).

[30] I agree with the respondent. I find the officer reasonably considered the best interests of the children involved. The applicants had the onus of presenting all the relevant factors and considerations to support their H&C application (see *Owusu* at para 5; see also Program delivery instructions). In the case of Emmanuel, the only argument raised was that he suffered from being separated from his siblings. The officer specifically considered this argument, but concluded that the evidence on file did not support finding a close relationship. The applicants and Emmanuel barely knew each other (see the notes from October 20, 2017 in the CTR in Grace's file at p 12; CTR in Hope's file at p 10):

> Emmanuel indicates that he desperately wishes to be reunited with his siblings. He expressed the 'pain he felt when graduating…without his family in Canada to support him'. During the interview, Hope indicated that he saw Emmanuel only one [sic], when he was an infant. He never communicated with Emmanuel. Similarly, Grace indicated that she only saw Emmanuel when he was 3. Based on the interview, it does not appear that there is a strong relationship between Emmanuel and the applicants […].

[31] This conclusion was open to the officer given the evidence on record, particularly the interview notes, and was not unreasonable. The applicants refer to "uncontradicted evidence" of Emmanuel's suffering. By that, they refer to two letters written by Emmanuel himself. The officer could very well doubt those letters' probative value.

[32] As for Junior and Bridgette, I agree with the applicants that their best interests had to be assessed for both Hope and Grace's applications. Subsection 25(1) refers to any child directly affected. The Program delivery instructions indeed specify that "the relationship between the applicant and "any child directly affected" need not necessarily be that of parent and child, but could be another relationship that is affected by the decision. For example, a grandparent could

be the primary caregiver who is affected by an immigration decision that would in turn affect the child." Here, the record clearly established that Hope lived with Grace and Junior, and was very close to them. Any decision in Hope's file would undeniably affect them.

[33] This being said, I am satisfied that the officer reasonably considered Hope and Grace's best interests. Indeed, the notes from October 20, 2017 indicate that the children's integration in school and their community; the proximity and support of their father; the family's overall degree of settlement in Africa; and the need to maintain the family together were determinative:

> Bridgette (10 years old) and Junior (5 years old) – are quite happy. According to Grace, Bridgette goes to the neighbourhood school. She has fully integrated the school system. She is doing quite well and has lots of friends. Junior is doing well at the creche. Furthermore, Grace is currently in a 7 year relationship with Junior's father. While they do not live together, Junior's father visits the family regularly. He contributes to the household and both children like him. It would appear that the family is settled in South Africa. Uprooting the applicants to Canada would mean breaking the family apart […].

[34] The applicants argue that the officer did not conduct a thorough assessment of the children's best interests, and failed to consider the possibility for a better life in Canada. Again, the applicants had the burden of raising arguments in support of their H&C claim (see *Kisana* at para 35, citing *Owusu* at para 5). Their submissions essentially focused on the fact Bridgette and Junior's lives would be better in Canada. Unfortunately, as highlighted by the Court in *Jaramillo v Canada (Citizenship and Immigration)*, 2014 FC 744 at para 75, "the fact that the children might be better off in Canada in terms of general comfort and future opportunities cannot […] be conclusive in an H&C Decision that is intended to assess undue hardship because the outcome would almost always favour Canada." Here, the applicants did not raise any specific arguments

as to the undue hardship the children would suffer should they stay in South Africa, but instead only focused on general “danger and insecurity”. The officer rather found that they attended school and were well integrated in their community. This conclusion appears reasonable given the record.

[35] Finally, officers generally consider that it is more desirable for children to reside with their parents than being separated from them (*Kisana* at para 30).

[36] All in all, it was therefore reasonable for the officer to assess the children’s living conditions in South Africa, and conclude that their best interests favoured keeping the family together, in a stable environment.

V. Conclusion

[37] For these reasons, these judicial review applications are dismissed. There is no question of serious importance raised by the applicants.

JUDGMENT in IMM-5343-17 and IMM-5345-17

THIS COURT'S JUDGMENT is that:

The Court adjudges and orders that the judicial review applications in file IMM-5343-17 and IMM-5345-17 be dismissed. No question is certified.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5343-17
STYLE OF CAUSE:	HOPE SIBANDA v MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-5345-17
STYLE OF CAUSE:	GRACE SIBANDA v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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DATED:	JULY 31, 2018

APPEARANCES:

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