Federal Court  Cour fédérale

Date: 20190322

Docket: IMM-3342-18

Citation: 2019 FC 360

Ottawa, Ontario, March 22, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

DAINIA MAGDALENE HILARIA SMITH and SHEMEKA CODENE KISHURMA JEFFERS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Dainia Smith came to Canada with her daughter, Shemeka Jeffers, from St. Vincent and the Grenadines. They applied for permanent residency on humanitarian and compassionate (H&C) grounds, and they also applied for a pre-removal risk assessment (PRRA). Both were denied. This is an application for judicial review in relation to the denial of the H&C application.

[2] The Applicants raise a number of issues regarding the H&C decision, but I do not find it necessary to address each of them. I am granting the application because I find that the decision

is unreasonable because it focuses almost exclusively on the hardship or risk the Applicants would face upon their return to St. Lucia, rather than on the difficulties they would face in St. Vincent, which is the only country where both Applicants are citizens and where they said they would go if they were forced to leave Canada. A decision focused on the wrong country cannot be reasonable.

I. Background

[3] Ms. Smith was born in St. Lucia. When she was 13-years-old, her mother fled an abusive husband and moved to St. Vincent. Ms. Smith was left to care for her brothers and sisters. She eventually followed her mother to St. Vincent, and her siblings eventually followed them to St. Vincent too. Ms. Smith is a citizen of both St. Lucia and St. Vincent.

[4] Ms. Smith had her daughter, Shemeka Jeffers, in St. Vincent, and her daughter is a citizen of that country. When her daughter was one-year-old, they moved to Canada. After some years, Ms. Smith met a Canadian citizen who decided to attempt to sponsor her and her daughter for permanent residency. That application was denied. Ms. Smith and her daughter then applied for H&C relief, and submitted a PRRA application. The PRRA was denied on April 25, 2018, and the same officer (the Officer) denied the H&C claim on the following day.

II. Issues and Standard of Review

[5] The Applicants have raised a number of issues with the H&C decision. They argue that: (i) the Officer applied the wrong legal test to the consideration of the H&C claim, (ii) the assessment of the best interests of the child was faulty, (iii) the Officer failed to consider the

Applicants' establishment in Canada, and (iv) the assessment of the country conditions was unreasonable.

[6] I do not find it necessary to address all of these concerns. The standard of review of an officer's H&C decision is reasonableness. In short, the decision must fall within the range of reasonable outcomes on the law and the facts (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

III. Analysis

[7] In this case, the H&C claim was based primarily on the hardships the Applicants would face if they were to return to St. Vincent – the country from which they had come to Canada; the place where Ms. Smith had brothers and a home to return to, and the only country Miss Jeffers has ever lived in prior to coming to Canada. The H&C application states that the home in which the Applicants lived in St. Vincent is "the only home that Dainia has, if she is forced to leave Canada. Realistically, if she is removed from Canada, both her and Shemeka would have to move into this home, as there is literally no other place available to either of them…" The Application sets out in great detail the hardships the Applicants would face on return to St. Vincent. While there is some mention of the difficulties associated with a return to St. Lucia, the overall thrust of the application is clearly focused on a return to St. Vincent.

[8] For reasons which are not explained in the decision, the Officer assessed the risk of return to St. Lucia. While there is some mention to conditions in both countries, approximately half of the decision is devoted to an extensive quotation from a Unites States Department of State report on conditions in St. Lucia. The following passages set out the key findings of the Officer:

> Based on the evidence before me, I am not satisfied that going to St. Lucia would have a significant negative impact on the best interests of the child.…
>
> The adult applicant was born in St. Lucia and spent a large part of life living there While I accept the applicants may face some difficulties in readjusting to their lives they have not persuaded me that it would justify granting an exemption under humanitarian and compassionate considerations. It is further reasonable to believe that during the adult applicant years in St. Lucia that she would have developed and continued to have friends, acquaintances and social networks.…

[9] The Respondent suggested that since the Officer decided the PRRA based on an analysis of risk of return to St. Lucia, this was simply transposed to the H&C application. That may well be true, and without pronouncing on whether that would be a reasonable basis for such an approach, I would simply observe that this is simply speculation, since that explanation is not found in the H&C decision itself.

[10] The jurisprudence establishes two key propositions: (i) a decision that, in substance, is focused on the wrong country is unreasonable (*Pinto Ponce v Canada (Citizenship and Immigration)*, 2012 FC 181 at para 41; *Landaverde v Canada (Citizenship and Immigration)*, 2005 FC 1665 at paras 35-36); and (ii) a decision which makes passing reference, clearly in error, to the wrong country will not be unreasonable simply because of such an inadvertent mistake (*Earl v Canada (Citizenship and Immigration)*, 2011 FC 312; *Deyo v Canada (Citizenship and Immigration)*, 2014 FC 381).

[11] In this case, I find that the substance of the Officer's analysis of both the H&C claim and the best interests of the child issue was focused on St. Lucia rather than St. Vincent. The problem with this is that the detailed H&C submissions of the Applicants made it clear that if they were

forced to leave Canada, they would have to return to St. Vincent since that is where they had lived prior to coming to this country, and that is where Ms. Smith's brothers live. She has no familial or other ties to St. Lucia. Miss Jeffers has never lived in St. Lucia and is not a citizen of that country. Neither of the Applicants has any continuing relationship with Miss Jeffers' father and Ms. Smith's mother is deceased. The evidence shows that Ms. Smith's brothers are her only remaining immediate family, and they all live in St. Vincent.

[12] The Officer decided to focus the analysis on the wrong country, or at a minimum failed to consider in any meaningful way the hardships the Applicants would face in St. Vincent, the country which they clearly said they would return to if they were forced to leave Canada. For this reason, I find the Officer's decision is unreasonable. I am therefore quashing the decision, and returning the matter to a different Officer for reconsideration.

[13] The parties did not propose a question of general importance for certification, and none arises on the facts of this case.

JUDGMENT in IMM-3342-18

THIS COURT'S JUDGMENT is that:

1. The application is granted, the decision is quashed, and the matter is returned to a different officer for reconsideration.

2. There is no question for certification.

3. The style of cause is amended, with immediate effect, to reflect the correct spelling of the Applicants' names: DAINIA MAGDALENE HILARIA SMITH and SHEMEKA CODENE KISHURMA JEFFERS.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3342-18
STYLE OF CAUSE:	DAINIA MAGDALENE HILARIA SMITH AND SHEMEKA CODENE KISHURMA JEFFERS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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