

Federal Court



Cour fédérale

Date: 20190715

**Docket: IMM-4162-18
IMM-4165-18**

Citation: 2019 FC 937

Docket: IMM-4162-18

BETWEEN:

WENDY RAQUEL GUZMAN DE LA CRUZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

Docket: IMM-4165-18

AND BETWEEN:

ELIZABETH DE LA CRUZ CRUZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

HENEGHAN J.

[1] Ms. Wendy Raquel Guzman de la Cruz (the “Principal Applicant”) and her mother, Elizabeth de la Cruz Cruz (collectively “the Applicants”) seek judicial review of the decisions of a Senior Immigration Officer (the “Officer”) dated March 12, 2018, denying their applications for permanent residence in Canada on Humanitarian and Compassionate (“H and C”) grounds, 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 Mexico. She entered Canada on April 6, 2007. She gave birth to a son in Canada on December 21, 2007.

[3] Ms. Elizabeth de la Cruz is the mother of the Applicant. She entered Canada on July 1, 2007 and also sought permanent residence in Canada on H and C grounds, that is the best interests of her Canadian born grandchild and her establishment in Canada. Her application was also denied by the Officer in a decision dated March 14, 2018 and is the subject of an application for judicial review in cause number IMM-4165-18.

[4] The Applicants base their H and C applications upon the best interests of the Canadian born child and their establishment in Canada, as well as the risks to them if required to return to Mexico.

[5] The Officer's decision is reviewable on the standard of reasonableness; see the decision in *Kanhasamy v. Canada (Citizenship and Immigration)*, [2015] 3 S.C.R. 909.

[6] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[7] Upon reviewing the materials filed, including the Applicants' H and C submissions, I am satisfied that the Officer reasonably considered the best interests of the Canadian born child, including the treatment of his reading disability. There is no basis for judicial intervention in that regard.

[8] However, I am not persuaded that the Officer reasonably considered the evidence of the Applicants' establishment in Canada over a period of several years.

[9] The Applicants provided evidence of their community activities. Several letters of support were provided. A petition signed by more than 100 persons was submitted in support of both Applicants.

[10] The decisions under review do not show that the Officer took this evidence into account in rejecting the individual H and C applications submitted on behalf of each Applicant. The

failure of the decision-maker to show that all relevant evidence was considered means that the decisions in question lack transparency and justification.

[11] Accordingly, the decision fails to meet the standard of reasonableness, as set out in *Dunsmuir, supra*.

[12] In the result, the applications for judicial review are allowed, the decisions of the Officers are set aside and the matters remitted to different officers for redetermination. There is no question for certification arising.

[13] These Reasons will be filed in cause number IMM-4162-18 and placed upon the file in cause number IMM-4165-18. Separate judgments will be issued in the two files.

“E. Heneghan”

Judge

St. John’s, Newfoundland and Labrador
July 15, 2019

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4162-18; IMM-1465-18

STYLE OF CAUSE: WENDY RAQUEL GUZMAN DE LA CRUZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION;
ELIZABETH DE LA CRUZ CRUZ v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 14, 2019

REASONS FOR JUDGMENT: HENEGHAN J.

DATED: JULY 15, 2019

APPEARANCES:

Dov Maierovitz FOR THE APPLICANT

Mahan Kermati FOR THE RESPONDENT

SOLICITORS OF RECORD:

EME Professional Corp. FOR THE APPLICANT
Barrister & Solicitor
North York, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario