**Date: 20190724**

**Docket: IMM-1628-18**

**Citation: 2019 FC 985**

**Ottawa, Ontario, July 24, 2019**

**PRESENT: The Honourable Mr. Justice Norris**

**BETWEEN:**

**MINGZHONG GAN AND GUOHUI GU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants, Mingzhong Gan and Guohui Gu, are citizens of China. They were married in 1995 and have two children together. Mr. Gan also has two children from a previous marriage. All four children (who are now adults) and three grandchildren live in Toronto, with immigration status ranging from work permits to Canadian citizenship.

[2] The applicants are economically very secure and they have taken early retirement. They have property and investment interests in both Canada and China.

[3] The applicants spend most of their time in Canada on long-term, multiple entry visitor visas (or "super visas"). They return to China twice a year to deal with their business affairs there.

[4] The applicants would like to become permanent residents of Canada. In 2016, an immigration consultant advised them to apply for permanent residence on humanitarian and compassionate [H&C] grounds under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The application was submitted by the consultant in early 2017. It was refused by a senior immigration officer on March 19, 2018. The applicants now apply for judicial review of this decision under section 72(1) of the *IRPA*.

[5] For the following reasons, this application will be dismissed.

[6] Regrettably for the applicants, the evidence and submissions offered in support of their H&C application was thin at best. They relied upon their establishment in Canada, including the presence of family and their business activities and investments here. The consultant also submitted, without any supporting evidence, that it "is readily apparent persons such as the applicant and his wife might very well be subject to unusual, undeserved and disproportionate hardships if they continue to live in China." In supplementary submissions, the consultant asserted that the applicants (who at the time were 59 and 54, respectively) are "becoming elderly

and are beginning to develop illnesses associated with old age." Again, no supporting evidence was provided.

[7] In brief reasons, the senior immigration officer concluded that an exemption from the usual requirement that an application for permanent residence must be made from outside Canada was not warranted.

[8] It is well-established that generally a denial of H&C relief under section 25(1) of the *IRPA* is reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18 [*Kisana*]; *Taylor v Canada (Citizenship and Immigration)*, 2016 FC 21 at para 16). Since the provision creates a mechanism to deal with exceptional circumstances and decisions under it are highly discretionary, decision-makers will be accorded a considerable degree of deference (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15).

[9] On judicial review under a reasonableness standard, it is not the role of the reviewing court to reweigh the evidence and relevant factors (*Kisana* at para 24) or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61-62). Rather, the reviewing court should examine the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determine "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[10] In my view, the officer's decision meets these requirements. The officer gave little weight to the applicants' establishment in Canada. This finding was reasonably open to the officer on the record. The officer also found that the applicants' circumstances in China if they had to return there did not warrant the granting of exceptional relief. This finding was also reasonably open to the officer. Contrary to the applicants' submission here, there is no reason to think that the officer took a segmented approach to the relevant factors. Indeed, the decision itself states that the factors were "[c]onsidered cumulatively." There is no reason to doubt that this was the case.

[11] The fact of the matter is that the applicants gave the officer little, if any, reason to grant them relief under section 25(1) of the *IRPA*. The reasons given for rejecting the application were fully responsive to the submissions and evidence provided. There is no basis for me to interfere with the officer's decision.

[12] The parties did not suggest any serious questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

[13] Finally, the original style of cause names the respondent as the Minister of Immigration, Refugees and Citizenship. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *IRPA*, s 4(1). Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

**JUDGMENT IN IMM-1628-18**

**THIS COURT'S JUDGMENT is that**

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent.
2. The application for judicial review is dismissed.
3. No serious question of general importance is stated.

"John Norris"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-1628-18 |
| **STYLE OF CAUSE:** | MINGZHONG GAN ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | FEBRUARY 7, 2019 |
| **JUDGMENT AND REASONS:** | NORRIS J. |
| **DATED:** | JULY 24, 2019 |

**APPEARANCES:**

| | |
|---|---|
| Hadayt Nazami | FOR THE APPLICANTS |
| Lorne McClenaghan | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Jackman Nazami & Associates<br>Barristers and Solicitors<br>Toronto, Ontario | FOR THE APPLICANTS |
| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |