

Federal Court



Cour fédérale

Date: 20191118

Docket: IMM-5307-18

Citation: 2019 FC 1442

Ottawa, Ontario, November 18, 2019

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

**SAMUEL SILWAMBA
BRENDA SILWAMBA
YESHUA SILWAMBA
JEWEL NALWAMBA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants are citizens of Zambia. They arrived in Canada in 2010 on the authority of Mr Silwamba's study permit and Ms Silwamba's work permit. They then applied for permanent

residence from within Canada on humanitarian and compassionate grounds (H&C). In 2018, an immigration officer reviewed their application and dismissed it.

[2] The applicants argue that the officer arrived at an unreasonable decision, in particular, by failing to carry out a proper analysis of the best interests of their children. In addition, they submit that the officer ignored relevant evidence, namely, documentary evidence about the conditions in Zambia. They ask me to quash the officer's decision and order another officer to reconsider their application.

[3] I can find no grounds for overturning the officer's decision. The officer's response to the applicants' submissions on the best interests of the children was not unreasonable. Further, the officer did not ignore any relevant evidence. Therefore, I must dismiss this application for judicial review.

[4] There are two issues:

1. Was the officer's decision unreasonable?
2. Did the officer ignore relevant evidence?

II. Issue One – Was the officer's decision unreasonable?

[5] In addition to the two Zambian-born children who are applicants, the family now also includes two Canadian-born children. The applicants maintain that the officer failed to explain why the children's best interests would not be served by allowing the family to remain in Canada.

[6] I disagree. While an officer is usually expected to determine where the children's best interests lie before analyzing the impact on them of a positive or negative decision, an officer cannot be expected to carry out that kind of exercise when little evidence is provided by the applicants about the children's circumstances (compare *Kobita v Canada (Citizenship and Immigration)*, 2012 FC 1479 at para 52 with *Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 at paras 18-24).

[7] Here, the applicants provided evidence of the children's involvement in soccer, their strong ties to Canada, and documentary evidence suggesting that girls are often forced to marry at a young age in Zambia. On the latter point, the evidence also showed that the government of Zambia is attempting to stop child marriages. The officer found that this evidence was insufficient to show that the children would be seriously affected emotionally, psychologically, or educationally if the family had to return to Zambia to make their permanent residence application from there.

[8] The applicants have not identified any information in their submissions that the officer overlooked. One can presume that the officer realized that the children's best interests would be served by allowing them to remain in Canada. He did not have to state that explicitly in his reasons.

[9] On the evidence, I cannot conclude that the officer's analysis of the children's best interests was unreasonable.

III. Issue Two – Did the officer ignore relevant evidence?

[10] The applicants submit that the officer failed to consider evidence about the conditions in Zambia, including political, healthcare, and educational circumstances. They say that the officer's lack of care is demonstrated by the fact that he refers at one point to Korea, not Zambia.

[11] I disagree. The applicants provided the officer with little documentary evidence about conditions in Zambia – two articles about child marriage, an editorial about political violence, and an article about potential violence in an upcoming election campaign.

[12] The officer did not ignore any relevant evidence.

[13] In my view, the officer made an inadvertent reference to Korea in his decision. It is not indicative of a lack of focus on the applicants' personal circumstances.

IV. Conclusion and Disposition

[14] The officer did not ignore evidence or render an unreasonable decision. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-5307-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5307-18

STYLE OF CAUSE: SAMUEL SILWAMBA, BRENDA SILWAMBA,
YESHUA SILWAMBA, JEWEL NALWAMBA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MAY 30, 2019

JUDGMENT AND REASONS: O'REILLY J.

DATED: NOVEMBER 18, 2019

APPEARANCES:

Malvin Harding FOR THE APPLICANTS

Kathleen Tanner FOR THE RESPONDENT
Keith Reimer

SOLICITORS OF RECORD:

MALVIN J HARDING FOR THE APPLICANTS
Barrister and Solicitor
Surrey, British Columbia

Deputy Attorney General of FOR THE RESPONDENT
Canada
Vancouver, British Columbia