

Federal Court



Cour fédérale

Date: 20191211

Docket: IMM-2286-19

Citation: 2019 FC 1584

Ottawa, Ontario, December 11, 2019

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**KAYANNA ANDREA GORDON, MAKAYLA
CALISE MCCOY (by her litigation guardian:
KAYANNA ANDREA GORDON)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application concerns the Applicant's plea for positive humanitarian and compassionate relief from deportation to St. Vincent as a failed refugee claimant. By the decision dated February 28, 2019, an H&C Officer rejected the Applicant's plea. The issue for determination is whether the Officer delivered a reasonable decision. For the reasons that follow, I find that the decision is unreasonable because of the Officer's striking failure to apply critical evidence advanced by the Applicant.

I. The Evidence Placed before the Officer

[2] A core feature of the Applicant's evidence concerns the best interests of her daughters:

Makayla born on August 12, 2010, and Keziah born in Canada on August 20, 2013. Specifically,

with respect to support for the Applicant and her daughters in Canada as compared to St.

Vincent, the following key passages from the Applicant's affidavit were placed before the

Officer:

5. If Canada sends me back to St. Vincent, I have no relatives or friends with whom my daughters and I could stay. I only know of two relatives, my aunt, and my mother. My aunt has moved to the US and I don't know where my mother is. The only friend I know, still in St. Vincent lives in a single room with her three children and her mother. There is nowhere for us to go. I will end up on the street.

[...]

7. My grandmother recently died from AIDS. She had contracted the disease because she was a prostitute. She was forced to do that because she had no other means to feed her children. I am scared I will have the same fate as her. I cannot allow for my daughters to be on the street.

[...]

9. If forced back, I will have no money and no house. I will not have a fixed address.

[...]

12. My ex-husband and I separated in June 2017. My daughters live with me. He takes care of them during the night because I work late at a restaurant. He also spends time with them on the weekends. He is very stressed about the idea of our daughters and me having to return to St. Vincent. He says our daughters will be in danger. He is upset that he will not be able to communicate with them. I will not have access to the internet in St. Vincent or a phone. My daughters will not be able to speak to their father.

[...]

13. After I came to Canada, I established contact with my father and discovered his entire family is here, my three aunts, my

grandmother, and my three half siblings, two half sisters and a half brother (who is one year old and plays with my children). They are all Canadian citizens. I have a great relationship with all of them, and they support me. My daughters love spending time with their grandfather and the rest of the family.

[Emphasis added]

(CTR, pp. 174 to 178: Affidavit of Kayanna Gordon)

[3] On the same issue of support, the children's father supplied the following evidence by way of an undated letter:

To whom it may concern

My name is Osborne McCoy the father of Makayla and Keziah. And I am writing this letter on be half [sic] of my daughters, I love my kids and would do anything possible to see my girls every day, growing up I didn't have my parents in my life and would never want that to happen to my girls. St. Vincent is not a place I would like to see my daughters return to with no health care and a proper education, with no mean of communication and stable home my daughters will force [sic] to live in poverty. Living homeless and in poverty isn't ideal for no kids especially young girls, my daughters will be victim's of abuse no father nor mother-should be put in a position that they them self cannot survive to protect their children. I am a father pleading for the sake of my kids and their mother to stay in Canada with the government's consent as a permanent resident. I will not be able to carry on if the worst had to happen to my girls whom do I blame. How do you survive. Thank you in advance for taking time out to listen to a father plead for the sake of his children.

[Emphasis added]

(CTR, p. 180)

II. The Officer's Consideration of the Evidence

[4] The following passage from the Officer's decision addresses the best interests of the children:

I have carefully considered the best interests of the children and I note that the children will be returning to their country which offers educational opportunities to children and I am not satisfied that returning to St. Vincent will deprive the child [sic] of the basic necessities of her [sic] life. I find that insufficient evidence has been adduced to satisfy me that the children could not return to St. Vincent with their mother. Whatever adjustments the children will have to make in St. Vincent they will have the support of their mother who has always been the caregiver in her [sic] life. Although Counsel states that the applicant and her husband separated in June 2017, there is no evidence before me that the children's' [sic] father Osborne McCoy, who submitted an undated letter, provides them with any emotional and/or financial support or that he is involved in their life. I have considered that one child was born in Canada, however, there are many children born to parent(s) who are subsequently removed from Canada to their home country and I am not satisfied that it is a situation that is unique to this child and her mother. I note that young children are more resilient and adaptable to changing situations especially at such a young age. There is insufficient evidence presented to satisfy me that the children, would suffer emotionally, psychologically and educationally if the applicant were to apply for normal processing overseas.

[Emphasis Added]

(Reasons for Decision, p. 6)

III. Conclusion

[5] A comparison between the emphasis added to the above statements of the evidence and the emphasis added to the Officer's best interests statement illustrates the cardinal failure in the Officer's decision-making. It is clear that the Officer did not consider the details of the Applicant's evidence or the father's evidence.

[6] The evidence goes to establish that the Applicant and her husband, working together, with the support of the Applicant's family members in Canada, have provided a successful support system for the children. On the evidence, there is no support system in St. Vincent. Instead of addressing this fact, the Officer resorted to making unfounded and platitudinous statements. It is hollow to say that the children "will have the support of their mother who has always been the caregiver in her life [sic]". And to say that "young children are more resilient and adaptable to changing situations especially at such a young age" is not verified, and in the present case is just speculation. Instead, and of utmost concern, the evidence goes to establish that the adaptation challenge facing the children is horrendous.

[7] It is very clear that the decision under review is unreasonable due to the Officer's serious disregard for the evidence.

JUDGMENT IN IMM-2286-19

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for determination by a different officer.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2286-19

STYLE OF CAUSE: KAYANNA ANDREA GORDON, MAKAYLA CALISE
MCCOY (by her litigation guardian: KAYANNA
ANDREA GORDON) v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 20, 2019

JUDGMENT AND REASONS: CAMPBELL J.

DATED: DECEMBER 11, 2019

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