Federal Court  Cour fédérale

Date: 20211213

Docket: IMM-2116-20

Citation: 2021 FC 1401

Ottawa, Ontario, December 13, 2021

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

LYDIA MVUNDURA
RAVEN TAMUDA GWANZURA (A MINOR)
RILEY KUNASHE GWANZURA (A MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a decision of an officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] denying the Applicants' humanitarian and compassionate [H&C] application.

[2] The Applicants claimed that the Officer imposed an excessive legal burden on them, ignored critical evidence related to H&C factors including best interests of the child, and consequently made unreasonable findings which resulted in an unreasonable decision.

II. Background

[3] The Applicants are a mother [Principal Applicant], her daughter and her son, all citizens of Zimbabwe. The husband/father remained in Zimbabwe.

[4] Their refugee claim was denied by the Refugee Protection Division [RPD] because of credibility and the conclusion that the mother had not established that she was a member of an opposition party nor had she experienced problems related to her political affiliation.

[5] The Applicants then applied to remain in Canada on H&C grounds under s 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[6] The Officer found that there was a modest level of establishment but that there was insufficient evidence of the mother's income and economic establishment. The Officer also found community integration to be minimal.

[7] The Principal Applicant relied particularly on her need to stay in Canada to bond with her siblings in this country. That argument was not particularly strong given that the siblings resided in British Columbia whereas the Applicants were in Ontario. There was not sufficient evidence of dependency such that separation would cause hardship.

[8] In regard to adverse country conditions in Zimbabwe, the Officer relied on the RPD's decision and the country conditions described. The Officer noted the adverse credibility findings which were not dispelled in the H&C application.

[9] In regard to the best interests of the children, the Officer accepted that there would be a period of adjustment but both parents, given that the father resides in Zimbabwe, could assist and that there was insufficient evidence of long-term adverse effects.

III. Analysis

[10] As a preliminary matter, the Applicants' written request to amend the style of cause to remove "(A Minor)" from beside the Principal Applicant's name, to which the Respondent consented, is granted.

[11] The sole issue is whether the decision is reasonable. The standard of review is reasonableness as developed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Absent exceptional circumstances, a reviewing court will not interfere with the factual findings or reweigh the evidence.

[12] In large part, the Applicants are asking this Court to reweigh the evidence and come to a different conclusion.

[13] The Applicants claim that the Officer imposed an "excessive burden" on the Principal Applicant by requiring evidence of economic stability, and that s 3(d) of the *IRPA*, as discussed

in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 (SCC) [*Baker*], places an emphasis on “keeping spouses together”.

[14] There is nothing unreasonable in the Officer seeking assurance of economic stability particularly where the Principal Applicant relied on two weeks of employment as a basis for “establishment”.

[15] The Applicants’ reference to *Baker* is problematic. The Applicants purported to set out a quote from *Baker* which included the words “keeping spouses together”. In fact, the actual words in *Baker* did not include “keeping spouses together”. It referred to “keeping children in contact with both parents, if possible …”.

[16] It does not assist the Applicants to rely on misquotes of portions of judgments and it is misleading to the Court.

[17] In regard to the best interests of the child, the Applicants shifted their position to now claim that the Officer ignored the adverse impact on the school if the daughter was removed from the school. The basis of this argument arises from a letter from a teacher praising the child’s contributions to the class – a letter not relied upon in submissions to the Officer.

[18] The impact of the child’s absence on the school or her classmates, except in the most unusual circumstances, which the Court has difficulty foreseeing, is irrelevant to an H&C application where the focus of hardship is on an applicant and/or members of the family.

IV. Conclusion

[19] There is nothing unreasonable in the Officer's findings, analysis or conclusions. This judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-2116-20

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to remove "(A Minor)" from beside the Principal Applicant's name.

2. The application for judicial review is dismissed.

3. There is no question for certification.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2116-20
STYLE OF CAUSE:	LYDIA MVUNDURA, RAVEN TAMUDA GWANZURA (A MINOR), RILEY KUNASHE GWANZURA (A MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	DECEMBER 6, 2021
JUDGMENT AND REASONS:	PHELAN J.
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APPEARANCES:

Kingsley Jesuorobo	FOR THE APPLICANTS
Zofia Rogowska	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kingsley Jesuorobo & Associates Barristers and Solicitors North York, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT