Federal Court  Cour fédérale

Date: 20220214

Docket: IMM-3378-21

Citation: 2022 FC 199

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, February 14, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

NERTHO THERMITUS
ROSELINE DESTINA
KYSHA DIANA EXANTUS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

JUDGMENT AND REASONS

(Judgment delivered from the bench on February 14, 2022, at Ottawa, Ontario.)

[1] Mr. Thermitus, his wife, Ms. Destima, and her daughter, Kysha, are seeking judicial review of a decision refusing their application for relief based on humanitarian and compassionate considerations [H&C application]. Mr. Thermitus and Ms. Destima are Haitian

citizens. Kysha is an American citizen and is 4 years old. Mr. Thermitus and Ms. Destima also have a son, Lovinsky, who was born in Canada and is 2 years old.

[2] I am allowing their application, as the officer committed two errors that render the decision unreasonable.

[3] First, the officer did not reasonably analyze the best interests of the children. She was first concerned about the lack of detailed evidence regarding the children's current living environment. For example, she noted the absence of a progress report, an agenda or a parent meeting report from the day care centre attended by the children. Although she considered the living conditions in Haiti, where the children would be returned, she stressed that the impacts of a relocation would be mitigated by the young age of the children. She concluded that [TRANSLATION] "the applicants have not demonstrated that they would be unable to ensure the overall well-being of their children if they were to return to Haiti, such that it would jeopardize their development".

[4] The officer's reasoning is identical in every respect to the one found to be unreasonable in *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813. In that case, my colleague Justice Russell Zinn stated that an officer who merely notes that the child's basic needs would be met in the country of removal does not truly analyze the best interests of the child. In other words, these types of remarks do not show empathy, as is required of officers reviewing H&C applications. I also refer to *Teweldemedhn v Canada (Citizenship and Immigration)*, 2022 FC 36; *Obeid v Canada (Citizenship and Immigration)*, 2022 FC 88. Moreover, I find it difficult to see

how the officer could fault the applicants for not providing reports or documents from the day care. As counsel for the applicants correctly points out, the Court may take judicial notice of the type of activities offered to children in day care.

[5] Second, the officer gave only moderate weight to the conditions in Haiti. Relying on *Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6, she concluded that these conditions are generalized and that the applicants have not [TRANSLATION] "demonstrated how they would be particularly affected". However, in *Marafa v Canada (Citizenship and Immigration)*, 2018 FC 571, I reviewed the most recent case law of this Court and demonstrated that *Lalane* could no longer be followed in this regard; see also *Quiros v Canada (Citizenship and Immigration)*, 2021 FC 1412. Conversely, in *Marafa*, I noted that "officers must not limit their assessment of the hardship the claimants would face in their home country to hardship connected to a personal characteristic of the claimant". This does not mean that all citizens of certain countries are entitled to have their H&C applications granted, but rather that the officer must take into account the actual living conditions in the country of removal. In this case, the officer downplayed these conditions by stating that the applicants have not demonstrated how they would be affected in a manner different from other Haitian citizens. This is an additional ground that makes her decision unreasonable.

[6] I wish to make it clear that I am not reweighing the factors considered by the officer. Rather, the problem is that the officer adopts a line of reasoning that is at odds with the principles guiding the consideration of an H&C application, as set out by the SCC in

Kanthasamy v Canada (Citizenship and Immigration), 2015 SCC 626, [2015] 3 SCR 909, and elaborated upon by this Court, particularly in the decisions cited above.

[7] For these reasons, the application for judicial review will be allowed. No question will be certified.

JUDGMENT in IMM-3378-21

THIS COURT ORDERS that the application for judicial review be allowed. No question will be certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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