Federal Court  Cour fédérale

Date: 20220225

Docket: IMM-1841-20

Citation: 2022 FC 272

Ottawa, Ontario, February 25, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SAMUEL AIGBE UWAMUSI AND VICTOR OSAMEDIAMEH UWAMUSI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are brothers and citizens of Nigeria. Their application for permanent residence was refused, a Visa Officer [Officer] finding them not to be members of the family class as defined at section 117 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The Officer also concluded humanitarian and compassionate [H&C]

considerations did not justify an exemption from the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicants apply under section 72 of the IRPA for judicial review of the Officer's November 4, 2019 decision. They argue the Officer's H&C decision was unreasonable.

[3] For the reasons that follow, the Application is dismissed. The Officer's conclusion that the Applicants had failed to justify an exemption from the IRPA requirements was reasonable.

II. Background

[4] Paragraph 117(9)(d) of the IRPR excludes foreign nationals from family class status if, at the time the prospective sponsor became a permanent resident, the foreign national was a non-accompanying family member of the sponsor and was not examined. Relevant extracts from the IRPR are set out below for ease of reference:

DIVISION 1	**SECTION 1**
Family Class	**Regroupement familial**
116 For the purposes of subsection 12(1) of the Act, the family class is hereby prescribed as a class of persons who may become permanent residents on the basis of the requirements of this Division.	**116** Pour l'application du paragraphe 12(1) de la Loi, la catégorie du regroupement familial est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents sur le fondement des exigences prévues à la présente section.
117 (1) A foreign national is a member of the family class if,	**117 (1)** Appartiennent à la catégorie du regroupement familial du fait de la relation

with respect to a sponsor, the foreign national is	qu'ils ont avec le répondant les étrangers suivants :
[…]	[…]
(b) a dependent child of the sponsor;	**b)** ses enfants à charge;
[…]	[…]
Excluded relationships	**Restrictions**
117(9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if:	**117(9)** Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :
[…]	[…]
(d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.	**d)** sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.

[5] The Applicants' mother arrived in Canada in 2002, sponsored as a dependent child by her mother. She became a permanent resident in 2003. The Applicants' mother did not disclose that she had a common-law spouse and two children at the time she applied for permanent residence. As a result, these family members were not examined.

[6] In December 2003, the Applicants' mother travelled to Nigeria and married her common-law partner. She later filed two consecutive family class sponsorship applications for her

husband and his sons. In doing so, she failed to disclose that she had known her husband before 2003 and that his two sons were her biological children. Both applications were unsuccessful.

[7] In February 2019, the Applicants' mother initiated another application to sponsor her two sons. In this application, she accurately disclosed her prior relationship with her husband and that she is the biological mother of her sons. In a decision dated November 4, 2019, the application was rejected. The Officer found the two sons not to be members of the family class because of IRPR paragraph 117(9)(d). The Officer also found there were insufficient H&C grounds to overcome the exclusion.

[8] The Applicant's mother appealed the decision to the Immigration Appeal Division [IAD]. The IAD upheld the exclusion decision but found it lacked jurisdiction to consider the Officer's H&C assessment, an issue that was instead to be considered on judicial review (section 65 of the IRPA; *Canada (Citizenship and Immigration) v Chen*, 2014 FC 262; *Habtenkiel v Canada (Citizenship and Immigration)*, 2014 FCA 180; *Seshaw v Canada (Citizenship and Immigration)*, 2014 FCA 181).

[9] The Officer's H&C assessment is in issue in this Application for judicial review.

III. Decision under Review

[10] The Officer's reasons for concluding that neither Applicant warranted an H&C exemption are contained in the Global Case Management System [GCMS] notes.

[11] The Officer acknowledged the Applicants were largely raised by their father and it was difficult to assess the level of dependency between the Applicants and their mother. In this respect, the Officer noted little documentation had been provided regarding the level of dependency between the Applicants and their mother prior to her moving to Canada. The Officer considered documentary evidence relating to the effect on children raised by a single parent or without a mother but found there to be little indication of how the Applicants were personally affected by having been raised by their father.

[12] In assessing the assertion that the Applicants were not financially supported by their father, the Officer noted the lack of any corroborative evidence to this effect from the father. The Officer acknowledged the evidence of the mother's travel to Nigeria on four occasions and of text conversations between her and the Applicants in 2018, as well as evidence that some fund transfers from the mother to the Applicants had occurred between 2015 and 2018.

[13] The Officer found the Applicants are educated adults who have attended university in Nigeria; they have relatives in Nigeria and no health concerns. The Officer gave limited weight to the possibility the Applicants would be permanently separated from their mother, noting their mother's prior visits to Nigeria and the Applicants' ability to apply for study permits in Canada. The Officer also noted their mother had not submitted she would be personally negatively affected by her separation from the Applicants.

IV. Issues and Standard of Review

[14] The Application raises a single issue: was the Officer's H&C analysis, including consideration of the best interests of the children, reasonable?

[15] It is not in dispute that the Officer's H&C decision is to be reviewed on a reasonableness standard (*Khandaker v Canada (Citizenship and Immigration)*, 2020 FC 985 at para 17). A reasonable decision is one that is justified, transparent and intelligible and falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 86).

V. Analysis

[16] The Applicants argue that, in considering the H&C aspect of the application, the Officer gave undue weight to the Applicants' exclusion from the family class and their mother's failure to disclose her common-law husband and children at the time of her application for permanent residence. They submit this became the overriding consideration in assessing their H&C application and resulted in the Officer ignoring or overlooking evidence.

[17] The Officer's GCMS notes do set out the circumstances of the application and include reference to the Applicants' exclusion from the family class by operation of IRPR paragraph 117(9)(d). However, in assessing the H&C factors identified by the Applicants, the Officer does not refer to the mother's conduct or the family class exclusion. The GCMS notes reflect a focus on and assessment of the H&C factors relied upon in the application.

[18] I can identify nothing in the Officer's GCMS notes to support the argument that the Applicants' exclusion from the family class was an overriding or determinative factor in assessing the application for H&C relief.

[19] The Applicants further argue the Officer payed "lip service" to the documentary evidence disclosing the impact of being raised in a single-parent or single-father home and ignored their evidence of the distress they experienced following visits to Nigeria by their mother. The Applicants argue this evidence established they had been personally affected by the separation and the continued separation would have negative ongoing effects upon them and their mother.

[20] The Officer did acknowledge the documentary evidence relating to children raised in single-parent households but noted the absence of any evidence indicating the Applicants had experienced or were experiencing social, emotional or psychological issues due to the absence of their mother. The Officer also acknowledged and addressed the evidence that the Applicants had experienced upset after their mother's visits to Nigeria but gave this evidence little weight, finding the reported reaction (crying and moodiness) to be the norm where family members depart after a visit. The Officer did not err in considering the documentary evidence.

[21] The Applicants also take issue with the Officer's treatment of evidence relating to their father's impoverishment and the financial support provided by their mother. They submit the Officer failed to recognize the financial burden on their mother and that this burden was exacerbated by the cost of her trips to Nigeria. The Applicants submit these factors were relevant to assessing their best interests.

[22] None of these submissions are convincing. The Officer considered the evidence and responded to the submissions, noting “some evidence of funds transfer” between 2015 and 2018 and that the Applicant’s mother had traveled to Nigeria on four occasions between 2007 and 2014. The Officer also noted the absence of any submissions from the father to the effect that he was unable to support the Applicants. It was reasonable for the Officer to assign little or limited weight to these factors in assessing whether an exemption on H&C grounds was warranted.

[23] The Applicants further argue the Officer failed to consider whether the Applicants’ best interests would be better served if they were to be reunited with their mother in Canada. They submit the Officer placed too much weight on the fact that they were adults at the time of the sponsorship application and thereby failed to consider that they are university students who depend on their mother for financial support. They submit the Officer’s reliance on their relatives in Nigeria, university education and lack of medical problems indicate a hardship analysis rather than a global assessment of their best interests.

[24] The jurisprudence recognizes that individuals over 18 years of age may benefit from a consideration of their best interests (*Ramsawak v Canada (Citizenship and Immigration)*, 2009 FC 636 at para 18). In this circumstance, the Officer did address the Applicants’ best interests [BIOC].

[25] A BIOC assessment is a highly contextual analysis to be applied “in a manner responsive to each child’s particular age, capacity, needs and maturity.” (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 35). The Applicants’ age, education and abilities,

including their connections to Nigeria, are all factors and circumstances relevant to a BIOC assessment.

[26] In this case, the Officer addressed the H&C factors raised (including the best interests of the Applicants) reasonably, globally and within the context of the evidence provided and the Applicants' circumstances.

VI. Conclusion

[27] For all of the above reasons, I am of the opinion that the Officer's decision is reasonable. The Application is dismissed.

[28] The parties have not identified a question of general importance for certification and I am satisfied none arises.

JUDGMENT IN IMM-1841-20

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SAMUEL AIGBE UWAMUSI, VICTOR OSAMEDIAMEH UWAMUSI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 15, 2022
JUDGMENT AND REASONS:	GLEESON J.
DATED:	FEBRAURY 25, 2022

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