Federal Court Cour fédérale

Date: 20221005

Docket: IMM-2459-22

Citation: 2022 FC 1372

Ottawa, Ontario, October 5, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

DARYL SANTIAGO CORDERO ROMERO
LAURA VERONICA VALADEZ VENEGAS
DAYTON TADEO CORDERO VALDEZ

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family from Mexico who seek judicial review of the denial of their application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds. In particular, they claim that the Officer failed to take account of the best interests of their youngest child who has a rare and serious condition that requires ongoing specialized medical care. They say the decision is unreasonable, because the Officer accepted

that it was in the best interests of their son to remain in Canada and found that this was a consideration of "singular importance". However, the Officer went on to deny their claim for H&C relief without explaining how or why the best interests element was overcome by other considerations. The Applicants claim that the decision is not intelligible.

[2] I agree. For the reasons set out below, I find the decision unreasonable because of the Officer's treatment of the best interests of the child element in the context of the overall H&C assessment.

II. Background

[3] The Applicants fled Mexico due to cartel threats and claimed refugee status. They were denied status because the Refugee Protection Division found they had an internal flight alternative within Mexico. Their appeal to the Refugee Appeal Division was discontinued. They then sought H&C relief, based on their establishment in Canada, the risks and hardships they would face upon a return to Mexico, and the best interests of their two children.

[4] A significant focus of their best interests claim related to the medical condition of their youngest son, who was born in Canada in October 2018. Because the Officer's treatment of this aspect of the claim is the determinative issue in this case, the following summary will focus on that aspect of the decision.

[5] Shortly after his birth, the Applicants' son was diagnosed with a rare blood disorder, Neonatal Alloimmune Thrombocytopenia (NAIT). In simple terms, when he was born his body did not produce enough platelets, leaving him prone to cerebral hemorrhages and other issues.

[6] The Applicants' submissions on their H&C claim described the best interests of the children as "the most significant [H&C] factor in this application…" They refer to the relevant jurisprudence, including the requirement that decision-makers be "alert, alive and sensitive" to the best interests of the child, and those interests must be well identified and examined with a great deal of attention (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 38 and 39). They also cited *Kolosovs v Canada (Citizenship and Immigration)*, 2008 FC 165 [*Kolosovs*] at para 12, where the Court found that the analysis must seek to understand the "real life impact" of a negative H&C decision on the children, which requires a "meaningful critical analysis" of the best interests of the child "in their real life situation."

[7] In addition to describing the situation of the two children who are part of the H&C claim, (who were then almost two years and four and a half years old), the Applicants described in some detail the medical condition of their youngest son Dante:

> ...24 hours after Dante was born, doctors observed that his red blood cell count was low and discovered spots on his spine. He was subsequently diagnosed with [NAIT], which is characterized by his pediatrician as a "rare condition". This required admission to the Neonatal Intensive Care unit of the B.C. Children's Hospital for multiple treatments. He suffered from brain bleeds as a result, and has been followed by neurology due to cerebral hemorrhages. His pediatrician cautions that he is 'at risk of having neurologic deficits as well as learning issues, and risk for neurodevelopmental disorder', which will necessitate follow-up with a specialist in the long term.

[8] Because of this serious medical condition, Dante continues to see a neurologist. Before COVID-19 struck, Dante's parents would take him to see the pediatrician once a month. Since

COVID-19, Dante sees his pediatrician through telehealth appointments once every three months.

[9] In addition, they state that approximately six months after his birth, the pediatrician referred Dante to an Infant Development Program, which is aimed at ensuring he develops properly and supports his family in providing the ongoing care he needs. Several reports from this Program were included with the Applicants' H&C submission, and these show that while Dante is making progress he continues to face challenges; they also indicate that the Program provided advice to the Applicants about the ongoing measures they needed to take to ensure his continued development between visits.

[10] In their materials, the Applicants also included reports from a British health journal, which states that NAIT "is a rare but serious condition associated with significant fetal and neonatal morbidity and mortality. The consequences of NAIT include death (35%) or serous neurological sequelae in up to 83% of survivors. Optimal management is required to reduce or eliminate the risk…"(2019) 185 British Journal of Haematology at 550).

[11] The Applicants also included evidence on the current state of the Mexican health care system, noting the devastating effect that COVID-19 has had on the country and the medical system, as well as the challenges associated with the implementation of the reforms introduced by the Mexican government prior to the pandemic. They summarized this evidence as showing that "the reality… is a malfunctioning system that is often incapable of providing the kinds of treatment that Dante will need."

[12] The Applicants pointed to the ongoing support they have received from the Burnaby Infant Development Program to ensure Dante's healthy development, as well as the close monitoring of his health by his pediatrician since his birth. Based on the evidence concerning the state of the Mexican health care system, they argued that the kind of treatment Dante needed on an ongoing basis would not be available to them, because of the scarcity of the type of specialists they needed, the system-wide instability in the Mexican health care system associated with continued under-funding and recent reforms, the devastating impacts of COVID-19, and the unaffordable cost of private treatment.

[13] The Officer's analysis on this issue is set out in full below:

> Having covered the general claims to BIOC above, I move to include a health concern that is closely related to the best interest of one of the children. Dante has been formally diagnosed with NAIT and received treatment for his condition. It is a major [condition] that poses a threat to life even treated, and may result in permanent health detriments that will require lifelong treatment. The submissions make the case that the treatment that is currently being rendered in Canada will not be available to the family in Mexico. However, there are no submissions originating from Mexican health authorities noting that the treatment is officially unavailable. I also note that the treatment is formally available and that the applicant's family should be able to organize treatment in Mexico regardless of their economic status. I understand the arguments presented and that there may be doubts in accessing the required care, but consider that the applicants are accounted for in the Mexican health industry and should receive the pediatric care they require.
>
> Having evaluated the above, I nonetheless consider that it is the best interest of Dante specifically to remain in Canada for medical reasons. I consider the transportation of someone who has medical needs of his nature to be a hardship in of itself. I factor this element favourably in my global assessment, and consider it of singular importance in my assessment as a BIOC consideration.

[14] The Officer then continued to examine the hardship the Applicants said they would face in Mexico, primarily associated with the level of violence in the country and the risk that the children would be kidnapped. The Officer had previously awarded limited weight to the positive establishment of the family in Canada, having noted that both parents were employed, they had been taking English as a Second Language classes, and the mother had been involved in various community initiatives to support other young mothers. The Officer found that the family had demonstrated resilience, that they could find safe haven in Mexico (as determined in their refugee proceeding), and that "the family has options through which to succeed in Mexico… In examining the hardships, I find that a return to Mexico will not elevate the hardships to such a degree that they justify an exemption per 25(1) of the IRPA." The application was refused.

[15] The Applicants seek judicial review of this decision.

III. Issues and Standard of Review

[16] The determinative issue in this case is whether the Officer's analysis of the best interests of the child, and in particular of the impact of Dante's ongoing health condition, is reasonable in the context of the overall H&C analysis.

[17] The standard of review that applies is reasonableness, in accordance with the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Under this approach, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). One key question for a reviewing court to consider is whether the decision "bears the hallmarks of reasonableness – justification, transparency and

intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision…" (*Vavilov* at para 99). The onus is on the party challenging the decision to demonstrate that the errors are sufficiently central and significant to justify overturning the decision. (*Vavilov* at para 100).

IV. Analysis

[18] In this case, I agree with the Applicants that the Officer's decision is not intelligible. The analysis does not support the conclusion that was reached on the H&C assessment, and for that reason, the decision is unreasonable and must be set aside.

[19] As noted above, the Officer accepted the medical evidence that Dante had NAIT, which is a "major [condition] that poses a threat to life even [if] treated, and may result in permanent health detriments that will require lifelong treatment." The Officer then notes the Applicants' argument that the type of treatment he was receiving in Canada would not be available to them in Mexico, as a practical matter. On this point, I note that the Applicants did not argue that there are no pediatricians in Mexico, or that the system as a whole could not provide the necessary treatment. Instead, they pointed to evidence showing the serious challenges with the health care system in Mexico, related to persistent underfunding, problems with the implementation of a system reform, and the devastating impact of COVID-19.

[20] The Officer does not discuss this in any detail, other than to state, "there are no submissions originating from Mexican health authorities noting that the treatment is officially unavailable." With respect, that misses the point. It is also an indication that the Officer may have fettered their discretion, because it suggests that the Officer gave no weight to the ample

objective evidence from independent and otherwise credible sources about the state of the Mexican health care system.

[21] The Officer also finds that the treatment is “formally available” and that the Applicants “should be able to organize treatment in Mexico regardless of their economic status.” While the Officer acknowledges “that there may be doubts in accessing the required care” they went on to find that the Applicants “should receive the pediatric care they require.” This is a conclusion that was open to the Officer to make, on the record; however, it is not a conclusion that can be justified without some discussion of the ample evidence pointing in the other direction.

[22] The most significant problem with the Officer’s reasoning, however, is the absence of any explanation for how or why, having found, “I nonetheless consider that it is the best interest of Dante specifically to remain in Canada for medical reasons” and that this is “of singular importance in [the Officer’s] assessment as a BIOC consideration.” The Officer goes on to conclude that the H&C factors are not compelling enough to warrant relief. Again, this is a conclusion that is open to the Officer to make, but it must be explained.

[23] As discussed at the hearing, if the Officer had explained how the compelling best interests factor was weighed against other significantly negative factors in the case, the result might be understandable. That is absent here. Instead, the Officer had given some limited positive weight to the Applicants’ establishment, and had accepted that they would experience a degree of hardship by returning to the place of refuge that had been identified in Mexico. There are no negative factors mentioned, and no obvious basis in the record to support such a finding.

There is no criminality, no failure to abide by Canadian laws, no reliance on social support, and none of the other typical factors that weigh against granting H&C relief.

[24] Instead, the facts of this case present a family who fled Mexico because the father faced serious and ongoing threats from a major cartel. Once they arrived in Canada, they found jobs, began to study English, became involved in their community, and dealt with the significant health challenges that accompanied the birth of their youngest child. Almost all of this took place during the COVID-19 pandemic, and the Officer considered this to be a "favourable indicator… considering the chaotic time they have been through during their first few years in Canada."

[25] The Officer was bound by case law that requires that the specific best interests of the child be identified, which was done here. In addition, the jurisprudence clearly indicates that in assessing an H&C claim, a child will rarely, if ever, be expected to suffer significant hardship (*Kanthasamy* at para 41). In addition, as noted earlier, in *Kolosovs* this Court emphasized that the Officer must consider the "real life impact" of a negative H&C decision.

[26] In this case, the Officer found that Dante's health condition and need for ongoing treatment was a significant factor; indeed, it was "of singular importance" as a best interests of the child consideration. Having found that, the Officer was not bound to grant the H&C; the case law is clear that a positive best interests of the child assessment is not necessarily determinative of the outcome of an H&C claim. However, what was required was a reasonable, rational explanation by the Officer about how the best interests of the child factor was weighed in the overall assessment of the H&C claim, and why the harm that Dante would experience by being

removed to Mexico was outweighed as a consideration in the overall assessment. The Officer simply did not do that.

[27] The Officer's H&C decision is unreasonable, and therefore it is quashed. The matter is remitted back for reconsideration by a different Officer.

[28] The Applicant raised a number of other arguments about further deficiencies in the Officer's decision. In light of the conclusion I have reached on the best interests factor and the overall H&C analysis, it is not necessary to deal with them. My silence on these arguments, however, should not be understood by the Officer who next reviews the claim to indicate any disagreement with the Applicant's points. It would be best to avoid any mention of the children's "basic needs" because the point can easily lead an Officer into analytical confusion (see, for example: *Williams v Canada (Citizenship and Immigration)*, 2012 FC 166 at para 64; *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 at paras 15-16; *Conka v Canada (Citizenship and Immigration)*, 2014 FC 985 at para 15).

[29] In addition, it would be advisable to limit the comparison of the quality of education systems to the relevant countries (Canada and Mexico), rather than assessing the hardships the children would face by being placed in the Mexican education system in comparison to their luck at not finding themselves in other countries that are even worse off. The Officer's analysis seems to suggest that the fact that the children might be even worse off by being sent to some third country somehow justifies the harms that they will suffer by being sent to Mexico rather than continuing their education in Canada. That approach is simply wrong and should be avoided.

[30] For the reasons set out above, the application for judicial review is granted. The Officer's decision is quashed and the matter is remitted for reconsideration by a different officer.

[31] There is no question of general importance for certification.

JUDGMENT in IMM-2459-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The Officer's decision on the H&C application, dated February 23, 2022 is quashed and set aside.

3. The matter is remitted for reconsideration by a different officer.

4. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2459-22
STYLE OF CAUSE:	DARYL SANTIAGO CORDERO ROMERO, LAURA VERONICA VALADEZ VENEGAS, DAYTON TADEO CORDERO VALDEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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