Federal Court  Cour fédérale

Date: 20221116

Dockets: IMM-5620-21

Citation: 2022 FC 1564

St. John's, Newfoundland and Labrador, November 16, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JEAN-CLAUDE NDIKUM NGOLLE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Jean-Claude Ndikum Ngolle (the "Applicant") seeks judicial review of the decision of an Officer (the "Officer"), denying his application for Humanitarian and Compassionate ("H and C") relief, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The Applicant, a citizen of Cameroon, entered Canada on April 17, 2016. He submitted a claim for refugee protection on April 18, 2016 but subsequently withdrew that application on October 17, 2016. On February 15, 2019, he filed a Pre-Removal Risk Assessment. On June 21, 2019, he filed his H and C application.

[3] In making the H and C application, the Applicant submitted evidence about his establishment in Canada, the best interests of children and risk to him arising from country conditions in Cameroon.

[4] When the Applicant filed his H and C application, he was living in a common-law relationship. He referred to his common-law spouse and her four children in his submissions. He also referred to his young daughter and a stepson who live with his parents in Cameroon, and submitted that if granted permanent residence in Canada, he would apply to bring those children to Canada.

[5] In the affidavit filed by the Applicant in support of his application for judicial review, he deposed that his common-law relationship had ended prior to his receipt of the refusal of his H and C application.

[6] In my opinion, considering the end of the Applicant’s common-law relationship in Canada, only the interests of his children in Cameroon are relevant to this application for judicial review.

[7] The Applicant claimed to be at risk in Cameroon due to continuing tensions on linguistic-political lines, between Anglophone separatists and Francophone extremists. He claimed that his grandfather and father had been involved with the Southern Cameroon National Council for many years and that the conflict is bad in Buea, the area of the country where his family lives. He also claimed that because he bears a Francophone name, he will be at risk from Anglophone separatists.

[8] The Applicant also referred to difficulty in obtaining employment and poor health care in Cameroon, as aspects of the risk he would face if forced to return and apply for permanent residence from his country of nationality.

[9] In the decision, the Officer reviewed the submissions of the Applicant and determined that he had failed to present sufficient evidence of establishment in Canada, the best interests of children in Canada and Cameroon, and risks arising to him in Cameroon, to justify a positive determination on H and C grounds.

[10] The decision of the Officer is reviewable on the standard of reasonableness, pursuant to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.). The standard of reasonableness presumptively applies to administrative decisions, including decisions made under the Act, except where legislative intent or the rule of law suggests otherwise; see *Vavilov*, *supra* at paragraph 23.

[11] In considering reasonableness, the Court is to ask if the decision under review "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"; see *Vavilov*, *supra* at paragraph 99.

[12] The Officer's conclusions about the Applicant's lack of establishment in Canada are reasonable. The findings about the best interests of the children in Canada are reasonable, in light of the evidence about the end of the Applicant's common-law relationship in Canada.

[13] However, I am not persuaded that the Officer's reasoning and conclusion about the hardship arising from risks in Cameroon to the Applicant, related to linguistic and political strife, meet the applicable test of reasonableness. The alleged hardship to the Applicant may have affected the Officer's conclusion about the best interests of his children in Cameroon.

[14] Accordingly, the application for judicial review will be allowed, the decision of the Officer will be set aside and the matter remitted to another officer for redetermination. There is no question for certification.

JUDGMENT in IMM-5620-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter remitted to another officer for redetermination. There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-5620-21
STYLE OF CAUSE:	JEAN-CLAUDE NDIKUM NGOLLE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE BETWEEN CALGARY, ALBERTA AND ST. JOHN'S, NEWFOUNDLAND AND LABRADOR
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REASONS AND JUDGMENT:	HENEGHAN J.
DATED:	NOVEMBER 16, 2022

APPEARANCES:

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