Federal Court Cour fédérale

Date: 20240905

Docket: IMM-7938-23

Citation: 2024 FC 1391

Toronto, Ontario, September 5, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

MELISSA NATASHA LOUIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant, a citizen of Saint Lucia, seeks judicial review of a decision of a Senior Immigration Officer [Officer], dated June 6, 2023, denying her application for permanent residence on humanitarian and compassionate [H&C] grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] I am allowing the application because the Officer's analysis of the best interests of the child [BIOC] is unreasonable. The Officer failed to undertake an individualized assessment of the best interests of the Applicant's Canadian-born eleven-year old son. It is unnecessary for me to consider the Officer's assessment of the other H&C factors as this error is sufficient to vitiate their decision and to remit the matter for redetermination by another officer.

II. Analysis

[3] There is no dispute that the standard of reasonableness applies. 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8.

[4] In considering an H&C application, officers are required to weigh all relevant facts and factors to determine whether equitable relief is justified under subsection 25(1) of the *IRPA*: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 25 [*Kanthasamy*], citing *Baker v Canada (Minister of Citizenship and Immigration*, [1999] 2 SCR 817 at paras 74-75 [*Baker*]. Subsection 25(1) specifically requires that "the best interests of a child directly affected" must be taken into account.

[5] As articulated by the Supreme Court of Canada, a BIOC analysis requires that an officer be "alert, alive and sensitive" to the child's best interests: *Kanthasamy* at paras 38, 143; *Baker* at para 75. By its very nature, a BIOC analysis is "highly contextual". An officer's assessment must

be responsive to the affected child's particular circumstances including their age, capacity, needs, and maturity: *Kanthasamy* at para 35.

[6] The Officer's BIOC assessment in this case concerns the Applicant's eleven-year old son, who was born, and has lived in Canada his entire life. The Officer was not satisfied that the Applicant departing Canada and applying for permanent residence from abroad "would have a significant negative impact" on her son's best interests. In my view, there are a number of serious flaws with the Officer's BIOC assessment that render it unreasonable.

[7] First, the Officer relied on the general resilience of young children to find that the Applicant's son should be able to adjust to life in Saint Lucia over time, despite never having lived there:

> I accept that [the son] has never resided in Saint Lucia and may be unfamiliar with the culture and daily living in his mother's home country. However, given the resilience that young children possess, I find that it is more likely than not that [the son] would be able to integrate into the Saint Lucian education system and society over time.
>
> [Emphasis added]

[8] This Court has consistently held that generic reasoning about children's adaptability and resilience is problematic: *Francis v Canada (Citizenship and Immigration)*, 2024 FC 1287 at para 11 [*Francis*]; *Igreja Ferreira de Campos v Canada (Citizenship and Immigration)*, 2024 FC 1193 at para 22; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at para 31; *Bautista v Canada (Citizenship and Immigration)*, 2014 FC 1008 at para 28. As Justice Diner articulated,

"[t]he resiliency and adaptability of children is not a substitute for their best interests": *Francis* at para 11.

[9] Here, the Officer's conclusion about the son's ability to adjust to life in Saint Lucia was largely based on the general resilience of young children. The Officer did not undertake an individualized assessment by linking their conclusion in any way to the son's personal circumstances. This is especially concerning given that the son has spent his entire life in Canada. Furthermore, the Officer's generic approach fails to consider whether the son's medical conditions increase his vulnerability such that he may not possess the same resiliency as other children.

[10] The Officer bolstered their conclusion about the son's ability to integrate by referencing the assistance "of the applicant's parents and siblings in Saint Lucia". However, as the Applicant points out, the Officer misapprehended the evidence about the composition of the Applicant's immediate family in Saint Lucia. By the time of the H&C decision, the Applicant's father was deceased, and she only had one sibling (a brother with whom she was not close) and her mother left in the country.

[11] Second, the Officer failed to engage in a comparative analysis. It was incumbent on the Officer to assess the son's best interests from both perspectives — in Canada and in Saint Lucia: *Giraldo v Canada (Citizenship and Immigration)*, 2023 FC 492 at para 6; ***Vieira Sebastiao Melo v Canada (Citizenship and Immigration)***, 2022 FC 544 at para 57 [*Melo*]. While there is a presumption that remaining in Canada is in a child's best interests, this "comparative analysis must

be carried out": *Melo* at para 58, citing *Hawthorne v Canada (Minister of Citizenship and Immigration*), 2002 FCA 475 at paras 5-6.

[12] Like in *Khaja v Canada (Citizenship and Immigration),* 2022 FC 1041 [*Khaja*], "[n]ot once in their decision did the Officer consider how [the son's] best interests could be served by remaining in Canada": *Khaja* at para 36. Rather, the Officer unduly focussed on hardship, specifically the lack of evidence that the Applicant's son would be unable to access healthcare and education in Saint Lucia. In doing so, the Officer failed to undertake a sensitive and compassionate inquiry into the son's best interests given his medical conditions.

[13] The Officer should have considered the severity of the child's various medical conditions in determining where his best interests lie. Instead, the Officer simply made a passing reference to the medical conditions and did not meaningfully engage with the evidence tendered.

[14] The evidence was that the Applicant's son suffers from chronic eczema that requires a high dose of prescription medication. Only one medication has successfully controlled his eczema flare-ups. According to the son's primary care physician, his eczema has flared dozens of times in the past few years, necessitating urgent visits to her. She further described the medical care he requires to control his eczema:

> If is [*sic*] eczema is not treated aggressively, he is at risk of serious bacterial and viral infections, scaring and discomfort. He requires continuous treatment and access to expert medical care to control his skin inflammation and risk of eczema complications.

[15] The Applicant further explained the impact of the eczema on her son as follows:

> If we cannot manage his eczema, this will very seriously impact [his] life. When his symptoms worsen, kids ask him what is wrong with his face. He becomes irritable and has difficulty focussing and sleeping. He is susceptible to eczema over his entire body: from his feet to his scalp. With even a short lapse in medication, he will be intolerably itchy. Not only will he be miserable, but he will be unable to participate in school or play with friends.

[16] In addition, the Applicant's son suffers from severe environmental allergies and requires eye drops several times a day during flare-ups. Furthermore, he has a life-threatening peanut allergy and carries an epi-pen with him at all times.

[17] It was open to the Officer to find that the Applicant adduced "little independent and corroborative evidence" about access to medical services in Saint Lucia given the Applicant's failure to tender any objective country condition evidence on this topic. The only evidence about the lack of access was from the Applicant and her sister.

[18] However, in my view, the Officer erred by finding the lack of objective evidence about access to medical care in Saint Lucia determinative of their BIOC analysis of the son's medical conditions. The Officer did not consider how remaining in Canada under the care of his physician, with access to his medications, would serve the son's best interests, thereby failing to engage in the requisite comparative analysis.

[19] Third, the Officer failed to engage with the Applicant's evidence that they would not be able to live with her family in Saint Lucia due to their tight living conditions, as well as their strained relationship. This was highly relevant evidence that the Officer should have factored into

their BIOC analysis: *Ortiz De La Cruz v Canada (Citizenship and Immigration)*, 2023 FC 827 at para 36; *Ismail v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 845 at paras 13-14; *Taylor v Canada (Citizenship and Immigration)*, 2016 FC 21 at paras 28, 31.

[20] In her Statutory Declaration, the Applicant specifically raised concerns about their prospective living conditions in Saint Lucia, stating that "[i]t would be both impractical and onerous" for them to live with her mother. She explained that her mother lives in a small two-bedroom home with the Applicant's uncle, brother, and nephew. In addition, her mother suffers from Chronic Obstructive Pulmonary Disease.

[21] Further, the Applicant's mother recently retired and is on a limited pension of approximately $150 Canadian per month. Consequently, she cannot help with expenses. Indeed, the mother's evidence was that even before she retired as a janitor, the Applicant assisted her financially as she was unable to meet her needs on her salary alone. The mother has been raising her grandson since her son went missing in February 2012.

[22] The Applicant further stated that she could not live with her mother because they "don't see eye to eye which has led to frequent conflict during the times we have lived together". The Applicant's mother echoed this statement in her letter, stating that they have "constant conflicts". In her H&C submissions, the Applicant specifically voiced concern about the impact of such a living arrangement on her son, stating that she does not want her son "to grow up in that kind of environment". I find that the Officer's failure to contend with this evidence in considering the best interests of the Applicant's son is unreasonable: *Vavilov* at para 128.

III. Conclusion

[23] Based on the foregoing, the Officer's BIOC analysis is unreasonable. While a BIOC analysis is not determinative of the outcome of an H&C application, a flawed assessment can render a decision unreasonable: *Wen v Canada (Citizenship and Immigration)*, 2023 FC 1127 at para 15; *Monga v Canada (Citizenship and Immigration)*, 2023 FC 848 at para 27. The Officer's decision is therefore set aside and the matter is remitted to another officer for redetermination.

[24] The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-7938-23

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. The Officer's decision, dated June 6, 2023, is set aside and the matter is remitted for redetermination by another officer.
3. There is no question for certification.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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