

Date: 20080910

Docket: IMM-4754-07

Citation: 2008 FC 1021

Toronto, Ontario, September 10, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**YLLI BOCERRI
ANILA BOCERRI**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application challenges a negative humanitarian and compassionate (H&C) decision with respect to a mother and father, who are citizens of Albania, and their young Canadian born child. I find that the central issue in the decision is whether the H&C Officer was alert, alive, and sensitive to child's best interests.

[2] In the application for H&C consideration, Counsel for the Applicants made the following argument with respect to the child's best interests:

In addition to the above, there is also the aspect of the negative impact that removing this family to Albania will have on their Canadian born child, who is not subject to removal from Canada but would obviously be forced to leave in order that he is not separated from his parents. It is submitted that Kevin would suffer irreparable harm if he has to leave his country of birth and re-adjust himself to life in Albania, a country which is completely foreign to him.

[Application Record, p. 20]

[3] In support of this argument, the following evidence was tendered of in-country conditions in

Albania:

The Government generally respected the human rights of its citizens; however, there were serious problems in several areas. Police beat and abused suspects, detainees, and prisoners. Prison conditions remained poor. The police occasionally arbitrarily arrested and detained persons, and prolonged pretrial detention was a problem. Official impunity was a problem. The Government occasionally infringed on citizens' privacy rights. Political interference in the media occurred less frequently than in previous years. Police reportedly used excessive force against protestors. Individual vigilante action, mostly related to traditional blood feuds, resulted in some killings and an atmosphere of fear in some areas of the country. Societal violence and discrimination against women and children were serious problems. Societal discrimination against Roma, the Egyptian community, and homosexuals persisted. Child labor was a problem. [Emphasis added]

[...]

The Government's commitment to children's rights and welfare is codified in domestic law; however, in practice, there was limited commitment.

[U.S. Department of State: Country Reports on Human Rights Practices, 2004: Albania, Applicant's Application Record, p. 93, 103]

[4] On the issue of the child's best interests, the entire analysis in the decision under review reads as follows:

At the same time, the relative short period of time the applicants resided in Canada since 2003 and were employed since 2005 and the young age of their child at 3 were considered as well. In view of those factors, despite difficulty that might arise for them and their child upon return to Albania, the applicants were not found to have established in Canada to a degree that severing the ties would cause them such a negative impact that would constitute unusual and undeserved or disproportionate hardship. With the applicants' proper love and care, their child, if it was decided for him to return with them, would eventually adjust to the country conditions in Albania, which were understandably not as ideal as those in Canada.

[Application Record, p.12]

[5] In my opinion, the H&C Officer's decision with respect to the child in question is wholly deficient. It was incumbent on the H&C Officer to consider the Canadian born child as an individual, apart from the fact that, if his parents are required to return to Albania, he would be in their care. As an individual, the child is entitled to an independent assessment as to whether his best interests are served by his displacement to Albania.

[6] An H&C assessment of the best interests of a child involves a careful analysis of a number of important factors, quite apart from the single factor of whether he or she will be in the care of his parents should they be required to leave Canada (see *Gurpreet Singh Gill v. The Minister of Citizenship and Immigration* 2008 FC 613, para. 17). It is obvious that the reality of this child's potential future life in Albania was not squarely in the mind of the H&C Officer when the decision under review was made and, as a result, I find that the H&C Officer was not alert, alive, and sensitive to his best interests.

ORDER

Accordingly, I set aside the decision under review, and refer the matter back for redetermination before another H&C officer.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4754-07

STYLE OF CAUSE: YLLI BOCERRI, ANILA BOCERRI v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 10, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: SEPTEMBER 10, 2008

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