Date: 20090203

Docket: IMM-2738-07

Citation: 2009 FC 96

Montréal, Quebec, February 3, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

RASHEENA ALLEYNE
VANDRA ALLEYNE
KLEIN ALLEYNE
ANDRE ALLEYNE

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) of a decision of a pre-removal risk assessment (PRRA) officer, dated May 15, 2007, refusing the applicants' third application for permanent residence on humanitarian and compassionate (H&C) grounds wherein the officer found that there were insufficient H&C considerations to warrant exempting the applicants from the requirement that they apply for permanent residence outside of Canada.

II. The Facts

[2] The principal applicant, Rasheena Alleyne and three of her children, Vandra, Klein and Andre (the applicant-children), all citizens of Trinidad, entered Canada on December 25, 1993, on visitors' visas.

[3] The principal applicant has three other children who are not parties to this application. Of the three non-applicant children, one, Sadiq Jan, a mother of four children is already a permanent resident, and the other two, Tracy Alleyne, a mother of two Canadian-born children, and Sommar Alleyne received positive H&C decisions, while the applicant and the applicant-children received negative H&C decisions.

III. Reasons Alleged in the H&C Application

[4] The reasons alleged in support of the H&C application can be summarized as follows:

a. The applicants fear harassment and discrimination if removed from Canada because of their mixed race;
b. The applicants have no family ties in Trinidad;
c. The principal applicant was physically abused by her separated spouse, the applicant-children's father;
d. The principal applicant's former mother-in-law has threatened to have her arrested if she returns to Trinidad;
e. The principal applicant's former father-in-law is well connected and she fears he will try to use his influence to harm her;
f. The applicants have lived in Canada for 15 years and have become well established.

IV. The Impugned H&C Decision

[5] The officer concluded that the risks and hardships alleged by the applicants are insufficient to establish unusual, undeserved or disproportionate hardship should they have to apply for permanent residence from outside of Canada. To arrive at this conclusion, the PRRA officer made findings that can be summarized as follows:

- The risks and fear alleged by the principal applicant, namely, of harm to her from her former father-in-law, of arrest initiated by her former mother-in-law, of harassment and discrimination from the community due to the family's mixed race, do not amount to unusual and undeserved or disproportionate hardship;
- The principal applicant having lived away from Trinidad for 15 years and having been separated from her spouse since February 1, 1997, the circumstances have changed since then so that risks feared have become with time insufficient evidence to establish hardship;
- The country documentation shows that police corruption has been a problem related to illegal drugs and other illicit activities, but that mechanisms exist for complaints against police officers. The documentation shows also the existence of laws against racism and racial motivated crimes;
- The concept of risk is forward looking and the principal applicant has provided insufficient evidence that she would face a personalized risk should she return to Trinidad;
- Having been subject off a removal order since 2001, the applicants had a reasonable expectation they would be allowed to remain in Canada permanently. As a

consequence, they assumed the risk of establishing themselves in Canada while fully aware that their immigration status was more than uncertain;

- The applicants have established themselves to a certain degree, but not to the degree that it would be unusual, undeserved or disproportionate hardship to ask that they apply for permanent residence from outside of Canada;
- There is insufficient evidence to establish the applicants would not be able to adapt to living in Trinidad as well as they have adapted to living in Canada;
- The evidence does not establish that the relocation and resettlement in the home country would have a significant negative impact on the grandchildren that could amount to unusual, undeserved or disproportionate hardship.

V. Issues

[6] The applicants raise several issues that can be rephrased as follows:

Did the officer err in refusing the application considering all of the circumstances?

VI. Analysis

Standard of Review

[7] The present case involves the application of law to a situation of fact only. The appropriate standard of review here is therefore reasonableness. The question at issue falls within the expertise of the PRRA officer and as a result deference is owed and the Court should not intervene unless the PRRA officer's decision does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick,* 2008 SCC 9, at para. 47).

Did the Officer Err in Refusing the Application Considering All of the Circumstances?

[8] The applicants point out that Tracy and Sommar brought one application in April of 2004 on the same grounds for all the family members. Their application was successful while the present applicants' request followed a different avenue. The applicant-children are younger than Tracy and Sommar who have spent more of their lives in Canada, and are more likely entrenched and rooted in Canadian culture.

[9] The applicants submit that the PRRA officer completely ignored the issue of disparity and inconsistency by failing to mention in the reasons for decision that the applications of Tracy and Sommar were accepted. Also, the applicants submit that the officer erred by not analysing the hardship the separation that would result from these opposite findings would cause.

[10] The applicants have not cited any authority to support the proposition that a positive disposition of the H&C application of one family member should translate into a positive disposition for a different family member. The Court notes that this argument has been made in the refugee context and has consistently been rejected by the Federal Court (*Bakary v. Canada (Minister of Citizenship and Immigration),* 2006 FC 1111, at para. 10).

[11] The officer did not err by failing to mention the positive H&C decisions of Tracy and Sommar. H&C decisions are fact-specific to the particular applicant. The rejection of this argument is based on two main factors: first, refugee applications are to be determined on a case-by-case basis; and second, the other decision could be incorrect (*Bakary,* above; *Aoutlev v. Canada*

(Minister of Citizenship and Immigration), [2007] F.C.J. No. 183 (QL), at para. 26; and *Cortes v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 323 (QL), at para. 10).

[12] Just as a refugee determination must be done on a case-by-case basis, this is even more so in an H&C determination. Additionally and since the applicants have not provided the positive H&C reasons for the other family member, their arguments is without evidentiary foundation and the Court is unable to compare the two situations.

[13] The Court cannot ignore though that Tracy's affidavit indicates she is the mother of young children born in Canada, which is a factor inexistent in the applicants' request.

[14] The applicants cite the "*Inland Processing Manual IP5", Yu v. Canada,* [2006] F.C.J. No. 1217 (QL) and *Baker v. Canada*, [1999] 2 S.C.R. 817, in support of one of the most important principles that ought to favour a positive determination of an H&C determination, that is family reunification and the best interests of the applicants.

[15] The applicants rely on the following facts in their pretensions that the officer's decision was unreasonable:

a. They have lived in Canada for 15 years;
b. The applicant-children will be ousted from the home and employment they have established in Canada;
c. The applicant-children have absolutely no ties, roots or employment in Trinidad;

d. The applicant-children, Klein and Vandra, have been successful in building solid careers in their particular fields and are highly recommended by their employers;
e. The principal applicant is close to all of her children and grandchildren;
f. The applicants are hard-working, law-abiding, and dedicated to their employment and family in Canada.

[16] As noted by the PRRA officer, there are no minor applicants here. All of the principal applicant's children are adults. The only children who may be impacted by this decision are the principal applicant's grandchildren; the officer discussed the impact on them of the removal of their grandmother and determined it constituted insufficient H&C grounds.

[17] The respondent submits that the applicants are asking the Court to reweigh the factors the officer considered, which is not this Court's role. In their submissions, the applicants simply repeat the grounds of their H&C application. Other than alleging that the positive determinations of Tracy's and Sommar's applications should have been considered, the applicants do not point to specific errors in the officer's analysis or his decision-making process. Other than the H&C decisions of Tracy and Sommar, the applicants do not suggest any evidence that was overlooked.

[18] The Court has reviewed the H&C application, the reasons for decision, and the submissions on judicial review and noted that the reasons for the decision are accurate and reasonably well founded. The PRRA officer was correct when he stated that the personal risk alleged by the principal applicant risk is forward-looking an he accurately noted that the principal applicant has been separated from her abusive former husband, who still lives in Canada, for over 10 years.

[19] A prolonged stay that has led to establishment is one consideration amongst others, but more so if the circumstances leading to the prolonged stay are outside of the applicants' control. These are not the circumstances of the applicants here.

[20] The applicants decided to establish themselves in Canada without having any assurance that their various requests would be granted. Their prolonged stay appears to be the consequence of their own actions: their initial H&C application was rejected on December 3, 1999, and a removal order was issued for them on July 12, 2001; on January 28, 2004, they were determined not to be convention refugees; on June 7, 2006, their PRRA application was rejected; and on November 30, 2006, their second H&C application was rejected and followed with an application for leave of that decision to the Federal Court, but this recourse was discontinued upon the parties' agreement to have their H&C application re-considered by a different officer; and finally on May 15, 2007, the applicants' third H&C application was dismissed, and is the subject of the present judicial review.

[21] Under the circumstances, it cannot be said that they had nothing to do with their prolonged stay. They assumed the risk of these lengthy procedures and of their establishment in the meantime; unfortunately, they must now assume the consequence.

[22] In his decision, the PRRA officer stated and applied the correct legal test: unusual, undeserved or disproportionate hardship; accurately recited the applicants' submissions; and thoroughly analyzed the H&C considerations brought forth. However, the applicants failed to convince this Court that the impugned decision is unreasonable.

[23] In brief, the impugned decision falls within a range of possible and acceptable outcomes which are defensible in respect of the facts and the law, and therefore deserves deference from this Court. For these reasons, this Court concludes that the PRRA officer did not commit a reviewable error and that his decision is reasonable. Therefore, the judicial review application will be dismissed.

[24] The Court agrees with the parties that there is no serious question of general importance to certify.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application is dismissed.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Raj Napal	FOR THE APPLICANTS
Nur Muhammad-Ally	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Napal Law Office Brampton, Ontario	FOR THE APPLICANTS
John H. Sims, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT