Date: 20090505

Docket: IMM-1209-08

Citation: 2009 FC 456

Ottawa, Ontario, May 5, 2009

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

JOSE AGOSTINHO FERREIRA DE AGUIAR
& MARIA NOEMI DE AGUIAR

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] In March 2008, an immigration enforcement officer refused to defer the applicants' removal from Canada. The applicants filed an application for leave and judicial review of the officer's decision and asked me to stay their removal until that application had been decided. I granted their request, granted leave on the application for judicial review and ultimately heard the applicants' arguments on the merits.

[2] The Minister's main argument is that this matter is now moot. At the time the applicants requested a deferral of their removal, their application for humanitarian and compassionate relief

(H&C) was outstanding. They asked the officer to postpone their removal until their H&C application had been decided. Since then, the applicants' H&C has been turned down (on July 11, 2008). So, the respondent submits that the question whether the officer should have deferred the applicants' removal pending a decision on their H&C is no longer a live issue. I agree. Therefore, I must dismiss this application for judicial review.

I. Factual Background

[3] The applicants arrived in Canada from Portugal in 1986. They filed a refugee claim, but abandoned it and returned to Portugal. They returned to Canada in 1999 as visitors. They filed for an H&C and were turned down in 2003. They left Canada briefly but returned and made another refugee claim, which was dismissed in 2004. They filed a second H&C and an application for a pre-removal risk assessment (PRRA) in 2005. The PRRA was dismissed in 2006. The applicants were scheduled for removal in December 2007 but removal was deferred to March 21, 2008. The applicants then requested another deferral based on the outstanding H&C. The deferral was denied. It is this last decision that is the subject of this application for judicial review. The second H&C was dismissed on July 11, 2008.

II. Is this case moot?

[4] In March 2008, I stayed the applicants' removal from Canada pending the disposition of their application for leave and for judicial review. In the interim, the applicants' H&C application

was dismissed. Accordingly, the effect of the stay was to accord the applicants the relief that they had requested from the officer – deferral of their removal until disposition of their H&C application.

[5] In these circumstances, the Minister urges me to conclude that this application for judicial review is moot because the applicants have already achieved a deferral of their removal beyond the date on which their H&C was decided, even though the officer had denied them one. Further, there is no point, the Minister suggests, in deciding whether the officer's decision was reasonable since any conclusion I would arrive at would have no practical effect. The applicants will be re-scheduled for removal no matter what I decide.

[6] I agree.

[7] The question of mootness must begin with a characterization of the controversy between the parties: *Baron* v. *Canada (Public Safety and Emergency Preparedness)*, 2009 FCA 81. Here, on March 11, 2008, the applicants asked for a deferral of their removal to allow them "an opportunity to remain pending the outcome of [their] H&C Application". They attached a variety of materials to their request outlining the medical and psychological needs of their Canadian niece and her 12-year-old son. This evidence was relevant to their H&C application.

[8] As the applicants themselves characterized it, the issue before the enforcement officer was whether their removal should be deferred pending the outcome of their H&C. Since the H&C has

now been decided, there is no longer a live controversy between the parties (see *Baron*, above at para. 31, citing *Amsterdam* v. Canada (*Minister of Citizenship and Immigration)* 2008 FC 244).

[9] The applicants argue that, even if I were to find that their application was moot, I should exercise my discretion to decide the case on its merits in order to give guidance to enforcement officers on the exercise of their discretion to defer removal. In my view, Justice Marc Nadon of the Federal Court of Appeal has already provided a great deal of guidance on this question in *Baron*, above, and there is no need for me to say anything more.

[10] In any case, even if I had concluded that this case should be decided on its merits, I would have found that the officer's decision was not unreasonable. She carefully reviewed all of the material provided by the applicants, including the information relating to their niece and her son. I cannot find any basis on which that decision could be overturned.

[11] Accordingly, I must dismiss this application for judicial review. The applicants proposed a question for certification along the lines of the question addressed by the Federal Court of Appeal in *Baron*, above. Given the Court's recent answer to that question, I need not certify another one.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is dismissed.
2. No question of general importance arises.

"James W. O'Reilly"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1209-08
STYLE OF CAUSE:	DE AGUIAR ET AL v. MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 12, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	O'REILLY J.
DATED:	May 5, 2009

APPEARANCES:

Dov Maierovitz	FOR THE APPLICANTS
Margherita Braccio	FOR THE RESPONDENT

SOLICITORS OF RECORD:

ETIENNE LAW OFFICE Toronto, Ontario	FOR THE APPLICANTS
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT