Federal Court  Cour fédérale

Date: 20110922

Docket: IMM-923-11

Citation: 2011 FC 1089

Calgary, Alberta, September 22, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JUAN JOSE GONZALEZ VAZQUEZ
CARLA MARCELA ALVAREZ RODRIGUEZ
AGUSTINA MANON ALVAREZ RODRIGUEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision that denied the applicants' permission to file their application for permanent residency from within Canada on Humanitarian and Compassionate grounds (H&C application). The officer determined that Mr. Vazquez and the members of his family would not face unusual and undeserved or disproportionate hardship in the event they were to return to Uruguay to file a permanent residence application.

[2] For the reasons that follow, this application must be dismissed.

[3] The applicants are citizens of Uruguay. Juan Jose Gonzalez Vazquez and Carla Marcela Alvarez Rodriguez are in a common law relationship. They have two children: Agustina Manon Alvarez Rodriguez, age 12, and Deonna Ashelen, age 9. Deonna is not a party to this application as she was born in Canada and is a Canadian citizen. Carla also has a third daughter, Belen Vaz Alvarez, age 15, who lives in Uruguay with her paternal aunt.

[4] The applicants arrived in Canada on December 10, 2000 and initiated a claim for refugee protection the following day. Their claim was heard by the Refugee Protection Division on May 3, 2005 and subsequently rejected on May 13, 2005. The applicants applied for judicial review of that decision to this Court but leave was denied on September 7, 2005.

[5] On February 5, 2008, the applicants initiated their first Pre-Removal Risk Assessment application (PRRA application). It was rejected on April 21, 2008.

[6] On April 20, 2008, the applicants initiated a request for exemption on H&C grounds and on November 19, 2009 they initiated a second PRRA application. Both these applications were rejected by the same officer on August 23, 2010. Only the H&C decision is before the Court.

[7] The sole issue raised in the applicants' Memorandum of Argument is whether the officer failed to properly consider the best interests of the three children. The applicants set out two additional issues in their Further Memorandum of Argument, namely (1) did the officer make an unreasonable conclusion with respect to the degree of the applicants' establishment in Canada, and (2) did the officer fail to consider the hardship to the applicants upon return to Uruguay. However, although stated as issues, neither is addressed in the Further Memorandum of Argument and counsel at the hearing directed his submissions only to the issue of the best interests of the children which, in my view, is the only issue properly before the Court.

[8] Before turning to the substantive issue, I must address an objection raised by the respondent that evidence not before the officer was set out in the applicants' affidavit filed in this application. It is well settled that the Court cannot consider anything on a judicial review application that was not before the decision-maker. Counsel for the applicants agreed with that proposition and accordingly, to the extent that new evidence has been raised by the applicants, it has been rejected and was not considered in rendering judgment.

[9] The submission of the applicants with respect to the alleged error is that the officer ignored or failed to take full account of evidence with respect to the best interests of the children. Specifically, they point to the following facts:

(i) The children would be deprived of love and affection from their aunts, school mates and neighbourhood friends. They have also been living in Canada for more than ten years and have adopted Canadian customs, rules and regulations.

(ii) The children would be deprived of good quality of life, education and health care.

(iii) The children speak English at home and hardly speak Spanish. They would have no future if they went back to Uruguay and would live in poverty and be exposed to violence.

(iv) There is forced prostitution and trafficking of children in Uruguay.

(v) They are trying to establish themselves in Canada and have many friends. The applicant is working full time and making approximately $60,000.00 per year.

[10] The applicants submit that the officer did not take full consideration of these issues. They allege that this is demonstrated by the officer's statement pertaining to the fact that the applicants did not provide sufficient evidence to establish that the children would be deprived of their basic rights and needs.

[11] I agree with the respondent that the applicants are essentially arguing that the officer should have come to a different conclusion on the evidence. In essence, they submit that the officer ought to have weighed the evidence differently. There is no evidence in the record that the officer considered any irrelevant facts, or that the weight given the evidence was disproportionate so as to be perverse.

[12] The officer examined the applicants' risk, their establishment in Canada and the children's best interests before concluding that there were insufficient grounds to warrant an exemption.

[13] With respect to the best interests of the children, the officer noted that there was little reason to believe that the Canadian born child would not accompany the parents were they to be removed from Canada.

[14] The officer reviewed the written submissions prepared by the applicants, the letters of support and the documentary evidence reporting on the educational system in Uruguay and found that while the educational system may not be the same as that which is found in Canada, the evidence was insufficient to establish that the children would not have access to education in Uruguay. It was also found that the objective documentation did not support the claim that the education system was such that the children would not receive a quality education or would be subjected to harassment and discrimination. On the contrary, the evidence showed the education system to be of high quality.

[15] The officer also noted that health care was free in Uruguay and that there was insufficient evidence to establish that the children's health and welfare needs would not be met should they be deported. The officer also gave careful consideration to the children's ties to Uruguay. In this regard, the officer found little reason to believe that with the support of their parents, they would be unable to adjust to life in Uruguay. Importantly, the officer considered the circumstances that could place the children at risk in Uruguay and found that the parents' personal background militated against it. Lastly, the officer examined the family and friends of the applicants and the children and

found, reasonably, that while one never wishes to be removed from known friends, they would be removed as a family and they had additional family members in Uruguay.

[16] Finally, the officer considered the best interests of Belen Vaz Alvarez, Carla's 15 year old daughter who lives in Uruguay with her parental aunt. Finding that the applicants' submissions were lacking meaningful information regarding Belen, the officer reasonably found that it was unclear how her best interests would be affected by the applicants' removal from Canada.

[17] The one area that was of concern to the Court was a statement made by one of the children's teachers that the ability of the two children in Canada to speak Spanish was meager. Specifically, she wrote:

> [T]he same value is not placed on "safe and caring" schools, and children are often in danger of being harassed by others, or having their belongings stolen. Would their children be a target? It seems likely, since they have only known Canadian culture, and barely speak Spanish.

[18] The officer considered this statement in the context in which it was made; the context that their inability to communicate in Spanish was likely to lead to harassment and their being targeted. There was no submission made nor is there any evidence in the record before the officer that this language issue would have an adverse impact on their ability to have proper access to and reasonable success at school. Perhaps this was an oversight by the applicants or their counsel, or perhaps it was not mentioned because their fluency in Spanish is not as lacking as the one teacher believes. In any event, the officer had to render a decision on the basis of the submissions and evidence placed before her by the applicants. As was stated by the Court of Appeal in *Owusu v*

Canada (Minister of Citizenship and Immigration), 2004 FCA 38, at para 8: "applicants have the onus of establishing the facts on which their claim rests, they omit pertinent information from their written submissions at their peril." These applicants failed to raise the possible impact the children's language deficiency in Spanish might have on their schooling and thus the officer was not required to consider it. Further, I accept the submission of the respondent that the officer was under no duty to develop that possible submission herself. She was entitled to rely on the submissions made by the applicants and need not explore other possible issues that were not clearly and directly raised by them in their application.

[19] There was no doubt in the mind of the officer, or in mine, that these children will face challenges in adjusting to life in Uruguay. However, it was not found to be of such a nature so as to tip the balance in favour of granting the H&C application. Based on the record, I cannot say that the decision reached was unreasonable and I cannot say that the officer ignored or improperly weighed the evidence before her.

[20] For these reasons this application must be dismissed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-923-11
STYLE OF CAUSE:	JUAN JOSE GONZALEZ VAZQUEZ et al v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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