Federal Court | Cour fédérale

Date: 20120814

Docket: IMM-7087-11
IMM-281-12

Citation: 2012 FC 983

Ottawa, Ontario, August 14, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

IMM-7087-11

NORVIL BAILEY,
PRINCESS MARGARET LINDSAY BAILEY,
RAJAY BAILEY

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AND BETWEEN:

IMM-281-12

NORVIL BAILEY, PRINCESS MARGARET BAILEY LINDEY, RAJAY BAILEY

Applicants

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek judicial review of a decision of Senior Immigration Officer J. Rolheiser (H&C Officer), dated August 24, 2011, refusing the applicants' application for permanent residence on humanitarian and compassionate (H&C) grounds (IMM-7087-11) pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). Judicial review is also sought of a decision of an Inland Enforcement Officer (Enforcement Officer), dated January 9, 2012, refusing to defer the applicants' removal (IMM-281-12). For the reasons that follow the applications for judicial review are dismissed.

Facts

[2] The applicants, Norvil Bailey (applicant), Princess Margaret Lindsay-Bailey (female applicant), and their minor son Rajay Norvil Bailey (minor applicant), are a family from Jamaica. The applicants also have a minor son born in Canada, Duray Norvil Bailey.

[3] The applicants entered Canada as temporary residents in January 2007. They made claims for refugee protection in May 2007, which were refused on November 16, 2009. They submitted a Pre-Removal Risk Assessment (PRRA) application in September 2010, and an H&C application in November 2010.

[4] The applicants' PRRA application was refused in December 2010 and the decision was delivered to them on January 18, 2011. They were informed that removal was imminent. The applicants received a Direction to Report on June 1, 2011 with a removal date of July 10, 2011. Two deferral requests were submitted, both of which were refused. The applicants successfully

obtained a stay of removal in July 2011 on the basis of the second refusal. However, leave was ultimately denied in that application for judicial review.

[5] In August 2011, the applicants' H&C application was refused. Their removal was scheduled for January 12, 2012. They requested deferral of removal on January 6, and that request was denied on January 9. On January 11, the Court stayed the applicants' removal pending the outcome of the two applications before this Court.

[6] As the removal date has long passed the order is spent and of no force. No argument has been advanced which satisfies me that it would be in the best interest of the administration of justice to hear and decide this issue: *Borowski v Canada (Attorney general)*, [1989] 1 SCR 342. The application in respect of the removal order (IMM-281-12) is therefore dismissed.

H&C Decision

[7] In the Decision and Reasons the H&C Officer reviewed the applicants' establishment in Canada, the best interests of the children directly affected by the removal, the applicants' family ties in Canada and found that the applicants had not established unusual and undeserved or disproportionate hardship on any of these grounds.

[8] Regarding establishment in Canada, the H&C Officer noted that the applicants' employment letters were from the previous year and there was no evidence of their current employment status. The Officer also noted that the applicants had only provided their 2009 income tax returns and those

returns indicated that the applicants had been on social assistance during that year. The H&C Officer found that the applicants had not been financially self-sufficient since arriving in Canada.

[9] The H&C Officer noted a letter from the applicant's sister indicating her support for their H&C application, but found that the letter did not indicate whether this support was financial, which would not be binding in any event. The Officer found little evidence that the applicants had integrated or were active in the community.

[10] The H&C Officer noted the applicants' submissions that the applicant's sister, as well as many cousins and friends, are in Canada, and the applicants and their relatives in Canada provide each other considerable emotional support. However, the H&C Officer found little evidence to substantiate this submission.

[11] Regarding the children, the H&C Officer found no evidence that the minor applicant could not assimilate in Jamaica, enrol in school and make new friends there. The H&C Officer also found no evidence that Duray could not accompany the applicants back to Jamaica, although it was their choice whether or not to leave him in Canada with relatives.

[12] The application was therefore refused.

Standard of Review and Issue

[13] The remaining application, in respect of the H&C decision, concerns whether the H&C Officer's decision reasonable and whether the H&C Officer breached the principles of procedural fairness.

[14] The substance of the H&C Officer's decision is reviewable on a standard of reasonableness: *Da Silva v Canada (Minister of Citizenship and Immigration)*, 2011 FC 247, and matters of procedural fairness are reviewed on a standard of correctness: *Nizar v Canada (Minister of Citizenship and Immigration)*, 2009 FC 557.

Analysis

Was the H&C Officer's decision reasonable?

[15] I find that, while I have concern with aspects of the H&C Officer's analysis which may have been erroneous, the decision as a whole is reasonable and the application must be dismissed.

[16] The applicants impugn the H&C Officer's finding that they have not been financially self-sufficient since arriving in Canada. They argue that the relevant question was whether they were currently financially self-sufficient, even if they were not upon first arriving. The respondent submits that this finding was reasonably open to the H&C Officer.

[17] In my view, this finding by the H&C Officer was odd, or perhaps the choice of language was ill-considered. Whether or not the applicants have *always* been financially self-sufficient in Canada is not overly relevant to the question at issue. An immigrant initially dependent on

government assistance could subsequently become sufficiently established in Canada such that requiring that person to leave would cause unusual and undeserved or disproportionate hardship. Therefore, this finding on the part of the H&C Officer was tangential at best, to the overall issue.

[18] Secondly, the Officer obliquely discounts the letters from the applicants' employees. He said there was no "current" information on file and thus impliedly rejected them or accorded them little weight, even though they were but nine months old.

[19] If an Officer intends to discount or disbelieve evidence which is, on its face, probative, and, in the H&C context, reasonably current, reasons should be given.

[20] Notwithstanding that the decision strains the limits of reasonableness, it should be upheld. The H&C Officer found that the applicants had provided little evidence of establishment to the degree that would cause undue hardship, and a review of the record supports that conclusion as reasonable. The applicants submitted very little evidence of establishment and integration in Canada. All that was submitted were cryptic employment letters, some income tax returns, and a few letters from friends. As the respondent submits, some degree of establishment is expected and is, alone, insufficient to grant an H&C exemption. To succeed, the applicants must demonstrate a significant degree of establishment, and I find that the H&C Officer reasonably concluded that the applicants did not do so in this case.

[21] In their submission regarding the issue of financial self-sufficiency, the applicants implicitly argue that the H&C Officer erred by limiting the relevant factors to be considered in the H&C

analysis. The applicants submit that the concept of hardship is broad and the Officer must assess any hardship factor highlighted by the applicants. In my view, that is precisely what the H&C Officer did. He considered whether the applicants' establishment, family ties, or the best interests of the children warranted an H&C exemption. While, as discussed above, the H&C Officer may have misconstrued some aspects of the evidence (such as whether the applicants had always been financially self-sufficient as discussed above), the Officer did consider all the relevant factors advanced by the applicants and reached a reasonable and justified conclusion.

[22] In any event, even if I were to accept that it was unreasonable to impugn the applicants' employment letters when they were less than a year old this finding would not alter the conclusion that the decision as a whole was reasonable. Even if the H&C Officer had accepted that the applicant and female applicant had been continuously employed since 2009 and 2010, respectively, that finding could not have moved the conclusion that the applicants would not suffer undue hardship due to their establishment in Canada from the realm of reasonable to that of the unreasonable. As well, the unexplained absence of 2008 and 2010 tax records was, appropriately, significant in the Officer's mind.

Did the H&C Officer breach the principles of procedural fairness?

[23] The applicants argue that the H&C Officer breached the duty of fairness owed to the applicants by failing to seek updated submissions before rendering the decision. I agree with the respondent that there is no general duty on the part of an officer to seek further submissions or evidence from an applicant before rendering the decision; rather, the obligation is on the applicant to

put forward all relevant evidence: *Doe v Canada (Minister of Citizenship and Immigration)*, 2010 FC 285.

[24] The applications for judicial review are dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the applications for judicial review be and are hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7087-11
STYLE OF CAUSE:	NORVIL BAILEY, PRINCESS MARGARET LINDSAY BAILEY, RAJAY BAILEY v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	July 25, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	RENNIE J.
DATED:	August 14, 2012

APPEARANCES:

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