Federal Court  Cour fédérale

Date: 20131211

Docket: IMM-1753-13

Citation: 2013 FC 1242

Ottawa, Ontario, December 11, 2013

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

**FITO ALCIN, ROSIANIE ALCIME,
FRISNEL ALCIN, OWENSLAY ALCIN,
NAJIKA ALCIN**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

I. Introduction

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision by Lina Ly, a Citizenship and Immigration Canada Officer [CIC Officer], dated February 15, 2013, denying the Applicants' request for permanent residency based on humanitarian and compassionate considerations [H&C Application] under subsection 25(1) of the IRPA.

II. Facts

[2] Fito Alcin [Principal Applicant] and his wife Rosianie Alcime are Haitien citizens and have three children who are American citizens, Frisnel Alcin, born on June 6, 2002, Najika Alcin, born on July 17, 2003, and Owenslay Alcin, born on June 16, 2005 [together, the Applicants].

[3] The Principal Applicant and his wife fled Haiti in 2002 for the United States of America [US] where their children were born.

[4] The Applicants arrived in Canada on July 2, 2008 and claimed refugee status, which was denied on June 25, 2010.

[5] The Applicants submitted their H&C Application on October 25, 2010.

[6] The Applicants are the subject of a removal order, but a Temporary Suspension of Removals [TSR] for Haiti is in effect in Canada until further notice.

III. Decision under review

[7] The CIC Officer was satisfied as to the identity and citizenship of each Applicant.

[8] At the outset of the decision, the CIC Officer described the exceptional nature of the H&C Application and stated that the onus was on the Applicants to demonstrate that they would

suffer unusual and undeserved or disproportionate hardship if they were to present their Application for permanent residence in the normal manner, meaning from outside Canada.

[9] The present H&C Application was based on three grounds, namely the degree of establishment in Canada, the best interest of the children and conditions in the country of origin. These grounds, either taken individually or taken together, do not justify an exemption for humanitarian and compassionate grounds.

[10] First, regarding the level of establishment in Canada, the CIC Officer examined the Principal Applicant's and his wife's employment status and history, both in Canada and in the US, and found that they did not adequately show why they would not be able to find work should they return in Haiti, given the experience they both possess. Moreover, they failed to demonstrate their financial independence and the way in which losing their employment here as a result of having to present their permanent residence application from outside Canada would lead to unusual and undeserved or disproportionate hardship.

[11] The CIC Officer also considered other arguments put forward by the Applicants with respect to their establishment in Canada, specifically the poor employment prospects in Haiti and the fact that the Applicants financially support family members in Haiti who have suffered the devastations of the 2010 earthquake. Nevertheless, the CIC Officer noted that a TSR is in effect as a result of the current instability across Haiti, which means that the Applicants could remain and work in Canada, for the time being, and continue to support their family until the TSR is lifted. Ultimately, the CIC Officer found that the Applicants failed to sufficiently show the adequate level

of establishment and integration in Canada and the way in which severing ties with Canada would result in unusual and undeserved or disproportionate hardship should they be required to present their permanent residence application from outside Canada.

[12] Second, the CIC Officer examined the issue of the best interest of the children and started by noting that all three children are American citizens. The CIC Officer reviewed a letter from the organization *La Maisonnée, services d'aide et de liaison pour immigrants*, which highlighted the difficult situation in Haiti and asserted the children's establishment in Canada. Noting that this letter was the only piece of evidence produced with respect to the best interest of the children, the CIC Officer came to the conclusion that the Applicants, who had the onus of providing sufficient evidence, failed to show that their children are well established and integrated in Canada.

[13] The CIC Officer also found that the family unit would not be compromised if the Applicants are to return to Haiti to present their permanent residence application. The Applicants having failed to prove that they would not be in a position to work in their country of origin, the CIC Officer found that they also failed to show that their children could not adapt well and would be deprived of the emotional, physical and material support of their parents in Haiti. The CIC Officer also noted that despite the onus bearing on them, the Applicants did not provide any piece of documentary evidence pertaining to their allegation that the education system in Haiti is of a lesser quality. That being said, the CIC Officer consulted public and objective documentation related to the current difficult situation of the Haitian educational system but still found that, until the TSR for Haiti is lifted, the Applicants could remain in Canada and the children could still benefit from the Canadian education system. While she declared herself receptive and alert to the best interest of the child, the

CIC Officer maintained that this factor is not more important than the other interests in a way that it entails a *prima facie* presumption that it should always prevail. The Applicants simply did not put forward sufficient evidence in support of their claims.

[14] Third, as for the conditions in the country of origins, the CIC Officer reminded that according to new legislation the Minister "may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national."

[15] According to the CIC Officer, the Applicants did not provide any objective documentary evidence as to the generally difficult conditions in their country of origin except for a number of unsigned letters from members of their family. The CIC Officer nonetheless took it upon herself to examine public and objective evidence and acknowledged that the situation in Haiti is indeed difficult especially after the 2010 earthquake. She noted, however, that this difficult situation and these precarious living conditions affect the entire Haitian population and not only the Applicants. The CIC Officer referred to the TSR in effect for Haiti, added that this measure is a direct result of a generalized risk and not of a personalized risk, and noted that notwithstanding the TSR, the Applicants had failed to discharge the burden of proving that, in their particular situation, they would suffer unusual and undeserved or disproportionate hardship if they were to present their Application for permanent residence from outside Canada once the TSR is lifted.

[16] The CIC Officer concluded by stating the Applicants, who still benefit from the TSR, could continue their integration in Canada and eventually submit another H&C Application.

IV. Applicants' submissions

[17] The Applicants argue that the CIC Officer wrongly concluded that they were exposed to a generalized risk in Haiti and that this determination vitiated the rest of the decision. They submit three principal arguments: (1) the CIC Officer made a reviewable error in her appreciation of the unusual and undeserved or disproportionate hardship when she concluded that the current situation in Haiti constituted a generalized risk as opposed to a personalized risk, (2) the CIC Officer wrongfully relied her reasoning on the existence of a TSR for Haiti, and (3) the CIC Officer minimized the best interest of the children.

[18] The Applicants first put forward the argument that the CIC Officer made a reviewable error in her appreciation of the unusual and undeserved or disproportionate hardship when she concluded that the current situation in Haiti amounted to a generalized risk. Indeed, they claim that, in doing so, the CIC Officer misapprehended the applicable criteria and applied a standard that was too strict – the Applicants were expected to prove being exposed to a personalized risk. This Court has recently granted an application for judicial review, finding that the officer committed an error when it based its analysis on the risk and not the prejudice. Also, as confirmed by this Court on numerous occasions, the reasons should have concentrated on the unusual and undeserved or disproportionate hardship suffered by the Applicants and not on the future risks, which are applicable to a refugee claim or a pre-removal risk assessment.

[19] What is more, the CIC Officer refers to a decision rendered prior to the coming into force of the new legislation which rejected sections 96 and 97 from the determination of an H&C Application. Under this new legislative regime, the *IP 5 – Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds* guide [IP 5 Guide] was amended to explicitly command CIC Officers to steer away from the criteria applicable under sections 96 and 97 of the IRPA and to concentrate on the "hardships that affect the foreign national," including "adverse country conditions that have a direct negative impact on the applicant." To the contrary of this direction, however, the CIC Officer in the case at bar applied the criteria which would fall under section 97, when she stated that the current situation in Haiti affected the entire population and therefore constituted a generalized risk and not a personalized risk. However, the Applicants had submitted evidence of the "direct negative impact" suffered, and the CIC Officer herself identified in documentary evidence several elements that show adverse conditions in the general situation in Haiti.

[20] As a second argument, the Applicants claim that the CIC Officer wrongfully relied her reasoning on the existence of a TSR for Haiti. While it is true that the existence of a TSR for a specific country would not justify a positive outcome for every H&C Application submitted with regard to this country, it most certainly cannot lead systematically to a negative outcome. According to the previously cited IP 5 Guide, the presence of a TSR can be taken into consideration in appreciating the establishment of an applicant in Canada. On many occasions in the present case, however, the CIC Officer simply filled the gaps in her analysis by stating that, regardless of the outcome of her decision, the Applicants would remain in Canada.

[21] The third and last argument brought forth by the Applicants relates to the CIC Officer's appreciation of the best interest of the children. They submit that the CIC Officer minimized the existing evidence in this regard. According to case law and the IP 5 Guide, officers must "always be alert and sensitive to the interests of children." In the present case, the CIC Officer concluded to the absence of proof regarding the children's integration in Canada after rejecting the letter from the organization *La Maisonnée, service d'aide et de liaison pour les immigrants*, but she failed to explain why she rejected this letter. Furthermore, the CIC Officer never addressed the fact that the children are American citizens and have no relation with Haiti. However, the Applicants argue having submitted in their affidavit a series of elements which indicate that the children are in a far better position in Canada than they would ever be in Haiti.

[22] Moreover, although the Applicants did not present a vast amount of evidence, the CIC Officer nevertheless examined the documentation and recognized the existence of adverse conditions in this country as it concerns the children but stated that the presence of a TSR somewhat protected the Applicants. Once again, the CIC Officer filled the gaps in her analysis by relying on the existence of the TSR. Lastly, the Applicants submit that the CIC Officer's process for the analysis of the best interest of the children failed to follow recent teachings of this Court.

[23] Therefore, because the CIC Officer applied the incorrect criteria in her appreciation of unusual and undeserved or disproportionate, afforded too much importance to the existence of a TSR for Haiti and minimized the best interest of the children, the CIC Officer's decision cannot stand.

V. Respondent's submissions

[24] The Respondent argues that the CIC Officer's decision was reasonable and should be upheld, mainly because the Officer based her decision on the fact that the Applicants failed to provide sufficient objective evidence and because the decision is highly discretionary and results from a purely factual assessment of the case.

[25] First, the Respondent claims that the CIC Officer did not make a reviewable error in her appreciation of the unusual and undeserved or disproportionate hardship by concluding that the current situation in Haiti constituted a generalized risk as opposed to a personalized risk. As a matter of fact, the Applicants submitted no objective evidence on the current situation in the country and practically no allegations of their possible future situation in Haiti, and although the CIC Officer indeed stated that the Applicants would be in the same situation as the rest of the Haitian population, she clearly articulated that they did not demonstrate how this situation would lead to unusual and undeserved or disproportionate hardship for them. This burden was on the Applicants. The Principal Applicant did produce an affidavit describing the difficulties which his family would face in Haiti, but this affidavit was not before the CIC Officer and the information therein should not be considered for the purposes of this judicial review.

[26] Moreover, on the issue of the current situation in Haiti, the Respondent claims that the general difficult situation across Haiti does not suffice to issue an exemption under humanitarian grounds.

[27] Second, with regard to the Applicants' argument that the CIC Officer wrongfully relied on the existence of a TSR for Haiti, the Respondent reminds this Court that a TSR does not automatically warrant a successful H&C Application. Although the Officer did consider the fact that the Applicants will remain in Canada until this TSR is lifted, this element in no way constituted the basis for the decision, it was merely an additional comment, as the CIC Officer's decision is based on the fact the Applicants failed to provide sufficient evidence in support of their claims.

[28] What is more, with respect to the Applicants' establishment in Canada, the CIC Officer considered the circumstances of the case and found that the Applicants' establishment in Canada did not constitute a sufficient ground. This decision was reasonable, as the Applicants had the onus of establishing their claims and failed to do so. The Respondent further submits that the issue of integration in Canada alone is not sufficient to prove the unusual and undeserved or disproportionate hardship that a party could suffer if they were required to present the permanent residence application from outside Canada.

[29] Third, as for the superior interest of the children, the Applicants once again simply did not produce sufficient documentary evidence related, in particular, to the children's integration in Canada, to the reasons why they could not benefit from their parents' support in Haiti, and to their allegations that the children could not prevail themselves from a similar quality of education as they do in Canada. They presented practically no evidence that the children's best interest would be compromised should they relocate to Haiti. In fact, the CIC Officer considered the little evidence submitted by the Applicants – and explicitly acknowledged the letter in question from *La Maisonnée, services d'aide et de liaison pour immigrants* – and once more took it upon herself to

examine the general documentation. Ultimately, she reasonably concluded that the best interest of the children did not warrant an exemption under humanitarian grounds. In no way did the CIC Officer minimize the best interest of the children: the appreciation of this issue is to be conducted in the more general consideration of whether, in regard to all circumstances, including the best interest of the children, the Applicants would suffer unusual and undeserved or disproportionate hardship were they to present their Application for permanent residence from outside Canada.

[30] The Respondent also submits that the Applicants ask this Court to reexamine the evidence that was before the CIC Officer with respect to the best interest of the children because they are not satisfied with the decision she reasonably took. However, the appreciation of the evidence was the task of the CIC Officer and not that of the Court.

VI. Applicants' reply

[31] In their reply, the Applicants answer to the Respondent's arguments by referring to specific paragraphs of their original submissions, and thus submit no other argument.

[32] They do, however, encourage this Court to consider new case law which further clarifies the nature of hardship suffered and the importance of resorting to an analysis of hardship rather than an assessment of personalized risk for the purposes of an H&C Application.

VII. Issues

[33] The case at bar raises the following two issues:

1. Did the CIC Officer apply the proper legal criteria under subsection 25(1) of the IRPA as it relates to the appreciation of the current situation in Haiti for the determination of unusual and undeserved or disproportionate hardship?

2. Did the CIC Officer adequately assess the H&C considerations under subsection 25(1) of the IRPA, in particular as it relates to the appreciation of the current situation in Haiti for the determination of unusual and undeserved or disproportionate hardship, to the mentioning of the TSR in effect for Haiti and to the consideration of the best interest of the children?

VIII. Standard of review

[34] The Supreme Court of Canada set out at para 62 of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 [*Dunsmuir*] a two-step standard of review analysis in order to determine the applicable standard for a particular case. The first step of this analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question."

[35] With respect to the first issue, on the applicable legal criteria, Justice Gleason, of this Court, has recently stated "that the correctness standard is applicable to review the officer's enunciation of the test to be employed when determining whether H&C consideration is warranted." (*Diabate v Canada (Minister of Citizenship and Immigration)*, 2013 FC 129 at para 25, [2013] FCJ No 124).

[36] As for the second issue, on the appreciation of the evidence presented, in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 62, 174 DLR (4^{th}) 193, the Supreme Court of Canada established that the standard of review applicable to judicial reviews of H&C Application is reasonableness. This standard of review has been confirmed post-*Dunsmuir* by the Federal Court of Appeal in *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, at para 18, [2009] FCJ No 713 and followed in more recent decisions emanating from this Court (see, for example *Mirza v Canada (Minister of Citizenship and Immigration)*, 2011 FC 50, [2011] FCJ No 259; *Daniel v Canada (Minister of Citizenship and Immigration)*, 2011 FC 797 at para 12, [2011] FCJ No 1005).

[37] Therefore, on this second issue, this Court must consider "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para 47) and shall afford great deference to the decision of the CIC Officer (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] SCJ No 3).

IX. Analysis

A. *Did the CIC Officer apply the proper legal criteria under subsection 25(1) of the IRPA as it relates to the appreciation of the current situation in Haiti for the determination of unusual and undeserved or disproportionate hardship?*

[38] This first issue deals with identifying the criteria which the CIC Officer applied in determining H&C considerations under subsection 25(1) of the IRPA in the present matter. Did she consider the factors taken into consideration in the determination of applications under section 96 and subsection 97(1) of the IRPA? Or did she examine the elements related to the hardships that affect the foreign national?

[39] The Applicants argue the CIC Officer made an error in her appreciation of the unusual and undeserved or disproportionate hardship in the current circumstances in Haiti, when she concluded that the situation in Haiti amounted to a generalized risk, which would fall under the factors considered pursuant to section 97. However, I find that the CIC Officer applied the proper criteria, namely the one related to the hardships, and thus this Court's intervention is not warranted on this issue.

[40] At the outset, I must acknowledge that the Applicants' factual arguments are somewhat valid in that the CIC Officer indeed referred on a number of occasions to the general situation in Haiti and found that they would not be in conditions different from that of the entire Haitian population. As rightfully submitted by the Applicants and duly noted by the CIC Officer in her decision, following the amendment of subsection 25(1.3) of the IRPA by the *Balanced Refugee Reform Act*, SC 2010, c 8, the evidence submitted in H&C Applications is no longer to be examined in the light of the factors pertinent to applications presented under section 96 and subsection 97(1) of the IRPA, which would include the generalized versus personalized risk factor relevant under section 97 (see for example *Caliskan v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1190 at para 26, [2012] FCJ No 1291).

[41] This amendment was reflected in the IP 5 Guide which now states that "[…] [w]hile A96 and A97 factors may not be considered, the decision-maker must take into account elements related to the hardships that affect the foreign national," which may include "adverse country conditions that have a direct negative impact on the applicant." In this regard, the CIC Officer's conduct shows that she considered the 96 and 97 factors as well as the newly established criteria

stated in the IP Guide 5, i.e. the hardship suffered by the Applicants should they return. However, when reading the decision as a whole, I find that the CIC Officer effectively applied the proper legal criteria. In addition, but also more importantly, there was clearly a lack of evidence presented by the Applicants even though they bore the burden to do so. All in all, there may have been an appearance of confusion in applying the proper legal criteria but, in the end, when considering the decision in its entirety the proper legal test was applied.

B. *Did the CIC Officer adequately assess the H&C considerations under subsection 25(1) of the IRPA, in particular as it relates to the appreciation of the current situation in Haiti for the determination of unusual and undeserved or disproportionate hardship, to the mentioning of the TSR in effect for Haiti and to the consideration of the best interest of the children?*

[42] This Court finds that the decision rendered by the CIC Officer, albeit imperfect, is still reasonable, mainly because the Applicants failed to provide sufficient evidence in support of their claims.

[43] Indeed, with regard to all three factors, I find that the Applicants are merely asking this Court to re-weigh what little evidence they had presented to the CIC Officer in their H&C Application. However, the appreciation and weighing of this evidence is the responsibility of the decision-maker and not of this Court, as this Court stated in *Nsongi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1291 at para 7, [2010] FCJ No 1670:

> **[7]** It is well established that the decision made by a ministerial delegate to accept an H&C application is an exceptional and discretionary decision (*Baker v. Canada (Citizenship and Immigration)*, [1999] 2 S.C.R. 817 ("*Baker*"); *Legault v. Canada (Citizenship and Immigration)*, 2002 FCA 125; *Garcia De Leiva v. Canada (Citizenship and Immigration)*, 2010 FC 717; *Herrera Rivera v. Canada (Citizenship and Immigration)*, 2010 FC 570).

> Furthermore, the ministerial delegate deciding the H&C application has the responsibility of assessing the evidence and assigning it the proper weight: this is not the reviewing Court's role (*Suresh v. Canada (Citizenship and Immigration)*, 2002 SCC 1; *Legault v. Canada (Citizenship and Immigration)*, *supra*). [...]

[44] It should also be noted that in H&C Applications, the Applicants have the burden of providing evidence in support of their claims:

> **[5]** […] Moreover, an applicant has the burden of adducing proof of any claim on which the H & C application relies. Hence, if an applicant provides no evidence to support the claim, the officer may conclude that it is baseless. (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5, [2004] FCJ No 158 [*Owusu*]).

As a matter of fact, the Federal Court of Appeal reiterated this statement in *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 35, [2009] FCJ No 713 [*Kisana*], by finding that "[i]t cannot be disputed that the appellants had the burden of proving the claims made in their H&C application." As a result, at all times, the Applicants must prove that they would suffer unusual and undeserved or disproportionate hardship should they have to present their Application for permanent residence from outside Canada.

[45] For the reasons set out below, this Court finds that, independently of the analysis she undertook for each claim, the CIC Officer primarily rejected the Applicants' H&C Application because they failed to discharge their evidentiary burden, thus rendering the decision under review reasonable.

1. The Current Situation in Haiti

[46] As previously stated, although the CIC Officer does refer to the fact that the Applicants would be in the same difficult situation as the rest of the Haitian population, I find that she did not base her refusal solely on this reasoning. This Court finds the CIC Officer had first and foremost rejected the H&C Application because the Applicants failed to provide sufficient evidence in support of their claims. As a matter of fact, they provided very little to the CIC Officer with which to work: their H&C Application only contained allegations which were supported by unsigned letters from family members or acquaintances living in Haiti. They provided absolutely no objective documentary evidence reflecting the difficulties they would face in Haiti, or as the CIC Officer put it "[TRANSLATION] the Applicants, however, submitted no objective documentary evidence related to the general situation in Haiti." The little evidence produced by the Applicants was actually assessed and addressed by the CIC Officer in the decision as not being sufficient, and this was enough to reject the H&C Application because the burden was on the Applicants. It is not up to this Court to re-weigh this evidence.

[47] What is more, after concluding that she had been presented with no evidence that could help the Applicants, the CIC Officer took it upon herself to examine public and objective documentary evidence, even though she did not have to do it. Had she not done so, the CIC Officer would have had nothing to examine regarding the general situation in Haiti and, considering her above-quoted finding, the H&C Application would surely have been rejected simply because the Applicants provided practically no evidence to back their submissions. Whether this evidence was interpreted in the light of personalized risk for the Applicants or a generalized risk for the entire population in Haiti matters very little – given that the Applicants

presented virtually no evidence on the issue of the current situation in Haiti and that this was enough to reject their Application, the CIC Officer surely cannot be faulted for her appreciation of the evidence she had to adduce herself!

[48] Building on this reasonable finding and considering the undeniable lack of evidence in the present matter with regard to the current situation in Haiti, sending the matter back to the CIC Officer on this issue alone would be a moot exercise.

[49] Therefore, despite the fact that the CIC Officer's decision is not perfect, this Court finds that the CIC Officer did not commit a reviewable error in her appreciation of the unusual and undeserved or disproportionate hardship that would be suffered by the Applicants, as the Applicants did not submit any objective evidence of such difficulties despite having the burden of convincing the CIC Officer as to the merits of their claims.

2. The Best Interest of the Children

[50] As for the Applicants' argument that the CIC Officer minimized the best interest of the children, this Court's reasoning will greatly resemble that which it applied to the Applicants' first argument.

[51] Here again, the Applicants simply failed to provide sufficient evidence. In fact, they provided one letter from the organization *La Maisonnée, services d'aide et de liaison pour immigrants*, which the CIC Officer considered and explicitly acknowledged in her decision but reasonably found to be insufficient proof of the children's integration in Canada. As mentioned

earlier, the Applicants had the burden of producing sufficient evidence in support of their claims. On a number of occasions, the CIC Officer indicates that they did not submit any sufficient evidence that shows the difficult situation which the children could face in Haiti and the fact that the children could not benefit from the emotional, physical and material support of their parents in Haiti.

[52] Once again, confronted with a great lack of evidence, the CIC Officer decided on her own initiative to examine public and objective documents related to the situation of children in the country. Just as it was the case for the Applicants' first argument, as stated above, this lack of evidence would have been sufficient to reject the H&C Application because, had she not examined further documents, she would have had practically nothing to assess the best interest of the children.

[53] However, the CIC Officer did somewhat assess the best interest of the children, and as mentioned earlier, she cannot be faulted for her appreciation of the evidence she herself put forward as a result of the Applicants' failure to do so. Given that the Applicants provided virtually no evidence in support of their claims, the only way she could possibly have considered the best interest of the children was through the examination of documentary evidence which she adduced on her own initiative. Thus, this argument does not warrant this Court's intervention.

3. The Mention of the TSR in Effect in Haiti

[54] Lastly, the Applicants argue that the CIC Officer wrongfully relied her reasoning on the existence of a TSR for Haiti in order to fill the various gaps in her decision. I find that this argument does not warrant the intervention of this Court.

[55] For greater clarification, I shall start by specifying that a Temporary Suspension of Removals is a governmental measure that is symptomatic of a generalized risk for the population in a specific country and that, in the context of an H&C Application, the existence of a TSR with regard to a specific country cannot automatically lead to specific outcome, whether positive or negative. As such, the fact that a TSR is in effect in Haiti did not preclude the CIC Officer from rejecting the H&C Application (*Nkitabungi v Canada (Minister of Citizenship and Immigration)*, 2007 FC 331 at para 17, [2007] FCJ No 449).

[56] Similar to the conclusion for the Applicants' first argument, this Court finds that the CIC Officer did not base her reasoning solely on the TSR but primarily on the fact that the Applicants had not provided sufficient evidence in support of all their claims. As previously stated, the Applicants had the burden of proving that they would suffer unusual and undeserved or disproportionate hardship if they were to present their Application for permanent residence from outside Canada.

[57] This Court has already concluded that the Applicants have in fact failed to produce sufficient evidence with regard to the current situation in Haiti and the best interest of children, which leaves only the analysis of the evidence presented regarding the other claim in the H&C Application: the Applicants' establishment in Canada.

[58] The Applicants claim that the CIC Officer relies on the existence of a TSR in Haiti in order to fill the gaps in her analysis of their establishment in Canada and the superior interest of the children. In her analysis of the Applicants' establishment in Canada, the CIC Officer considered the

little evidence submitted by the Applicants, and this appreciation of the evidence lies within her expertise and jurisdiction. She took into account their employment history and added that they had "[TRANSLATION] submitted no further documents attesting to their financial independence." The Applicants further claimed that the employment situation is difficult in Haiti, but as mentioned above, the Applicants submitted no objective evidence related to the conditions in the country. The Applicants also put forward the argument that they provide financial support to family members in Haiti, but they did not produce documentary evidence to prove it, such as a bank deposit slip.

[59] What is more, after considering and weighing the evidence, the CIC Officer reasonably concluded that the Applicants' establishment in Canada is not a sufficient ground to grant an H&C Application, as this Court stated in *Lynch v Canada (Minister of Citizenship and Immigration)*, 2009 FC 615 at para 43, [2009] FCJ No 795:

> **[43]** According to the jurisprudence, the degree of establishment in Canada is not decisive on an application based on H&C considerations. Similarly, the hardship inherent in being required to leave after having spent several years in Canada is normally not sufficient to warrant an exception. Again, s. 25 of the IRPA is intended to provide an exceptional relief for unusual, undeserved and disproportionate hardship (*Singh*, above at paras. 51-52; *Wazid*, above at paras. 14-16; *Monteiro v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1322, 166 A.C.W.S. (3d) 556 at paras. 18-20; *Lee v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 368, 167 A.C.W.S. (3d) 161 at para. 2; *Souici v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 66, 308 F.T.R. 111 at paras. 9-10 and 36-40).

[60] As previously stated, it is not the role of this Court to re-weigh the evidence considered by the CIC Officer.

[61] As such, although the CIC Officer did mention on numerous occasions that the Applicants, adults as well as children, could remain in Canada as a result of the TSR in effect for Haiti and therefore continue benefiting from the advantages of living in Canada, this Court finds that these mentions of the TSR are simple remarks on behalf of the CIC Officer, which does not make them objectionable. As stated earlier, they were not used to decide on the outcome. Rather, the lack of evidence was the determinant factor.

4. Conclusion

[62] All in all, I find that as rightly noted by the CIC Officer, the Applicants failed to provide sufficient evidence in support of their claims despite having the burden of proving that they would suffer unusual and undeserved or disproportionate hardship should they present their Application for permanent residence from outside Canada. I also find that the CIC Officer reasonably appreciated the little evidence with which she was presented and even went further than what was expected of her by seeking public and objective documentation on her own initiative. Although the decision under review is far from flawless, considering that the absolute lack of evidence submitted by the Applicants is sufficient to reject the H&C Application, the CIC Officer's decision undeniably falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law and must therefore be upheld.

[63] The parties were invited to submit questions for certification but none were proposed.

ORDER

THIS COURT ORDERS that this application for judicial review is dismissed. No question is certified.

"Simon Noël"

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Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1753-13
STYLE OF CAUSE:	ALCIN ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	December 5, 2013
REASONS FOR ORDER AND ORDER:	NOËL J.
DATED:	December 11, 2013

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