Federal Court  Cour fédérale

Date: 20140514

Docket: IMM-3143-13

Citation: 2014 FC 467

Ottawa, Ontario, May 14, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

RUMINA KARMALI VELJI
SARAH SHIVJI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review of a negative decision on an application for permanent residence from within Canada on humanitarian and compassionate grounds [H&C application] under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], must be allowed.

[2] The Applicants are citizens of Tanzania and are a mother and daughter. Ms. Karmali Velji, is 46 years old. Ms. Sarah Shivji [the Minor Applicant] was 17 years old when the H&C application was submitted on October 12, 2011. She is now no longer a minor. They came to Canada in 2002 and 2003 respectively.

[3] The Applicants raise two issues: (i) whether the officer failed to properly assess the best interests of the Minor Applicant, and (ii) whether the officer failed to properly consider the country conditions in Tanazania and how these would personally affect the Applicants and expose them to undue hardship on return?

[4] In my view, the analysis of the best interest of the Minor Applicant was unreasonable and deficient, and on this basis alone, the application must be allowed. It was unreasonable and deficient because at no point does the officer describe whether it would be in the best interests of the child to remain in Canada or not. The analysis is focused entirely on the hardship that the Minor Applicant might face if returned to Tanzania.

[5] Although the officer states "it is in the best interests of every child to gain an education and to have their parents' constant love and support as they journey through life" the officer goes on to say, "the [Minor Applicant] is now an adult and has had the benefit of being educated and raised by her mother in Canada and they will return to the country together. I have not been provided evidence to support that the [Minor Applicant] cannot continue to be educated with the support of her family in Tanzania."

[6] There are three issues with this analysis. First, the officer does not identify whether, because it is in the best interests of every child to gain an education and to have their parents' constant love and support, it is therefore in the best interests of the Minor Applicant to remain in Canada. Second, the officer then considers the hardship (or lack thereof) that the Minor Applicant would face given that she is "now an adult and has had the benefit of being educated… in Canada" (emphasis added). The officer completely changes the frame of reference from the Minor Applicant as a child, to an adult, contrary to the guidance set out in Citizenship and Immigration Canada's Manual IP 5.

[7] Third, the officer commits the error identified by Justice Russell in *William v Canada (Minister of citizenship and Immigration)*, 2012 FC 166, [2012] FCJ No 184, namely, that the officer should not impose any threshold of hardship requirement when considering the best interests of the child. The officer here erred by stating that the Applicants had not provided "evidence to support that the [Minor Applicant] cannot continue to be educated with the support of her family in Tanzania." It was an error for the officer to require the Applicants to lead evidence to meet some threshold level of hardship.

[8] The proper approach would have been to acknowledge the Minor Applicant's interests in continuing her education and the evidence that pursuing education beyond high school may be difficult for women in Tanzania. Following that acknowledgment, it would then have been appropriate for the officer to find that it was in her best interests to remain in Canada.

[9] It was then the duty of the officer to weigh that factor together with all other relevant factors and decide whether there were sufficient humanitarian and compassionate considerations to favour granting the permanent residence application: *Singh v Canada (Minister of Citizenship & Immigration)*, 2009 FC 11, [2009] FCJ No 4 at para 18; see also *Webb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1060, [2012] FCJ No 1147 at paras 18-20.

[10] Having conducted a deficient analysis of the best interests of the child, the decision is unreasonable and the H&C application must be redetermined by a different officer.

[11] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed, the decision under review is set aside, the Applicants' application for permanent residence from within Canada on humanitarian and compassionate grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 is remitted back for redetermination by a different officer, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3143-13
STYLE OF CAUSE:	RUMINA KARMALI VELJI ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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