

Federal Court



Cour fédérale

Date: 20140602

Docket: IMM-2861-13

Citation: 2014 FC 533

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, June 2, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**MOHAMED ARBIA
MERIEM OUGGAD**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Judgment delivered from the bench)

[1] The applicants, an older couple, are seeking judicial review of a decision by an officer refusing an application for an exemption from the condition requiring them to obtain their permanent resident visa outside Canada for humanitarian and compassionate considerations

[H&C], in accordance with subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Seven of the applicants' children are established in Canada and they would like to live near them.

[3] Knowing that, aside from exceptional cases, any person who wishes to become a permanent resident is required to apply from outside Canada (Section 11 of the IRPA and section 6 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227), the Court considers this legislative provision in and of itself.

[4] According to section 25 of the IRPA, it is the officer who determines whether the individual would face unusual, undeserved or disproportionate hardship if they were to comply with the usual legislative requirements.

[5] Although the respondent argues that the officer's decision is reasonable, the Court, analyzing all the evidence, finds that this evidence, when read carefully as a whole, shows that the applicants' establishment in Canada, as well as the best interest of the children and grandchildren, requires attention. This is true despite *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 FC 555 (FCA), which does not necessarily apply in this case. It is a particular case, considering the personal situation of the applicants according to the evidence from within their country of origin and also considering their situation in Canada. The applicants have a daughter who is separated from the father of her

child; in addition to this, there are circumstances that clarify the situation of the other family members.

[6] The Court also notes that the applicants' children have shown a strong desire to sponsor their parents considering the parents' and the family's situation as shown by the supporting evidence. This evidence requires at the very least an overall analysis.

[7] For all the above-noted reasons and knowing that an application for permanent residence is at stake, the applicants' application for judicial review is allowed and the case is referred to another officer for reassessment.

JUDGMENT

THIS COURT ORDERS that the applicants' application for judicial review be allowed and that the case be reconsidered by another officer. There is no question of general importance for certification.

"Michel M.J. Shore"

Judge

Certified true translation
Elizabeth Tan, translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2861-13

STYLE OF CAUSE: MOHAMED ARBIA, MERIEM OUGGAD v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 2, 2014

JUDGMENT AND REASONS: JUSTICE SHORE

DATE OF REASONS: JUNE 2, 2014

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