

Federal Court



Cour fédérale

Date: 20150313

Docket: IMM-6701-13

Citation: 2015 FC 311

Ottawa, Ontario, March 13, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**DENNIS VILLANUEVA
BESSY ALFARO
JAMIE VILLANUEVA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION
CANADA BORDER SERVICES AGENCY**

Respondents

JUDGMENT AND REASONS

[1] This application for judicial review of a decision of a Senior Immigration Officer refusing the applicants' humanitarian and compassionate [H&C] application for permanent residence in Canada must be dismissed, notwithstanding the court's considerable concern for the health of Denssy, the Canadian born child of the applicant family.

Background

[2] Dennis Villanueva and his spouse Bessy Alfaro are citizens of Honduras. Their daughter Jamie Lizeth Alfaro was born in September 2009 while they were sojourning in the United States. The couple also have a son, Denssy Joseph Villanueva Alfaro, born in Canada in August 2012.

[3] The adult applicants fled Honduras to the United States of America on May 1, 2008, fearing the Mara Salvatrucha street gang. Two years later, they entered Canada on May 21, 2010, and applied for refugee protection on the basis of this alleged fear. Their claim for protection was denied by the Immigration and Refugee Board on November 24, 2011. Their application for leave and judicial review of that decision was denied by this court on April 12, 2012.

[4] On March 26, 2012, they applied for a Pre-Removal Risk Assessment and also made their H&C application. Their application for a Pre-Removal Risk Assessment was rejected on June 18, 2013. The H&C application was decided on March 26, 2013, and is the subject of this application.

[5] In August 2012, after the H&C application but before the decision was rendered, Denssy was born by C-section. At birth there were no issues noted; however, he was subsequently noted to have cyanosis (blue discolouration of the skin) and his heart was beating faster than normal. He received treatment for these symptoms in the Neonatal Intensive Care Unit [NICU] of the Windsor General Hospital for three days. He was monitored with periods of persistent irregular

heartbeat and cyanosis to his legs and arms. Several tests and heart tracings revealed persistent abnormalities. The doctors told the applicants that there was likely something wrong with his heart and Denssy was seen by a paediatric specialist at the Children's Hospital of Western Ontario before being released.

[6] Following Denssy's birth and in light of his medical issues, the applicants updated their H&C application submitting that he required continued medical care and monitoring in Canada and that the level of care required was not available in Honduras.

[7] Denssy continues to have times when he exhibits blue discolouration of the skin and the applicants were recently informed that he required a further test on his heart which is to be done at Sick Kids Hospital in Toronto. This information was not before the officer deciding the H&C but was put before the enforcement officer with a request to defer the applicants' removal from Canada.

[8] In support of their H&C application the applicants submitted subjective and objective evidence regarding Denssy's health, including:

- Health records from the Windsor NICU with frequent notations of irregular heartbeat, sinus tachycardia, premature atrial contractions [PACs] and premature ventricular contractions [PVCs] and a notation by the treating physician stating that the cyanosis had resolved but irregular heartbeat persisted;

- The NICU records included a notation from the treating physician advising the applicants to “come to Emergency in case of poor feeding, lethargy, tachypnea, sweating or to call 911 if the child is tachypneic, shortness of breath or looking dusky;”
- Letter from Sr. Connie Harrington of the Diocese of London, Ministry to Refugee Claimants stating that she had researched the possible medical services costs that the applicants would face to care for Denssy in Honduras;
- Letter from Dr. Jorge Alberto Valle Reconco of Honduras attesting that the costs in Sr. Harrington’s letter were correct;
- Letter from a nurse practitioner in Honduras attesting to the cost and availability of certain medical services in Honduras;
- A Wikipedia article on “Intraventricular Conduction;”
- Peer-reviewed medical articles; and
- Country condition evidence regarding quality, access, and cost of healthcare in Honduras.

[9] The challenge to the officer’s decision rests on the analysis of the best interests of the child. The officer acknowledged that the “socio-economic conditions in Honduras may not be favourable relative to those in Canada for raising children” and that the children might “find greater comfort in Canada than Honduras and potentially enjoy greater futures,” but noted that this was not determinative.

[10] The officer reviewed the submissions and medical documentation indicating that Denssy was born with cyanosis, which has since resolved and that he was diagnosed at birth with an irregular heart beat. The officer also noted that Denssy's records indicated the presence of PACs and PVCs, but held that the evidence indicated that PACs are commonly seen in infants, disappear with age, and are usually benign and need no treatment and that PVCs are usually benign.

[11] The officer dismissed the letters from the Honduran nurse practitioner and Sr. Harrington because there was no explanation for how the required medical services were determined. The officer acknowledged the objective documentary evidence about healthcare in Honduras, but found that "general statistical and narrative data relating to the provision of health care in a specific country does not overcome the requirement of specifying the nature of the care required."

[12] The officer found that there was no documentation with respect to Denssy's prognosis. The officer concluded that, while Denssy may require periodic medical care and monitoring, there was no objective evidence confirming the appropriate treatment or the unavailability of that treatment in Honduras. As such, the officer was not satisfied that Denssy suffered from a medical condition for which treatment would be unavailable in Honduras.

[13] On the basis of the foregoing, the officer concluded that there was insufficient objective evidence to establish that their removal from Canada would adversely affect their children.

Issue

[14] The applicants submit that the officer's decision was unreasonable because it was made without regard to all of the evidence.

Analysis

[15] The applicants submit that the officer gave more weight to the Wikipedia information filed with the application than to the "scholarly, peer-reviewed article by Pediatric Cardiologist, Dr. Michael J. Kantoich, provided to her to assist in her determination." That article, it is said was not considered or weighed.

[16] They further submit that the officer erred by failing to consider the particularized information on care for Denssy provided by the treating physician at the NICU; namely that the applicants return to the emergency room or to call 911 if a series of conditions arose. This, they assert is relevant given the documentary evidence that showed that Honduras lacked effective ambulance and 911 services.

[17] The respondent submits that the applicants are asking the court to reweigh the evidence. It is also submitted that the officer is presumed to have considered all of the evidence unless the contrary is shown.

[18] The applicants can hardly complain if the officer gave weight to the Wikipedia documents, which they themselves provided. While it is true that the doctor's article is most

likely a better source of information on which to assess Denssy's medical condition, it is written for those who are trained in medicine, and the officer is not.

[19] The officer's weighing of the evidence and the conclusion reached was not unreasonable, given those facts. Regrettably the H&C application provided only a brief narrative regarding Denssy's medical condition, its risks, treatment, and explanation as to why it was not available in Honduras. More ought to have been put before the officer if in fact Denssy's condition is as serious as was made out by counsel at the hearing. At a minimum, a letter from a physician explaining in common language the reality of his health and possible prognosis would have assisted the officer greatly. By the time this decision issues, it may be that there is a clearer picture of his health, which may warrant an administrative deferral of removal or a renewed H&C application. However, the court is unable to find on the facts presented that this officer's decision was unreasonable. I agree with the respondent that the real basis of the applicants' issue with the decision rests in the weight the officer gave to the evidence before her. This is not a basis to interfere with the decision unless it was perverse or capricious and I am not persuaded that it was either.

[20] Neither party proposed a question for certification.

JUDGMENT

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

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6701-13

STYLE OF CAUSE: DENNIS VILLANUEVA ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION ET AL

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APPEARANCES:

Mary Jane Campigotto

FOR THE APPLICANTS

Asha Gafar

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Campigotto Law Firm
Barristers & Solicitors
Windsor, Ontario

FOR THE APPLICANTS

William F. Pentney
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENTS