Federal Court  Cour fédérale

Date: 20161124

Docket: IMM-2586-16

Citation: 2016 FC 1303

Ottawa, Ontario, November 24, 2016

PRESENT: THE CHIEF JUSTICE

BETWEEN:

NOVIA ALEXA WILLIAMS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS
(Delivered orally)

[1] The sole issue before the Court is whether the Senior Immigration Officer erred in assessing the best interests of the two minor children of the Applicant's employer.

[2] The standard of review applicable to that issue is reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, at para 44 [*Kanthasamy*]).

[3] In short, the officer's decision will stand so long as it falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." In assessing whether this is so, the Court is required to assess both the Officer's process of articulating reasons, and the ultimate conclusion, or outcome, reached by the officer. In making that assessment, the Court will evaluate whether the decision is appropriately justified, transparent and intelligible (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

[4] The Court must also keep in mind that s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, [IRPA] provides a mechanism to deal with exceptional circumstances, and that decision-makers must be accorded a considerable degree of deference. This is because of the highly discretionary nature of the decision contemplated by s. 25(1). (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125, at para 15 ; *Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113, at paras 40 and 84*;* *Pervaiz v Canada (Citizenship and Immigration)*, 2014 FC 680, at para 40; *Obeng v Canada (Citizenship and Immigration)*, 2009 FC 61, at paras 39-40; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 61 [*Baker*]).

[5] Where there are children whose interests are likely to be affected by the removal of an applicant from Canada, an officer considering an application under s. 25(1) must be "alert alive and sensitive" to those interests, and must give them important weight. A decision made under s. 25(1) may therefore be set aside if the interests of the children affected by the decision are not sufficiently considered (*Kanthasamy*, above, at paras 38–39).

[6] To be alert, alive and sensitive to the interests of affected children, a decision-maker on an application under s. 25(1) must identify and define those interests, and then examine them with a great deal of attention. (*Kanthasamy*, above, at para 39).

[7] However, the best interests of such children do not necessarily trump other relevant considerations in the assessment contemplated by s. 25(1) (*Baker*, above, at para 75).

[8] In this case, I am satisfied that the officer appropriately identified and defined the interests of the two children for whom the Applicant cared, namely, her employer's children. I am also satisfied that the officer examined the employer's son's interests with a great deal of attention.

[9] I do not agree with the Applicant's submissions that the officer misapprehended the medical evidence with respect to her employer's son, or was not sufficiently sensitive to his emotional attachment to her. It was not unreasonable for the officer to find that he was progressing well and no longer had the same need for the Applicant that he once had, particularly given that he is almost 18 years of age. The officer explicitly dealt with his evidence that he needs to have the Applicant stay in Canada, as he does not wish to "start over again" and may not find someone else who will love him as the Applicant loves him.

[10] However, I find that the officer did not examine the interests of the employer's daughter Clarissa with a great deal of attention. I acknowledge that the officer referred to the evidence from her employer, from the pastor at the church they attend and from a daycare worker; and

also referred to the Applicant's own assertion that she has been the children's main caregiver since 2012. However, that assertion and evidence was never examined or addressed, even if to say that the degree of attachment between Clarissa and the Applicant was similar to that which exists between many children and a parent who may be removed from Canada.

[11] Instead, the officer simply concluded that, given Clarissa's young age, it is reasonable to expect that her interests would be minimally affected by the Applicant's departure from Canada.

[12] In my view, the officer's failure to examine Clarissa's interests to any meaningful degree was unreasonable.

[13] While the *outcome* may not have been unreasonable, the *process* by which the outcome was reached was not appropriately justified or intelligible, as it failed to accord with the requirement that Clarissa's interests be examined with a great deal of attention.

[14] Accordingly, this application will be partially granted.

[15] The decision of the officer will be set aside as it relates to Clarissa, the daughter of the Applicant's employer. The matter shall be reassessed by a different officer, in accordance with these reasons.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is granted as it relates to Clarissa, the daughter of the Applicant's employer, Mr. Caleb Foreman.

2. The Applicant's application pursuant to s. 25(1) of the IRPA, as it relates to Clarissa Foreman, shall be reassessed by a different decision-maker in accordance with these reasons.

3. There is no question for certification.

"Paul S. Crampton"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2586-16
STYLE OF CAUSE:	NOVIA ALEXA WILLIAMS
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 23, 2016
JUDGMENT AND REASONS:	CRAMPTON C.J.
DATED:	NOVEMBER 24, 2016

APPEARANCES:

Phil Trotter	FOR THE APPLICANT
Sybil Thompson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jacqueline Lewis Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT