Federal Court  Cour fédérale

Date: 20170301

Docket: IMM-3704-16

Citation: 2017 FC 254

Toronto, Ontario, March 1, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ABRAHAM MONTGOMERY MITCHELL LOUISY, KERNNIFER SANTRISHA SMITH-LOUISY, AKILA GENESIS ADORA LOUISY

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Abraham Montgomery Mitchell Louisy, Mrs. Kernnifer Santririsha Smith Louisy, and their soon to be seven year old daughter Akila, are citizens of St. Lucia. Mr. and Mrs. Louisy are also the parents of now three year old Kadine, their Canadian born daughter.

[2] Mr. Louisy entered Canada in March 2012. Mrs. Louisy and Akila entered Canada in June 2012. The family was granted an extension of their visitors' visa allowing them to remain in Canada until December 2013. The family has continuously remained in Canada since their arrival in 2012. In March 2014, Kadine was born. In December 2015, the family applied for permanent residence from within Canada on Humanitarian and Compassionate [H&C] grounds.

[3] The H&C application was denied. It is this decision which is now before the Court on judicial review. The applicants argue that the Officer's assessment of the best interests of the children [BIOC] was unreasonable. This is the sole issue I need address.

[4] Having considered the written and oral submissions of the parties, I am unable to conclude that the Officer's BIOC analysis was flawed or that the determination was unreasonable. For the reasons that follow the application is dismissed.

II. Standard of Review

[5] The parties submit, and I agree, that the reasonableness standard of review applies in considering the Officer's decision in this case (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 44, [*Kanthasamy*]). This Court will only intervene where the Officer's decision is not justifiable, transparent, and intelligible, or when it does not fall within the range of reasonable outcomes in light of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

III. Analysis

A. *Was the Officer's BIOC analysis reasonable?*

[6] In conducting the BIOC analysis, the Officer recognised the children's best interests are an important factor that is to be given significant weight in an H&C application. The Officer also noted that a child's best interests are not necessarily a determinative factor in considering an H&C application.

[7] The Officer observed that two children were involved, one born in Canada and the other in St. Lucia. The Officer concluded that there was insufficient objective evidence upon which to find that the children's best interest will be compromised if the applicants were to return to St. Lucia.

[8] The applicants argue, relying on *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 and *Kanthasamy*, that the Officer erred by (1) failing to determine what the children's best interests were; (2) minimising their best interests; and (3) failing to consider the interests of each child individually. I disagree.

[9] The consideration of a child's best interests is a highly contextual analysis requiring that "…decision-makers must do more than simply state that the interests of a child have been taken into account": [*Hawthorne v Canada (Minister of Citizenship and Immigration),* 2002 FCA 475 .at para. 32]. Those interests must be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence: *Legault v. Canada (Minister of Citizenship and*

Immigration), [2002] 4 F.C. 358 (C.A.), at paras. 12 and 31; *Kolosovs v. Canada (Minister of Citizenship and Immigration)*, 323 F.T.R. 181, at paras. 9-12. (*Kanthasamy* at para 39).

[10] In this case, the applicants dedicated a single paragraph in their H&C submissions to the children's best interests. The paragraph contains generalised statements relating to Akila's attendance at school in Canada, lack of memory of life in St. Lucia, and states she has formed significant relationships and friendships. With respect to Kadine, the paragraph speaks to her Canadian citizenship and the opportunity to embrace "her homeland and benefit from the good education and secured future that her citizenship provides her". There is no documentation on the record supporting the general submissions made.

[11] Neither *Baker* nor *Kanthasamy* displace the burden that is on an applicant to advance meaningful evidence in support of the analysis of a child's best interests (*Osorio Diaz v Canada (Minister of Citizenship and Immigration)*, 2015 FC 373 at para 29). Nor does the jurisprudence support the view that an Officer commits a reviewable error by failing to identify and define a child's best interests where those interests are not identified or advanced by the applicant. There is also no magic formula to be applied in the conduct of a BIOC assessment (*Celise v Canada (Minister of Citizenship and Immigration)*, 2015 FC 642 at para 30). Rather, an assessment must be sensitive to context (*Kanthasamy* at para 35). Applying these principles, I am satisfied that the Officer did indeed identify and define the children's best interests "in light of all the evidence".

[12] The applicants argued that the Officer erred by recognising that the children, both young in age, would be in the company of their parents and benefit from their care and support in

"making whatever adjustments the children will have to make". This, the applicants submit, minimised the children's best interests. I disagree. The Officer weighed the factors of age and the presence of parents against the generalised impacts on the children, and lost school and church friendships. The Officer was therefore alive to the impact on the children.

[13] This is not a case where the Officer minimised or ignored objective documentary evidence demonstrating negative impacts on the children (see *Jimenez v Canada (Minister of Citizenship and Immigration)*, 2015 FC 527). In this case, the Officer weighed the stated general impacts against the relevant factors of the children's age and the family remaining together, and found that the parent's presence would be of assistance to the children in making adjustments. The applicants' disagreement with the Officer's weighing of the evidence, particularly in light of the paucity of evidence of negative impacts on the children, does not render the decision unreasonable.

[14] I am also satisfied that the Officer did not fail to consider the interests of both children. The Officer recognised both children and notes that they consider Canada home. The Officer also noted, with respect to Akila, that she has no memory of St. Lucia, that she is attending school, she has formed friendships, and would have to start over in St. Lucia. The Officer did not ignore these factors.

[15] The applicants rely on the decisions in *Weng v Canada (Minister of Citizenship and Immigration)*, 2014 FC 778 and *Momcilovic v Vanada (Minister of Citizenship and Immigration)*, 2005 FC 79. However, in both of those cases, the interests and impacts upon each

child were significantly different. These differences warranted a separate assessment for each of the children.

[16] In this case, Akila's ties to Canada may have been more numerous, based on external family friendships and attendance at school however, her interests and the impact of return to St. Lucia are not significantly different than those faced by her younger sister Kadine. The Officer was aware of the stated impacts, aware of the differences in age, and reasonably concluded that there was insufficient evidence to conclude the best interests of the children would be compromised if the applicants were to return to St. Lucia.

IV. Conclusion

[17] I am unable to conclude that there is any basis upon which the Court should intervene in this case. There was no reviewable error in considering the best interests of the children.

[18] The parties have not identified a question of general importance, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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