Federal Court  Cour fédérale

Date: 20170327

Docket: IMM-3564-16

Citation: 2017 FC 313

Ottawa, Ontario, March 24, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JAMES CHAKANYUKA
AGNES CHAKANYUKA
KUDAKWASHE MAVIS CHAKANYUKA
SIMBARASHE CHAKANYUKA

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review of the August 10, 2016 decision of a senior immigration officer [the Officer] refusing the Applicants' applications for permanent residence in Canada on humanitarian and compassionate [H&C] grounds. The Applicants are a family consisting of the

principal Applicant, James Chakanyuka, his wife Agnes Chakanyuka, their minor daughter, Kudakwashe Mavis Chakanyuka [Kudakwashe], and their adult son, Simbarashe Chakanyuka [Simbarashe].

[2] As explained in greater detail below, this application is allowed, because the Officer's decision does not demonstrate any meaningful analysis of the H&C application of Simbarashe, or the best interests of the minor Applicant, Kudakwashe.

II. Background

[3] The Applicants are citizens of Zimbabwe who arrived in Canada on December 14, 2015 and claimed refugee protection in Canada on January 28, 2016. Their claim was refused on April 1, 2016.

[4] On June 10, 2016, the Applicants applied for permanent residence in Canada on H&C grounds, based on the family's establishment in Canada, and the best interests of their daughter, as well as factors in their country of residence. Their applications were refused on August 10, 2016 in the decision that is the subject of this judicial review.

III. Issues and Standard of Review

[5] The Applicants raise the following issues for the Court's consideration:

A. Did the Officer err in considering the H&C application of the adult son?

B. Did the Officer err in considering the best interests of a child, the minor daughter?

C. Did the Officer err in finding that the Applicants do not face undue hardship upon a return to Zimbabwe?

[6] The standard of review applicable to an officer's findings of fact in assessing an H&C application is reasonableness (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61, at para 45; *Taylor v Canada (Minister of Citizenship and Immigration)*, 2016 FC 21, at paras 16-18). I consider this standard to apply to the issues raised by the Applicants.

IV. Analysis

A. *Did the Officer err in considering the H&C application of the adult son?*

[7] The Officer's decision on the application of the adult son, Simbarashe, which was based on his establishment in Canada, is contained in a set of reasons separate from those which apply to the other Applicants. The Applicants argue that the decision must be set aside because, after accepting the positive nature of Simbarashe's establishment, the Officer reached a bald conclusion, that there were insufficient H&C considerations to grant his application, without providing any reasons in support of that conclusion.

[8] The Applicants rely on the jurisprudence of this Court, in which judicial review has been granted in the absence of reasons justifying a decision (see *Jasim v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1017, at paras 18-19; *Bajraktarevic v Canada (Minister*

of Citizenship and Immigration) 2006 FC 123, at para 18; *Cobham v Canada (Minister of Citizenship and Immigration)*, 2009 FC 585, at para 26; *Webb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1060, at para 31) and in particular *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 [*Adu*], where Justice Mactavish held as follows at paragraph 14:

> [14] In my view, these 'reasons' are not really reasons at all, essentially consisting of a review of the facts and the statement of a conclusion, without any analysis to back it up. That is, the officer simply reviewed the positive factors militating in favour of granting the application, concluding that, in her view, these factors were not sufficient to justify the granting of an exemption, without any explanation as to why that is. This is not sufficient, as it leaves the applicants in the unenviable position of not knowing why their application was rejected.

[9] I am conscious that adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes (see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para 14, [*Newfoundland Nurses*]). However, I do not consider these principles to detract from the reasoning in *Adu*, that a decision must contain analysis, explaining how the decision-maker arrived at his or her conclusion. Otherwise, the applicant has not received reasons at all.

[10] I agree with the Applicants that the Officer's decision on Simbarashe's application suffers from precisely the same shortcoming identified by Justice Mactavish in *Adu*. The Officer referred to school documents and a letter of reference submitted in support of the application, identifying those elements as positive and granting them certain weight. However, the Officer then proceeds immediately to expressing the conclusion that, having considered Simbarashe's

personal profile, his personal circumstances, his establishment in Canada, and his links to Canadian society, there were insufficient H&C considerations to grant his application. The decision discloses no analysis explaining why the positive factors were not sufficient to grant an exemption on H&C grounds.

[11] The Respondent argues that Simbarashe's establishment was not beyond what one might expect from someone who has come to Canada with his family, made a refugee claim which failed, and then followed that with an H&C application, all the while maintaining his studies and a clear civil record. Also, despite the economy and high unemployment rates in Zimbabwe, the evidence on the record demonstrated that Simbarashe was able to be educated and employed in Zimbabwe the year after he left high school. The Respondent submits that, in these circumstances, it was reasonable for the Officer to conclude that there were insufficient H&C considerations to grant the application.

[12] I am expressing no conclusion on whether or not it would have been reasonable for the Officer to find, based on an analysis of these facts, that there were insufficient H&C grounds to grant the application. Rather, the difficulty with the Respondent's arguments is that the above analysis, which the Respondent submits would support the Officer's decision, is not found in the decision. While the Court can examine the record before the Officer in assessing the reasonableness of the decision (see *Newfoundland Nurses*, at para 15), it is not the role of the Court to weigh the evidence or to extrapolate reasoning from evidence and conclusions (see *Webb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1060, at para 31).

[13] It is therefore my conclusion that the Officer's decision, as it relates to Simbarashe, is unreasonable and must be remitted to another officer for reconsideration.

B. *Did the Officer err in considering the best interests of a child?*

[14] I have reached similar conclusions on this issue. In the portion of the decision addressing the best interests of the minor Applicant, Kudakwashe, the Officer notes that consideration of this principle does not mean that the interests of the child outweigh all other factors in the case. The Officer observes that the Applicants argue Kudakwashe's interests would be affected if the family returned to Zimbabwe and that they submitted a letter of confirmation that she is attending school. However, from there, the Officer proceeds to the conclusion that the Applicants have submitted insufficient evidence to establish that the general consequences of having to apply for permanent residence from outside Canada would have a significant negative impact on Kudakwashe.

[15] Again, the decision fails to demonstrate an analysis which explains how the Officer arrives at this conclusion. The Applicants provided little in the way of evidence or submissions in support of their position that the minor Applicant's interests would be adversely affected. However, even in connection with the one point that was expressly raised, that Kudakwashe is attending school in Canada, the Officer noted that fact but failed to conduct any analysis, based on country condition documents or otherwise, as to the effect upon Kudakwashe's education if her family were to return to Zimbabwe to apply for permanent residence.

[16] I agree with the Respondent's submission that the best interests of a child, and the fact that a child may be better off in Canada, is not determinative of an H&C application (see *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, at para 37). Rather, the interests of the child are one factor which an officer must examine with a great deal of attention; it is up to the officer to determine the appropriate weight to be accorded to this factor in the circumstances of the case, and it is not the role of the Court to re-examine this weight (see *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, at para 11). However, my conclusion that this aspect of the Officer's decision is unreasonable does not turn on the question whether or not the effect upon Kudakwashe of returning to Zimbabwe would be sufficient to warrant granting the application. Rather, the error in the decision is the failure to demonstrate any meaningful analysis of what this effect would be and the weight to be accorded to it.

[17] Given this conclusion, I find the Officer's decision to be unreasonable as it relates to Kudakwashe and her parents, such that the decision must be set aside and their application remitted to another officer for reconsideration. It is therefore unnecessary for the Court to consider the Applicants' arguments that the Officer also erred in finding that they would not face undue hardship upon returning to Zimbabwe.

[18] The parties raised no question for certification for appeal, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, and the matter is remitted back to a different officer for reconsideration. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	JAMES CHAKANYUKA ET AL V THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
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