Federal Court  Cour fédérale

Date: 20170615

Docket: IMM-4067-16

Citation: 2017 FC 597

Ottawa, Ontario, June 15, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

YANDI LUO, SHUXIN CAO AND SHUNXIN CAO

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant [PA] and her two daughters, Shuxin and Shunxin, arrived in Canada in July 2011 from Trinidad & Tobago. Their claim for refugee protection was dismissed. This is a judicial review of a decision of Citizenship and Immigration Canada [CIC], dated September 9, 2016, denying their application for permanent residence on humanitarian and

compassionate grounds [H&C], pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The PA is a citizen of China. Her country of last permanent residence is Trinidad & Tobago. She is the mother and sole provider for her three children: two daughters who are citizens of Trinidad & Tobago; and a son who is a citizen of Canada. The PA is divorced from their father who resides in Trinidad & Tobago. She argues that the H&C decision is unreasonable and that the H&C Officer [the Officer] failed to properly consider the evidence of establishment and the best interests of the children [BIOC].

[3] For the reasons that follow, this judicial review is dismissed.

II. H&C Decision under review

[4] The Officer considered the issues of establishment in Canada, adverse country conditions in China and in Trinidad & Tobago, and the best interests of the three children.

[5] On the issue of establishment, the Officer concluded that the PA failed to demonstrate a significant degree of establishment in Canada. While the PA had become employed in January 2016, for the majority of her time in Canada, she had not worked and collected Social Assistance Benefits. The Officer concluded that her employment history did not demonstrate that she would be able to support herself and her children in Canada.

[6] On the other hand, the Officer attributed positive weight to the following factors: the PA made efforts to improve her language skills; she was a volunteer; her daughters were enrolled in school; and, the family was involved in their church.

[7] The PA claimed that she would be face discrimination in China as a single mother. She also argued that education is very costly, and that there is a lack of freedom in China. With regard to Trinidad & Tobago, she contended that her children would be in danger of being kidnapped or killed.

[8] In the absence of evidence to support the claims of adverse country conditions, the Officer concluded:

> "I note that the applicants have not provided any documentary evidence, such as research reports or articles concerning country conditions in China and in Trinidad and Tobago, to support the PA's statements. In the absence of any supporting documentary evidence I do not find that the applicants' H & C materials are sufficient to demonstrate, either that there are adverse country conditions in China and in Trinidad and Tobago, or in the event that there are adverse conditions in these countries, that the applicants would experience a direct, negative affect as a result of them."

[9] While the Officer did note that the children would likely undergo a period of adjustment upon resettlement in China or in Trinidad & Tobago, he did consider the fact that the PA and the two minor applicants had previously lived in Trinidad & Tobago, and the age of the children, as being factors which would assist in the transition.

[10] After examining the circumstances and documents in support of the applicants' claim, the Officer was not satisfied that the H&C considerations justified an exemption under subsection 25(1) of the *IRPA*.

III. Issues

[11] The PA argues that the H&C decision is unreasonable on two main grounds:

A. Is the Officer's decision with respect to establishment reasonable?

B. Did the Officer err in the BIOC analysis?

IV. Standard of review

[12] The standard of review for an H&C application is reasonableness (*Kisana v Canada (Citizenship and Immigration*), 2009 FCA 189 at para 18). Therefore this Court should not intervene unless the Officer's conclusions do not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

V. Analysis

A. *Is the Officer's decision with respect to establishment reasonable?*

[13] The PA argues that the Officer failed to undertake an empathetic approach in considering the issue of establishment. She submits that his consideration was too narrow in focus. She also

argues that the Officer failed to consider the progress she has made in the five (5) years since she has been in Canada.

[14] The Officer noted however that five (5) years does not constitute a considerable period of time. The Officer also noted that the applicants have few family members in Canada and that the father of the children resides in Trinidad & Tobago.

[15] The Officer acknowledged that the PA has secured full time employment in January 2016, and earns $11.50/hour. However, the Officer noted that for the majority of the time she has been in Canada (July 2011- January 2016) the PA has been unemployed and in receipt of Social Assistance Benefits. Therefore, the Officer concluded that the PA's employment history does not demonstrate that she will be able to support herself and her children in Canada.

[16] The Officer attributed positive weight to the fact that the PA made efforts to improve her language skills. He also considered the fact that her two daughters were enrolled in school, and their involvement in their church as positive factors.

[17] Nevertheless, the Officer determined that these were not sufficient to demonstrate a significant degree of establishment in Canada.

[18] The Officer considered the factors raised by the applicants in their evidence, including the hardships they would face if they were to resettle in Trinidad & Tobago or China. In

considering this, the Officer noted: the severance of friendships; the PA's employment history; the PA's efforts to improve her English; her volunteer record; and the children's achievements.

[19] Overall, the Officer's consideration and treatment of the evidence was reasonable. It is not the role of this Court to reweigh the evidence (see *Canada (Citizenship and Immigration) v Khosa* , 2009 SCC 12 at paras 4 and 59).

[20] The Officer's analysis of the applicants' degree of establishment does not give rise to any reviewable errors.

B. *Did the Officer err in the BIOC analysis?*

[21] The PA argues that the Officer erred in his BIOC analysis by taking a narrow approach and failing to adopt a "holistic approach", as enunciated by the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*].

[22] In *Kanthasamy*, the SCC directed that an officer must engage in a highly contextual analysis (see *Kanthasamy* at para 35). The SCC noted that the concept of "unusual, undue and disproportionate hardship" is inapplicable. However, officers are not prohibited from considering the hardship which may be faced by a child if they are not granted an exemption under subsection 25(1) of the *IRPA* (*Kanthasamy* at para 41; *Canada (Minister of Citizenship and Immigration) v Hawthorne*, 2002 FCA 475 at para 9). The analysis of the BIOC must be well identified and defined, and be considered attentively in light of the evidence (see *Kanthasamy* at para 39).

[23] Additionally, the officer must be "alert, alive and sensitive" to the best interests of the children (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75); however the mere presence of children does not necessarily call for a specific result (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 12).

[24] Here, the Officer's reasons demonstrate that he identified the BIOC considerations and examined them in light of the submissions of the applicants. The Officer considered the following: the PA is the sole caregiver and that there is no indication that the children's basic needs are not being met; the children would have to undergo a period of readjustment if they had to resettle; the majority of the applicants' relatives reside in China and there is nothing in the evidence to suggest that they would not assist the children in adjusting to life there; alternatively, there was nothing in the materials to suggest that the children would not benefit from being closer to their father in Trinidad & Tobago; and Shuxin and Shunxin would likely excel in school and make friends elsewhere as a result of their academic and social skills.

[25] The Officer considered the H&C submissions regarding Shuxin and Shunxin's best interest to remain in Canada, as they are both attending school and have a network of friends in Canada. He found that although they would experience some sadness upon having to leave friends behind and resettle, the documentation from their school indicated that they have good academic and social skills which would assist them to adjust in either China or Trinidad & Tobago.

[26] The Officer also concluded that the applicants' evidence failed to demonstrate that there are adverse country conditions in China or Trinidad & Tobago with respect to the children.

[27] The Officer's reasons demonstrate that he fully considered the factors raised by the applicants in relation to the BIOC. It is not the role of the Officer to locate evidence in support of the applicants' H&C application as the burden of proof rests on the applicants (see *Lu v Canada (Citizenship and Immigration)*, 2016 FC 175 at para 42).

[28] The Officer did not err in his assessment of the evidence and of the various factors relevant to the BIOC analysis.

JUDGMENT in IMM-4067-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No serious question of general certification is certified.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4067-16
STYLE OF CAUSE:	YANDI LUO, SHUXIN CAO AND SHUNXIN CAO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 18, 2017
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	JUNE 15, 2017

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