Federal Court  Cour fédérale

921Date: 20180307

Docket: IMM-2552-17

Citation: 2018 FC 261

Toronto, Ontario, March 7, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

STEFAN TISER, MARIA ZIGOVA, STEVEN LEE TISER, CHRISTOPHER TISER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Stefan Tiser (the "Principal Applicant"), Ms. Marika Zigova, his common law spouse and their minor Tiser children Steven Lee Tiser and Christopher Tiser (collectively the "Applicants") seek judicial review of the decision of an Officer who dismissed their application for permanent residence in Canada on humanitarian and compassionate ("H & C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicants are citizens of the Czech Republic. Following their entry into Canada in June 2015, they submitted a claim for refugee protection. The Principal Applicant was found to be excluded from refugee status on the basis of Article 1F (b) of the *United Nations Convention Relating to the Status of Refugees* (United Nations, Treaty Series, vol. 189, p. 137) as the result of his conviction in England for a serious non-political offence.

[3] In refusing their application, the Officer noted that, as citizens of the Czech Republic, the Applicants are also "citizens of the European Union" and could return to the United Kingdom where they had lived for some years.

[4] The Officer noted, as well, that the Refugee Protection Division had made negative credibility findings against the Principal Applicant and his common law spouse. The Officer acknowledged that credibility is not a "determinative factor" in the H & C application. The Officer concluded that there were insufficient grounds to permit "waiver" of the Principal Applicant's criminal inadmissibility and dismissed the application.

[5] The Officer's decision is reviewable on the standard of reasonableness; see the decision in *Kanthasamy v Canada (Minster of Citizenship and Immigration)*, [2015] 2 S.C.R. 909.

[6] According to the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S. C. R. 190 at paragraph 47, that standard of review requires that a decision is transparent, intelligible and justifiable, and falls within a range of possible, acceptable outcomes that is defensible upon the facts and the law.

[7] In my opinion, the Officer's decision here does not meet that test.

[8] The whole point of an H & C application pursuant so subsection 25(1) of the Act is to overcome factors that would otherwise make a person inadmissible to Canada. That much is apparent from the language of the provision.

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

[9] In my opinion, the Officer did not reasonably consider the Applicants' situation in Canada, in assessing whether discretion should be exercised in their favour.

[10] Consideration of the Applicants' status in the United Kingdom was irrelevant. The Applicants were not asking the Officer to assess their ability to relocate to the United Kingdom. The relevance of that factor is not apparent, in light of the focus in subsection 25(1) of the Act upon "humanitarian and compassionate" grounds including establishment in Canada.

[11] In the result, the application for judicial review is allowed, the decision is set aside and the matter remitted to a different officer for redetermination, no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside, and the matter is remitted to a different officer for re-determination. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2552-17
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APPEARANCES:

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