

Federal Court



Cour fédérale

Date: 20181219

Docket: IMM-2108-18

Citation: 2018 FC 1292

Vancouver, British Columbia, December 19, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

FABRIZIO SALTARELLI

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] Mr. Fabrizio Saltarelli (the “Applicant”) seeks judicial review of the decision made on May 3, 2018, by a Canada Border Services Agency Officer (the “Officer”), refusing his request for the deferral of his removal. The Officer found that there was no legal impediment to removal of the Applicant nor sufficient compelling, and unusual or extraordinary circumstances to warrant deferral, in light of section 48 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is an Italian national. He acquired status in Canada as a permanent resident in 1965. A deportation order was issued against him on August 24, 2010, following his conviction for fraud over the amount of \$5000.

[3] The Applicant is in a common-law relationship with a Canadian resident and stands in a parental relationship with her two minor children. He argues that the Officer committed a reviewable error by failing to consider the best interests of those children, including contextual factors and evidence of their reliance upon him as a parent.

[4] The Minister of Public Safety and Emergency Preparedness (the “Respondent”) raises an objection to certain material included as exhibits to the affidavit of the Applicant, filed in support of this application for judicial review, on the basis that these exhibits were not before the Officer. He argues that the Officer was only required to consider the short-term interests of the children and reasonably did so.

[5] Following the hearing, counsel for the Respondent submitted the decision in *Forde v. Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1029. Counsel for both the Respondent and the Applicant filed written submissions as to the relevance of that decision to the within application for judicial review.

[6] The decision of the Officer is reviewable upon the standard of reasonableness; see the decision in *Nguyen v. Canada (Public Safety and Emergency Preparedness)*.

[7] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[8] Upon consideration of the evidence that was before the Officer, as contained in the Certified Tribunal Record, and of the submissions of Counsel, both written and oral, I am not satisfied that the decision under review meets the applicable standard of review.

[9] I acknowledge that the Officer was not obliged to conduct a full analysis of the best interests of the children, on the basis of humanitarian and compassionate factors. However, I am not satisfied that the Officer reasonably considered the short-term interests of the children. The decision does not mention those interests.

[10] The facts in the present proceeding can be distinguished from those in *Forde, supra*.

[11] The applicant in *Forde, supra* requested a deferral for a six month period to support his wife through the rest of her pregnancy and the first months of the child's life. In the present proceeding, the Applicant requested a deferral to coach his step-daughter in soccer. The Applicant's request for deferral was not for a specific period of time, and that fact is distinguishable from the decision in *Forde, supra*.

[12] As well, the Applicant's situation is distinguishable from that of the applicant in *Forde, supra* because he does not pose a risk to public safety and has not been charged with any additional offences since his fraud conviction in 2008.

[13] In the result, this application for judicial review is allowed and the decision is set aside, for redetermination by a different officer. There is no question for certification arising.

JUDGMENT in IMM-2108-18

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the decision is set aside and the matter is remitted for redetermination by a different officer.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2108-18

STYLE OF CAUSE: FABRIZIO SALTARELLI v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: OCTOBER 15, 2018

JUDGMENT AND REASONS: HENEGHAN J.

DATED: DECEMBER 19, 2018

APPEARANCES:

Rachael J. Anderson

FOR THE APPLICANT

Maria Green

FOR THE RESPONDENT

SOLICITORS OF RECORD:

RJA Law
Edmonton, Alberta

FOR THE APPLICANT

Attorney General of Canada
Edmonton, Alberta

FOR THE RESPONDENT