Federal Court  Cour fédérale

Date: 20190506

Docket: IMM-2099-18

Citation: 2019 FC 582

Ottawa, Ontario, May 6, 2019

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

CHUNHWA JEONG & SUHYUN KANG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Chunhwa Jeong, and her daughter, Seo Yeon Kang, entered Canada in April 2012 and made a refugee claim. After their refugee claim was rejected in August 2014, they applied for a permanent residence visa from within Canada on humanitarian and compassionate [H&C] grounds. This H&C application was refused in June 2017.

[2] The Applicants submitted a second H&C application in January 2018. In a decision dated February 26, 2018, a Senior Immigration Officer refused the second H&C application. The Applicants have now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*], for judicial review of the Officer's decision. They ask the Court to set aside the decision and have their H&C application redetermined by a different officer.

I. Background

[3] Ms. Jeong was born in North Korea in 1971. She left North Korea in 1998 and went to China where she stayed until she journeyed to South Korea in March 2001. She became a South Korean citizen some five months later.

[4] In June 2007, Ms. Jeong married Jung Su Kang, a South Korean, and their daughter, Seo Yeon Kang, was born in October 2009. Although Mr. Kang's family was originally against the marriage (due to her North Korean ancestry), they came to accept it with the exception of Mr. Kang's brother who threatened to harm the couple if they remained together.

[5] The family had difficulties finding daycare for Seo Yeon due to Ms. Jeong's North Korean background. Parents would tell their children not to play with Seo Yeon as she was a daughter of a North Korean mother.

[6] In February 2012, Mr. Kang went to Australia to pursue a business opportunity and get away from his brother who continued to harass him about his marriage to Ms. Jeong. According to Ms. Jeong, her husband divorced her in March 2013 to stop this harassment. Despite this

divorce, their relationship has continued (though Ms. Jeong now identifies Mr. Kang as her common-law partner instead of husband).

[7] Unable to cope with being a single parent and a North Korean defector, Ms. Jeong decided to come to Canada in April 2012. Shortly after their arrival in Canada, Ms. Jeong and her daughter initiated an inland refugee claim, but this claim was rejected in August 2014.

[8] Mr. Kang came to Canada in February 2013 and lived with Ms. Jeong and Seo Yeon until he was removed from Canada in August 2017 after receiving a negative pre-removal risk assessment [PRRA]. He still sends money from South Korea to Canada to support them.

[9] In July 2015, Ms. Kang and Seo Yeon moved from Edmonton to Toronto to the home of a friend and fellow defector who was dying of cancer to provide support for the friend's young daughter, Diana. After Ms. Jeong's friend died, Diana was put into the care of the pastor of the friend's church.

[10] Ms. Jeong applied for a permanent residence visa from within Canada on H&C grounds in September 2016, but this application was refused in June 2017. After this refusal, she then applied for a PRRA in October 2017. She made a second H&C application in early January 2018 based on establishment in Canada, the hardship the Applicants would face due to their North Korean connection, Ms. Jeong's difficulty finding work, her mental health and the effects on Seo Yeon, and the best interests of Seo Yeon and Diana.

[11] In a decision dated February 26, 2018, the Officer refused the second H&C application. The same Officer, on the same day, also rejected Ms. Jeong's PRRA application. The Officer did not consider the Applicants' request for a temporary resident permit [TRP].

II. The Officer's Decision

[12] After reviewing Ms. Jeong's background prior to her arrival in Canada, the Officer noted the Applicants had a degree of establishment, having resided in Canada for nearly six years and participating in religious and volunteer activities. Although the Officer gave some positive weight to Ms. Jeong's commitment to her religion, the Officer noted she would have the freedom to continue practicing her religion in South Korea. The Officer found the support Ms. Jeong had provided to her friend who died of cancer commendable, but this did not warrant an exemption from the requirement to apply for a permanent resident visa from outside Canada. The Officer remarked that Seo Yeon had attended school in Canada. The Officer assigned some positive weight to the Applicants' establishment in Canada but found "their ability to assimilate to the environment in Canada demonstrates their ability to assimilate to the environment in their country of citizenship".

[13] The Officer then examined the risks and adverse country conditions, noting that while societal discrimination against North Korean defectors exists in South Korea, much of the discrimination is against those who do not possess South Korean citizenship. In the Officer's view, the Applicants' South Korean citizenship would allow Ms. Jeong to secure employment, receive education, and obtain other social services. The Officer observed that the government in South Korea provides support to help defectors adapt to the environment in the country.

[14] The Officer acknowledged that Ms. Jeong had suffered sexual harassment and sexual assault while working in South Korea. The Officer found that this was "unfortunate" and stated:

> I am satisfied that she is now more informed of her rights and options. The applicant does not have to feel pressured to put up with these issues simply due to her gender or background. Additionally, I find that the applicant has the financial support of her partner and would not have to feel obligated to stay in a job due to financial pressures.

[15] The Officer dismissed Ms. Jeong's fears of finding it difficult to find a job, stating that she had provided insufficient evidence and noting that South Korea prohibits discrimination in employment based on race, gender, disability, sexual orientation and social status. Although the Officer accepted that there is discrimination against defectors in the labour force, the Officer cited a report which stated that female defectors adapt more easily than their male counterparts. The Officer acknowledged that, although gender discrimination and inequality for women continued to be a problem in South Korea, there is legislation in place and recourses are available to women to mitigate this hardship. The Officer found insufficient evidence had been provided to demonstrate that the issue of gender inequalities would cause the Applicants a level of hardship justifying an exemption from the requirement to apply for a permanent resident visa from outside Canada.

[16] The Officer next addressed Ms. Jeong's fears about Mr. Kang's brother who had threatened her, noting that Mr. Kang had returned to South Korea in August 2017 and insufficient evidence had been provided to demonstrate his brother had harmed or attempted to harm him in any way. The Officer found the Applicants had provided insufficient objective documentary evidence to demonstrate that Mr. Kang's brother had an ongoing interest in

harming Ms. Jeong, and that she could seek protection from the police authorities should he threaten to harm her again.

[17] The Officer also addressed Ms. Jeong's fears that her family in North Korea would face further and greater persecution if she was to be found residing South Korea. The Officer noted Ms. Jeong's claim that her adult daughter from a prior marriage had been interrogated in 2016, and in 2017 sent to a labour camp for one year. The Officer dismissed these claims, stating that Ms. Jeong had not provided sufficient corroborating evidence to demonstrate she was a person of interest to the North Korean government 19 years after she had left that country or that her family members have been interrogated or punished due to her defection.

[18] The Officer recognized Ms. Jeong's diagnosis of post-traumatic stress disorder and depression. The Officer noted she had been experiencing depressive symptoms since 1998 and had not sought out treatment in South Korea, but this was consistent with the lack of awareness or reluctance of persons with mental health illnesses to seek treatment in South Korea. The Officer did not accept the submission that Ms. Jeong could be subjected to electroconvulsive therapy or any other involuntary treatments if she returned to South Korea. The Officer based this finding on the fact that she had previously been diagnosed with postpartum depression after the birth of Seo Yeon. The Officer observed that South Korea's approach to mental health was changing as more individuals sought assistance and the government provided more funding. After reviewing the nature and number of mental health care facilities in South Korea, the Officer found Ms. Jeong would be able to secure reliable and consistent mental health treatment in South Korea for her mental health issues.

[19] Despite the opinion of Ms. Jeong's psychologist that she would be re-traumatized and her mental health conditions would be exacerbated if forced to return to South Korea, the Officer stated:

> I accept that it may be emotionally difficult for the applicant to return to South Korea due to her desire to remain in Canada; however, I find that there are resources that are available in South Korea to help her cope with her mental health issues….
>
> I respect the professional opinion … however, I find her opinion is based on the applicant's subjective perception of safety in South Korea…. I find that the applicant's fear of being unsafe in South Korea could be attributed to her lack of awareness of the resources that are available to her in the country. Although Smitha [the psychologist] stated "treatment would be helpful only if she is able to stay in a country that she perceives to be safe", I find that her perception of South Korea could change as she becomes more informed of her resources. I am not satisfied that mental health treatments in South Korea would be ineffective for the applicant. I find that the applicant has provided insufficient evidence to demonstrate how her mental health issues would cause her to suffer from hardship upon her return in South Korea due to a lack of treatment options or other reasons.

[20] The Officer then considered the best interests of Seo Yeon, noting that she was eight years old and had entered Canada at the age of two. In response to the submission that Seo Yeon did not wish to return to South Korea, the Officer stated:

> I am satisfied that she has loving and caring parents who will continue to provide a loving, caring and nurturing [*sic*] for her upon her return to South Korea. Additionally, I find that it is in the best interests of any child to have access to both of his/her loving parents. As Seo Yeon's father returned to South Korea in August 2017, I find that it would be in her best interests to return to South Korea where she would have access to both of her loving parents. I acknowledge that Seo Yeon has adapted well to the environment in Canada; however, given her young age, I am satisfied she would be able to assimilate to the environment in South Korea after an initial period of adjustment.

[21] The Officer accepted that, while Seo Yeon's language skills might be lower than other South Korean students, she had the ability to catch up to her peers after an initial period of adjustment, especially with the help of her loving parents, and that she was not less capable of succeeding in the South Korean educational system than other South Korean children. The Officer found that although Seo Yeon was well adapted to Canada, given her age she should be able to assimilate to South Korea, including catching up on the language.

[22] The Officer found insufficient evidence had been provided to substantiate Ms. Jeong's concerns about Seo Yeon being bullied and noted that there were programs in place in South Korea to reduce bullying and to ensure students have a healthy cognitive, social, and emotional school experience. The Officer referenced a letter from Ms. Jeong's friend who had written that, although her child was born in South Korea, the fact she (the mother) was born in North Korea caused her child to be bullied. The Officer dismissed this letter because everyone's individual experiences are different, and it did not support a finding that Seo Yeon would face bullying in South Korea.

[23] The Officer concluded the analysis of Seo Yeon's best interests by stating that insufficient evidence had been provided to demonstrate her best interests would be compromised by discrimination, bullying or school violence in South Korea; and by stating that her extracurricular activities in Canada would also be available in South Korea and she could participate in these activities upon return to South Korea.

[24] The Officer then turned to consider Diana's best interests, noting Ms. Jeong's desire to adopt her. The Officer commended Ms. Jeong for her generosity and compassion but found there was little information to indicate Diana was or would be up for adoption. The Officer noted the letters of support from Ms. Jeong's senior pastor and associate pastor did not indicate they were seeking individuals to adopt Diana.

[25] The Officer concluded the analysis of the best interests of the children [BIOC] by stating that insufficient evidence had been provided to demonstrate that having to depart Canada to apply for permanent residence would have a significant negative impact on the BIOC.

III. The Parties' Submissions

A. *Establishment*

[26] The Applicants say it was inappropriate for the Officer to hold their adaptability to Canada as a factor against them by finding that they could adapt to South Korea. According to the Applicants, they should be given credit for their establishment in Canada. The Officer's reasoning that because they have adapted in Canada, they will therefore be able to adapt in South Korea is erroneous, the Applicants say, especially considering the hardship they faced in South Korea. The Applicants maintain that it was unreasonable for the Officer to suggest their Canadian establishment would transfer into establishment in South Korea.

[27] In the Applicants' view, the Officer unreasonably conflated establishment with hardship. According to the Applicants, the Officer dismissed significant positive signs of establishment by

finding they can continue their religious activities, friendships, and extracurricular activities in South Korea. The Applicants say the Officer's task was not to determine whether they would have access to similar activities in South Korea, thereby diminishing hardship, but whether they were established in Canada.

[28] According to the Respondent, the Officer assigned positive weight to the Applicants' establishment in Canada and recognized that, while a return to South Korea may cause disruption, they would be able to adapt, particularly given that Mr. Kang lives in South Korea. The Respondent says it was reasonable for the Officer to find the Applicants could maintain their Canadian relationships. In the Respondent's view, the Applicants are essentially asking the Court to reweigh the evidence, and that is not the purpose of judicial review.

B. *Hardship*

[29] The Applicants claim the Officer's finding that, since mental health care was available to Ms. Jeong in South Korea she would eventually feel safe there, was unreasonable. According to the Applicants, the Officer unreasonably minimized the mental health impacts on return and failed to appropriately grapple with the hardship of decompensation. In the Applicants' view, the Officer minimized the severe impact returning to South Korea would have on Ms. Jeong's mental health, when the Officer was obligated to consider the decompensation as a hardship in its own right.

[30] The Applicants say the Officer erred in assuming that since Ms. Jeong was willing to seek out mental health supports in Canada, she would be able to do so in South Korea because of

her self-awareness. In the Applicants' view, the availability of mental health care resources does not address the deterioration of Ms. Jeong's mental health if returned to South Korea.

[31] The Applicants further say that, although the Officer recognized there was discrimination, the finding that there were resources available to combat it was inappropriate because the Officer did not cite or reference any objective documentary evidence to support this. The Applicants submit that South Korea does not have any anti-discrimination laws, and even if there were resources to combat discrimination, the Officer unreasonably negated the hardships in this regard.

[32] The Respondent does not agree that the Applicants would face discrimination due to Ms. Jeong's North Korean background because: much of the discrimination is against those North Koreans who do not possess South Korean citizenship; female North Korean defectors adapt more easily than male defectors; and the South Korean government has taken steps to address the discrimination faced by North Koreans residing there.

[33] In the Respondent's view, it was reasonable for the Officer to find that the Applicants had provided insufficient evidence to show Ms. Jeong had been a victim of sexual abuse or had difficulty securing employment due to her North Korean background.

[34] According to the Respondent, the Officer did not speculate as to Ms. Jeong's ability or willingness to seek treatment for her mental health issues in South Korea but, rather, cited the evidence from her psychologist in finding she showed a willingness to seek professional help.

C. *Best Interests of the Children*

[35] According to the Applicants, the Officer's BIOC analysis relied on incorrect principles of law and considered only that it was in the best interest of Seo Yeon to be reunited with her father in South Korea without considering the possibility of maintaining the status quo in Canada. In the Applicants' view, the Officer concluded at the outset of his BIOC analysis that all children's best interests are to be in the presence of two loving parents, and then used the rest of the analysis to explain the lack of hardship to return Seo Yeon to South Korea.

[36] The Applicants say the Officer failed to consider either the impact of removal upon Seo Yeon or the friendships and relationships she had made in Canada. According to the Applicants, the Officer unreasonably dismissed the hardships Seo Yeon would face because of her adaptability and youth. In the Applicants' view, the Officer erred when comparing Seo Yeon's circumstances to those of other children. By stating simply that she was no less capable of succeeding than her South Korean peers, the Officer did not analyse the general hardship conditions; namely, the objective evidence describing widespread use of corporal punishment and verbal abuse by teachers, a high pressurized educational system, low happiness, and a high youth suicide rate.

[37] The Applicants further say the Officer inappropriately dismissed the hardship of bullying by simply stating that bullying is a problem everywhere. The Applicants claim the only evidence the Officer referenced about the hardship of bullying was a letter from Ms. Jeong's North Korean friend whose child had been born in South Korea, when 22 articles on bullying, 15 articles on the

South Korean educational system and 30 articles relating to the discrimination of defectors had been submitted.

[38] In the Applicants' view, the Officer also inappropriately minimized the linguistic difficulties Seo Yeon would face if returned to South Korea; in that she was only two years old when she came to Canada and her only formative reading and writing education have been limited to the English language. Even if she was able to catch up in South Korea, the Applicants maintain that the Officer should have considered Seo Yeon's ability to succeed in the highly competitive South Korean school system.

[39] Lastly, the Applicants say the Officer failed to consider how the mental health of Seo Yeon's mother would affect Seo Yeon if the Applicants were returned to South Korea and, in particular, how her mother's risk of psychological decompensation might affect her ability to care for Seo Yeon.

[40] The Respondent defends the Officer's decision. In the Respondent's view, the Officer did not ignore the submissions concerning the best interest of the children and appropriately considered all the evidence, weighed it, and explained why it did not support a positive disposition. The fact that the Officer did not cite specific documents mentioned by the Applicants does not, the Respondent says, mean that the Officer ignored the evidence.

[41] According to the Respondent, officers are presumed to know that living in Canada offers a child better opportunities than they would have elsewhere, and any comparison is not determinative since the outcome would almost always favour Canada.

D. *The Global Assessment*

[42] The Applicants contend that the Officer's global assessment was superficial. They point out that the Officer concluded most sections of the decision with a boilerplate statement that "insufficient evidence" had been provided to grant the Applicants an exemption from the requirement to apply for a permanent resident visa from outside Canada.

[43] The Respondent maintains that there was no reviewable error with the Officer's global assessment of the evidence, and denial of the application does not necessarily imply that the factors were not globally assessed.

E. *Non-consideration of temporary resident permit request*

[44] The Respondent agrees with the Applicants' position that the Officer erred by not considering their request for a TRP. Consequently, it is the Respondent's position that the TRP application be returned so that a decision can be rendered according to the law.

F. *Analysis*

(1) Standard of Review

[45] The Applicants say reasonableness is the standard of review in respect of an H&C decision.

[46] The Respondent says the Officer's decision is owed deference and the reasons for the decision should be considered as an organic whole. The Respondent notes that an H&C exemption is an exceptional, discretionary measure, which is reviewed on the standard of reasonableness, and as a discretionary matter the range of possible and acceptable outcomes is broad.

[47] An immigration officer's decision to deny relief under subsection 25(1) of the *IRPA* is reviewed on the reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44). An Officer's decision under subsection 25(1) is highly discretionary, since this provision "provides a mechanism to deal with exceptional circumstances" and the Officer "must be accorded a considerable degree of deference" by the Court (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15).

[48] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls 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). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

(2) Establishment

[49] I agree with the Applicants that it was inappropriate for the Officer to minimize the Applicants' establishment in Canada and hold their adaptability to Canada as a factor against them in finding they could adapt to South Korea. The Applicants should be given credit for their establishment in Canada, and this should not have been used against them.

[50] As the Court in *Knyasko v Canada (Minister of Citizenship and Immigration)*, 2006 FC 844, found:

> [6] … the officer failed to give the applicants credit for their degree of attachment to Canada. Rather, the officer reasoned that the applicants' extensive ties to Canadian life show that they could likely reintegrate successfully into Hungarian society.
>
> [7] … The officer failed to consider relevant evidence. Further, he did not consider the extent to which the applicants' ties to Canada favoured their application. He appears only to have assessed them in terms of the applicants' ability to resettle in Hungary.

[51] The Officer's reasoning that because the Applicants have adapted in Canada, they will therefore be able to adapt South Korea is unreasonable in view of the hardships they faced in

South Korea. This sort of problematic analysis was discussed in *Sosi v Canada (Citizenship and Immigration)*, 2008 FC 1300:

> [18] … the use of the conclusion that the applicants are well established in Canada is perverse because it takes the existence of a factor set out in IP 5 as a consideration militating towards granting humanitarian and compassionate relief and uses it to do just the opposite. Obviously, the proven establishment of the applicants in Canada should work in their favour because there is absolutely no way of knowing whether the personal abilities they used to create this establishment can be used in Kenya to accomplish the same thing. To speculate that the applicants would be successful is a primary error, given the evidence of suffering they experienced in Kenya before fleeing to Canada.

[52] The Applicants do not face the same prejudice or have the same history in Canada as in South Korea and it was unreasonable for the Officer to find their Canadian establishment would transfer into establishment in South Korea.

[53] It is also problematic that the Officer conflated establishment with hardship. The Officer dismissed significant positive signs of establishment by stating the Applicants could continue their religious activities, friendships, and extracurricular activities in South Korea. The Officer's task was not to determine whether the Applicants would have access to similar activities in South Korea, thereby diminishing hardship, but whether they are established in Canada (*Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at paras 21 to 26 [*Lauture*]). The Officer's analysis of the Applicants' degree of establishment in Canada should not have been based on whether they could carry on similar activities in South Korea. Under this type of analysis, "the more successful, enterprising and civic minded an applicant is while in Canada, the less likely it is that an application under section 25 will succeed" (*Lauture* at para 26).

(3) Hardship

[54] I agree with the Applicants that the Officer unreasonably minimized the mental health impacts if Ms. Jeong returns to South Korea and failed to appropriately grapple with the hardship of decompensation.

[55] In this regard, the Court's decision in *Esahak-Shammas v Canada (Citizenship and Immigration)*, 2018 FC 461, warrants note:

> 26 … the Officer acknowledged the psychiatric report without taking issue with its diagnosis, content, finding of required treatment or otherwise. Accordingly, and as the Applicants submit, if the Officer accepted the psychiatric report and if it spoke to the effect of removal from Canada on the Principal Applicant's mental health, then the Officer was obligated to consider this in his or her analysis. This Court has held that when psychological reports are available and indicate that the mental health of applicants would worsen if they were to be removed from Canada, then an officer must analyze the hardship that applicants would face if they were to return to their country of origin. In that circumstance, an officer cannot limit the analysis to a determination of whether mental health care is available in the country of removal [citations omitted].

[56] In this case, the psychologist's report clearly stated, in relevant part:

> …there is a risk of re-traumatization should Ms. Jeong be returned to South Korea. … Should she be forced to leave Canada, it is anticipated that Ms. Jeong's symptoms of Posttraumatic Stress Disorder and Major Depressive Disorder would become exacerbated, resulting in significant decompensation of her psychological symptoms. … Ms. Jeong noted a slight improvement in her symptoms since she arrived in Canada, which she attributed to feeling safe in Canada. Should she be forced to leave Canada, it is anticipated that Ms. Jeong's symptoms of Posttraumatic Stress Disorder could become exacerbated and return to a level of intensity that closely resembles what she was experiencing in South Korea (i.e. the symptoms of PTSD that she is currently

> experiencing plus the return of unpleasant dreams of past traumatic events; having strong negative beliefs about herself, other people and the world; hypervigilance and strong startle reaction).

[57] The Officer found that insufficient evidence had been provided to demonstrate how Ms. Jeong's mental health issues would cause her to suffer from hardship upon her return in South Korea "due to a lack of treatment options or other reasons". This finding is unreasonable because the hardship facing Ms. Jeong upon return to South Korea was not due to a lack of treatment options or other reasons but, rather, due to the fact that return to South Korea would, in itself, according to the psychologist, exacerbate and result in a significant decompensation of her psychological symptoms.

[58] It also was unreasonable for the Officer to find that the psychologist's opinion was based on Ms. Jeong's "subjective perception of safety in South Korea". This finding is unintelligible because the psychologist based her opinion on behavioural observations of Ms. Jeong and a structured interview utilizing the Miller Forensic Assessment of Symptoms Test, the Structured Clinical Interview for DSM-5 Disorders Clinician Version, and the Clinician-Administered PTSD Scale. The psychologist's opinion was not based on Ms. Jeong's subjective perception of safety, whether in Canada or in South Korea.

(4) Best Interest of the Children

[59] The Officer's analysis of the BIOC suffers from two defects.

[60] First, the Officer considered only that being reunited with her father in South Korea was in Seo Yeon's best interests without considering the possibility of maintaining the status quo in Canada. The Officer's view that Seo Yeon's best interests would be reunification with her father in South Korea is unreasonable because it ignored and did not address the possibility that her best interests might be best served by maintaining the status quo (*Ndlovu v Canada (Immigration Refugees and Citizenship)*, 2017 FC 878 at para 20; *Alagaratnam v Canada (Citizenship and Immigration)*, 2017 FC 381 at para 32; and *Jimenez v Canada (Citizenship and Immigration)*, 2015 FC 527 at paras 27 and 28).

[61] The second defect in the Officer's BIOC analysis is that, not only was it premised on an assumption that Seo Yeon would return to South Korea with her mother (a presumption which this Court has found to be unreasonable in several cases (*Sivalingam v Canada (Citizenship and Immigration)*, 2017 FC 1185 at para 17, and the cases cited therein); but it did not consider or assess the impact upon her best interests if, as the psychologist opined, her mother's psychological symptoms would be exacerbated and result in a significant decompensation. Although the psychologist's report offered no opinion as to the impact of Ms. Jeong's ability to parent her daughter if returned to South Korea, in my view this was an important factor which the Officer unreasonably failed to examine.

IV. Conclusion

[62] The Officer's decision in this case was not reasonable. The Officer's analysis of the Applicants' establishment and Seo Yeon's best interests was flawed and the matter must be returned to be reconsidered by a different immigration officer.

[63] The Officer also failed to consider the Applicants' request for a TRP and the officer who reconsiders the Applicants' H&C application should address this request so that a decision can be rendered according to the law.

[64] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-2099-18

THIS COURT'S JUDGMENT is that: the application for judicial review is granted; the decision of the Senior Immigration Officer dated February 26, 2018, is set aside; the matter is returned for redetermination by a different immigration officer in accordance with the reasons for this judgment; and no question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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