

Federal Court



Cour fédérale

Date: 20200214

Docket: IMM-2781-19

Citation: 2020 FC 252

Ottawa, Ontario, February 14, 2020

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MARTIN EVANS REID

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Martin Evans Reid (the “Applicant”) seeks judicial review of the decision of a Senior Immigration Officer (the “Officer”), refusing his application for permanent residence on Humanitarian and Compassionate (“H and C”) grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of Jamaica. He first entered Canada in 1990 as a permanent resident. He was convicted on three counts of trafficking in a narcotic in May 1997 and deported to Jamaica on January 19, 2000.

[3] The Applicant returned to Canada in 2000, without status and has remained here since that time.

[4] In 1999, the Applicant married. He was involved in the parenting of his wife's young daughter, who is now 33 years of age and fathered two children with his wife, who are now 19 and 16 years of age.

[5] The Applicant submitted his application for permanent residence on H and C grounds based on his establishment in Canada, his familial ties to Canada, including his wife, mother and sisters, as well as the best interests of his children.

[6] Due to his criminal record, the Applicant can only obtain status in Canada, at this time, through an application on H and C grounds.

[7] The Applicant is eligible to seek, and has now applied for, a suspension of his criminal record.

[8] The Applicant's adult stepdaughter and 19-year-old son are not "children" for the purposes of the Act, in the absence of evidence of dependency.

[9] The Applicant submits the decision was unreasonable because the Officer failed to consider all of the evidence, including his establishment in Canada and letters of support from family and friends.

[10] The Applicant also argues the Officer unreasonably assessed the best interests of his children.

[11] The Minister of Citizenship and Immigration (the “Respondent”) submits the Officer’s decision was reasonable and made with regard to all of the evidence.

[12] In its recent decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada revisited the standard of review of administrative decisions. It said that, presumptively, such decisions are reviewable on the standard of reasonableness, with two exceptions: where legislative intent or the rule of law requires otherwise. Neither exception applies in this case.

[13] In *Vavilov, supra*, the Supreme Court of Canada confirmed the content of the reasonableness standard as set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[14] According to the decision in *Dunsmuir, supra*, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[15] In my opinion, the decision is not reasonable because the reasons do not show that the Officer considered the totality of the evidence, including evidence of family relationships and the marital relationship.

[16] It is not necessary for me to address the arguments about an unreasonable assessment of the best interests of the Applicant's 16-year-old daughter.

[17] In the result, the application for judicial review is allowed, the decision is set aside and the matter is remitted to another officer for redetermination.

[18] There is no question for certification arising.

JUDGMENT in IMM-2781-19

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter is remitted to another officer for redetermination.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2781-19

STYLE OF CAUSE: MARTIN EVANS REID v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 4 , 2020

JUDGMENT AND REASONS: HENEGHAN J.

DATED: FEBRUARY 14, 2020

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