

Federal Court



Cour fédérale

Date: 20210629

Docket: IMM-2437-20

Citation: 2021 FC 682

St. John's, Newfoundland and Labrador, June 29, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JASMINE CURLEITHA CHARLES

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Jasmine Curleitha Charles (the “Applicant”) seeks judicial review of the decision made by an Officer (the “Officer”), on or about May 1, 2020, denying her request to seek permanent residence from within Canada 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 St. Vincent and the Grenadines. She entered Canada as a visitor on February 26, 1999 and has remained since that day. She is a mother of a child who was born in Canada in 2013. She based her H and C application on her establishment in Canada and the best interests of her child, among other things.

[3] The Officer's decision is reviewable on the standard of reasonableness, pursuant to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[4] The Applicant argues that the Officer's decision is unreasonable, in particular with respect to the elements of establishment and the best interests of her Canadian-born child.

[5] The Minister of Citizenship and Immigration (the "Respondent") submits that the decision is reasonable.

[6] Upon reading the materials filed and hearing the submissions of Counsel, I am not satisfied that the decision is reasonable. Judicial intervention in this matter is warranted.

[7] In my opinion, the Officer unreasonably used the fact that the Applicant stayed in Canada since 1999 without status, in assessing her establishment in Canada since that time. The failure to regularize immigration status is not, *per se*, a factor that minimizes a person's establishing in Canada; see the decision in *Mitchell v. Canada (Citizenship and Immigration)*, 2019 FC 190.

[8] The Officer also unreasonably found that there was limited evidence of establishment. This conclusion is not supported by the evidence.

[9] In my view, the Officer further erred in her assessment of the best interests of the Applicant's Canadian-born child by apparently dismissing the fact that the child has spent his life in Canada. I agree with the submissions of the Applicant that the Officer did not engage with the best interests of the Canadian-born child.

[10] The following quotation from the Officer's reasons demonstrates a misguided approach to assessment of the child's best interests:

... While I have considered that remaining united in Canada with his mother would be ideal, I am not persuaded that a return to St. Vincent would seriously harm the child's best interests. I am mindful that the child will retain his Canadian citizenship regardless of where he resides and thus will be afforded all the rights and opportunities available to other Canadian citizens. I find it is in the best interests of the child to remain united with his mother regardless of geographical location.

[11] While an H and C application involves the exercise of discretion by the Respondent and his agents and delegates, that discretion is to be exercised reasonably with a fair assessment of the personal circumstances of an applicant and not in a mechanical manner, seeking a way to deny an application.

[12] It is not necessary for me to address the other arguments raised by the Applicant.

[13] The application for judicial review will be allowed, the decision of the Officer will be set aside and the matter remitted to a different officer for redetermination. There is no question for certification arising.

JUDGMENT in IMM-2437-20

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

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2437-20

STYLE OF CAUSE: JASMINE CURLEITHA CHARLES v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: JUNE 28, 2021

JUDGMENT AND REASONS: HENEGHAN J.

DATED: JUNE 29, 2021

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