

Federal Court



Cour fédérale

Date: 20211213

Docket: IMM-386-21

Citation: 2021 FC 1409

Ottawa, Ontario, December 13, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

QUANGEN ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the bench at Ottawa, Ontario, on December 13, 2021)

[1] Mr. Zhang applies for judicial review of the rejection of his application for permanent residence on humanitarian and compassionate [H&C] grounds. These are my reasons for allowing his application.

[2] Mr. Zhang and his wife, Ms. Yuan, are citizens of China. They have only one daughter, Ms. Zhang, who married a Canadian permanent resident and obtained permanent residence herself. In November 2012, Ms. Zhang gave birth to a son, who is a Canadian citizen.

[3] In January 2015, Ms. Zhang's husband became ill with lung cancer. Mr. Zhang and Ms. Yuan, who had obtained multiple-entry visas for Canada, made several visits to help the family while their daughter was caring for her husband, who, sadly, died in September 2018. Mr. Zhang and Ms. Yuan have remained in Canada since 2018 and applied for H&C relief.

[4] In his application, Mr. Zhang wrote that he and his wife cared for their grandson while their daughter was taking care of her husband. Since the latter's death, they have continued caring for the child, for example by walking him to school, preparing meals and doing housekeeping. He also notes that his daughter has resumed full time work and earns a salary of \$14 per hour.

[5] Section 25 of the *Immigration and Refugee Protection Act* requires H&C officers to consider the best interests of any child involved. It is trite law that they must do so with empathy. As Justice Campbell stated in *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 at paragraph 34:

This approach is achieved by a decision-maker stepping into the shoes of an applicant and asking the question: how would I feel if I were her or him? In coming to the answer, the decision-maker's heart, as well as analytical mind, must be engaged.

[6] Here, the evidence in support of the application was perhaps slim, but I am unable to detect any empathy in the decision. The officer merely stated that it was in the best interests of the child to be with his mother in Canada. While recognizing that the presence of the grandparents was beneficial, the officer stated that “the best interests of their grandson will likely continue to be met by his mother if the applicants were to leave Canada.”

[7] The officer, however, gave no consideration to the fact that the boy had lost his father at an early age; no consideration to Mr. Zhang and Ms. Yuan’s daily presence for significant portions of their grandson’s life; no consideration to the situation in which Ms. Zhang would find herself without the help of her parents, as a single mother working for minimum wage; no consideration to the fact that Ms. Zhang and her son have no other family in Canada; and no consideration to the fact that Mr. Zhang and Ms. Yuan do not appear to have other immigration options, given their daughter’s low income. Quite simply, the officer did not attempt to understand how the child would be impacted by his grandparents’ return to China.

[8] In many respects, this case is similar to *Motrichko v Canada (Citizenship and Immigration)*, 2017 FC 516. While the best interests of children do not always require that their grandparents be granted H&C relief, the officer in this case was not alert, alive and sensitive to the actual circumstances of the family. His decision is unreasonable and the application for judicial review will be granted.

JUDGMENT in IMM-386-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter returned to a different officer for reconsideration.
3. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-386-21

STYLE OF CAUSE: QUANGEN ZHANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 13, 2021

JUDGMENT AND REASONS: GRAMMOND J.

DATED: DECEMBER 13, 2021

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