Federal Court  Cour fédérale

Date: 20220531

Docket: IMM-6795-20

Citation: 2022 FC 790

Ottawa, Ontario, May 31, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ANNE MARIE TERESA JEROME

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The decision of a Senior Immigration Officer refusing the Applicant's request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds will be set aside. It is unreasonable. The officer misstates the evidence of photographs of the Applicant and her grandson and improperly assesses the best interest of the Applicant's grandson by not fully considering the impact on him of his grandmother's removal.

Background

[2] The Applicant's personal circumstances are tragic.

[3] The Applicant is a citizen of Saint Lucia. At the time of the H&C decision, she was 62 years old. She has three adult children, two living in Saint Lucia, and one living in Canada.

[4] The Applicant's first marriage ended because of family violence. She became a single mother, raising her children on her salary as a teacher.

[5] In 2002, the Applicant met a Canadian citizen in Saint Lucia and started a relationship. The Applicant married him in Canada in 2003. Her new husband told her that he would sponsor her for permanent residence.

[6] The Applicant returned to Saint Lucia to settle her affairs and moved to Canada in January 2006 to live with her husband. In the months following her arrival, the Applicant's husband became manipulative and financially controlling. He was abusive towards her. The Applicant's husband revealed to her that he was no longer willing to sponsor her and, in fact, had divorced her in November 2004. The Applicant says that she was never served with a divorce application and was shocked by this development. Because the Applicant was not established in Canada, she had to live with her ex-husband for the next three months.

[7] According to the Applicant, she now works full time as a cleaner and as a caregiver, lives in an apartment that she rents, and is financially self-sufficient.

[8] The Applicant first made an application for permanent residence on H&C grounds, which was rejected in March 2018. She made a second H&C application on January 8, 2020.

[9] In addition to her H&C application, the Applicant also applied for a pre-removal risk assessment in November 2019 and a temporary resident permit for victims of domestic violence in August 2019.

[10] The Applicant's H&C application was primarily based on (1) the best interests of the Applicant's Canadian grandchild Kadien as well as her close friend's 8 year old son Veedel, and (2) factors that pertain to family violence including hardship that would result from her removal and her establishment in Canada.

[11] Counsel for the Applicant submitted a 35-page letter containing her submissions as to why a positive decision was warranted [the Submissions]. It includes 5 pages focused on the best interests of the children, especially as regards her grandson Kadien.

[12] The Submissions regarding Kadien are summarized as follows: "Refusal of this application will have an adverse effect on [the Applicant's] grandson Kadien's best interests, as it will have a significant negative impact on his psychological and emotional wellbeing."

[13] Kadien's parents are separated and the Applicant babysits him for his mother when she works or needs to leave her home. The Applicant is described as his primary caregiver.

[14] In support of the submissions on the negative effect that the Applicant's removal to St. Lucia will have on Kadien, the Submissions reference and attach a recently published paper on the subject: Marcia Zug, "Deporting Grandma: Why Grandparent Deportation May be the Next Big Immigration Crisis and How to Solve It" (2009) 43:1 UC Davis L Rev 193, available online at <lawreview.law.ucdavis.edu/issues/43/1/articles/43-1_Zug.pdf>.

[15] The Submissions also referenced the Supreme Court of Canada's decision in *Gordon v Goertz*, [1996] 2 SCR 27, a child custody case, wherein, at pages 92–93 Justice L'Heureux-Dubé, in her concurring reasons, discusses the singular importance of preserving a child's relationship with their primary caregiver when considering that child's best interests:

> The assessment of the child's best interests also involves a consideration of the particular role and emotional bonding the child enjoys with his or her primary caregiver. The importance of preserving the child's relationship with his or her psychological parent has long been recognized by this Court on a number of occasions (*Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)*, [1994] 2 S.C.R. 165, at p. 202; *Racine v. Woods*, *supra*, at p. 188; *King v. Low*, [1985] 1 S.C.R. 87, at p. 101). There is a growing body of evidence that this relationship may well be the most determinative factor on the child's long-term welfare. As I mentioned in *Young*, *supra*, at p. 66, the vital link between continuity in the emotional bonding of the child with his or her psychological parent and the best interest of the child finds ample support in the literature:
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> > Goldstein, Freud and Solnit's *Beyond the Best Interests of the Child*, *supra*, while perhaps lacking in empirical data, remains an influential analysis of the psychological needs of children following divorce. The authors emphasize, among other factors, the importance of continuity in the child's

> relationships and conclude that the major focus of custody decisions should be to preserve and protect the relationship between the child and his or her psychological parent. [Emphasis added.]

[16] The Submissions also reference the work of parenting expert Dr. Justin Coulson, who sums up the effect of separation by stating:

> When children are secure they thrive because they feel safe enough to explore, develop, learn, and grow. Separation creates insecurity, which threatens their development and exploration of the world. Instead, they put their energies into seeking reassurances rather than learning, experimenting, and growing.
>
> Justin Coulson, "Separation and children: How it affects your kids", online: *Kidspot Health*, archived at *Internet Archive* <web.archive.org/web/20160106061914/www.kidspot.com.au/health/ask-the-expert/ask-dr-justin/separation-and-children-how-it-affects-your-kids>

[17] Lastly, the Submissions reference online publications from the Department of Justice and Public Health Agency of Canada on the development and attachment issues experienced by infants: Public Health Agency of Canada: *Because life goes on…Helping Children and Youth Live with Separation and Divorce: A guide for parents*, 3rd ed (2016), at s 7, online: <www.canada.ca/en/public-health/services/publications/healthy-living/because-life-goes-on-helping-children-youth-live-with-separation-divorce.html>.

[18] In the face of these significant submissions, the officer responds in a single paragraph, giving no weight to Kadien's best interests because the Applicant has not submitted corroborating evidence, such as photographs of the two of them, establishing that she is a primary caregiver for Kadien:

> The applicant states that one of her children lives in Canada and that she is the primary caregiver for his son, Kadien, given that the parents are separated. More specifically, she states that Kadien lives with his mother and that "she often babysits him while his mother works" and he has thus "become a massive part" of her life. She further states that "the family is not able at present to pay for daycare", so she is the "only reliable option to take care of her son" and that she is the "only person" her daughter-in-law trusts. I note that the application does not include any other evidence of the applicant's relationship with Kadien, such as a letter from her son or daughter-in-law that confirms these facts or photographs of her and Kadien together. In the absence of evidence from the legal guardians of Kadien or other persuasive corroborating evidence, I find that the applicant has not satisfactorily established that she is the primary caregiver for Kadien or the extent and nature of her relationship with him, and therefore cannot give it any favourable weight.
>
> [emphasis added]

[19] Contrary to the officer's finding that there were no photographs submitted, the Respondent's submissions to the Court claim that "[a]mong a number of photographs provided in support of the application, there was only one photograph of the applicant with her grandson" [emphasis added].

[20] These statements are inconsistent, and neither is accurate. There are eight photographs of the Applicant with her grandson in the Certified Tribunal Record on what appears to be several different occasions (see Certified Tribunal Record at pp 459-468, 475-477, & 502-503). The captions of three of these photographs say that the Applicant is babysitting him, including one where she is giving him his first experience bottle-feeding.

[21] The very evidence that the officer claims should have been provided was, in fact, provided by the Applicant.

[22] I agree that the lack of a letter from either of the child's parents is a concern. However, as the Applicant submits, this cannot be the end of the officer's analysis. Even if the Applicant is not her grandson's primary caregiver, her removal from Canada may still have a negative impact on him. For example, the ability to maintain connections between family members is a relevant consideration when considering the best interests of a child (see *Kanthasamy v Canada (Minister of Citizenship and Immigration*), 2015 SCC 61 at para 34; *Baker v Canada (Minister of Citizenship and Immigration)*, [1992] 2 SCR 817 at para 72). There was no consideration by the officer on the impact on the Applicant's grandson of the removal of his grandmother, his father's only relative living in Canada, beyond the inability for her to act as a primary caregiver. There is no consideration of the documentary evidence in the Submissions going to this issue.

[23] The officer's analysis of this child's best interests is beyond unreasonable – it is shockingly inept. This is especially so given the officer's statement that "I must always be alert, alive, and sensitive to the interests of children when examining requests that pertain to section 25(1) of the IRPA."

Conclusion

[24] This failure is sufficient to grant the application and set aside the decision under review. None of the other concerns raised need be examined. Two and one-half years have passed since the application, and circumstances may have changed. Accordingly, the Applicant is to be provided with an opportunity to update her application, if she wishes. No question was posed for certification.

JUDGMENT in IMM-6795-20

THIS COURT'S JUDGMENT is that this application is granted, the officer's negative decision on the Applicant's H&C application is quashed, her application is referred to another officer for determination in keeping with these Reasons, and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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