Federal Court  Cour fédérale

Date: 20220713

Dockets: IMM-4638-21
IMM-4639-21

Citation: 2022 FC 1036

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 13, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

Docket: IMM-4638-21

BETWEEN:

ESSOSSOLIM ANGE-MARIE SILIADIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-4638-21

AND BETWEEN:

ANGE-MARIE BRIGHT PETRO SILIADIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] There are two applications for judicial review before the Court, filed by two Togolese citizens, Ange-Marie Bright Petro Siliadin [Bright], aged 17, and Ange-Marie Essossolim Siliadin [Essossolim], aged 12, from the decisions of an officer of the I*mmigration Section of the High Commission of Canada in* Ghana [the Officer] dated May 27, 2021, refusing their individual applications for permanent residence sponsored by their father, Adjessonou Siliadin.

[2] For the reasons set out below, I conclude that the impugned decisions are reasonable and that the applications for judicial review must be dismissed.

I. Facts giving rise to these applcations

[3] Mr. Siliadin became a permanent resident of Canada in 2013, in the skilled worker class. He became a Canadian citizen on October 10, 2018.

[4] Mr. Siliadin is the father of five children, all of whom are Togolese citizens. Mr. Siliadin sought to sponsor his wife, known as Véronique, their three children, and his sons, Bright and Essossolim [the applicants], from different mothers who have no interest in entering Canada.

[5] When Mr. Siliadin applied for permanent residence, he did not mention either children or a wife. Because he failed to do so, under paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], Mr. Siliadin's spouse and all of his children were not members of the family class.

[6] As part of their application for permanent residence or examination of humanitarian and compassionate considerations under secton 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, the applicants provided an affidavit from Mr. Siliadin dated June 19, 2019.

[7] The affidavit focused on Mr. Siliadin's personal circumstances. He attempted to explain why he failed to disclose that he had a wife and children when he applied for permanent residence. He expressed great regret that he had left his family to fend for themselves in Togo. He said he feared for his family's safety. According to him, [TRANSLATION] "there are popular uprisings during election periods, the gendarmerie and the army shoot at the public with live ammunition, sometimes killing innocent people." He stated that he wanted to [TRANSLATION] "become a more present father than he was before" and give his children the chance to have a better future.

[8] In support of the applications, counsel for the applicants relied on family reunification and the best interests of the children.

II. The Officer's decision

[9] The Officer reviewed the application of paragraph 117(9)(d) of the IRPR in making his decision and did not lend credence to Mr. Siliadin's multiple explanations as to why his family members were not included in his application for permanent residence. The Officer concluded that Mr. Siliadin's wife and five children were not members of the family class. The applicants do not dispute this finding.

[10] In addition, the Officer found that the evidence was woefully insufficient to establish that the circumstances merit special relief. The Officer noted that there was no indication that Mr. Siliadin had played any role in the lives of Bright or Essossolim or that they were experiencing any difficulties in Togo. Furthermore, he noted that there was no evidence of any financial support given by Mr. Siliadin to his children since 2009, other than "chats" that reflect that money transfers were made in 2018 and 2019 through intermediaries. The Officer noted that no bank statements or other financial documents establishing withdrawals or deposits of money were produced.

[11] The Officer concluded that on the basis of the files, as they stand, the applicants' humanitarian and compassionate applications must be refused.

[12] The applicants believe that the sponsorship application should have been granted on humanitarian and compassionate grounds. They allege that the decision to refuse their application for permanent residence is unreasonable because the Officer failed to consider the best interests of the children, namely their best interests, and used circular reasoning in assessing other factors.

III. Standard of review and issue

[13] The standard of review applicable in a case such as this is reasonableness. This standard is a deferential standard. The Court's role is to ensure that the impugned decision, and the rationale behind it, possess the "the qualities that make a decision reasonable" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 86). According to the decision in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, reasonableness "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

IV. Analysis

[14] It should be noted that in the context of a humanitarian and compassionate application, the onus is on applicants to provide all details concerning their application, to demonstrate why they believe an exemption should be granted, and to show that there are sufficient and compelling reasons to allow the exemption, as outlined by my colleague Mr. Justice Andrew Little in *Garcia Diaz v Canada (Citizenship and Immigration)*, 2021 FC 321 at para 47:

> [47] The onus of establishing that an H&C exemption is warranted lies with the applicant: *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360 (Nadon JA), at paras 35, 45 and 61. Lack of evidence or failure to adduce relevant information in support of an H&C application is at the peril of the applicant: *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 FCR 635 (Evans JA), at paras 5 and 8.

[15] In his analysis of the children's best interests, the Officer had to take into account factors relating to a child's emotional, social, cultural and physical welfare. Given the multitude of factors that may impinge on the child's best interest, this assessment is highly contextual (*Sibanda v Canada (Citizenship and Immigration)*, 2018 FC 806 [*Sibanda*], at para 21).

[16] However, the documents before the Officer contained very little evidence about the applicants. Indeed, there was no specific argument about the applicants' particular circumstances. All that was in the file was a brief handwritten letter from the applicants to their father, and photographs of Mr. Siliadin with his five children during visits to Togo in 2013, 2016 and 2019. There was no indication of sustained contact by Mr. Siliadin with the applicants outside these periods. It was therefore entirely reasonable for the Officer to conclude that the file did not reflect Mr. Siliadin's involvement with the applicants.

[17] The applicants submit that the Officer fell into a circular reasoning. According to them, the Officer never asked himself whether it was in their best interests to remain in Togo, separated from their father, or to join him in Canada, with their half-brothers, half-sisters and stepmother.

[18] Of course, humanitarian and compassionate considerations "under section 25 of the IRPA require an examination of the foreign national's circumstances" (*Sibanda*, at para 25). However, there is a serious lack of evidence in the applicants' records that concerns them. An officer cannot be criticized for having failed to consider evidence that was not submitted to him or her.

[19] As in *Sibanda*, Mr. Siliadin simply spoke in general terms of the high unemployment, the political insecurity, the allegedly inadequate health care, and a life expectancy of 45 years, instead of raising specific, well-founded arguments regarding the undue hardship that his sons would face if they remained in Togo. It was therefore open to the Officer to refuse the applications in the complete absence of evidence relating to the applicants.

V. Conclusion

[20] The decision, albeit brief, is transparent, intelligible, and well supported by the relevant facts and law. Accordingly, the applications for judicial review are dismissed.

[21] There is no question to certify.

JUDGMENT in IMM-4638-21 and IMM-4639-21

THIS COURT ORDERS as follows:

1. The applications for judicial review are dismissed.

2. No question is certified.

"Roger R. Lafrenière"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4638-21
STYLE OF CAUSE:	ESSOSSOLIM ANGE-MARIE SILIADIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-4639-21
STYLE OF CAUSE:	ANGE-MARIE BRIGHT PETRO SILIADIN v THE MINISTER OF CITIZENSHIP ANDF IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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DATED:	JULY 13, 2022

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