Federal Court  Cour fédérale

Date: 20230706

Docket: IMM-8937-21

Citation: 2023 FC 927

Ottawa, Ontario, July 6, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

THEODORE ALANDO GORDON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 36 year-old citizen of Jamaica. He has lived in Canada since 2005, when he was sponsored for permanent residence by his father and stepmother. The applicant lost his permanent resident status, however, as a result of a 2008 conviction for robbery for which he was sentenced to 19 months in jail. Although a deportation order was issued as a result, that order was stayed in 2010 by the Immigration Appeal Division of the Immigration and Refugee Board of Canada under section 68 of the *Immigration and Refugee Protection Act*, SC 2001, c 27

(*IRPA*). In May 2015, this stay was cancelled by operation of law under subsection 68(4) of the *IRPA*. This must mean that the applicant was convicted of another criminal offence; however, no information about this is found in the record on this application.

[2] In October 2020, the applicant applied for permanent residence on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *IRPA*. In support of this application, the applicant cited the best interests of his two Canadian-born children and four Canadian-born step-children, his establishment in Canada, and the hardship he would face in Jamaica given, among other things, the length of time he has been away and the social and economic conditions there.

[3] In a decision dated November 23, 2021, a Senior Immigration Officer refused the application. The officer gave some positive weight to the applicant's family ties in Canada, to the best interests of the children who will be affected by the decision, and to the length of time the applicant had lived in Canada. The officer found, however, that the applicant's inadmissibility due to serious criminality and his minimal degree of establishment in Canada outweighed these positive factors. In sum, the officer found that "there are insufficient humanitarian and compassionate considerations to overcome the negative factors in this case."

[4] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*.

[5] The parties agree, as do I, that the substance of the officer's decision is to be reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44). A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*).

[6] The onus is on the applicant to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125).

[7] The applicant submits that the officer's assessments of the best interests of the children, his establishment in Canada, and the hardship he would face in Jamaica are unreasonable. As I will explain, I do not agree.

[8] Looking first at the best interests of the children, subsection 25(1) of the *IRPA* expressly requires that the decision maker take this factor into account. It is indisputable that the best interests of a child is an important factor and that decision makers must "give them substantial weight, and be alert, alive and sensitive to them" (*Baker v Canada (Minister of Citizenship and*

Immigration), [1999] 2 SCR 817 at para 75). Still, it is not the case that "children's best interests must always outweigh other considerations, or that there will not be other reasons for denying an H&C claim even when children's interests are given this consideration" (*ibid.*).

[9] The "best interests" principle is "highly contextual" because of the "multitude of factors that may impinge on the child's best interests" (*Kanthasamy* at para 35, internal quotations and citations omitted). As a result, it must be applied "in a manner responsive to each child's particular age, capacity, needs and maturity" (*Kanthasamy* at para 35). This is a highly fact-specific and individualized inquiry. The onus is on the party seeking H&C relief to provide sufficient evidence that the best interests of the child factor favours granting relief (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45; *Zlotosz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 724 at para 22).

[10] In the present case, the applicant's evidence concerning the best interests of the children who would be directly affected by the decision was thin at best. While the applicant mentioned six children in total, there was little evidence about his current relationship with his then two year-old daughter or her four step-siblings (two of whom were over the age of 18 at the time of the decision in any event). In fact, while the applicant does not expressly acknowledge this, it is apparent from the record that he was not residing with his daughter or her mother when he submitted his H&C application. (This may explain why no letter or other supporting information from the daughter's mother was provided in support of the application.) There was no evidence of the applicant's ongoing role in his daughter's life, if any. With respect to the applicant's

daughter and her step-siblings, the officer reasonably determined that the applicant had failed to discharge his onus "to provide evidence or elaborate on the adverse effects on the children should he return to Jamaica."

[11] The only supporting information relating to the best interests of the child factor was a letter from the mother of the applicant's then eight year-old son. As the officer recognized, the letter spoke positively about the applicant and his role in his son's life. The applicant's submissions on review effectively ask me to give this letter more weight than the officer did in the overall analysis. As noted above, this is not the role of a court conducting judicial review on a reasonableness standard. Considered in light of the limited evidence offered to support this factor, the officer's assessment of the best interests of the children was altogether reasonable.

[12] Similarly, the officer reasonably determined that the applicant had provided only limited evidence of his establishment in Canada. Apart from one letter of employment from a nursing home dated October 2019, which confirmed that the applicant had been employed there since January 2018 and was a valued employee, the applicant provided little other evidence to support his contention that his establishment in Canada favoured granting H&C relief. The officer reasonably determined that there was "insufficient evidence to indicate any pattern of stable employment history since the applicant's arrival in Canada in 2005." Relatedly, the officer accepted that the applicant had close friendships and family relations in Canada and gave this factor some weight. The applicant has not established any basis on which to interfere with the officer's overall weighing of this factor amongst all the others.

[13] The applicant also submits that the officer unreasonably gave little weight to his rehabilitation when weighing the fact of his inadmissibility to Canada due to serious criminality. I do not agree.

[14] The officer accepted that the applicant had completed his robbery sentence without incident, including a period of community service that was presumably part of a probation order. The officer found this was a positive factor. However, apart from attributing his criminality to having fallen in with the wrong crowd, the applicant offered no information about the underlying offence, the specific circumstances that had led to his criminal behaviour, or the steps he had taken to avoid this happening again. In light of this, the officer's assessment of this factor was entirely reasonable.

[15] Finally, the applicant submits that the officer failed to assess reasonably the hardship he would face in Jamaica given that he had been in Canada all his adult life, he had few connections to Jamaica, and he would face adverse social and economic conditions there, including a high crime rate.

[16] I do not agree. The officer accepted that returning to Jamaica after such a long absence may not be easy for the applicant. On the other hand, the officer also found that the applicant "is a fit and healthy young man," he has gained experience working in the nursing home, and he has demonstrated an ability to be self-supporting. The officer concluded that "such factors can mitigate the applicant's concerns in terms of re-establishing himself in his native land after an initial period of re-integration." While acknowledging the applicant's evidence of the prevalence

of crime in Jamaica, the officer concluded that the applicant failed to establish that he would likely be affected by these adverse country conditions. This finding was reasonably open to the officer on the evidence provided.

[17] In conclusion, the officer identified the relevant factors and weighed them reasonably in light of the applicant's evidence and submissions. With transparent and intelligible reasons, the officer explained why the applicant had failed to demonstrate that H&C relief was warranted in his case. This application for judicial review must, therefore, be dismissed.

[18] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-8937-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8937-21
STYLE OF CAUSE:	THEODORE ALANDO GORDON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 16, 2023
JUDGMENT AND REASONS:	NORRIS J.
DATED:	JULY 6, 2023

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