Federal Court  Cour fédérale

Date: 20231003

Docket: IMM-3518-22

Citation: 2023 FC 1323

Ottawa, Ontario, October 3, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

ODILIA BENOIT
SIERRA LILY MON JOSEPH
VIRGINIA JAYLA LAURENT

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of Saint Lucia. Odilia Benoit was born there in September 1979. Her daughters Sierra and Virginia were born there in November 2002 and August 2005, respectively.

[2] Ms. Benoit arrived in Canada in May 2012. In June 2012, she sought refugee protection on the basis of her fear of her ex-partner, E.J. She also claimed to identify as bisexual and sought protection on this ground as well. Sierra and Virginia joined their mother in Canada a short time later. In August 2012, they too made claims for protection on the basis of their fear of E.J. as well as other members of the community.

[3] The three claims were heard jointly by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada on March 1, 2018. In a decision dated March 6, 2018, the RPD rejected the claims on credibility grounds.

[4] In March 2020, the applicants applied for a pre-removal risk assessment (PRRA) under section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). A Senior Immigration Officer rejected the PRRA application on January 5, 2021. For reasons dated August 9, 2023, I dismissed the applicants' application for judicial review of this decision: see *Benoit v Canada (Citizenship and Immigration)*, 2023 FC 1084.

[5] Since coming to Canada, Ms. Benoit has had two more children: Skylar (born May 2013) and Heaven (born September 2014). As well, Sierra has had two children in Canada: Dezarre (born May 2019) and Zerea (born December 2021).

[6] In February 2022, the applicants applied for permanent residence in Canada on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *IRPA*. The

application was based primarily on the best interests of the children who would be directly affected by the decision.

[7] In a decision dated March 31, 2022, a Senior Immigration Officer refused the application. The officer was not satisfied that the applicants had established that their particular circumstances warranted making an exception to the usual requirement that permanent residence must be applied for from outside Canada.

[8] The applicants now apply for judicial review of this decision under subsection 72(1) of the *IRPA*. They submit that the decision is unreasonable in several respects, including the best interests of the children analysis.

[9] As I will explain, I agree with the applicants that the officer's best interests of the children analysis is unreasonable. Since this is sufficient to require that the matter be reconsidered, there is no need to consider the other grounds for review the applicants have raised.

[10] The parties agree, as do I, that the officer's decision is to be reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44).

[11] 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). The onus is

on the applicants 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).

[12] Subsection 25(1) of the *IRPA* expressly requires the decision maker to take the best interests of any child who would be directly affected by the decision into account. It is indisputable that this is an important factor. Decision makers must give these interests "substantial weight" and must be "alert, alive and sensitive to them" (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75).

[13] 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; and *Zlotosz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 724 at para 22).

[14] In the present case, the officer recognized that, in principle, the best interests of the children deserve significant weight. However, the officer was not satisfied that the best interests

of the children included in the application "would be affected by a negative H&C decision." For three main reasons, I agree with the applicants that this conclusion is unreasonable.

[15] First, the officer did not meaningfully engage with the applicants' contention that the best interests of the youngest children (Skylar, Heaven, Dezarre, and Zerea) would be adversely affected by their dislocation from Canada or by their exposure to the adverse economic and social conditions in Saint Lucia. Instead, the officer found that, with the support of their primary caregivers (their mothers) and given "their young age and inherent resilience that accompanies it," the children's interests would be unaffected by the change (apart from a brief period of adjustment). The officer did not simply conclude that the applicants had failed to demonstrate that the young children would have difficulty adapting to a new life in Saint Lucia; rather, the officer concluded affirmatively that the children "would be able to successfully adapt to life in Saint Lucia." This conclusion is not reasonably supported by the evidence before the officer or by the officer's reasoning. For the reasons articulated by Justice Ahmed in *Augusto v Canada (Citizenship and Immigration)*, 2022 FC 226 at paras 30-33, the officer's heavy reliance on the young age, "inherent resilience", and adaptability of the children is especially problematic. See also *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at para 31.

[16] Second, the officer assessed unreasonably the impact of leaving Canada on Dezarre's and Zerea's best interests given that this would separate them from their father. Their mother, Sierra, is no longer in a romantic relationship with the children's father and she is their primary caregiver (with assistance from her own mother and others). However, the evidence before the officer also established that Sierra wants her children to grow up knowing their father and that

she has a good relationship with her ex-partner's family. The officer simply notes that there was no legal impediment to the children leaving Canada and that the children (who were, at the time of the decision, less than 3 years old and less than 6 months old) could maintain contact with their father virtually or by visiting him in Canada. The evidence of their father's involvement in the children's lives was not particularly strong; nevertheless, it was unreasonable for the officer to conclude that their separation from him would have no impact whatsoever on their best interests.

[17] Third, the applicants had argued in their H&C application that having to leave Canada would disrupt Virginia's education, which she was pursuing online when the application was submitted. The officer finds that there is "little objective evidence" to indicate that Virginia could not continue her online classes from Saint Lucia. At the time, Virginia was enrolled at St. Oscar Romero Catholic Secondary School in Toronto. The officer appears to have simply assumed, without any support in the record, that Virginia would still be eligible to attend this school virtually even though she was no longer a resident of Toronto. (I note parenthetically that the officer made a similar unsupported finding regarding Sierra's attendance in online classes at the Massey Centre Secondary School Treatment Program, a specialized program in Toronto for young mothers wishing to continue their education. When the H&C application was submitted, Sierra was over the age of 18. The applicants relied on the disruption to her education as an aspect of the hardship she would suffer if she were required to leave Canada.)

[18] The respondent points out, correctly, that while the best interests of the child is an important factor and deserves significant consideration, it is not necessarily determinative of an

H&C application (*Baker* at para 75). It is also the case, however, that where the interests of a child are minimized in a manner inconsistent with humanitarian and compassionate principles, the decision will be unreasonable (*Baker* at para 75). In my view, this is what happened here. The best interests of the children who would be directly affected by the decision is a central part of the applicants' H&C application. Even if it is not necessarily determinative, this factor had to be assessed reasonably. The officer's failure to do so undermines the reasonableness of the decision as a whole.

[19] For these reasons, the officer's decision must be set aside and the matter will be remitted for reconsideration by a different decision maker.

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

JUDGMENT IN IMM-3518-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Senior Immigration Officer dated March 31, 2022, is set aside and the matter is remitted for reconsideration by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3518-22
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