Federal Court Cour fédérale

Date: 20231117

Docket: IMM-8870-22

Citation: 2023 FC 1525

Ottawa, Ontario, November 17, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

HUI DENG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Hui Deng, is a citizen of Jamaica, who first came to Canada in 2007. She has been travelling back and forth since that time. Her husband lives in Jamaica, and they have three daughters who were all born in Canada and are Canadian citizens. Their first child, whom I shall refer to as "V", was born in 2017, and they have twin daughters ("F" and "L") born in 2019. The twins were born prematurely, and spent several weeks in intensive care. One of the twins (L) has ongoing medical needs.

[2] The Applicant applied for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. This was refused, and the Applicant seeks judicial review of that decision.

[3] The determinative issue in this case is whether the Officer's analysis of the best interests of the child factors was unreasonable. This is assessed under the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[4] The Applicant's H&C application included letters from their doctor indicating that the Applicant experienced complications with her second pregnancy, and the twins were born at 30 weeks and 6 days. The doctor states that the twins were both pre-term babies "who [carry] a lot of challenges of care and development. [L], in particular, sustained feeding challenges, inadequate weight gain, oral aversion resulting in failure to thrive. Her care is an ongoing challenge." Another letter from the doctor states that L has ongoing medical issue[s] since birth [including] low weight, poor weight gain and chronic constipation. The baby was admitted to hospital in Feb 2020 for tube feeding and continued needing "pediatric followup."

[5] In her H&C submissions, the Applicant stated that the twins "have had lasting health complications, which are still ongoing today" and that they "have been admitted to hospital on several occasions, and are under the continuous care of medical professionals…" The submissions add that L "was under the care and monitoring of a specialist until September 2021,

and is now under the close watch of a family physician. It is imperative to [her] health and future development that she continue to receive the medical care she needs in Canada."

[6] In regard to the health situation of the twins, the Officer's decision states:

> While I accept that the young children may be experiencing some medical concerns, I note that submissions were not provided to indicate that the children are currently receiving ongoing treatment or that they must remain in Canada to pursue treatment. While I am sympathetic to the circumstances, the information before me does not indicate that they would be unable to receive medical care in Jamaica nor does it state it would be severely inadequate. Based on the totality of the information before me, I find there is insufficient evidence to demonstrate that either the children or their family would experience a direct, negative affect as a result of Jamaica's healthcare system. While I acknowledge that the healthcare in Jamaica is not as adequate as Canadas, I have not been provided sufficient objective evidence to support the children would be denied access to such treatment or unable to receive support if required.

[7] The Applicant submits that the primary issue in this case is the Officer's analysis of the best interests of the child factor. In particular, the Applicant argues that the Officer disregarded the medical evidence that L has ongoing medical needs, citing the statement in the decision that "submissions were not provided to indicate that the children are currently receiving ongoing treatment." The Applicant submits that this statement flies in the face of the only evidence in the record, which is that the twins, and in particular L, have ongoing medical needs.

[8] While acknowledging that the evidence about L's ongoing medical care and treatment is somewhat scant, the Applicant submits that the Officer needed to grapple with the evidence

about the twins' ongoing medical needs, including the Doctor's statements, supplemented by the personal statement of the Applicant and her H&C submissions. Instead, these were ignored. In the Applicant's view, a finding that the evidence about ongoing medical care was insufficient might have been reasonable. However, that is not what the Officer stated, and the finding actually made in the decision ignores the only evidence in the record. The Applicant submits that this is contrary to accepted jurisprudence, citing *Cepeda-Guitierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanlII 8667 (FC) at para 17.

[9] The Respondent contends that judicial review under the *Vavilov* framework is not meant to be a "line-by-line treasure hunt for error" (*Vavilov* at para 102), and that a reviewing court must examine the decision as a whole.

[10] In this case, according to the Respondent, there is a clear line that runs through the entire decision to the effect that the Officer found the Applicant's evidence on a number of points to be insufficient. In regard to the best interests of the child analysis, the Respondent points to a number of findings that say exactly that. The Officer notes that the children would face a period of adjustment if they moved to Jamaica, and found that the Applicant "has presented insufficient evidence that they will be unable to adapt or integrate or that their best interests would not be met or their fundamental rights denied in Jamaica." Similarly, the Officer found insufficient evidence "that either the children or their family would experience a direct, negative affect as a result of Jamaica's healthcare system."

[11] In concluding the best interests of the child analysis, the Officer accepted that the best interests of the children carry "some weight" but continued "overall, I do not find sufficient evidence before me that the best interests of the children would be negatively affected to such an extent that warrants [H&C] relief…"

[12] The Respondent argues that the wording of one sentence of the Officer's decision should not be sufficient to render it unreasonable. The Officer summarized the evidence about the Applicant's challenges during her pregnancy and the medical issues faced by the twins - and in particular by L - following their birth. According to the Respondent, this demonstrates that the Officer was cognizant of the evidence and was "alert, alive and sensitive" to the children's best interests, as required by the jurisprudence. The Respondent contends that the Officer's conclusion that it was in the children's best interests to be with their mother and to return to Jamaica to be reunited with their father is reasonable and based on the evidence in the record.

[13] I find the Officer's analysis to be reasonable in many respects. However, I am persuaded that the failure to grapple with a key element in the best interests of the child analysis is sufficiently serious to make the entire decision unreasonable. According to *Vavilov* (at paragraph 100), the Applicant's burden is to satisfy the reviewing court that "any shortcomings or flaws… are sufficiently central or significant to render the decision unreasonable." In my view, the Officer's failure to mention the evidence about the ongoing medical care that L had received or to grapple with the Doctor's statements that she needed "ongoing care", meet this threshold. I say this for three reasons.

[14] First, the best interests of the child factor is a pre-eminent consideration in the H&C analysis the Officer was required to undertake. Central to the Applicant's submission in this case is that her twin daughters – in particular L – had medical conditions from birth, that they had been hospitalized for treatment, that L had recently been under a specialist's care and now was being monitored by her family doctor. The evidence in the record is somewhat sparse, and on this point I agree with the Respondent. However, there was evidence that L had complex medical needs that required ongoing care. The Officer's statement that "submissions were not provided to indicate that the children are currently receiving ongoing treatment" simply flies in the face of the record. It also fails to demonstrate that the Officer was alert, alive and sensitive to the children's best interests when examining the record (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 38).

[15] Second, it is not possible to know how this finding about ongoing treatment influenced the Officer's overall analysis of the best interests of the children. For example, if the Officer failed to apprehend that L required ongoing medical care, the analysis may have been grounded in a view that she had previously experienced medical issues but these issues had been resolved and it was uncertain whether future treatment would be required. The Officer's analysis of the country condition evidence regarding the state of health care in Jamaica may well have been influenced by this starting point. It is simply not possible to isolate this one statement from the rest of the analysis.

[16] Finally, as the Applicant acknowledged, the best interests of the child factor is the primary consideration in this case. It was central to the Applicant's claim for H&C relief. Lying

at the core of this factor is L's current and ongoing medical situation. The Officer's failure to grapple with the evidence – either by finding it insufficient or by raising a concern with the Applicant and providing an opportunity for further evidence to be provided – was unreasonable. In the particular circumstances of this case, and based on the specific facts that were before the Officer, I am persuaded that the Officer's unreasonable finding about the ongoing medical care that L requires is sufficiently serious and central to make the entire decision unreasonable.

[17] Based on this finding, it is not necessary to deal with the other arguments advanced by the Applicant. I would simply note that I am not persuaded that the Officer's analysis of the establishment factor is flawed. I would also add that I reject the Applicant's submission that this is a case where "special reasons" for awarding costs have been demonstrated: see *Balepo v Canada (Citizenship and Immigration)*, 2017 FC 1104.

[18] For the reasons set out above, this application for judicial review will be granted. The matter will be remitted back for reconsideration by a different Officer.

[19] There is no question of general importance for certification.

JUDGMENT in IMM-8870-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8870-22
STYLE OF CAUSE:	HUI DENG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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