Federal Court  Cour fédérale

Date: 20231221

Docket: IMM-9657-22

Citation: 2023 FC 1736

Ottawa, Ontario, December 21, 2023

PRESENT: Madam Justice Walker

BETWEEN:

BRUTUS DULNE
MARIE ANGE PIERRE LOUIS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Mr. Brutus Dulne and Ms. Marie Ange Pierre Louis, are citizens of Haiti who came to Canada in 2017 and 2018, respectively, after residing in the United States. They have been in a common law relationship since 2011. Each of the Applicants filed refugee claims upon arriving in Canada but both claims were rejected by the Refugee Protection Division.

[2] On August 12, 2020, the Applicants filed an application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds. The application included their three children who reside in Haiti, two of whom were minors (17 years old) on the date of submission. One of the children is Mr. Dulne's daughter and two are sons of Ms. Pierre Louis.

[3] A senior immigration officer (the Officer) denied the application for H&C relief on September 29, 2022. In a lengthy decision (the Decision), the Officer canvassed the Applicants' establishment in Canada, their familial links in Canada and Haiti, the best interests of the children (BIOC), and the difficulties the Applicants would encounter upon a return to Haiti. In the course of their analysis, the Officer refers to the existence of an Administrative Deferral of Removals (ADR) to Haiti.

[4] The Officer found that the Applicants have a certain degree of establishment in Canada after five years of working and building relationships but concluded that this aspect of their application was not determinative. The Officer noted that the Applicants resided in Haiti for the majority of their lives and have remaining family there who may offer support upon their return. With respect to the children, a factor described in the Decision as essential to the application, the Officer concluded that it is in the best interests of the children to be reunited with their parents in Haiti where their other biological parents reside and they have extended family and friends. In the Officer's opinion, the return of the Applicants to Haiti will not be contrary to the children's interests. Finally, the Officer acknowledged that there will be difficulties associated with leaving Canada but concluded that those difficulties do not warrant an exemption from the requirement that they leave Canada to submit an application for permanent residence.

[5] The Applicants now seek judicial review of the Decision. They submit that the Decision is unreasonable primarily, although not solely, because the Officer failed to analyze the impact of the ADR and the fact that the Applicants are and will be for the foreseeable future unable to return to Haiti. The Applicants argue that the Officer was required to assess the H&C factors identified in their application "through the lens" of the ADR, what it conveys about conditions in the country and the realities of any return to Haiti in the short term.

II. Analysis

[6] It is well established that the merits of a decision regarding a request for H&C relief pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) is reviewed on the reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 (*Kanthasamy*); *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Brar v Canada (Citizenship and Immigration)*, 2023 FC 1692 at para 7). Where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and determine whether the decision "is based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). A reasonable decision is one that is justified, transparent and intelligible (*Vavilov* at para 99).

[7] Subsection 25(1) authorizes the Minister to grant relief to a foreign national seeking permanent resident status who is inadmissible or otherwise does not meet the requirements of the *IRPA* only if the Minister "is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national". This discretion to make an exception provides

flexibility to mitigate the effects of a rigid application of the law in appropriate cases (*Kanthasamy* at para 19). H&C relief is a highly discretionary measure and decision makers are accorded considerable deference (*Bawazir v Canada (Citizenship and Immigration)*, 2019 FC 623 at para 5 (*Bawazir*)).

[8] The Applicants argue in their written submissions that the Decision is fatally flawed because the Officer did not analyse the ADR for Haiti and its effect on their H&C application. They submit that the existence of an ADR restricts an officer's delegated authority to review H&C applications to factors such as establishment and BIOC. They also submit that an officer should not consider existing conditions in the country of origin if an ADR is in place because no removal from Canada would occur for the duration of the ADR. In the Applicants' opinion, the Officer in this case did not assess the factors identified in their H&C application against the fact that "there has been and will be a lengthy moratorium on travelling to Haiti".

[9] The Respondent submits that the Applicants are essentially arguing that the ADR for Haiti creates a presumption that their H&C application will be granted. In addition, the Respondent argues that the scope of the Officer's authority to consider the H&C application was not restricted by the existence of the ADR. I agree with the Respondent in this respect and find that the Applicants' foregoing arguments are contrary to the jurisprudence of this Court. I note, however, that the Applicants' submissions during the hearing differed from those made in writing and I will address those submissions later in this judgment.

[10] The Minister's authority to establish an ADR is set out in subsection 230(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which provides in part that "the Minister may impose a stay on removal orders with respect to a country or a place if the circumstances in that country or place pose a generalized risk to the entire civilian population". An ADR prevents removal by the Government of Canada to that country but does not impose a general moratorium on travel to the affected country.

[11] The existence of an ADR does not automatically result in a positive H&C decision (*Ndikumana v Canada (Citizenship and Immigration)*, 2017 FC 328 at para 18; *Likale v Canada (Citizenship and Immigration)*, 2015 FC 43 at para 40; *Elshafi v Canada (Citizenship and Immigration)*, 2023 FC 266 at para 27 (*Elshafi*)). The Applicants do not dispute this proposition. The existence of an ADR cannot, however, be used to deny or side-step humanitarian relief on the basis that an applicant is not facing immediate involuntary removal from Canada (*Bawazir* at paras 16-17; *Al-Abayechi v Canada (Citizenship and Immigration)*, 2022 FC 873 at para 15; *Elshafi* at para 17). In *Milad v Canada (Citizenship and Immigration)*, 2019 FC 1409, the officer failed to acknowledge the applicant's updated submissions which noted that an ADR was in place for Libya. Justice Kane stated that the ADR was a relevant consideration in the context of the country conditions and the assessment of hardship (at para 37):

> [37] As guided by *Kanthasamy*, the Officer assessing an H&C application must consider all the evidence presented. In this case, the Officer was required to consider the extensive country condition documents, including the existence of the moratorium on removals, which is relevant to the country conditions and the assessment of the hardship Mr. Milad would face if he could be returned to Libya. The Officer's decision does not convey that all the relevant evidence was considered in assessing the hardship considerations. Moreover, the evidence that the Officer clearly

> considered and summarized does not appear to have been fully taken into account in assessing the hardship claimed by Mr. Milad.
>
> [Emphasis in original]

[12] Contrary to the Applicants' written submissions, I find that the Officer was required to consider the serious conditions in Haiti in their analysis.

[13] In oral argument, the Applicants presented a more nuanced position that is consistent with the jurisprudence. They argued that the existence of the ADR for Haiti required the Officer to analyse the country conditions and consider how those conditions affect the obstacles identified by the Applicants in any return, including the possibility of finding work and a suitable home for them and their children. I agree.

[14] The Officer's treatment of the ADR for Haiti follows their assessment of the Applicants' evidence and submissions regarding the difficulties they would encounter upon returning to Haiti and states:

> En tenant compte des faits énoncés, je reconnais que les conditions de Haïti sont problématiques et difficiles. De plus, le pays est présentement visé par un report administratif des renvois (ASFC, 2022). Par conséquent, je prends en considération les conditions défavorables dans le pays et j'accorde du poids à ce facteur dans l'analyse. Cependant, pour ce cas particulier, le poids accordé aux conditions défavorables pourrait être mitigé par d'autres facteurs présentés dans le dossier. Comme déjà mentionné, je note que les demandeurs ont leurs enfants en Haïti, ainsi qu'un réseau et de la famille qui pourrait les accueillir et les soutenir à leur retour. De plus, les demandeurs ont vécu en Haïti la majorité de leur vie, ils ont travaillé en Haïti et acquis des compétences transférables au Canada, ce qui leur permettrait de rebâtir leur réseau et d'intégrer le marché du travail en Haïti.
>
> [TRANSLATION] Considering the facts stated, I recognize that the conditions in Haiti are problematic and difficult. In addition, the

> country is currently subject to an administrative deferral of removals (CBSA, 2022). Therefore, I take into account the adverse conditions in the country and give weight to this factor in the analysis. However, for this particular case, the weight given to adverse conditions can be mitigated by other factors presented in the file. As mentioned above, I note that the applicants have their children in Haiti, as well as a network and family that can welcome and support them upon their return. In addition, the applicants lived in Haiti for most of their lives, worked in Haiti and acquired transferable skills in Canada, which will enable them to rebuild their network and join the Haitian labour market.

[15] In their concluding paragraph, the Officer stated that the Applicants had lived most of their lives in Haiti, would benefit from the support of their families and that the critical interests of the children favoured reunification in Haiti, in part because the other biological parent of each child lives in Haiti. There was no evidence before the Officer of any severance of those parental relationships. With regards to the difficulties the Applicants would encounter in Haiti, the Officer reverted to standard language, finding that there will inevitably be difficulties associated with the Applicants' obligation to leave Canada but that such difficulties did not warrant an exemption under subsection 25(1) based on H&C considerations.

[16] I find that the Decision is transparent and intelligible. The Officer's analysis follows a rational chain of reasoning and fully engages with certain aspects of the Applicants' evidence. There is no reviewable error in the Officer's assessment of the Applicants' establishment in Canada, the evidence specific to the Applicants regarding work experience, financial status and family in Haiti, and the evidence concerning the current circumstances of their children in Haiti.

[17] The question in this application is whether the Officer's conclusion that the Applicants will largely experience the typical difficulties associated with leaving Canada and returning to Haiti is justified and I find that it is not.

[18] An ADR signals that there are serious concerns regarding a country: circumstances in that country or place pose a generalized risk to the entire civilian population. Despite referencing the ADR for Haiti in the Decision, the Officer does not substantively engage with the evidence of pervasive violence and poverty in the country. The Officer acknowledges those conditions but appears to then disregard the severity of the conditions in evaluating the Applicants' submissions and evidence, and prospects in Haiti. The analysis in this section of the Decision suggests the conditions in Haiti are not dissimilar to many other countries that are not as economically prosperous as Canada or that may be plagued with issues of violence and/or a lack of order that are not concerns in this country. The Officer notes the ADR and states only that they will take the unfavourable conditions in Haiti into consideration and give them weight in their analysis. They largely proceed to their conclusion that the difficulties the Applicants will suffer in leaving Canada are those inherent in any obligation to leave. While the Officer does not err in stating that the weight to be given to unfavourable country conditions in an H&C analysis can be mitigated by the particular applicant(s)' circumstances, the Officer's analysis of the Applicants' circumstances does not reasonably respond to the evidence in the record and the severity of the conditions in Haiti. For this reason, I will allow the application and return this matter for reconsideration.

[19] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-9657-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The decision of the senior immigration officer dated September 29, 2022 refusing the Applicants' application for permanent residence based on humanitarian and compassionate grounds is set aside and the matter is remitted to a different officer for redetermination.

3. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9657-22
STYLE OF CAUSE:	BRUTUS DULNE, MARIE ANGE PIERRE LOUIS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 12, 2023
JUDGMENT AND REASONS:	WALKER J.
DATED:	DECEMBER 21, 2023

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