Federal Court  Cour fédérale

Date: 20240327

Docket: IMM-3220-23

Citation: 2024 FC 480

Ottawa, Ontario, March 27, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

ARELI VANESSA CERECER FLORES
DAVID LEON KEIDEL CERECER
LUKAS CHRISTIAN KEIDEL CERECER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Principal Applicant, a citizen of Germany and Mexico, and her two children [Minor Applicants], seek judicial review of a decision of a Senior Immigration Officer dated February 16, 2023, refusing their application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] Subsection 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of that statute and grant permanent resident status in Canada if the Minister is of the opinion that such relief is justified by H&C considerations. An H&C determination under subsection 25(1) of the *IRPA* is a global one, where all the relevant considerations are to be weighed cumulatively in order to determine if relief is justified in the circumstances. Relief is considered justified if the circumstances would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another [see *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 13, 28 [*Kanthasamy*]; *Caleb v Canada (Citizenship and Immigration)*, 2020 FC 1018 at para 10].

[3] The applicable standard of review of an H&C decision is reasonableness [see *Kanthasamy, supra* at para 44]. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[4] While the Applicants have advanced a number of grounds for review, I am satisfied that the Officer's flawed consideration of the best interests of the Minor Applicants is determinative of this application.

[5] The evidence before the Officer was that the Applicants had suffered family trauma in Germany as a result of the conduct of the Principal Applicant's then husband and father of the Minor Applicants [Spouse], which forced the Applicants to flee the family home and live in a shelter. Thereafter, the Spouse died by suicide and the Applicants were subjected to significant harassment from the Spouse's family. The Minor Applicants (as well as the Principal Applicant) suffered from mental health challenges as a result of their traumatic experience in Germany, which especially affected David, one of the two Minor Applicants.

[6] In considering the best interests of the Minor Applicants, the Officer states in the "BIOC" (best interests of the child) section of their reasons for decision:

> In addition, the applicant submits that her children have both been through traumatic pasts and that a removal from Canada would have a negative psychological impact on them. She states that Lukas suffers from ADHD, sensory issues, speech issues and tantrums, while David suffers from emotional trauma stemming from the aforementioned past experiences. I have read and considered the medical reports included in the submissions and I accept that the children would be psychologically impacted upon a return to Germany. They would be required to move schools and re-establish themselves in a country where all of the traumatic events unfolded.
>
> On the other hand, I note that the children would be returning to Germany in the company of their primary caregiver who can provide them with support. Moreover, the children will still have access to quality education systems and similar future opportunities in Germany. Finally, mental healthcare would also still be available to them if required as outlined above.

> Nevertheless, I still find that it would be in the best interests of the children to remain in Canada based on the emotional trauma that would result if they are returned to Germany.
>
> [Emphasis added.]

[7] However, notwithstanding these findings, in the conclusion section of the reasons for decision, the Officer states:

> I have also carefully considered the best interest of the two children. I recognize that in a negative decision, the children would likely face emotional trauma. However; the purpose of section 25 of IRPA is to give the Minister the flexibility to deal with extraordinary situations which H&C grounds compel the Minister to act. While I accept that it is somewhat in the children's best interest to remain in Canada, in this particular case, I find that the weight accorded to the BIOC is not enough to justify an exemption because of the insufficient evidence demonstrating a negative impact on the children. In either a positive or a negative decision, I find that the children will still be with their supportive mother and have access to quality education, housing and health care.
>
> [Emphasis added].

[8] I find that the Officer's reasons fail to provide an internally coherent and rational chain of analysis. Specifically:

A. The Officer finds that it is in the best interests of the Minor Applicants to remain in Canada, but then later states that it is only "somewhat" in their best interests.

B. The Officer concludes, after reviewing the medical evidence, that the Minor Applicants would suffer emotional trauma if returned to Germany and accepts that they would be psychologically impacted. The Officer makes no comment about the sufficiency of the evidence tendered by the Applicants in relation to this issue or, put differently, any evidence that the Applicants had failed to provide. However, the Officer then concludes

> that the Minor Applicants would only "likely" face emotional trauma and finds that there is insufficient evidence demonstrating a negative impact on the Minor Applicants if they were to return to Germany.

[9] The Respondent asserts that the Officer's findings and conclusion are not inconsistent, but merely different or more precise ways of saying the same thing. I cannot accept this assertion. I find that the Officer's conclusion does not align with their BIOC findings and, as a result, the reasons fail to exhibit the required degree of intelligibility.

[10] Accordingly, the application for judicial review shall be granted, the Officer's decision set aside and the matter remitted to a different officer for redetermination.

[11] Neither party proposed a question for certification and I agree that none arises.

[12] The Respondent requested that the style of cause be amended to name the Minister of Citizenship and Immigration as Respondent, rather than the Minister of Immigration, Refugee and Citizenship Canada. The Applicant does not oppose the request and the Court is satisfied that the amendment should be made.

JUDGMENT in IMM-3220-23

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to name the Minister of Citizenship and Immigration as the respondent.

2. The application for judicial review is granted.

3. The decision of the officer dated February 16, 2023 refusing the Applicants' H&C application is set aside and the matter is remitted to a different officer for redetermination.

4. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3220-23
STYLE OF CAUSE:	ARELI VANESSA CERECER FLORES, DAVID LEON KEIDEL CERECER AND LUKAS CHRISTIAN KEIDEL CERECER v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 21, 2024
JUDGMENT AND REASONS:	AYLEN J.
DATED:	MARCH 27, 2024

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Zofia Rogowska	FOR THE RESPONDENT

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Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT