Federal Court  Cour fédérale

Date: 20240815

Docket: IMM-5517-22

Citation: 2024 FC 1266

Ottawa, Ontario, August 15, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

DEVON EARL MASTERS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of a decision of a Senior Immigration Officer [Officer], dated May 30, 2022, denying his application for permanent residence on humanitarian and compassionate [H&C] grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] I am allowing the application because the Officer's assessment of the best interests of the child [BIOC] is unreasonable. The Officer failed to undertake a contextual analysis that was responsive to the particular circumstances of the special needs of the Applicant's stepson and the significant role the Applicant plays as a stay-at-home father attending to the child's medical and developmental needs. It is unnecessary for me to consider the Officer's assessment of the other H&C factors as this error is sufficient to vitiate their decision and to remit the matter for redetermination by another H&C officer.

II. Analysis

[3] There is no dispute that the standard of reasonableness applies. 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 (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8.

[4] In considering an H&C application, officers are required to weigh all relevant facts and factors to determine whether equitable relief is justified under subsection 25(1) of the *IRPA*: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 25 [*Kanthasamy*], citing *Baker v Canada (Minister of Citizenship and Immigration*, [1999] 2 SCR 817 at paras 74-75 [*Baker*]. Subsection 25(1) specifically requires that "the best interests of a child directly affected" must be taken into account.

[5] As articulated by the Supreme Court of Canada, a BIOC analysis requires that an officer be "alert, alive and sensitive" to the child's best interests: *Kanthasamy* at paras 38, 143; *Baker* at para 75. By its very nature, a BIOC analysis is "highly contextual". An officer's assessment must be responsive to the affected child's particular circumstances including their age, capacity, needs, and maturity: *Kanthasamy* at para 35.

[6] Here, the BIOC assessment concerns the Applicant's stepson, K, who has Down syndrome, laryngomalacia, gastroesophageal reflux disease, severe obstructive sleep apnea, bilateral conductive hearing loss, and a history of aspiration. At the time of the Applicant's H&C application in 2021, K was seven years old. By that time, the Applicant had been married to K's mother for three years, since K was four years old. The evidence is clear that the Applicant has played an important and integral caregiving role in K's life.

[7] In my view, the Officer's BIOC analysis is not justified in terms of either the constraining facts or the law: *Vavilov* at para 100. The Officer acknowledged the Applicant's involvement in K's care and development, but ultimately concluded that K's interests would be best served by his mother as "primary caregiver" and that K could adapt to the Applicant's departure:

> I assign some positive weight to the applicant's involvement in [K's] care and I accept that the applicant's presence in [K's] life has been beneficial to his growth and development. However, I find that [K's] best interests are to be loved and supported by his primary caregiver(s), his mother. I find that his interests would be best served by having him remain in the care of his primary caregiver wherever she may reside and with her support [K] could adapt to the applicant's departure from Canada, though there may be an initial period of adjustment.
>
> [Emphasis added]

[8] While the Applicant is not K's biological father, he has been a father to K since at least 2018 (there is no evidence on the record as to how long the Applicant and his spouse were together before they married in 2018). The Officer, however, emphasized K's relationship with his mother and that he would remain in her care if the Applicant left Canada. In doing so, the Officer "failed to consider the common sense presumption that it is in the best interests of a child to be raised by both parents" (biological or otherwise): *Nagamany v Canada (Citizenship and Immigration)*, 2019 FC 187 at para 41; *Sivalingam v. Canada (Citizenship and Immigration)*, 2017 FC 1185 at para 17. This presumption holds more true in the case of a child with special needs.

[9] The Officer minimizes the critical caregiving role the Applicant has played since coming into K's life. As the Applicant's spouse explained in her affidavit, filed in support of the H&C application, she met the Applicant at a time when she was having difficulty coping with her son's special needs as a single parent. She speaks to how grateful she is for "the day he stepped into [their] lives". Additionally, the Applicant's spouse states that K would not be where he is developmentally had it not been for the Applicant's devotion to "his therapy sessions, his appointments, his education, and his mental and physical development".

[10] This Court has made clear that the level of dependency between the affected child and the applicant must be considered in a BIOC analysis: *Le v Canada (Citizenship and Immigration)*, 2022 FC 427 at para 30; *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 34. Here, however, the Officer fails to sufficiently consider the degree of dependence and reliance that not only K, but also the Applicant's spouse, has on the Applicant to care for and support him.

[11] As the Officer noted, the Applicant was a stay-at-home father. In addition to looking after the housekeeping duties, he was taking K to medical and therapy appointments, and helping him with his development by teaching him and accompanying him to his virtual classes (the latter during the global pandemic). In his H&C affidavit, the Applicant describes his special bond with K: "The bond we share is incredible, to the extent that he calls me 'mommy'" [emphasis added]. This evidence was, however, notably absent in the Officer's assessment of the BIOC.

[12] Furthermore, according to the evidence, the Applicant's spouse has a demanding job as a transit operator with odd working hours. The Officer, however, does not mention this relevant evidence in their BIOC assessment.

[13] The Officer's BIOC analysis is also not responsive to K's special, multiple, and complex needs. As set out above, K not only has Down syndrome, but various other serious medical ailments. The Officer does not adequately address the extent of these medical conditions and the amount of resultant necessary care. Rather, the Officer's analysis is general, superficial in nature, and certainly does not portray the full picture of the daily challenges K faces nor the extensive care, support, and treatment he requires.

[14] According to the medical evidence on the record, K is followed at SickKids in Toronto by a number of different services (Down Syndrome, Sleep, Cardiac, and ENT clinics) and requires multiple medical appointments. In addition to his SickKids visits, K has medical visits with his primary care provider and requires speech, occupational, and physical therapy. At the time of the H&C application in 2021, K had undergone five surgeries with others on the horizon.

[15] As explained by a nurse practitioner at SickKids, K requires a "high amount of daily care" based on his "medically complex" circumstances. K's main source of nutrition is supplemental formula via his gastrostomy feeding tube. Because he does not have at-home nursing support, K's tube feeding and needs related to his severe obstructive sleep apnea fall to his family to manage.

[16] The Officer's decision does not contend with how the Applicant's spouse would manage on her own with these significant care responsibilities. Indeed, the evidence of both the Applicant and his spouse is that if the Applicant were to leave Canada, she would be forced to decide whether she could continue her job given K's "severe medical needs" – as the Applicant put it, K cannot be left in the "care of any random babysitter" due to the complexity of his situation. In her affidavit, the Applicant's spouse stated that if the Applicant were to leave, she would have to "consider uprooting from Canada to Jamaica for the mental well-being of our son [K] who is extremely attached to [the Applicant]" [emphasis added].

[17] Yet, again, the Officer does not engage with this highly relevant evidence. A decision-maker's failure to grapple with relevant evidence may undermine the reasonableness of their decision: *Vavilov* at para 126. The Officer was simply not attune to the serious consequences of the Applicant's departure from Canada on K, as a child with special, multiple, and complex medical needs.

[18] Finally, another concerning aspect of the Officer's BIOC analysis is their finding that any hardship resulting from the Applicant's departure "may be alleviated to some extent through maintaining their relationship using modern communication tools". The Officer relies on a similar

refrain in their assessment of family ties. This reasoning is particularly insensitive and non-responsive to K's special needs, capacity and age. It further diminishes K's close bond with, and dependency on, the Applicant. Indeed, the Court has cautioned against relying on this line of boilerplate reasoning without regard to the particular circumstances of the affected individuals: *Igreja Ferreira de Campos v Canada (Citizenship and Immigration)*, 2024 FC 1193 at para 27; *Kaur v Canada (Citizenship and Immigration)*, 2023 FC 412 at paras 24-27; *Lopez Alvarez v. Canada (Citizenship and Immigration)*, 2022 FC 130 at para 38.

III. Conclusion

[19] Based on the foregoing, I find that the Officer's BIOC analysis falls well short of what is required by *Kanthasamy*. The Officer's assessment was not alert, alive, nor sensitive to K's best interests. The words of Justice Strickland are particularly apt in this case: "Given the complex needs and significant challenges facing this family, more was required": *Fernandes v Canada (Citizenship and Immigration)*, 2021 FC 997 at para 43.

[20] While a BIOC analysis is not determinative of the outcome of an H&C application, a flawed assessment can render a decision unreasonable: *Wen v Canada (Citizenship and Immigration)*, 2023 FC 1127 at para 15; *Monga v Canada (Citizenship and Immigration)*, 2023 FC 848 at para 27. The Officer's decision is therefore set aside and the matter is remitted to another officer for redetermination.

[21] The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-5517-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. The Officer's decision, dated May 30, 2022, is set aside and the matter is remitted for redetermination by another officer.
3. There is no question for certification.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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