Federal Court Cour fédérale

Date: 20241030

Docket: IMM-6025-23

Citation: 2024 FC 1728

Ottawa, Ontario, October 30, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

NOSA AIZOTOIGBE
BLESSING AIZOTOIGBE
ZION COURAGE NOSA
ZOE WEALTH NOSA
ZANITA NOSA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the decision refusing their application for permanent residence from within Canada on humanitarian and compassionate ("H&C") grounds.

[2] The primary applicant (“PA”), Nosa Aizotoigbe, together with his wife (the associate applicant or “AA”) and their three children entered Canada in February 2019 from the United States, and filed a refugee claim. I note here that their fourth child was born in Canada subsequent to their arrival, but is not part of their claim since the child is a Canadian citizen.

[3] The Applicants’ refugee claim was dismissed by the Refugee Protection Division based on credibility. Their appeal was dismissed by the Refugee Appeal Division. The Applicants filed an application for permanent residency under the federal health care workers’ program but it was refused in September 2021. They applied for leave to seek judicial review of that decision but later discontinued the proceeding.

[4] The Applicants made their H&C claim in May 2022. They also filed a Pre-Removal Risk Assessment application, but that matter is not before the Court. The H&C claim was based on the Applicants’ establishment in Canada, the best interests of their children, and the hardship they would face on a return to Nigeria, in light of the country condition evidence.

[5] The Officer rejected their claim. The Officer recognized that the Applicants had attained a degree of establishment in Canada by finding employment, participating in their church, establishing friendships, and the children had successfully integrated into the education system. The Officer also considered the relatively short period of time the Applicants had been in Canada, as well as their familiarity with Nigeria having grown up there, and noted their family ties in that country (the PA and AA both have siblings who reside in Nigeria).

[6] On best interests of the child, the Officer accepted that the children (including the Canadian-born child) would experience a period of adjustment if they had to leave Canada, but noted they would continue to have the care and support of their parents. The Officer determined that it would be in the children's best interest to remain with their parents, considering their ages and dependence on their parents.

[7] The Officer found that the Applicants had not established that the hardships they would experience upon their return to Nigeria would go beyond the hardship usually associated with having to leave Canada. The risks they raised had previously been assessed in the context of their refugee claims, and the Officer noted they had not established any other risks or hardship that warranted H&C relief. Based on this analysis, the Officer found that the Applicants' claim was not sufficiently compelling to justify H&C relief and therefore refused their application.

[8] The Applicants seek judicial review of the decision. While they raised a number of grounds in their application for leave and judicial review, at the hearing they focused only on the Officer's assessment of the best interests of the children.

[9] The Applicants claim that the decision is unreasonable because the Officer based the analysis of the best interests of the child aspect of their claim on unfounded speculation about the support they could receive from their family members in Nigeria. They also argue that the Officer failed to consider the country condition evidence showing the difficulties they will face in finding employment in Nigeria, which in turn will diminish their capacity to support their children.

[10] These questions are to be assessed under the framework for reasonableness review 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 21.

[11] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at para 102). Such flaws or shortcomings must be sufficiently central or significant to render the decision as a whole unreasonable (*Vavilov* at para 100).

[12] In this case, I am not persuaded by the Applicants' arguments regarding the Officer's analysis of the best interests of the children. They zero in on two points: the Officer's finding regarding the family support available in Nigeria, and the failure to consider the difficulties the PA and AA will face in finding employment in Nigeria.

[13] In *Mason*, the Supreme Court of Canada confirmed that the *Vavilov* framework applies a "reasons first" approach, requiring careful attention to the reasons actually provided by the decision-maker. Applying that approach to the issue of family ties does not support the Applicants' position. In discussing the question of their establishment in Canada, the Officer observed the following: "Regarding family ties in Nigeria, the PA states that he has four siblings

residing in Nigeria. There is little information provided in the H&C materials indicating that the applicants are estranged from their family in Nigeria. Thus, I assign this factor some weight."

[14] There is no mention of family ties in the part of the decision on the best interests of the children. The Officer's analysis focuses on the fact that the children will continue to have the care and support of their parents. To the extent that the prior statement about family ties was a factor that somehow weighed in the background for the Officer, I am not persuaded that the statement quoted above amounts to unfounded speculation. Rather, the express words of the Officer reflect the absence of detail in the H&C application about their relationship with their family members in Nigeria. The PA and AA both list siblings who reside there, but provide no information regarding their relationships with each other – or any indication of a significant rupture in family relationships.

[15] As for the abundant country condition evidence filed by the Applicants, I do not agree that the Officer failed to grasp its significance. The Officer clearly stated that the situation in Nigeria was not ideal and accepted that the Applicants would face a period of adjustment on their return there. On the other hand, the Applicants are both university-educated, and the Officer reasonably notes that they are familiar with the country because they grew up there. The Officer states that differences in living standards or the quality of social supports and services available in Nigeria as compared with Canada is not, in itself, the kind of hardship that supports granting H&C relief. The Applicants did not demonstrate how the general country condition evidence would affect them or create a situation of particular difficulty for them. Based on this, the Officer

found that the hardships they would face on returning to Nigeria did not go beyond the usual challenges associated with leaving Canada.

[16] There is no basis to find the Officer's analysis of the best interests of the children or the hardships the Applicants will face on a return to Nigeria to be unreasonable. While the Applicants may be disappointed with the result of the Officer's assessment, they have not met their burden of demonstrating that the decision is marred by serious flaws on any central issues.

[17] Based on the reasons set out above, the application for judicial review will be dismissed.

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

JUDGMENT in IMM-6025-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

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

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6025-23
STYLE OF CAUSE:	NOSA AIZOTOIGBE, BLESSING AIZOTOIGBE, ZION COURAGE NOSA, ZOE WEALTH NOSA, ZANITA NOSA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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