Federal Court  Cour fédérale

Date: 20250102

Docket: IMM-10038-23

Citation: 2025 FC 13

Ottawa, Ontario, January 2, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

BIBI YASMIN ALI
SAAJID MUJAAHID IBN MUHAMMAD SHAFFIE
ZAYNAB ZIYARAH BINT MUHAMMAD SHAFFIE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Bibi Yasmin Ali, the principal applicant, and her two children, the co-applicants, are citizens of Guyana. Ms. Ali had been granted permanent resident status in Canada in September 2002 through the sponsorship of her then-husband but she relinquished this status in August 2019. During most of this time, Ms. Ali resided in Guyana with her second husband. They had two children: Zaynab (born in June 2005) and Saajid (born in March 2007). In

February 2018, Ms. Ali's husband was randomly attacked on the street by a drug addict. He died as a result of his injuries.

[2] In December 2021, the applicants entered Canada on visitor visas. They stayed with Ms. Ali's parents, who are Canadian citizens. Ms. Ali's older brother and younger sister are also Canadian citizens. They both have families of their own to which the applicants are very close.

[3] In May 2022, the applicants applied for permanent residence in Canada on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). They based this application on their establishment in Canada, family reunification, adverse conditions in Guyana, Ms. Ali's health needs, and the best interests of the children. A Senior Immigration Officer refused the application in a decision dated July 25, 2023.

[4] The applicants now apply for judicial review of this decision under subsection 72(1) of the *IRPA*. They contend that the decision is unreasonable in several respects but, in my view, it is necessary to address only one aspect of the decision: the officer's analysis of the best interests of the children. I agree with the applicants that the officer's analysis of this issue is unreasonable. As a result, this application will be allowed and the matter will be remitted for reconsideration by a different decision maker.

[5] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10).

[6] A decision is reasonable if it is "based on an internally coherent and rational chain of analysis and [is] justified in relation to the facts and law that constrains the decision maker" (*Vavilov*, at para 85). It is not the role of the reviewing court to reweigh or reassess the evidence or interfere with the decision maker's factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). This constraint on the reviewing court is especially important when considering a decision made under subsection 25(1) of the *IRPA*. These decisions are highly discretionary and, as a result, the decision maker's weighing of relevant factors warrants a considerable degree of deference from the reviewing court (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

[7] As I have already said, I agree with the applicants that the officer's assessment of the best interests of Ms. Ali's children (who were both minors when the H&C application was submitted) is unreasonable.

[8] Subsection 25(1) of the *IRPA* expressly requires a decision maker to take into account the best interests of a child directly affected by the decision. As well, it is indisputable that the best interests of children is an important factor and that a decision maker must "give them substantial weight, and be alert, alive and sensitive to them" (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75). At the same time, it is not the case that "children's best interests must always outweigh other considerations, or that there will not be other reasons for denying a H&C claim even when children's interests are given this consideration" (*ibid.*).

[9] The best interests principle is "highly contextual" because of the "multitude of factors that may impinge on the child's best interests" (*Kanthasamy*, at para 35). As a result, it must be applied "in a manner responsive to each child's particular age, capacity, needs and maturity" (*ibid.*). Importantly, protecting children through this principle means deciding what "appears most likely in the circumstances to be conducive of the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention" (*Kanthasamy*, at para 36). Because this is a highly fact-specific and individualized inquiry, the onus is on an applicant seeking H&C relief to provide evidence to support their reliance on a child's best interests (*Zlotosz v Canada (Citizenship and Immigration)*, 2017 FC 724 at para 22; *Lovera v Canada (Minister of Citizenship and Immigration)*, 2016 FC 786 at para 38).

[10] In the present case, the applicants provided detailed personal statements and letters of support from their family members in Canada that addressed the children's interests, including their family ties in Canada, their educational needs and aspirations, the hardships they had faced

in Guyana (especially since the death of their father), and the happy and secure lives they were now leading in Canada.

[11] The officer prefaced the assessment of the best interests of the children by stating: "I recognize I must always be alert and sensitive to the best interests of children when examining A25(1) requests. While factors affecting children should be given weight, the best interests of a child is only one of many important factors that must be considered when making an H&C or policy decision that directly affects a child." The officer then stated that "some weight" would be accorded to the children's best interests.

[12] The applicants argue that, in saying that the best interests of the children is "only one of many important factors to be considered" in this case and then giving only "some weight" to those interests, the officer committed a reviewable error by failing to give significant weight to the children's best interests, as the jurisprudence requires. As the applicants point out, the use of very similar language contributed to the decision under review being set aside as unreasonable in *De Oliviera Borges v Canada (Citizenship and Immigration)*, 2021 FC 193 at para 6. The respondent acknowledges that the officer's choice of language in the present case is potentially problematic but submits that this does not necessarily undermine the reasonableness of the assessment, as long as the officer identified the interests at stake properly, made them a significant part of the overall assessment, and explained why they did not outweigh other factors (*Mebrahtom v Canada (Citizenship and Immigration)*, 2020 FC 821 at para 16; *Panton v Canada (Citizenship and Immigration)*, 2024 FC 514 at para 49). I am not persuaded, however, that the decision can be salvaged on this basis.

[13] Despite the applicants having provided detailed personal statements and support letters from family members describing the children's family ties in Canada and the importance of these relationships, the decision merely states that "[t]he evidence submitted persuades me that besides the children's familial ties in Canada, their ties to Guyana are much stronger at this time." It is unclear from the decision why the officer found this to be the case. The conclusion that the children have "much stronger" family ties to Guyana than to Canada is contrary to the evidence before the officer. Indeed, the finding that, at present, the children have any family ties at all to Guyana appears to be entirely speculative. On the other hand, there was substantial evidence of the children's ties to family in Canada yet the officer simply sets it aside without any analysis. The officer's conclusory statement sheds no light on how the officer evaluated this evidence and then made a finding that is contrary to the weight of that evidence. Furthermore, the officer did not address in any way the children's statements that they now only associate returning to Guyana with their father's violent death and with the financial, educational, and emotional challenges they had faced there and would face again if they had to return. In sum, while the decision states that the officer gave "significant consideration" to the best interests of the children, the reasons as a whole suggest otherwise. I agree with the applicants that the officer failed to be alert, alive, and sensitive to the best interests of *these* children given their unique experiences and circumstances.

[14] As well, in assessing the children's best interests, the officer stated that there appeared to be little reason why the children could not reside temporarily with their family in Canada while pursuing their education here. The officer appears not to have considered the evidence of the applicants' financial struggles in Guyana. The evidence before the officer suggested that it

would be far beyond the applicants' financial means for the children to study in Canada as foreign students yet the officer does not address this evidence in the decision. Furthermore, the question before the officer was whether the applicants should be permitted to apply for permanent resident status from within Canada now, not whether the children might be able to avail themselves of a study permit in the future. It is well established that, even assuming this to be the case, the option of seeking temporary status in Canada is not a valid reason to reject an application for permanent status: see *Farooq v Canada (Citizenship and Immigration)*, 2023 FC 1391 at para 16 and the authorities cited therein.

[15] For these reasons, I have concluded that the officer's assessment of the best interests of the children is unreasonable. Given the importance of this factor, this is sufficient to require that the decision be set aside and the matter to be reconsidered by a different decision maker.

[16] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-10038-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Senior Immigration Officer dated July 25, 2023, is set aside and the matter is remitted for reconsideration by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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