Date: 20071001

Docket: IMM-4301-06

Citation: 2007 FC 988

Ottawa, Ontario, October 1, 2007

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

PAULICA MOISE &
DORINA MOISE

Applicants

and

THE MINISTER OF CITIZENSHIP
& IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision by an immigration officer dated July 18, 2006, which denied the applicants' application for permanent residence on humanitarian and compassionate (H&C) grounds.

[2] The applicants seek an order of *certiorari* setting aside the decision of the immigration officer, and an order of *mandamus* referring the matter for redetermination by a different officer.

Background

[3] The applicants, Paulica and Dorina Moise, are a married couple from Romania. They were granted status as visitors to Canada many times in order to visit their daughter, who had immigrated to Canada in 1999. Their last entry into Canada took place on December 2, 2005, and their visitor's status was eventually extended to December 2, 2007. They are currently living in Canada with their daughter, their son-in-law and their two grandchildren. The applicants received financial support from their daughter both during their visits to Canada, and when they lived in Romania.

[4] After one of the applicants' visits to Canada in 2004, their daughter was diagnosed with hypertension, major depression and separation anxiety. The daughter's health condition is allegedly linked to her separation from her parents. The applicants' grandson was diagnosed with Asperger Syndrome and the applicants alleged that their presence in Canada has caused his condition to improve.

[5] The applicants applied for permanent residence in Canada on H&C grounds in June 2003. By decision dated July 18, 2006, the application was refused. This is the judicial review of the decision to refuse their H&C application.

Officer's Reasons

[6] The applicants were advised by letter dated July 18, 2006, that their application for permanent residence on H&C grounds had been refused. The officer's notes to file constitute the reasons for the decision. The officer noted that the applicants' H&C claims were based upon their interdependent relationship with their daughter, the best interests of their grandchildren, and the geological and economic hardship they would face should they return to Romania.

[7] The officer noted that the applicants were very close to their daughter and her family. The applicants' daughter provided the officer with a letter indicating that she had been diagnosed with hypertension, major depression and separation anxiety. The applicants had visited their daughter often since she had immigrated to Canada in 1999, and the officer concluded that they could continue to travel back and forth in order to see her. The officer was not satisfied that the emotional hardship caused by family separation was sufficient to warrant exemption on H&C grounds.

[8] The officer considered the best interests of the applicants' grandchildren and noted that they were close to the applicants. The applicants' grandson had been diagnosed with Asperger Syndrome, and his condition had improved since the applicants' arrival in Canada. However, the officer concluded that there was insufficient evidence that the applicants' presence in Canada had directly affected his condition in a positive manner.

[9] The officer considered evidence with respect to the possibility of earthquakes in Romania. The officer noted that the population in Romania generally faced earthquakes and there was no evidence to bolster counsel's statement that Romania would not receive aid in the event of an emergency. The officer noted that the applicants appeared financially dependent upon their daughter, whether they were living in Romania or in Canada. The officer was not satisfied that this arrangement would not continue if the applicants returned to Romania.

[10] Having reviewed the evidence, the officer found that it was not sufficient to warrant granting the applicants an exemption from the requirement to apply for permanent residence from outside Canada.

Issues

[11] The applicants submitted the following issues for consideration:

1. Did the officer err in ignoring relevant evidence, relying upon irrelevant considerations, and misapprehending the evidence?

2. Did the officer err in failing to consider the best interests of the child?

3. Did the officer err in his assessment that the applicants were not sufficiently established in Canada?

[12] I would rephrase the issue as follows:

Did the officer err in refusing the applicants' application for permanent residence on H&C grounds?

Applicants' Submissions

[13] The applicants submitted that the standard of review applicable to an H&C decision was that of reasonableness (see *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, (1999) 174 D.L.R. (4th) 193). It was noted that pursuant to section 12.11 of Immigration Manual IP5, several factors were relevant in assessing a family relationship, including: (1) proof of relationship; (2) what hardship would occur if the application were refused; (3) the level of interdependency; (4) the support available in home country; (5) whether the applicant was able to work; and (6) the degree of establishment.

[14] The applicants submitted that the officer failed to consider the impact of the geological instability in Romania upon them, considering their advanced ages and the fact that they did not have any family in Romania to help them. It was noted that the officer acknowledged that emotional hardship could take place if the family separated. The applicants submitted that the officer's conclusion that the family relationship did not warrant an exemption on H&C grounds was therefore untenable.

[15] The applicants noted that the officer failed to consider their ability to work, the level of interdependence amongst the members of their family, and their degree of establishment in Canada.

In addition, the officer failed to refer to evidence regarding the applicants' financial and emotional dependence upon their daughter and her family.

[16] Finally, it was submitted that the officer erred in finding that the objective of family reunification could be achieved through an existing family reunification program. The applicants noted that they had been denied extensions to their visitors' visas in the past, and their overseas sponsorship application had been pending for thirty months.

[17] The applicants submitted that the officer failed to consider ample evidence that they played a major role in the well-being of their grandchildren. It was noted that their grandson and his parents had attested that his scores had improved as a result of their presence in Canada. The applicants noted that the officer had failed to provide the basis for the conclusion that the grandson could be supported by his parents. It was submitted that the officer erred in failing to consider the best interests of the applicants' grandchildren (see *Baker* above).

Respondent's Submissions

[18] The respondent submitted that the officer carefully considered all of the evidence before making a decision. It was submitted that the applicants were seeking to have the Court reweigh the evidence that the officer had considered in making a decision. The respondent submitted that the applicant's risk and hardship allegations with respect to potential earthquakes were highly

speculative. It was noted that other people in their sixties lived in Romania and also faced the risk of earthquakes.

[19] The respondent submitted that the officer's analysis of the economic hardship faced by the applicants was appropriate given the minimal evidence provided regarding their pension. It was noted that the applicants' daughter supported them financially when they lived in Romania, therefore, the officer properly concluded that such support was likely to continue if they returned to Romania.

[20] The respondent submitted that the officer adequately considered the best interests of the applicants' grandchildren. It was submitted that the best interests of the children was an important consideration, but was not determinative of the application (see *Legault* v *Canada (Minister of Citizenship and Immigration)* (2002), 212 D.L.R. (4th) 139, 2002 FCA 125).

[21] The respondent submitted that the officer considered the impact of the applicants' departure upon the grandchildren, and properly concluded that the children would not suffer undue hardship if the applicants were made to apply for permanent residence from outside Canada. It was submitted that the officer properly found that there was a dearth of evidence in support of the applicants' claims that their presence contributed to improvements in their grandson's health. It was noted that the officer had found that the children's parents could support them.

Analysis and Decision

Standard of Review

[22] The standard of review applicable to the decision of an immigration officer with respect to an application for permanent residence on H&C grounds is that of reasonableness (see *Baker* above).

[23] **Issue**

Did the officer err in refusing the applicants' application for permanent residence on H&C grounds?

Consideration of the Evidence

The applicants submitted that the officer failed to consider evidence with respect to geological instability in Romania. The respondent submitted that the evidence was speculative and that the officer properly found that all people living in Romania faced such a risk. Having reviewed the evidence on file and the officer's decision, it is clear that the officer considered the evidence with respect to the risk of earthquakes in Romania and reasonably concluded that it did not warrant granting the applicants and exemption from the requirement to apply for permanent residence from outside Canada.

[24] The applicants also challenged the officer's consideration of the emotional hardship that they and their family members would suffer should the family be separated. The respondent

submitted that the officer properly concluded that the applicants and their family would not suffer undue hardship due to family separation. The officer reviewed evidence regarding the distress and medical problems experienced by the applicants' daughter following her parents' departure. The officer noted that family separation could cause emotional hardship, but found that the applicants could continue to visit their daughter in Canada, as they had since 1999. I do not find that this was an unreasonable conclusion on the officer's part.

[25] The applicants submitted that the officer failed to consider the financial impact of separation from their daughter. The respondent submitted that the officer properly found that the applicants' financial support by their daughter was not likely to end should they return to Romania. The officer's decision noted the fact that the applicants' daughter supported them financially whether they were in Canada, or in Romania, and that this pattern of support was not likely to end if they returned to Canada. The officer also noted that the applicants submitted little information regarding their pension income. In my view, the officer clearly considered the evidence provided by the applicants and reached a reasonable conclusion with respect to the issue of financial hardship.

[26] The applicants submitted that the officer erred in finding that the objective of family reunification could be achieved through existing immigration programs. I would note that the applicants were granted several visitors' visas to Canada, and were afforded extensions of these visas. Most recently, the applicants' visitors' visas were extended until December 2007. In my view the officer did not err in finding that the applicants could likely continue visiting their family through other means under IRPA.

Best Interests of the Children

[27] Pursuant to subsection 25(1) of IRPA, the best interests of children affected by an H&C decision must be considered by the decision-maker involved. The applicants submitted that the officer failed to consider evidence that they had contributed to the wellbeing of their grandchildren, and in particular, their grandson who suffered from Asperger Syndrome. The respondent submitted that there was no evidence that the applicants' presence had helped their grandson's condition.

[28] I have reviewed the evidence on file, and, as noted by the officer, the reports do not directly link any improvements in the grandson's condition with the applicants' presence in Canada. In addition, there was no evidence that the applicants' parents were unable to support their son without the applicants being present in Canada. I do not believe that the officer erred in his or her analysis of the best interests of the children involved in this case.

[29] The application for judicial review is therefore dismissed.

[30] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[31] **IT IS ORDERED that** the application for judicial review is dismissed.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27:

11.(1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act. . . .	11.(1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement, lesquels sont délivrés sur preuve, à la suite d'un contrôle, qu'il n'est pas interdit de territoire et se conforme à la présente loi. . . .
25.(1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.	25.(1) Le ministre doit, sur demande d'un étranger interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4301-06
STYLE OF CAUSE:	PAULICA MOISE & DORINA MOISE - and – THE MINISTER OF CITIZENSHIP & IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 27, 2007
REASONS FOR JUDGMENT AND JUDGMENT OF:	O'KEEFE J.
DATED:	October 1, 2007

APPEARANCES:

Mario Bellissimo	FOR THE APPLICANTS
Bernard Assan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ormston, Bellissimo, Rotenberg Toronto, Ontario	FOR THE APPLICANTS
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT