Date: 20080729

Docket: IMM-4308-07

Citation: 2008 FC 925

Ottawa, Ontario, July 29, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

DEREK SHAMIN ALIE, CAMILLE FAZELLA NARAINE, KEVIN ROMANO ALIE and STACEY LIANNA ALIE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] I am satisfied that the decision here under review must be set aside because the officer, when considering the best interests of the Canadian born child of the adult Applicants, failed to properly focus her analysis on the needs of that child; her analysis was focused on the benefit or harm to the family if they were removed from Canada.

BACKGROUND

[2] The Applicants are a family of four, all citizens of Guyana. In addition to the two teenage children, these parents also have a young child, Sarah, who was born in Canada in April 2006. The present matter arises out of a decision denying the Applicants permanent residency in Canada on a humanitarian and compassionate basis under the *Immigration and Refugee Protection Act*, S.C. 2001, c.27.

[3] The Applicants seek judicial review of the decision of the officer on the basis that it was unreasonable. It is alleged that the officer ignored material evidence in regard to the risk that would be faced by the Applicants in returning to Guyana where they would be assumed to have wealth and thus be targeted, and in the officer's assessment of their establishment in Canada. Secondly, it is alleged that the officer's assessment of the best interests of the children was unreasonable as it failed to consider the family support and social connections the older children had in Canada and the lack thereof in Guyana.

ANALYSIS

[4] Despite the able argument of Applicants' counsel that the officer ignored relevant evidence with respect to the risk in returning to Guyana and in her consideration of the Applicants' establishment in Canada, the position submitted by the Respondent is correct: the officer cannot be faulted for failing to consider factors or evidence that was not before her.

[5] The application before the officer was prepared and filed by the Applicants without the assistance of a consultant or a lawyer. No doubt the Applicants did the best they could, however, the application and the material filed with it is woefully inadequate to establish any of the risk or establishment considerations now urged by the Applicants. Aside from the statement of the Applicants that they would face a risk of being targeted if they returned to Guyana, no evidence was submitted to support this assertion. As to establishment, the Applicants submitted information that showed they were established in Canada, but submitted no evidence nor made any submission that leaving Canada would cause them undue, disproportionate or undeserved hardship. It is not the task of the officer assessing an application to engage in speculation, surmise and inference when the information provided is very basic. In such cases, as here, the officer cannot be faulted for the conclusions she reached which were reasonable on the basis of the evidence and submissions before her.

[6] The same may be said of the Applicants' complaints regarding the officer's analysis of the best interest of the children. The Applicants urged the Court to find that the officer had failed to consider factors such as the societal bonds the two Applicant children (aged 18 and 19) have with their friends in the neighbourhood, the family bonds they have with their grandparents, aunts and other family members in Canada, and the absence of any family members in Guyana. Unfortunately, aside from the bare statement in the application that these children have graduated from high school and did well, and that one wishes to pursue higher education, and one wishes to continue his soccer referee activities, and there are family in Canada and none in Guyana, there was

no evidence submitted to the officer nor submissions made to her of the sort now urged upon the Court by the Applicants.

[7] I agree with the observation of Justice Dawson in *Ahmed v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 646, that "it was incumbent upon the applicants to raise, and support with evidence, any specific issue a family member would face that was said to give rise not just to hardship, but to hardship which is unusual and undeserved or disproportionate". In this case, the Applicants failed this requirement and the decision of the officer cannot be faulted for that failure.

[8] Nonetheless, I am going to allow this application because, in my view, the officer erred in her consideration of the best interests of the Canadian born child. When considering her best interests the officer stated as follows:

> As for Sarah, she is only one year old and has not started education yet. In this regard, I have considered the best interest of the Canadian born child *by considering the benefit and hardship to the family* if they have to return to Guyana with or without Sarah. I do not find it would amount to unusual and undeserved or disproportionate hardship *to the family* to return to Guyana to justify an exemption under the humanitarian and compassionate considerations. (emphasis added)

[9] In my view, the officer committed an error of law in her analysis of the best interests of the Canadian born child, Sarah. The proper focus of those considerations must be on the child herself. In this case, the officer failed to focus on the child and the hardship the removal of her family, with or without her, would have on her. Instead the officer focused her analysis on the hardship to the family if they were removed from Canada, with or without the child.

[10] Given this error, the decision cannot stand. A proper consideration of the best interests of this child is required before the Applicants may be removed from Canada.

[11] Neither party proposed a question for certification and no question will be certified.

[12] Accordingly this application for judicial review is allowed because the officer failed to conduct a proper inquiry with regards to the interests of the Canadian born child.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application is allowed, the decision is set aside and the matter referred back to a different officer for re-determination.

2. No question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4308-07
STYLE OF CAUSE:	DEREK SHAMIN ALIE, CAMILLE FAZELLA NARAINE, KEVIN ROMANO ALIE and STACEY LIANNA ALIE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	July 22, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	Zinn J.
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