Date: 20081008

Docket: IMM-1310-08

Citation: 2008 FC 1130

Ottawa, Ontario, October 8, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

YONG DOO KIM, SEAK SOON PARK
JU YOUNG (JULIA) KIM, A YOUNG (IRENE) KIM

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a pre-removal risk assessment (PRRA) officer's refusal to grant the Applicants' request to have their applications for permanent residence processed from within Canada, on humanitarian and compassionate (H&C) grounds. The decision is dated January 11, 2008. For the reasons that follow, I am of the view that the decision under review is reasonable.

BACKGROUND

[2] The Applicants are a Korean family. Yong Doo Kim is the principal Applicant. He is the husband of Seak Soon Park. They are the parents of Ju Young Kim (a.k.a Julia) and A Young Kim (a.k.a. Irene).

[3] The Kim family came to Canada in the summer of 2003, allegedly fleeing criminal loan sharks in Korea, and made a refugee claim a month after their arrival. In 2004 the claim was refused, as was leave to bring an application for judicial review in respect of the refusal. The family submitted an H&C application in 2005, and in 2007 they submitted a PRRA application.

[4] Mr. Kim was an entrepreneur in Korea. Since coming to Canada, the family has established two restaurants. Mr. Kim has also established a renovation business. He supplements his business income by working as a cleaner. In his affidavit filed in support of this proceeding, Mr. Kim goes into some detail as to his daughters' establishment in Canada, their success in Canadian schools, and their plans to attend university. He alleges that neither would be able to attend university in Korea because they would not be able to pass the state administered entrance exams. They would be forced to do menial jobs and be relegated to the "bottom of society".

[5] Mr. Kim also claims that he and his wife would have trouble re-entering the Korean labour market, as they are in their late 40's and Korean employers prefer to hire young graduates. He adds

that he still fears being targeted by loan sharks and that he does not believe that the Korean government's efforts to combat loan-sharking have been effective.

[6] In her case notes, the officer who analyzed the Kim family's H&C application sets out a detailed summary of the family's submissions as to their establishment in Canada, their alleged fear of returning to Korea, and the best interests of their daughters.

[7] With respect to the family's establishment in Canada, the officer noted among other things their successful businesses, their participation in the community, their many friendships, and their close relationship with Mr. Kim's Canadian sister and her family. Describing this involvement as "commendable", the officer nonetheless found that the family's degree of establishment was "not exceptional"; the Applicants were provided with student and work permits in order to facilitate their self-sufficiency, and some establishment was to be expected. Nor did she accept that a return to Korea and the attendant difficulties of finding work and a place to live would amount to excessive hardship for the family, noting among other things that Mr. Kim and his wife have spent most of their lives in Korea, have family ties there, and know the culture well.

[8] With respect to the Applicants' fear of return, the officer relied on the IP5 Guidelines in her assessment of their contention that they would face a risk from corrupt moneylenders amounting to cruel and unusual hardship. These guidelines provide that positive consideration may be warranted where an applicant's removal would expose them to a risk to their life or security. The officer reviewed their submissions in this regard and consulted documentary evidence on the Korean police

and security apparatus (2006 US Department of State report; 2007 Amnesty International report), as well as items relating to a crackdown on money lending at exorbitant rates (included in a 2007 Immigration and Refugee Board report). On this evidence she concluded that there is no reason to believe the state would be unwilling or unable to provide protection to the Kim family should they require it.

[9] Finally, with respect to the best interests of the Kim children, the officer acknowledged that they would have to leave friends in Canada and adapt to a different school system. She did not however accept that any of the difficulties alleged would amount to unusual, undeserved, or disproportionate hardship.

ISSUES

[10] The Applicants raise three issues:

(a) Whether the officer improperly assessed the best interests of the children;

(b) Whether the officer erred in her assessment of their establishment in Canada; and

(c) Whether the officer erred as to the availability of state protection.

ANALYSIS

Did the officer improperly assess the best interests of the children?

[11] The Applicants submit that the treatment of the children's best interest was cursory and speculative. They submit that no consideration was given to the children's lack of literacy in Korean, and the difficulties they would face in gaining admission to university in Korea. They refer

to the decision of Justice O'Keefe in *Kim v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 248, where he found that the potential loss of a year of university which removal to Korea would occasion for the applicant amounted to an irreparable harm and so stayed her deportation. The Applicants also rely upon *Kim v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1461, a similar case to that at hand, where it was found that an officer's failure to address and weigh all of the consequences of a removal on the children, notably their ability to attend university, was unreasonable.

[12] The Respondent relies on *Lee v. Canada*, 2008 FC 368, and *Vasquez v. Canada*, 2005 FC 91, in submitting that the fact that the Kim children might be better off in Canada with respect to access to educational opportunities is hardly conclusive of an H&C application that looks to, and turns on, the existence of undue hardship. The Respondent suggests that Justice Shore's comments in *Lee* are equally apt here: "[t]he Applicants are would-be immigrants whose H&C application is primarily based on the existence of minor children and the fact that they have been in Canada for a few years. If this were the standard upon which H&C applications had to be approved, virtually no applications could be refused (…) it would, in effect, create a whole new immigration system."

[13] In my view, the officer's discussion and analysis of the children's best interest, although brief, considered the essence of the Applicants' submissions on the point. There was no "misconstruing of the evidence" as alleged by the Applicants; the evidence, consisting mostly hyperbolic statements about the difficulties of adapting to a different educational system, warranted no more comment than it actually received.

Did the officer err in her assessment of establishment in Canada?

[14] The Applicants claim that the officer erred in her assessment of their establishment in Canada. Citing *Ranji v. Canada (Minister of Citizenship and Immigration) et al.*, 2008 FC 521, the Applicants submit that the officer failed to consider their "positive" establishment factors within the context of their personal circumstances.

[15] In my view, the officer's consideration of the factors advanced by the Applicants, and application of the principles relating to H&C assessments, was proper in her consideration of establishment. The facts in this case are materially different than those in *Ranji*. Mr. Ranji had a grade school education and had been a farmer in India. He had neither a secondary education nor skills, yet in his time in Canada he had been continuously employed, save for a two month period, and although he had never earned more than $50,000 annually in unskilled positions, had accumulated a sizable bank account, purchased an RRSP, co-purchased a residence with his brother, financially supported family in India and sent his two children to private schools. His was closer to the establishment one would have expected of someone with Mr. Kim's background and experience. In fact, it is arguable that his establishment, despite his personal circumstances, was greater than Mr. Kim's.

Did the officer err as to the availability of state protection?

[16] The Applicants submit that the officer's conclusions as to the availability of state protection were made without regard to whether state protection is actually effective in Korea. They contend that the evidence indicated that criminal loan-sharking remains a problem, notwithstanding efforts to combat it, and that moneylenders resort to violence to collect from debtors.

[17] The evidence allegedly overlooked by the officer as referenced by the Applicants is a single sentence from a *Korea Times* article reading "members of the government are also stating that it needs to do more to protect people from loan sharks". This does not come close to the clear and convincing evidence that would be needed to rebut the presumption of state protection; (*Carrillo v. Canada*, 2008 FCA 94, para. 38). As Justice Sexton J.A. observed in *Hinzman v. Canada*, 2007 FCA 171, at para 57, "a claimant coming from a democratic country will have a heavy burden when attempting to show that he should not have been required to exhaust all of the recourses available to him domestically before claiming refugee status." Even accepting that "hardship" has a broader meaning than risk in the context of an H&C analysis, in this case the officer's observation that should the applicants require assistance, they would have avenues of recourse open to them, in my view, is equally responsive to the allegation of hardship broadly understood.

[18] The Respondent points out that the Applicants have not provided any evidence that state protection was ever sought and refused. On the authority of the Supreme Court of Canada's decision in *Canada (A.G) v. Ward*, [1993] 2 S.C.R. 689, the Respondent argues that the Applicants had an obligation to seek state protection before seeking international surrogate protection. I agree.

[19] For all of these reasons the application is dismissed. No question was proposed for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is denied; and

2. No question is certified.

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"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Marvin Moses	FOR THE APPLICANTS
Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MARVIN MOSES Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANTS
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT