Date: 20090914

Docket: IMM-4558-08

Citation: 2009 FC 904

Ottawa, Ontario, September 14, 2009

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

Heather Lafleur TONEY
Aalyah Akeyba TONEY

Applicants

and

MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS and
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Carline Médée, Immigration Officer (officer), refusing the applicants' request for permanent residence on humanitarian and compassionate (H&C) grounds. The decision was rendered on September 12, 2008.

[2] Leave was granted by Madam Justice Hansen on April 8, 2009.

Facts

[3] The principal applicant Heather Toney (applicant) and her daughter, Aalyah, are citizens of St. Vincent.

[4] In 1992, at the age of 13, the applicant came to Canada to live with her aunt when her grandmother who was raising her passed away.

[5] The applicant is not close with her mother, who travels back and forth between the British Virgin Islands and St. Vincent. She is very close with her father who lives in Boston.

[6] In her affidavit, the applicant says that while she lived with her aunt in Kitchener, Ontario, her uncle molested her. This forced her to move to Montreal. The applicant lived in Montreal from 1994 to 1999 and did domestic work.

[7] The applicant dated Kelly Moses, Aalyah's father, for 2 years. They broke up once the applicant became pregnant. Mr. Moses wanted the applicant to have an abortion, and when she refused, he left Montreal for Toronto.

[8] In November 1999, the applicant was deported to St. Vincent when she was four months pregnant. The applicant gave birth to Aalyah on April 10, 2000 in St. Vincent.

[9] In September 2002, the applicant tried to re-enter Canada but was sent back to St. Vincent.

[10] According to the applicant, while in St. Vincent she was in a violent relationship with her boyfriend. In order to protect Aalyah, in June of 2005 she sent her daughter to Montreal to live with her sister who is a permanent resident in Canada.

[11] The applicant legally changed her name in St. Vincent and in December 2005, the applicant returned to Canada with a passport in the name of Wendy Laverne Adams. She was granted a six month visitor's visa.

[12] According to the applicant, she returned to Montreal because she wanted Aalyah to know her father, wanted to get child support from him, and wanted to escape her abusive relationship in St. Vincent.

[13] The applicant notes that she has visited Toronto many times, but Mr. Moses has refused to meet his daughter. However, "all of his family know and love her".

[14] On September 20, 2006, a removal order was issued against the applicant and her daughter.

[15] A pre-removal risk assessment (PRRA) was conducted and, on February 15, 2007, a negative decision was issued. The applicant applied for leave to commence judicial review of the PRRA decision but leave was refused on June 8, 2007 (IMM-1437-07).

[16] On October 12, 2007, the applicant won a final judgment in the Superior Court of Quebec against Mr. Moses that recognized his paternity and obligation to pay child support.

[17] In October of 2007, the applicant filed an H&C application.

[18] On May 15, 2008, Mr. Jean Bellavance refused to defer the applicants' removal. The applicant filed an application for judicial review of Mr. Bellavance's decision.

[19] On May 24, 2008, Mr. Justice de Montigny granted a stay of removal pending the hearing of the judicial review application on its merits.

[20] On September 10, 2008, the applicant discontinued her application for judicial review of Mr. Bellavance's decision. The CBSA undertook not to remove the applicant until the H&C application was decided.

[21] On September 12, 2008, the H&C decision under review in this application was issued.

[22] On December 18, 2008, Madam Justice Hansen granted the applicants a stay of removal pending the resolution of the application for leave and judicial review.

Relevant Statutory Provisions

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

Humanitarian and compassionate considerations

25. (1) The Minister shall, upon request of a foreign national in	**25.** (1) Le ministre doit, sur demande d'un étranger se

Canada who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative or on request of a foreign national outside Canada, 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.	trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative ou sur demande d'un étranger se trouvant hors du Canada, 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.

Decision under review

[24] At the outset, the decision notes that it is incumbent on the applicant to prove that the requirement of applying for permanent residence outside of Canada would cause her undue hardship. The officer notes that the decision is based on the best interests of her daughter who was born in St. Vincent.

[25] The officer noted that the applicant stated that her daughter's father is a Canadian citizen; however, the records indicate that Mr. Moses was not a Canadian citizen at the time of Aalyah's birth to the present.

[26] The officer recited the applicant claims that her will was to reunite her daughter with Mr. Moses, and stressed the importance of the two staying in Canada so the applicant could enforce a support order against Mr. Moses. The officer noted that a DNA test was performed to determine paternity.

[27] The officer found that while the presence of a father can be important for a child, in this case there was no evidence submitted to indicate the existence of a significant and meaningful relationship between the father and daughter. There was no mention of any visits between the two.

[28] The officer gave little significance to the documents presented by the applicant that state the measures she has undertaken to prove paternity and to have the father take financial responsibility of Aalyah. The only document signed by the father was his formal demand to stop child support payments. Consequently, the officer found that the best interests of the child were not a determinative issue in this case.

[29] The officer then recited the applicants' immigration history.

[30] The officer concluded that the fact the applicant changed her name in order to be allowed into Canada and the fact that she was always working while in Canada demonstrate that she wants to establish herself in the country.

[31] The officer noted that the applicant has made efforts to become financially independent but has not shown respect for the law. She has not obtained the necessary documents – a work permit

and written authorization – to re-enter Canada after her expulsion. Further, she only ever held one work permit and that was for the period of September 1998 to January 2000, even though she has worked in Canada for several years.

[32] Given all of this, the officer concluded that the case does not justify an exception to the requirements imposed on all immigrants. The officer was not satisfied that the applicant had shown the best interests of the child is determinative in this case and that having to leave Canada to apply for permanent residence abroad, which is what the law requires, would cause her undue and disproportionate hardship.

Issues

[33] The applicant frames the issues as:

1. Did the Minister's Delegate err when he did not take into account the best interests of the child?
2. Did the Minister's Delegate err when he did not take into account Mrs. Toney's establishment in Canada?
3. Did the Minister's Delegate err when he did not give the applicants a reasonable opportunity to update their file?
4. Would deporting the applicants violate Canada's national and international human rights obligations?

[34] The respondent does not list issues, but does address the issues raised by the applicant. The respondent also raises a preliminary objection to some of the evidence in the applicant's affidavit that the respondent submits was not before the officer.

[35] I wish to re-frame the issues as follows:

1. Are pages 30-31 and 35-52 of the Applicant's Record inadmissible because they were not before the decision-maker?
2. What is the applicable standard of review?
3. Was the officer's decision on best interests of the child reasonable?
4. Was the officer's decision on establishment reasonable?
5. Did the officer err by not giving the applicants reasonable time to update their file?
6. Would deporting the applicants violate Canada's international and national human rights obligations?

Position of the Applicant

[36] The applicant did not reply to the respondent's preliminary objection to the affidavit evidence nor did the applicant discuss the applicable standard of review.

Was the officer's decision on best interests of the child reasonable?

[37] The applicant states that Aalyah grew up in Montreal and her whole life is in Montreal. She attends school and has many friends and a large family here. The applicant states that Aalyah's

father is a Canadian citizen. If she were removed from Canada, Aalyah would have to live in poverty and without the support of family and friends.

[38] The applicant alleges that the best interests of Aalyah were not taken into account as required by *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. The applicant also points to the United Nation's *Convention on the Rights of the Child* and *Arulraj v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 529 to help define what the parameters of the best interests of the child are and what Canada's obligations are.

[39] In *Arulraj*, the Court noted that there is no legal basis for incorporating a burden of irreparable harm into the consideration of the best interests of the children.

[40] The applicant submits that the best interests of Aalyah are of "utmost importance" in this case and the deportation of Aalyah would be devastating. According to the applicant, if she and Aalyah are removed from Canada, Aalyah will not be able to receive support payments from her father.

[41] The applicant submits that Aalyah has a right under international law to be with her family: the *UN International Convention on Civil and Political Rights*, articles 23 and 24 and the *Universal Declaration of Human Rights* at paragraph 3 of article 16. According to the applicant, the only family Aalyah has and has ever known is in Canada.

[42] The applicant also refers to the U.S. Department of State Country Report of 2007 for Saint-Vincent and the Grenadines that discusses the problem of child abuse, and a study by UNICEF in November 2006 entitled "A Study of Child Vulnerability in Barbados, St-Lucia and St-Vincent and the Grenadines" about aspects of children's lives such as poverty, education, and health care.

[43] In her written submissions, the applicant includes the following excerpt from Mr. Justice de Montigny's order to stay the applicants' deportation in IMM-2365-08:

> Mrs. Toney's daughter enjoys a relatively stable life in Canada, attends school and benefits from an extended family and social network. Mrs. Toney herself is better able to provide for her as a result of the child support order from the Superior Court of Quebec directing the father to assist financially in her daughter's upbringing. All of this would likely be lost if the applicants were to be removed to Saint-Vincent. In my respectful opinion, this would amount to irreparable harm.

Was the officer's decision on establishment reasonable?

[44] The applicant submits the following in support of her claim that she is established in Canada: she has lived in Canada for 10 years, her sister is in Canada and she is not close with her mother who lives in St. Vincent, she is able to support herself and her daughter, she has no criminal record, and she has contributed to Canadian society. She filed letters of support from friends and employers. The applicant has volunteered at church for the past two years and she faithfully attends church with her daughter.

Did the officer err by not giving the applicants a reasonable opportunity to update their file?

[45] The applicants filed an application for leave and judicial review on May 23, 2008 in IMM-2365-08 to contest the Enforcement Officer's decision not to defer their deportation. On May 24, 2008, Justice de Montigny ordered that the execution of their removal be stayed until a decision was made in their application for leave and judicial review. That case was discontinued by the applicant on September 10, 2008 on the condition that their pending H&C application would be decided before any removal is contemplated.

[46] According to the applicant, the discontinuance was filed on the assumption that a reasonable amount of time would be given for the applicants to update their H&C file. However, no time was given and a decision on their application was rendered two days later on September 12, 2008. The applicant submits the IMM-2365-08 application had a reasonable chance of succeeding given that a stay was granted and it never would have been discontinued had the applicants known that a decision was going to be made so quickly.

Would deporting the applicants violate Canada's international and national human rights obligations?

[47] The applicants submit that the officer's decision and the consequent deportation of the applicants violated their section 7 and 12 Charter rights. The decision is said not to take into account Canada's obligations not to deport the applicants to a country where they will face a life of poverty and hardship.

[48] The applicant also cites the U.S. Department of State Country Report of 2007 on the problem of violence against women in St. Vincent and submits that she will not be protected if she were returned to St. Vincent.

[49] The applicant also submits the following rights that are protected under international law are violated by the decision:

- The right of a refugee not to be returned to a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion, as stated in the *Convention relating to the Status of Refugees*;
- The right to a simple, brief procedure whereby the courts will protect the applicant from acts of authority that, to her prejudice, violate fundamental constitutional rights, as required by article 18 of the *American Declaration of the Rights and Duties of Man*; and
- The right not to be deported except in pursuance of a decision reached in accordance with law, as enshrined in article 13 of the *International Covenant on Civil and Political Rights*.

Position of the Respondent

[50] The respondent submits the style of cause should be amended to add the Minister of Citizenship and Immigration as a respondent.

Are pages 30-31 and 35-52 of the Applicant's Record inadmissible because they were not before the decision-maker?

[51] According to the respondent, the applicants have filed additional evidence that was not before the officer when the decision was made, specifically: pages 30 and 31 of exhibit "A" and pages 35-52 of exhibit "B". Such additional evidence cannot be considered on judicial review. See for example: *Asafov v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 713 and *Franz v. Canada (Minister of Employment and Immigration)* (1994), 80 F.T.R. 79 (F.C.). As such, the pages should not be considered by the Court.

What is the applicable standard of review?
Was the officer's decision on best interests of the child reasonable?

[52] The respondent submits that the Court should not interfere with an officer's decision on an H&C application unless the decision is unreasonable. In an H&C application, the applicant has the onus of establishing the hardship of having to obtain a permanent residence visa outside of Canada would be unusual and underserved, or disproportionate.

[53] The respondent says it is inaccurate to say the officer failed to take into account the daughter's interest. It is also inaccurate to say that Aalyah's father is Canadian since he does not have such status and there is no evidence to support the applicant's allegation to that effect.

[54] The evidence on child support and enforcing the support order was considered by the officer and noted in her decision. With respect to paragraph 20 of the applicant's submissions, the respondent states that it is to be noted that no support payments have been made since the judgment

in 2007. As such, the applicant's reliance on an eventual financial contribution from Aalyah's father is purely speculative.

[55] Contrary to the submissions of the applicant, Aalyah did not grow up in Canada. She came to Canada when she was five years old on a visitor's permit. Furthermore, the officer addressed the relationship between the father and the child and the applicant did not file any evidence in support of the existence of a relationship. Nor was there any evidence filed with respect to Aalyah's relationship with other members of her family on her mother's side or on her father's side, contrary to paragraphs 9, 10, 15, 21, and 29 of the applicant's submissions.

[56] The respondent submits that while the best interests of the child is an important factor to consider when assessing H&C applications, it is not a determinative factor: *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125; *Bolanos v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1032; and *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, [2003] 2 F.C. 555 (F.C.A.).

Was the officer's decision on establishment reasonable?

[57] The respondent submits that the immigration history of the applicant's presence in Canada was properly considered by the officer. The applicant has constantly expressed disregard for Canadian immigration legislation and the officer was correct in concluding that such conduct should not benefit the applicant: *Buio v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 205.

[58] The respondent submits the test is not whether the applicant would be in a better environment in Canada, it is whether having the applicant apply for permanent residence outside of Canada would constitute undue, undeserved or disproportionate hardship.

Did the officer err by not giving the applicants reasonable time to update their file?

[59] The respondent submits that the allegations in paragraphs 31-34 of the applicant's submissions are unfounded. Furthermore, as can be seen from the Applicants' Record, no extra proof or information was brought forward by them in order to demonstrate that their request for landing could have been updated in a significant manner. Moreover, no conditions were attached to the applicants' discontinuance since the respondent was representing Canada Border Services Agency (CBSA) who is not responsible for the processing of permanent residence applications. Finally, the applicant had ample time to produce further evidence because she filed her H&C application in October 2007 and the matter was not decided until September 2008.

[60] According to the respondent, contrary to the applicant's assertion, the officer is under no obligation to give them an opportunity to update their file: *Zambrano v. Canada (Minister of Citizenship and Immigration)* (2008), 326 F.T.R. 174. Consequently, there are no procedural violations in this case.

Would deporting the applicants violate Canada's international and national human rights obligations?

[61] The respondent submits that the Supreme Court of Canada has clearly established that a removal after a risk assessment does not violate sections 7 and 12 of the Charter: *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, *Al Sagban v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 133. In this case, a negative PRRA assessment was made and the decision was upheld by the Court.

Analysis

1. Are pages 30-31 and 35-52 of the Applicant's Record inadmissible because they were not before the decision-maker?

[62] The respondent asserts that pages 30 and 31 of the Applicants' Record in exhibit "A" and all the pages of exhibit "B" to Heather Toney's affidavit were not before the officer and therefore should not be considered on judicial review. However, most of the impugned pages are in the Tribunal Record and are properly before the Court. The table below lists the impugned page(s) in the left column and the page(s) in the Tribunal Record where the document can be found.

Page of Affidavit	Page of Tribunal Record
30-31	18-19
36	85
37	Not in Tribunal Record.
38, 39	86, 87
40	116
41, 42, 43, 44,	69, 76, 75, 70

45	125
46	Not in Tribunal Record, but there is a letter with identical content at page 81. The letter in the Tribunal Record was sent to Immigration Canada while the one in the Applicants' Record was sent to Daniel Fougere at Quebec Immigration.
47, 48	111, 106
49	Not in Tribunal Record.
50	17
51-52	8-9

[63] The respondent correctly recites the law. It is a well-established principle that only evidence that was before the decision-maker is relevant on judicial review. In one of the cases cited by the respondent, *Asafov v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 713 at paragraph 2 (T.D.), Justice Nadon stated the following in response to evidence the applicant tried to submit that was not before the decision-maker:

> The purpose of the judicial review process is to examine the tribunal's decision in the light of the evidence adduced before it at the hearing and to decide whether or not there are grounds for review. From that perspective, the evidence which the Applicants now seek to introduce is irrelevant. By granting this application, I would be transforming the judicial review process into that of an appeal.

[64] *Asafov* has been cited in agreement several times in subsequent cases, including recently in *Jessamy v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 47 at paragraph 55 (F.C.).

[65] Therefore, pages 37, 46, and 49 of the Applicants' Record should not be considered in this application for judicial review.

2. What is the applicable standard of review?

[66] The decisions of immigration officers on H&C applications are subject to a reasonableness standard of review. See for example: *Ahmad v. Canada (M.C.I.),* [2008] F.C.J. No. 814 at paragraph 11 (F.C.) and *Hansra v. Canada (Minister of Citizenship and Immigration),* [2009] F.C.J. No. 297 at paragraph 11 (F.C.).

[67] Review on the standard of reasonableness is "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See: *Dunsmuir v. New Brunswick,* [2008] 1 S.C.R. 190 at paragraph 47.

[68] A reasonableness standard applies to issues 3 and 4, but issue 5 is a procedural fairness issue and the standard of review analysis does not apply to procedural fairness issues. See *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour),* [2003] 1 S.C.R. 539 at paragraph 100.

3. Was the officer's decision on best interests of the child reasonable?

[69] The respondent is correct that the onus is on the H&C applicant to satisfy the immigration officer that he or she will suffer unusual, undeserved, or disproportionate hardship if he or she has to apply for permanent residence outside of Canada. For the reasons articulated by the respondent, in my opinion the officer's conclusion that the applicant did not satisfy that onus was reasonable.

[70] The applicant states that the best interests of the child were not taken into account by the officer. However, the officer analyzed the best interests of Aalyah and then determined they are not determinative. The officer found that there was no evidence of a meaningful relationship between Aalyah and Mr. Moses. This conclusion is supported by the evidence of the applicant throughout her immigration file that states the father has made no attempts to see Aalyah. It is further supported by the evidence that Mr. Moses was trying not to pay his court ordered child support payments.

[71] The applicant cites *Arulraj* for the proposition that it is an error for an immigration officer to require an H&C applicant to satisfy the burden of irreparable harm in terms of the best interests of the child. However, in my opinion, the officer did not place such a burden on the applicant and the applicant is unable to point to a part of the decision that suggests the officer did.

[72] In her written submissions, the applicant again asserts that Aalyah's father is a Canadian citizen, but the officer determined he was not at the time of Aalyah's birth up until the time of the officer's decision. The applicant does not explicitly dispute that finding by the officer and does not point to any evidence to support her claim that he is a citizen.

[73] The applicant also states that Aalyah grew up in Canada when in fact the first five years of her life were spent in St. Vincent.

[74] The applicant submits that if she and her daughter are removed to St. Vincent, they will not be able to enforce the court order and therefore will not receive the child support payments that are "vital to her well-being". However, the evidence before the officer was that Mr. Moses was not making the required payments.

[75] Furthermore, there is nothing in the Tribunal Record to support the applicant's claim that Aalyah is close with her family in Montreal.

[76] The applicant cites the U.S. Department of State Country Report of 2007 for Saint-Vincent and the Grenadines on the issue of child abuse and child vulnerability, however, this document is not in the Tribunal Record. In any event, there is no evidence to substantiate a claim that the likelihood of Aalyah being abused would increase if she and her mother were removed to St. Vincent. Aalyah would still be living with and cared for by the applicant, who by the evidence before the officer is a caring and loving parent. Further, there was no evidence before the officer to suggest that the applicants would suffer from poverty if removed from Canada. All the evidence was that the applicant was a hard worker who did not have trouble making ends meet. The documents before the officer included documents from her former employer in St. Vincent.

[77] The reasons of Justice de Montigny on IMM-2365-08 dated May 24, 2008 were not before the officer.

[78] The reasons of the officer on the best interests of the child are supported by the evidence that was before the officer. The officer's decision on this issue is justifiable, transparent, and intelligible. The officer did not err as the applicant alleges.

4. Was the officer's decision on establishment reasonable?

[79] The applicant does not point to a specific error on the part of the officer, but instead recites the reasons she should have been found to be established in Canada.

[80] The officer acknowledges that the applicant really wants to establish herself in Canada and this is evidenced from her changing her name and the fact she has always worked while she was in Canada. While the applicant notes she has no criminal record, the evidence is clear that she has consistently disrespected Canadian immigration laws. The applicant was well aware that she required a work permit and written approval to re-enter Canada after her deportation in 1999. She tried to return in 2002 and was denied for not having the proper documentation. Instead of obtaining the required documents before returning again, the applicant legally changed her name in St. Vincent to obtain a passport under a different name. She also worked throughout her two stays in Canada, yet she only had a valid work permit from September 1998 to January 2000.

[81] It is important to remember that the purpose of assessing establishment is to determine whether the claimant is established to such a degree that removal would constitute disproportionate

hardship. The applicant states that she is close with her sister in Montreal, but did not submit any evidence from her sister or any friends. She did submit evidence from several employers and evidence supporting her volunteer work at her church. However, the officer noted her efforts and determined that they, in addition to the rest of her application, did not justify an exception to the immigration rules.

[82] The applicant tried to establish herself while knowing that her immigration status was not positive. In this way, she assumed the risk that she may have to return to St. Vincent and apply for permanent residence abroad. Since she assumed the risk, the hardship she will face as a result is not unusual, undeserved, or disproportionate to the hardship that all individuals who apply from abroad face. See for example: *Obeng v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 57 at paragraph 45 (F.C.).

5. Did the officer err by not giving the applicants reasonable time to update their file?

[83] The applicant claims that she discontinued her application in IMM-2365-08 on the condition that she would be allowed to update her H&C application. However, as the respondent points out, there is no evidence to substantiate that condition and the respondent in IMM-2365-08 was the CBSA while the respondent in this application should be the Minister of Citizenship and Immigration. The CBSA is not responsible for permanent residence applications so it is unlikely that the CBSA would guarantee something that it is not responsible for. Finally, the H&C application was filed in October 2007 and the decision was not rendered until September 2008. If the applicant wanted to update her file, she had the opportunity to attempt to do so.

[84] In *Zambrano*, Madam Justice Dawson concluded that there is no obligation to ask a PRRA applicant if they wish to make any further submissions, and the applicant bears the burden of supplying all the documentation to support his or her claim. Justice Dawson concluded that even if there was an obligation, the applicant had not provided any evidence of significant, new information that they could have provided that would have been material to the decision. Like in *Zambrano*, the applicant has advanced no evidence to support the position that the decision would have been different had she been afforded the opportunity to update her submissions. Consequently, there was no breach of procedural fairness.

6. Would deporting the applicants violate Canada's international and national human rights obligations?

[85] The applicant submits the officer's decision does not take into account Canada's obligation not to deport the applicants to a country where they will face a life of poverty and hardship. The applicant points to the U.S. Department of State Country Report for 2007 on the issue of domestic violence in St. Vincent. In my opinion, these arguments are more properly suited for a review of the PRRA decision.

[86] Many of the applicant's submissions on this issue are not relevant. Her H&C application did not deal with domestic violence. This was not a refugee application and the focus on Canada's obligations not to deport refugees to a place where their life or freedom is threatened is misplaced.

[87] A PRRA was completed for the applicants and the result was negative. An application for leave to review that decision was denied. It is not contrary to the Charter to remove the applicants to St. Vincent. In *Choudhary v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 583, Justice Lagacé noted at paragraph 25 that:

> It is well established that a deportation order, with respect to a person who is not a Canadian citizen, is not contrary to the principles of fundamental justice and that the execution of such order is not contrary to sections 7 or 12 of *the Charter (Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711).

[88] The jurisprudence does not support the applicant's broad accusations in regard to Canada's human rights obligations.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that for the above reasons, this application for judicial review is dismissed. No question of general importance has been submitted for certification.

The style of cause is hereby amended to include the Minister of Citizenship and Immigration as a respondent.

"Louis S. Tannenbaum"

Deputy Judge

AUTORITIES CONSULTED BY THE COURT

1. *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817
2. *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services),* [2001] 2 S.C.R. 281, 2001 SCC 41
3. *Del Cid v. Canada (Minister of Citizenship and Immigration)* 2006 FC 326
4. *Mughrabi v. Canada (Citizenship and Immigration)* 2008 FC 900
5. *Griffith c. M.C.I.*, IMM-4543-98
6. *Franklyn v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1249
7. *Fraser v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1154
8. *Okoye v. Canada (Citizenship and Immigration)* 2008 FC 1133
9. *De Sousa v. Canada (Citizenship and Immigration)*2008 FC 1171
10. *Kolosovs v. Canada (Citizenship and Immigration)* 2008 FC 165
11. *Arulraj v. Canada (Minister of Citizenship and Immigration)* 2006 FC 529
12. *Simoes v. Canada (M.C.I)* (2000), 187 F.T.R. 219
13. *Toney et al v. Canada (Minister of Public Safety and Emergency Prepardness),* IMM-2365-08
14. *Zambrano v. M.C.I.*, 2008 FC 481
15. *Zambrano v. Canada (Minister of Citizenship and Immigration)* (2008), 326 F.T.R. 174
16. *Chieu v. M.C.I.*, 2002 RSC 3
17. *Al Sagban v. M.C.I.*, 2002 RCS 4
18. *Idahosa v. the Minister of Public Safety and Emergency Preparedness,* 2008 FCA 418

19. *Asafov v. M.E.I.*, (May 18, 1994) Imm-7425-93 (F.C.)

20. *Franz v. M.E.I.* (1994), 80 F.T.R. 79 (F.C.)

21. *César v. M.E.I.*, A-72-93, October 8, 1993 (F.C.)

22. *Ferreya c. M.E.I.* (1993), 56 F.T.R. 270

23. *Quintero c. M.C.I.*, IMM-3334-94, February 7, 1995, (F.C.)

24. *Quito c. M.E.I.* (1990), 32 F.T.R. 222

25. *Owusu v. M.C.I.* 2003 FCT 94

26. *Owusu v. M.C.I.*, A-114-03, January 26, 2004 (FCA)

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FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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