Federal Court  Cour fédérale

Date: 20100721

Docket: IMM-2917-09

Citation: 2010 FC 773

Toronto, Ontario, July 21, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

NESLYN CORVETTE DURRANT
MONTSICA ZEAVECIA DURRANT
MOSRAN MOZARRO DURRANT

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants' application for permanent residence from within Canada on humanitarian and compassionate grounds was based upon a number of factors, including their establishment and family ties in Canada and the best interests of a child affected by the application. There was also a significant risk aspect to the application relating to ongoing threats faced by the family from a violent criminal about to be released from prison in St. Vincent.

[2] The H&C application was assessed by the same Officer who decided the family's application for a Pre-removal Risk Assessment. That decision was also negative, with the PRRA Officer finding that adequate state protection was available to the family in St. Vincent.

[3] While not consenting to the granting of the application for judicial review, counsel for the respondent concedes that in assessing the risk component of the family's H&C application, the Officer committed the same error as was identified by the Federal Court of Appeal in its recent decision in *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2010 FCA 177. That is, insofar as the risk component of the application was concerned, "the Officer's analysis is really nothing more than a risk assessment which stops short at the availability of state protection …": *Hinzman* at para. 27.

[4] No consideration was given by the Officer to "public policy considerations and humanitarian grounds" as they related to the question of risk: *Hinzman* at para. 26. This is an error. The question on an H&C application is not whether adequate state protection is available to the applicants in their country of origin, but rather whether, having regard to all of the applicants' individual personal circumstances, they would face unusual, undeserved or disproportionate hardship if returned home.

[5] Consequently, the application for judicial review is allowed. No question arises for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a different Officer for re-determination in accordance with these reasons; and

2. No serious question of general importance is certified.

"Anne Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2917-09
STYLE OF CAUSE:	NESLYN CORVETTE DURRANT, MONTSICA ZEAVECIA DURRANT, MOSRAN MOZARRO DURRANT v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	July 21, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	Mactavish J.
DATED:	July 21, 2010

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