Federal Court  Cour fédérale

Date: 20110420

Docket: IMM-4454-10

Citation: 2011 FC 479

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, April 20, 2011

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

JOSEPH VIL
MARIE JOSELENE SIDEL
ANCHELEAU VIL
TAMARA VIL

Applicants

and

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

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision by a PRRA officer dated June 17, 2010, rejecting the applicants' application for permanent residence from within

Canada based on humanitarian and compassionate considerations under subsection 25(1) of the IRPA. That decision is the subject of this judicial review.

[2] The applicants, Joseph Vil (the principal applicant) and his spouse, are citizens of Haiti. They have lived in Canada since November 12, 2006, with three of their children. Two of their children, who are also applicants in this case, have American citizenship, and the third one has Canadian citizenship. They also have four other children who stayed in Haiti and the applicant supports them from Canada.

[3] Did the officer err by rejecting the applicants' application for permanent residence based on humanitarian and compassionate considerations?

[4] The applicable standard of review for the review of the content of a decision rendered by an officer in the context of an application for permanent residence based on humanitarian and compassionate consideration is reasonableness (*Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817 at paragraph 62 (*Baker*); *Nsongi v. Canada (Minister of Citizenship and Immigration*), 2010 FC 1291 at paragraph 8; *De Leiva v. Canada (Minister of Citizenship and Immigration*), 2010 FC 717 at paragraph 13; *Garcia v. Canada (Minister of Citizenship and Immigration*), 2010 FC 677 at paragraph 7.

[5] The applicants contend that the officer did not consider the children's best interests. Given the current situation in Haiti, the finding that the children will find parental guidance there that is adequate for their development is unreasonable. The officer also disregarded the best interests of the

child with Canadian citizenship and did not properly assess the degree or history of the applicants' establishment in Canada.

[6] However, the respondent argues that the applicants had not discharged their burden of demonstrating that they would face unusual, undeserved and disproportionate hardship if they were to return to Haiti. The officer assessed the children's best interests in light of the limited evidence submitted by the applicants. I am of this opinion.

[7] In accordance with subsection 25(1) of the IRPA, the Minister has the discretionary authority to allow a foreign national in Canada to file an application for permanent residence without having to leave the country or to exempt them from any applicable criteria or obligations pursuant to the IRPA if justified by humanitarian and compassionate considerations.

[8] The case law establishes that it is up to the persons who wish to benefit from this exemption to demonstrate that they would suffer from unusual, undeserved and disproportionate hardship if they were to leave Canada (*Raji v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 653 at paragraph 7; *Gallardo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 554 at paragraph 12).

[9] Given the evidence submitted by the applicant, the officer must assess all of the relevant factors to determine whether humanitarian and compassionate considerations justify granting the application. It is not up to the Court to determine the weight that must be attached to the evidence and it can intervene only if it would have assessed the relevant factors differently (*Baker*, above, at

paragraphs 54-56, 68, 73-75; *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paragraphs 34 to 38; *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at paragraph 11; *Mpula v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 456 at paragraph 26).

[10] The children's best interests is one of the factors to consider. The officer must be "alert, alive and sensitive" (*Baker*, above, paragraph 75). Nevertheless, the presence of children does not constitute in itself a sufficient reason to grant an application based on humanitarian and compassionate considerations.

[11] In the case at bar, the principal applicant submitted very brief submissions in support of the application based on humanitarian and compassionate considerations and his spouse merely indicated that hers were consistent with his. To the question [TRANSLATION] "Explain the humanitarian and compassionate reasons that prevent you from leaving Canada", the principal applicant stated the following:

> [TRANSLATION]
>
> Several reasons would justify facilitating my admission to Canada and that of my dependent family. First, these reasons pertain to the situation of insecurity that is rampant in Haiti, and second to the fact that my children born in the USA never knew this country, where they risk being an easy target for criminals of all kinds. Third, since coming to Canada, we have demonstrated a serious willingness to integrate ourselves through various activities (volunteering, working, religious meetings).

[12] It appears from the decision that the officer assessed all of the reasons raised by the applicants, but that she found that they did not justify exempting them from presenting their application for permanent residence from abroad.

[13] Regarding the establishment of the applicants, she noted that they have held sporadic jobs since their arrival in Canada and that they have also benefited from employment insurance. She also noted that the applicants could continue their volunteering and religious activities in Haiti. She nevertheless found that, even though their history was by and large positive, this establishment could not in itself justify the exemption requested.

[14] With respect to the children concerned, she assessed their best interests in light of the evidence submitted by the applicants. She considered the fact that the applicant's children who are in Haiti receive his support. She also noted that even though their schools are closed, this situation is temporary. For the children in Canada, she determined that, despite the current hardships in the country, it was not unreasonable to think that they could also benefit from an education and learn French there.

[15] She also found that, because their well-being and stability stem from the family unit, it was not unreasonable to think that the children in Canada would follow their parents and could continue to benefit from parental support. Finally, she determined that the applicant had not provided probative evidence in support of his allegation that some of his children would be a target for criminals if they were to return to the country. She also noted that, according to the evidence provided, none of his children who live in Haiti have suffered from such a situation.

[16] Therefore, the officer did not merely list the contributing factors but analyzed the interests of the children and demonstrated that she understood each participant's point of view under all of the particular circumstances of the case here. The officer was therefore alert, alive and sensitive to the best interests of those children living in Canada and those still living in Haiti.

[17] Regarding the fear of removal, she noted that the panel of the Refugee Protection Division of the Immigration and Refugee Board had found that the applicants were not refugees within the meaning of the Geneva Convention. She also noted blatant contradictions in several documents provided by the applicants in support of their allegations of fear and therefore decided to attach little evidentiary weight to them. She found that these fears did not amount to unusual or undeserved hardship justifying the exemption sought.

[18] She also considered the current humanitarian disaster in Haiti as a result of the January 12, 2010, earthquake, but noted that removals to this country are currently on hold. The applicants can therefore benefit from protection in Canada for the moment and they will not have to return to the country as long as this situation prevails.

[19] Therefore, the officer assessed all of the relevant factors in light of the evidence submitted by the applicants. It was their responsibility to demonstrate that they would suffer from unusual, undeserved and disproportionate hardship if they were to return to Haiti, which they did not do. I recognize that the Court could have attached more weight to certain factors and that it may have come to a different conclusion, but this is not its role. The officer's decision falls within a range of

possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[20] Consequently, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	JOSEPH VIL ET AL. v. MCI AND MPSEP
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