Federal Court Cour fédérale

Date: 20120606

Docket: IMM-7228-11

Citation: 2012 FC 696

Ottawa, Ontario, June 6, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

BERZUNZA LOPEZ, RICARDO
RAMIREZ RODAS, RAQUEL OLIVIA
BERZUNZA RAMIREZ, LUIS IGNACIO
BERZUNZA RAMIREZ, GABRIEL
BERZUNZA RAMIREZ, ALEXIA

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a refusal by an Immigration Officer (the Officer), dated September 7, 2011, to grant an exemption for permanent residence on humanitarian and compassionate (H&C) grounds under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Having considered the Applicant's submissions, I am not prepared to grant the application and quash the Officer's decision.

I. Background

[3] Ricardo Berzunza Lopez and his common-law spouse Raquel Olivia Ramirez Rodas along with their three children, Alexia Berzunza Ramirez, Gabriel Berzunza Ramirez and Luis Ignacio Berzunza Ramirez (collectively the Applicants) came to Canada from Mexico in 2007. The Principal Applicant had previously entered the country as a visitor in 1999 but was removed for overstaying in 2003.

[4] The Applicants' claim for refugee protection was denied by the Immigration and Refugee Board. This Court also dismissed their application for leave to judicial review that decision on December 29, 2010.

[5] Subsequent applications for a Pre-Removal Risk Assessment (PRRA) and consideration on H&C grounds were also denied. On November 7, 2011, however, a stay of removal was granted to the Applicants under IMM-7227-11 (by Justice Douglas Campbell), but for the purposes of pursuing this application for judicial review of the Officer's H&C determination.

II. Decision Under Review

[6] The Officer found that the Applicants had not provided evidence to support the conclusion that a return to Mexico would amount to an unusual and undeserved or disproportionate hardship.

[7] The risks identified were based on the same assertions made by the Applicants in their refugee claims, namely that they were in danger of being targeted by a violent man. Documents submitted related to conditions faced by the general population and there was no objective evidence "to support that their profile in Mexico is similar to those persons who would suffer hardship upon returning to Mexico."

[8] Considering the best interests of the children and the difficulties associated with them leaving Canada, the Officer noted that there was no evidence they would be unable to continue their education and extra-curricular activities in Mexico or that their eldest son would not receive medical treatment for his Attention-Deficit/Hyperactivity Disorder (ADHD) in Mexico.

[9] As for the Applicant's establishment in Canada, the Officer considered factors such as the presence of close family members, letters from friends and co-workers, employment, and letters from organizations where they had volunteered in the past. The Officer stated:

> The applicants have found employment in Canada. While commendable, I find that this function in and of itself does not support that the applicants have integrated into Canadian society to such an extent that their departure from Canada would cause an unusual and undeserved or disproportionate hardship or that the resulting hardship was not anticipated by the Act.
>
> […]

> They have also submitted letters from the organizations for which they have done volunteer work. As indicated above they have also submitted numerous letters of support from co-workers, friends, and relatives. These letters all state that the applicants are a welcome addition to the Canadian community and that they wish and hope that the family is allowed to remain in Canada and not forced to return to Mexico.
>
> The question in this assessment is not whether the applicants would make a welcome addition to Canadian society but whether their removal to Mexico would amount to an unusual and undeserved or disproportionate hardship. The evidence before me does not indicate that severing the applicants' relationships that they have established in Canada would constitute an unusual and undeserved or disproportionate hardship.

[10] Finally, the Officer noted that the documentation did not support the Applicants having difficulty readjusting to Mexican society as "[t]hey have been independent and self-sufficient in the past and they are familiar with the Mexican culture such that their reintegration in Mexico would be minimal."

III. Issues

[11] The Applicants raise the following issues:

(a) Did the Officer err in assessing the Applicants' establishment in Canada?

(b) Did the Officer provide boilerplate reasons for refusing the application?

IV. Standard of Review

[12] Discretionary determinations on H&C grounds are to be reviewed based on the standard of reasonableness taking into consideration justification, transparency and intelligibility as well as whether the decision falls within the range of acceptable outcomes (*Zambrano v Canada (Minister of Citizenship and Immigration)*, 2008 FC 481, [2008] FCJ no 601 at para 31; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[13] By contrast, matters of procedural fairness demand the correctness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43).

V. Analysis

A. *Did the Officer Err in Assessing the Applicants' Establishment in Canada?*

[14] The Applicants assert that the Officer failed to properly analyze the evidence of their establishment in this country. They claim the Officer was dismissive of the particular circumstances; including their good civil record, the Principal Applicant's employment and efforts to establish a business, the bond with family members in Canada and letters in support of the family's integration into Canadian society. When these factors are given due consideration, the Applicants insist that they have demonstrated an unusual level of establishment (see *Raudales v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 385, [2003] FCJ no 532; *Laban v Canada (Minister of Citizenship and Immigration)*, 2008 FC 661, [2008] FCJ no 819). The Officer

simply set too high a standard (see *Kim v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1461, [2004] FCJ no 1768 at para 28).

[15] I cannot agree with the Applicants' position. *Raudales* and *Laban*, above, are readily distinguishable on their facts. In this instance, all of the particular circumstances referenced by the Applicants were addressed in a relatively detailed manner in the course of the Officer's establishment analysis. The Officer's decision regarding establishment more closely resembles that recently upheld by Justice Richard Mosley in *Ramaischrand v Canada (Minister of Citizenship and Immigration)*, 2011 FC 441, [2011] FCJ no 551 at para 10 for clearly examining the applicant's personal circumstances.

[16] For example, the Officer considered the evidence of the Principal Applicant's employment and business activities but found that "this function in and of itself does not support that the applicants have integrated into Canadian society to such an extent that their departure from Canada would cause an unusual and undeserved or disproportionate hardship." The Officer specifically acknowledged the letter from the Principal Applicant's employer substantiating that "he is a valued employee and extremely important part of the company" but nonetheless concluded that it did not suggest that the "company will be unable to operate or suffer financially should the applicants return to Mexico." This is not the only conclusion that could be reached, but it is one within the range of possible outcomes.

[17] Similarly, referring to the letters from co-workers, friends and relatives, the Officer noted that "this assessment is not whether the applicants would make a welcome addition to Canadian

society but whether their removal to Mexico would amount to an unusual and undeserved or disproportionate hardship."

[18] While the Applicants would have preferred these circumstances be given greater weight, it does not follow that the Officer, having specifically addressed the evidence as presented, adopted an unreasonable approach. In *Mirza v Canada (Minister of Citizenship and Immigration)*, 2011 FC 50, [2011] FCJ no 259 at para 18, Justice Michel Shore stressed that "[a]s long as the immigration officer considers the relevant, appropriate factors from a H&C perspective, the Court cannot interfere with the weight the immigration officer gives to the different factors, even if it would have weighed the factors differently."

[19] The threshold is understandably high in the context of an H&C assessment. The Officer appropriately focused attention on the degree of hardship that would be caused by the Applicants being returned to Mexico and whether that would amount to what would be considered unusual and undeserved or disproportionate.

[20] For a finding in the Applicants' favour there would have to be "something other than that which is inherent in being asked to leave after one has been in place for a period of time" and the "fact that one would be leaving behind friends, perhaps family, employment or a residence would not necessarily be enough to justify the exercise of discretion" (*Irimie v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 1906, 10 Imm LR (3d) 1206 at para 12).

[21] In addition, I note that the Applicants' submissions focus exclusively on the Officer's establishment analysis when this is just one of the many factors to be weighed in the context of an H&C determination (see for example *Irmie*, above at para 20).

B. *Did the Officer Provide Boilerplate Reasons for Refusing the Application?*

[22] I also decline to accept the Applicants' claims that the Officer merely provided boilerplate reasons for the refusal and therefore ignored the particular circumstances of their case. The similar passages identified in another H&C determination relate to broader legal principles and reasoning. I must agree with the Respondent that it is clear from the entirety of this decision that the Officer turned his attention to the Applicants' evidence before him, considered relevant factors and reached reasonable conclusions.

VI. Conclusion

[23] In accordance with these reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Monika Choudhury	FOR THE APPLICANTS
Catherine Vasilaros	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Monika Choudhury Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General Canada	FOR THE RESPONDENT