

Federal Court



Cour fédérale

Date: 20130326

Docket: IMM-1308-12

Citation: 2013 FC 303

Ottawa, Ontario, March 26, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**MUHAMMAD IBRAHIM JAMIL,
NASIMA JAMIL, AMNA JAMIL,
ARQUM KHAN, FILZA JAMIL**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Jamil family, originally from Pakistan, has lived in Canada since 2003. Their refugee claim and their pre-removal risk assessment were both unsuccessful. They then applied for humanitarian and compassionate relief (H&C) and that application was also turned down by an

immigration officer.

[2] In this application for judicial review, the applicants argue that the officer's H&C decision was unreasonable, primarily because the officer failed to adequately analyze the best interests of their son, Arqum Khan, who was 18 years old at the time of the officer's decision. Arqum experiences Pervasive Developmental Disorder and Mild Intellectual Disability.

[3] The officer accepted the medical evidence that Arqum required special attention and schooling. However, the officer concluded that the applicants had not shown that the treatment Arqum required would be unavailable in Pakistan or that they could not afford it. The officer found that the family would not experience unusual, undeserved or disproportionate hardship if they returned to Pakistan.

[4] The sole issue is whether the officer's analysis of Arqum's best interests was unreasonable. In my view, the officer's analysis was unreasonable because it overlooked important evidence relating to Arqum's circumstances.

II. Was the officer's decision unreasonable?

[5] In their H&C application, the applicants pointed out that Arqum has little ability in the Urdu-Punjabi language, and has difficulty adjusting to changes in his routines. In fact, the family supplied a detailed psycho-educational assessment of Arqum's circumstances, which disclosed the following:

- Arqum's cognitive memory and visual-motor abilities are in the extremely low range, well below average;
- He has problems with memory and in processing information;
- He has difficulty forming and maintaining social connections;
- He has trouble adapting to changes in his routines, and taking care of himself; and
- He experiences symptoms of anxiety.

[6] In my view, given that the officer made no mention of this evidence, the officer's decision was unreasonable. The officer had a duty at least to consider this evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, at para 15), especially in respect of a child with special needs (*Kimotho v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1004, at para 2).

III. Conclusion and Disposition

[7] The officer overlooked important evidence relating to the best interests of Arqum Khan and, in doing so, rendered an unreasonable decision on the applicants' H&C. Therefore, I must allow this application for judicial review and order another officer to reconsider the family's application.

Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1308-12

STYLE OF CAUSE: MUHAMMAD IBRAHIM JAMIL, ET AL
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 22, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 26, 2013

APPEARANCES:

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