

Federal Court



Cour fédérale

Date: 20170727

Docket: IMM-3331-16

Citation: 2017 FC 733

St. John's, Newfoundland and Labrador, July 27, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**MIHAI-EMIL NICULESCU
IULIANA NICULESCU
MARIA TEODORA NICULESCU**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Mihai-Emil Niculescu (the “Principal Applicant”), Ms. Iuliana Niculescu (the “Female Applicant”) and Ms. Maria Teodora Niculescu (the “Minor Applicant” and collectively “the Applicants”) seek judicial review of the decision of an Officer (the “Officer”), denying their application for permanent residence in Canada on humanitarian and compassionate (“H&C”) grounds.

[2] The Applicants are citizens of Romania. They based their H&C application upon establishment in Canada and the best interests of the child.

[3] In denying the application, the Officer considered the evidence about police protection in Romania. The Officer found that although that evidence was mixed, there was insufficient evidence to show that police protection would not be available to the Applicants.

[4] The Officer also considered the best interests of the child of the Principal Applicant and determined that while the Minor Applicant had some degree of establishment in Canada, there was insufficient evidence that denial of the application would cause such negative impact that the exceptional relief of the H&C process was warranted.

[5] The Applicants now argue that the Officer made a finding about police protection that is unsupported by the evidence. They also submit that the Officer failed to properly consider and analyze the best interests of the child.

[6] An H&C decision is subject to review on the standard of reasonableness; see the decision in *Kanthasamy v. Canada (Citizenship and Immigration)*, [2015] 3 S.C.R. 909 (S.C.C.) at paragraph 44. According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 (S.C.C.) at paragraph 47, the standard of reasonableness requires that the decision be justifiable, intelligible and transparent, and falls within a range of acceptable outcomes.

[7] In my opinion, the dispositive issue in this application is the manner in which the Officer dealt with the evidence of police protection.

[8] The Officer observed that while there was evidence about police responsiveness to the crime of extortion, there was also evidence about corruption in the police forces.

[9] I am not satisfied that the Officer reasonably considered the acknowledged competing evidence about police protection. Evidence that the police respond to certain types of criminal activity does not, *per se*, resolve the acknowledged existence of corruption in the police forces. That is a more serious problem and requires more analysis by the Officer.

[10] In the result, the decision does not meet the required standard of review. It is not necessary for me to address the arguments about the best interests of the child.

[11] The application for judicial review will be allowed and the matter is remitted to a different Officer for re-determination. There is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the judicial review is allowed and the matter is remitted to a different Officer for re-determination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3331-16

STYLE OF CAUSE: MIHAI-EMIL NICULESCU ET AL v. MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 26, 2017

JUDGMENT AND REASONS: HENEGHAN J.

DATED: JULY 27, 2017

APPEARANCES:

Jennifer Luu FOR THE APPLICANTS

Stephen Jarvis FOR THE RESPONDENT

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