Federal Court  Cour fédérale

Date: 20180314

Docket: IMM-4331-16

Citation: 2018 FC 296

Ottawa, Ontario, March 14, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

TINGFENG YANG (AKA JIN QUAN YANG),
MIN YAN CAO (AKA XINTONG CAO),
SIMMON YANG (AKA JUN JIAN YANG)

Applicants

And

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Tingfeng Yang, his wife and his eldest son, seek judicial review of the decision of Senior Immigration Officer M. Campbell [the Officer], refusing their application for permanent residence on humanitarian and compassionate grounds [H&C Application].

[2] The Applicants argue that the Officer inappropriately used a test that was too narrow - undue or disproportionate hardship – and, unreasonably used the Applicants' establishment against them. In addition the Applicants allege that the Officer improperly assessed their risk in Guyana, and unreasonably assessed the best interests of the children [BIOC].

[3] The Applicants ask that the Officer's decision be set aside and the matter remitted to another officer for redetermination.

[4] For the reasons that follow, the application is dismissed.

II. **Background facts**

[5] The Applicants are nationals of China and Guyana. Mr. Yang (the father) and his son arrived in Canada on November 11, 2011, on visitor visas in their Guyanese passports. They then made a fraudulent refugee claim on November 30, 2011, using falsified documents under a false name to claim they were nationals of China only, subject to persecution in China on the basis of participating in a Christian house church. Ms. Cao (Mr. Yang's wife) arrived separately in Canada on February 15, 2012, and made a separate fraudulent refugee claim on the basis of Falun Gong practice.

[6] After the Minister of Citizenship and Immigration intervened in the refugee hearing, using biometric information to prove the real identities of the Applicants, Ms. Cao abandoned her refugee claim on February 20, 2014, while Mr. Yang changed his Personal Information Form to put forward a new basis of persecution, based on criminal activities against Chinese nationals

in Guyana. Meanwhile on July 12, 2012, Mr. Yang and Ms. Cao's younger son was born in Canada. He is a Canadian citizen.

[7] On March 26, 2015, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejected the Applicants' refugee claim on the basis of a lack of credibility, and communicated this determination the following day. The RPD found there was no credible basis for the claim. The Applicants did not seek leave to judicially review that decision.

[8] On October 1, 2015, the Applicants submitted the H&C Application which is under review. In the submissions made by their immigration consultant [Consultant], the Applicants noted that they had feared for their safety since a March 2010 incident where their restaurant was robbed and they were assaulted (an incident that also formed the basis of their revised refugee claim).

[9] The submissions put forward four reasons why H&C relief is warranted: (1) the time the family spent in Canada; (2) the children's ties with Canada; (3) undue hardship involving the BIOC and, (4) fear of return to Guyana. The submissions noted that the Applicants had started a laundry/dry-cleaning business in Canada and made many friends in Canada. Mr. Yang had volunteered in the community for over six months.

[10] The submissions also argued that removal would create undue hardship for the parents and their minor children. It was said that the children had spent four years being raised in Canada, and lacked the resilience to adapt to life in Guyana or China. The return of the children

to Guyana would be so traumatic that the BIOC could only be served by the family remaining in Canada.

[11] The submissions further argued that there was unusual criminality against ethnic Chinese in Guyana and the Guyanese state was unable to protect them. In support, the Applicants adduced three news articles about crime against ethnic Chinese people in Guyana. As a result it was submitted that the Applicants would likely face discrimination and ethnic violence if returned to Guyana.

III. **The decision under review**

[12] The Officer noted the topics in the Applicants' submissions, and specifically noted that while the Applicants alleged they would face hardship if returned to Guyana, they made no similar allegation about a return to China to which the RPD had found they could return.

[13] The Officer reviewed the findings of the RPD about credibility and whether the Applicants could return to China. Regarding the articles about violence, the Officer agreed that violence has occurred in Guyana to people of Chinese descent, but found the articles did not support the proposition that there is discrimination against those of Chinese ethnicity in Guyana or that the Applicants would personally face hardship. The Officer found the Applicants did not rebut the finding of the RPD that these sorts of criminal attacks could take place in any country.

[14] With respect to the Applicants returning to China, the Officer found that there was no evidence provided of hardship in China and the Applicants had not rebutted the RPD's finding that they hold status in China that would allow them to return there.

[15] Regarding establishment, the Officer noted a certain level of establishment, but no evidence of such significance that removal would create hardship from loss of that establishment beyond what might normally be expected. The Officer additionally noted that Ms. Cao had been the subject of an immigration warrant since January 2, 2015 for failing to attend a pre-removal interview. As a result, the Officer counted that against her establishment.

[16] The Officer noted that Mr. Yang had not been employed between November 2011 and February 2015. There was no indication of how Mr. Yang supported himself and his family. Ms. Cao had been unemployed since her arrival in Canada. The Officer also noted the existence of a business licence indicating that Mr. Yang had started a business. While there was no indication that the municipal licence had been renewed after February 2016, the Officer gave the business positive weight. The Officer also noted that Mr. Yang had volunteered as an office assistant in 2013.

[17] The Officer found that while there was some level of establishment, the evidence did not indicate a level of integration into Canadian society such that the departure of the Applicants would cause excessive hardship beyond their control and unanticipated by the *Immigration and Refugee Protection Act*, SC 2001, c27 [*IRPA*].

[18] Turning to the BIOC, the Officer noted the submission that the children lacked the resilience to return to China or Guyana. However, according to the submissions, the eldest son lived in China for the first seven years of his life with his grandparents. There was no evidence that he lacked resiliency or was deprived of his basic needs there.

[19] The Officer found that although there was no evidence with respect to the children's schooling it was reasonable to expect that the eldest son was attending school and that the younger child was in daycare. There was no evidence of the older son's schooling or any information from classmates, teachers, or others that would show his best interests would be served by remaining in Canada rather than being removed. There was also no evidence from any professionals indicating that the children's best interests would be compromised if they were to depart Canada.

[20] The Officer concluded that while it is in the best interests of most children to remain with their parents, the younger son would not lose his status as a Canadian citizen, and the ultimate decision of which country he would go to if the parents were removed would be up to the parents. There was no evidence to indicate that the younger son lacked the ability to go to China. While it was likely that better amenities would be available in Canada, there was no indication the children's needs could not be met in Guyana or China. The Officer noted that no government could guarantee the absence of poverty or that criminality would not affect a family and it was in the interest of every child to have the love and support of their parents. The Officer found no evidence had been submitted to show that the children's interests would be compromised in Guyana or China.

[21] The Officer found it a reasonable assumption that the children had been exposed to Chinese and Guyanese languages, customs and culture through their parents and that their young age would reasonably help them adapt to either country.

[22] The Officer noted that the Applicants should have known removal would be a possibility after the refugee claim was rejected; therefore they could not now claim the difficulties in leaving Canada were beyond their control. Given the Applicants' familiarity both with China and Guyana, as well as Mr. Yang's ability to start a business in Canada, the Officer was satisfied that Mr. Yang could obtain employment or start a business in either country and there would be no excessive hardship caused by removal.

[23] Considering a global assessment of factors, the Officer found that based on the evidence as a whole, including the exceptional nature of H&C relief, the Applicants had not demonstrated that it would be unacceptable to deny them H&C relief. Accordingly, the application was refused.

IV. **Issue and Standard of Review**

A. *Issues*

[24] The Applicants identify four issues:

1. Whether the Officer erred in law by relying on a test that was too narrow.
2. Whether the Officer properly considered the Applicants' establishment in Canada.
3. Whether the Officer erred in the assessment of risk by applying the wrong test.
4. Whether the Officer was alert, alive and sensitive to the best interests of the children.

B. *Standard of Review*

[25] The Applicant did not make submissions with respect to the standard of review but did challenge the reasonableness of various findings. The Respondent submits the decision is reviewable on a standard of reasonableness.

[26] The issues which involve the Officer's assessment of the evidence involve either questions of fact or mixed fact and law and are therefore reviewable on the standard of reasonableness. The issue of whether the Officer applied the correct test is a question of law that is reviewable on a standard of correctness: *D'Aguiar-Juman v Canada (Citizenship and Immigration)*, 2016 FC 6 at para 6, 261 ACWS (3d) 970. If the correct test was applied, the outcome from its application is reviewable on a standard of reasonableness given such a determination is one of mixed fact and law.

[27] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*].

[28] If the reasons, when read as a whole, "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

V. **Analysis**

A. *Did the Officer apply a test that was too narrow?*

[29] The Applicants rely on *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 [*Kanthasamy*] and the Inland Processing Guidelines [Guidelines] in submitting that, although the Officer did not say so, the test used was that of undue or disproportionate hardship rather than focussing on the underlying purpose of an H&C application and looking at all the factors set out in the Guidelines cumulatively.

[30] The Applicants point to two examples where they say the Officer made these errors.

[31] One alleged error is that the Officer says that the H&C process is not designed to eliminate hardship but rather to respond to a particular set of circumstances and it is meant to provide a flexible but exceptional mechanism for relief. The Applicants say that language is a paraphrase of the decision in *Irimie v Canada (Minister of Citizenship and Immigration)* (2000), 10 Imm LR (3d) 206, [2000] FCJ No 1906 (QL) (FCTD) [*Irimie*] and, *Irimie* was specifically struck down by *Kanthasamy*.

[32] With respect, *Kanthasamy* did not strike down *Irimie*. To the contrary, the Supreme Court relied on *Irimie* and *Rizvi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 463, [2009] FCJ No 582, to say that being required to leave Canada will inevitably result in some hardship and that this hardship alone is generally not sufficient to warrant relief on humanitarian and compassionate grounds under subsection 25(1): *Kanthasamy* at para 23.

[33] The other paragraph in the Officer's decision upon which the Applicants rely to show that an undue hardship test was used is this one:

> That they chose to remain in Canada in order to have a child, and pursue other immigration channels, they cannot now maintain that the difficulties they may incur in leaving Canada have been beyond their control.

[34] The Applicants submit that the reference to difficulties being beyond the control of the Applicants is only relevant if an undue hardship test is being applied.

[35] I disagree. *Kanthasamy* identifies that the language "beyond the person's control" relates to unusual and undeserved hardship that is "not anticipated or addressed" by the *IRPA*: *Kanthasamy* at para 26. That is the language found in the Guidelines. The Supreme Court not only makes it clear that the Guidelines, although non-binding, are useful to indicate what constitutes a reasonable interpretation of a provision in the *IRPA*, it also identifies that they can be considered by an Officer provided the Officer considers the specific circumstances of the case and does not treat the Guidelines as setting out mandatory requirements: *Kanthasamy* at paras 31-32.

[36] The Applicants have not shown that the Officer failed to consider their specific circumstances or that the Officer considered the Guidelines to be a mandatory requirement that to allow an H&C application there must be "unusual and undeserved or disproportionate hardship". As set out in these reasons, the evidence before the Officer was meagre. Nonetheless, the Officer considered the circumstances that were put forward by the Applicants. Considering the evidence before the Officer and the scant submissions which were made, I am not persuaded

that the Officer either applied the wrong test or applied the correct test too narrowly. The evidence was appropriately considered but it was simply insufficient to support the claim.

B. *Did the Officer err in considering the Applicants' establishment in Canada?*

[37] With respect to establishment, the evidence submitted to the Officer was equally sparse. It consisted of a few documents related to the laundry/dry-cleaning business that Mr. Yang had started with a partner (it appears on these documents the business was started in 2015), a Canada Revenue Agency notice of assessment for 2014 showing personal income of $13,972, a one page document from TD Canada Trust showing that Mr. Yang had a net worth of $5,369.30 and a motor vehicle permit for a 2007 Toyota vehicle. A letter from the Centre for Immigrant and Community Services confirmed that Mr. Yang had volunteered at the Centre from April 2013 to October 2013 as an office assistant working a total of 81.5 hours.

[38] As well as the documents, the Officer received a variety of photographs of Mr. Yang either with his business partner or his family showing him at work and with his family in and around Toronto at various landmarks and events.

[39] The submissions made by the Consultant in support of establishment were that the Applicants had lived in Canada for about four years, have two children, one of whom is Canadian born and "Mr. Yang has shown his effort in supporting his family, while his wife is taking care of their children as a house wife". Reference is then made to the laundry/dry cleaning business and the documents filed to substantiate it and the Applicants' establishment. It was also submitted that "Mr. Yang has made many friends in Canada and has become enthusiastic about

his life in Canada." The submissions continued, stating that the family was "adapting well to life in Canada and appears to have integrated well into a Canadian lifestyle."

[40] In considering those submissions the Officer noted that the Applicants have been in Canada for more than four years and, as would be expected, had acquired a certain level of establishment. While Mr. Yang submitted to the Officer that he had a sister living in Canada, no evidence was tendered to support the extent of their relationship. The Officer noted that the Applicants had shown a measure of establishment in Canada but also accorded negative weight to Ms. Cao's lack of a good civil record in Canada given that she had been the subject of an active warrant for failing to appear for a pre-removal interview.

[41] The Officer expressed concern that from the time of Mr. Yang's arrival in Canada in November 2011 until February 2015 he was not employed but he had not indicated how he financially supported himself and his family during those years. Ms. Cao had not been employed in Canada since her arrival.

[42] Regarding the documentary evidence submitted by the Applicants, the Officer noted that both the business license and insurance policy had expired in February 2016 and no up-to-date documents had been submitted to indicate whether they had been renewed.

[43] The Officer's conclusion with respect to establishment was that the Applicants had achieved a measure of establishment but it did not support that they had integrated into Canadian society to an extent that their departure would cause excessive hardship beyond their control and not anticipated by the *IRPA*.

[44] The Officer's conclusion is reasonable and consistent with the evidence which shows a relatively minor level of integration by the Applicants over the course of four years.

[45] No evidence was presented to the Officer that could support a finding that the departure of the Applicants would create hardship either for the Applicants or for those whom they had come to know in Canada such that they ought to be given the exceptional relief anticipated by subsection 25(1) of the *IRPA*. The consequences to the Applicants of being required to leave Canada to apply for permanent residence from overseas would, from the evidence, appear to be the inevitable hardship arising in such a situation.

[46] Contrary to the submissions of the Applicants the Officer's discussion of the Applicants' adaptability and business experience was made as part of their analysis of hardship of return and discussing how these traits might assist in Guyana or China given there had been no evidence led to show an inability to start a business or obtain employment there. The Officer did not impermissibly discount establishment by stating that reestablishment on return would be facilitated due to the Applicant's characteristics and experiences in Canada. Although the Officer did not find that establishment warranted H&C relief, the Officer reasonably analysed the submissions on this ground and accorded them appropriate weight.

C. *Did the Officer err in the assessment of risk by applying the wrong test?*

[47] At the hearing of this application, counsel for the Applicants stated the assessment of risk by the Officer was the strongest issue in their favour. Although the Applicants use the term risk this Court will call this consideration by the term used by the Officer, which also more accurately describes this consideration, adverse country conditions. It is submitted by the

Applicants that the Officer erroneously relied on the negative credibility findings of the RPD that it used to find there was no credible basis for their claims under section 96 or subsection 97(1) of the *IRPA*. In doing so the Applicants state that the Officer failed to look at whether the underlying facts, as shown by the three internet articles submitted, could support a finding of hardship sufficient to support the H&C Application under subsection 25(1). As subsection 25(1.3) permits such an analysis, the Applicants say the Officer erred by accepting the RPD's findings under section 96 and subsection 97(1) and using it to assess subsection 25(1) hardships due to adverse country conditions without determining whether there were humanitarian and compassionate grounds arising from the same set of facts.

[48] The Applicants also say that the Officer could not import into their H&C consideration the RPD finding that the Applicants could return to China. The Applicants allege that they, other than their Canadian born son, have Guyanese citizenship and as such the alleged adverse country conditions in Guyana were not moot and the Officer ought not to have accepted that they could return to China where they would not face the alleged conditions in Guyana.

[49] To succeed, those submissions require a finding that the conditions that were alleged to have put the Applicants at risk in Guyana were legitimate even though they were the same risks that were considered and rejected by the RPD as not being credible. The Applicants rely upon the three internet articles to make that case.

[50] In reviewing this issue, both counsel focus on the 2nd last paragraph on page 5 of the decision which addresses the internet articles. Each say that the paragraph should be read in different ways. The paragraph in question states:

> The Applicants' remaining submissions include internet articles reporting on crime and violence in Guyana, including against people of Chinese ethnicity. I have read these articles and determine that while they support that people of Chinese descent have been the victims of crime in Guyana, they do not support that there exists discrimination against ethnic Chinese in that country or that the Applicants personally face the hardship cited. These submissions do not rebut the findings of the RPD that "such attacks may happen in any country".

[51] The Applicants suggest the three submitted articles show there is targeting of those who are ethnically Chinese in Guyana and that is what they fear. They believe the Officer did not properly take those country conditions into account. They say that they were not alleging that they will be personally attacked but rather they, as ethnically Chinese, will face discrimination and a risk of being targeted that, while not rising to a level of persecution, creates an adverse country condition that would make it a hardship to return to Guyana. They find support for these concerns with the three articles retrieved from the Internet, two that were published in the Guyana Times on August 8, 2015, and March 24, 2015, and one that was published on iNews Guyana on August 19, 2014. The headlines of the articles are as follows:

> Chinese Restaurant owner chopped to death, wife beaten in home invasion;
>
> Granger scapegoats Chinese, Brazilians;
>
> Attack on Chinese investment is an attack on all Guyanese.

[52] On reading the actual articles, which do in part refer to attacks on people of Chinese ancestry, it is my view that it was reasonable for the Officer to find that these articles do not support the existence in Guyana of discrimination against those of Chinese ethnicity that would amount to adverse country conditions warranting H&C relief.

[53] For example the first article does not insinuate that the Chinese Restaurant owner was targeted or killed due to his Chinese ethnicity. The thrust of the article is actually on increased crime and also mentions a gruesome murder of a 77 year old woman and the shooting of a 23 year old man. A reference in the article to one woman saying "they come and kill Chiney" appears to be a reference to the nickname of the victim as outlined earlier in the article and not a statement that the crime was tied to the victim's ethnicity. In the article there was also no mention that either of the other two recent victims of murder were persons of Chinese ethnicity or that they were killed for anything linked to ethnicity. It appears that crime in general, not ethnicity, was the common denominator.

[54] The second article was a story about certain Guyanese politicians who were campaigning in "Region 11" (those who are not within Guyana). These politicians, in pursuing financial contributions from the Guyanese diaspora in New York and New Jersey and seeking their influence with their relations as to who to vote for in Guyana, alleged "that Brazilians and Chinese investors are pushing Guyanese to the periphery". The story notes that the same politicians had "made other anti-Chinese comments before". The article concludes that while opposition parties have in the past conducted political and media attacks on Chinese nationals who were investing in Guyana, the Government fully supported the contributions of the Chinese nationals and called for "an immediate halt to such unwarranted attacks which run counter to the hospitable characteristic of our nation". I am unable to see how this article, discussing the argument by certain politicians that the Guyanese should fear investment in Guyana by Chinese investors, shows there exists systemic discrimination in Guyana of the kind allegedly feared by the Applicants.

[55] The third article is simply an earlier reiteration of the government position stated in the second article with the addition of more statements about encouraging foreign investments. It clearly shows the government is not in favour of discouraging investment by Chinese and has reiterated its position that no ethnic group should be disparaged and any negative political and media propaganda must stop.

[56] Having reviewed the three internet articles I am unable to find that the Officer made any unreasonable findings or applied a wrong test in concluding that the articles do not show discrimination against those of Chinese ethnicity warranting H&C relief.

[57] Another basis submitted for the Applicants' concerns of adverse country conditions was that they had personally experienced a robbery in Guyana. The RPD had determined that given the numerous negative inferences and credibility findings against the Applicants there was not sufficient credible and trustworthy evidence to find that the Applicants were ever the victims of any robbery in Guyana. If the robbery did not happen then it cannot logically be a basis for the Applicants' adverse country condition concerns.

[58] If I understand the Applicants' submission with respect to the robbery allegation, it is that by acknowledging that the finding of the RPD was that no robbery occurred, the Officer used section 96 or subsection 97(1) factors and applied the standard of whether the Applicants had established a well-founded fear of persecution, risk of torture, risk to life, or risk of cruel and unusual treatment or punishment. As such, they argue that the Officer did not apply the provision of subsection 25(1.3) of the *IRPA* that requires the Officer to "consider elements related to the hardships that affect the foreign national" and therefore the wrong test was applied.

[59] The problem with that argument is two-fold. First, part of the hardship identified by the Applicants due to the country conditions was their past experience of being robbed in Guyana. The Officer therefore appropriately addressed this concern. Second, it is my view that the Officer followed the instruction of the Supreme Court that "s. 25(1.3) does not prevent the admission into evidence of facts adduced in proceedings under ss. 96 and 97 . . . [the Officer] can take the underlying facts into account in determining whether the applicant's circumstances warrant humanitarian and compassionate relief": *Kanthasamy* at para 51.

[60] The RPD made very clear findings that established the underlying facts upon which the Officer reasonably relied. The fact is that the robbery the Applicants still sought to rely upon was found by the RPD in unequivocal language, after first hearing the testimony of Mr. Yang and questioning him not to have occurred. The Applicants cannot change that finding of fact simply by relying on it again in the context of the H&C Application. The Applicants provided the Officer with no basis upon which to even consider re-weighing the evidence before the RPD in order to arrive at a different conclusion about whether the alleged robbery in Guyana took place.

[61] In conclusion, I do not read the Officer's decision as saying that there must be personal risk to the Applicants in order that they may show hardship through adverse country conditions. Rather the Officer recognized that there was insufficient evidence submitted of hardship if the Applicants were returned to Guyana due to the country conditions raised and, no evidence of risk or hardship if they returned to China.

[62] While I note and respect Ms. Lee's advocacy on this issue, in my view, for the reasons just given, the Officer did not apply the wrong test in determining whether H&C relief was

warranted due to the adverse country conditions the Applicants suggest would exist should they return to Guyana. Nor in my view, given the underlying facts and the evidence before the Officer, did the Officer err in the assessment of this determination.

D. *Was the Officer alert, alive and sensitive to the best interests of the children?*

[63] There was almost no evidence before the Officer identifying or supporting the best interests of the two children. The submissions contained largely unsupported bald statements and a reproduction of paragraphs 59 – 67 of *Williams v Canada (Citizenship and Immigration)*, 2012 FC 166, 212 ACWS (3d) 207, set out in full, without comment.

[64] The Officer recognized that they must be alert, alive and sensitive to the interests of the children but also recognized that the Applicants had the burden of proving the basis of their claim and that the fact that the best interests of the children is codified does not mean that it outweighs all other factors. The Officer identified that the children were 12 years and 4 years old and that the 12 year old had lived the first 7 years of his life in China, with his grandparents. After that he lived with his parents in Guyana for a year prior to coming to Canada.

[65] The BIOC submissions made to the Officer were that one child was born in Canada and it was “inevitable” that the children on departure from Canada would not be resilient enough to adapt to life in Guyana or China. It was also submitted that there was evidence of a close and loving relationship between the parents and children. That was followed by the statement that “returning to Guyana [would be] so traumatic that the best interest of children [*sic*] would only be satisfied if the whole family remained in Canada”. No other submissions were made to the Officer about the BIOC. No evidence was referred to in support of the submissions.

[66] In terms of the resiliency of the children, the Officer found that the eldest son had lived with his grandparents in China for seven years and then with his parents in Guyana for one year prior to coming to Canada. The Officer then noted that the evidence did not support a lack of resiliency. That is a reasonable conclusion as there was no evidence to the contrary.

[67] With respect to the close and loving relationship with the parents, no evidence was identified to the Officer. Having reviewed the record it appears that the only such evidence would be the family photos, which the Officer reviewed and commented upon. In my view the photos show a family enjoying various outings in Toronto but provide little detail about their overall relationship. Accepting at face value that there is such a close and loving relationship, that fact alone does not support the ensuing submission made by the Consultant that returning to Guyana would be so traumatic that the whole family must remain in Canada.

[68] The Officer considered there was no evidence provided that the youngest son could not enter either Guyana or China and as such the Officer stated it was reasonable to assume he would be able to accompany his parents on removal. As he is a Canadian citizen the Officer also recognized that the youngest son was entitled to remain in Canada which is a decision that would be up to his parents. The Officer also considered that there was no evidence that the children would not be provided education, health or medical care in Guyana or China. Specifically looking at education the Officer acknowledged that "[i]t is in the best interest of every child to gain an education and to have their parents' constant love and support". There was no evidence before the Officer that this would not occur in Guyana or China.

[69] The onus of establishing that an H&C exemption is warranted falls upon the Applicants and an applicant that has not adduced relevant information in support of their application does so at their own peril: *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 8, [2004] 2 FCR 635. That the Officer had very little information with which to make a more detailed BIOC can be laid entirely at the feet of the Applicants and their Consultant. The Officer considered as much as could be gleaned from the family history in the RPD decision and the background facts provided in the submissions. It clearly was not sufficient to show that the extraordinary relief provided for under subsection 25(1) ought to be granted.

[70] Counsel for the Applicants next challenged what she says are three unreasonable findings in the Officer's assessment of the BIOC: (1) speculation that the children were exposed to Chinese and Guyanese language on a daily basis; (2) a finding that the Applicants had not shown that they could not provide basic amenities such as education, health or medicine in either China or Guyana which they say evidences the Officer use of a basic needs test; and, (3) the failure of the Officer to consider the circumstances of the children with the Officer instead listing what was not provided as evidence.

[71] With respect to the Chinese/Guyanese language statement by the Officer, counsel says that not only was it speculative but the fact that there is no Guyanese language shows that the Officer was not sufficiently attentive to the BIOC.

[72] The entire statement made by the Officer was not restricted to language. The statement was that "[i]t is reasonable that both boys are exposed daily to the Chinese and Guyanese language, customs and culture through the applicants". I do not read that as saying or even

implying that there is a separate Guyanese language. It is an all-encompassing statement referring to the ability of the parents to share with their children information about both China and Guyana given that they lived for extensive periods of time in each country.

[73] With respect to the basic amenities reference, the Officer's reference was that there was no evidence that the children would not be provided the basic amenities of education, health and medical care in Guyana or China. That statement was part of the analysis of the differences between life in Canada and in Guyana or China. It was also a comment on the overall lack of evidence. It certainly was not the entire BIOC analysis. The Officer considered the ages of the children, history of the eldest son in China and Guyana, the benefits of education, the lack of evidence about schooling, the benefit to children of having the love and support of their parents, the presence of immediate family in China, and the ability of the parents to re-establish themselves in China or Guyana including their resourcefulness.

[74] The objection that the Officer did not consider the circumstances of the children but listed what evidence was not present is without merit. The absence of evidence or meaningful submissions to assist the Officer to conduct a BIOC analysis was critical. There was very little for the Officer to consider. I will not fault the Officer for being clear that more evidence – of the sort listed – should have been presented.

VI. **Conclusion**

[75] The Applicants have, in effect, asked that first the Officer and then this Court re-weigh the evidence that was before the RPD and come to a different conclusion. The fact is, the evidence in support of this H&C Application, which I underscore was submitted by a Consultant

and not by Ms. Lee, was at best very weak. The Officer was given very little, if anything, upon which a positive H&C determination could be made. Coupled with that is the unchallenged RPD finding that there was no credible basis to the Applicants' claim.

[76] The Officer was presented with what amounted to bald assertions in the submissions and, a paucity of evidence with respect to the H&C grounds generally and the BIOC specifically. It is my view that there is no doubt the decision is reasonable. The reasons of the Officer clearly explain how and why the decision was reached. That the outcome falls within the range of possible outcomes, defensible on the facts before the Officer and the law, is clear.

[77] In the Officer's view, the evidence presented simply did not warrant the exercise of discretion to provide the exceptional relief sought by the Applicants. That was an entirely reasonable conclusion for the Officer to have drawn.

[78] For these reasons, the application is dismissed. Neither party put forward a question for certification and none exists on these facts.

JUDGMENT IN IMM-4331-16

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	MARCH 14, 2018

APPEARANCES:

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