Federal Court  Cour fédérale

Date: 20180510

Docket: IMM-4350-17

Citation: 2018 FC 499

Ottawa, Ontario, May 10, 2018

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

BRENDAN GANNES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Brendan Gannes, has lived in Canada for some thirty years, having arrived here from Trinidad and Tobago with his family around the age of three. He became a permanent resident in 1992 but never obtained Canadian citizenship. After being convicted and sentenced for possession of cocaine and marijuana for the purpose of trafficking as well as possession of a loaded prohibited firearm, the Applicant lost his permanent resident status and

was ordered deported. The deportation order has not been executed because the Applicant is still serving his sentence.

[2] The Applicant sought the restoration of his permanent resident status by application made within Canada on humanitarian and compassionate [H&C] grounds under s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant also applied for a Temporary Resident Permit [TRP] under s. 24(1) of the IRPA. A Senior Immigration Officer denied the applications on September 21, 2017.

[3] In this application for judicial review, the Applicant contends that the Officer's decision is unreasonable because she failed to conduct a meaningful analysis of all the relevant evidence and factors commensurate with *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. He seeks to have the decision set aside and the matter remitted for reconsideration by another immigration officer.

[4] In my view, the Officer's reasons are transparent, intelligible and justify the result she reached. I am satisfied that the Officer considered all the relevant circumstances supported by the evidence before her, reasonably weighed those circumstances, and reached a decision that "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 at para 47). While the Officer's decision to deny the application for permanent residence must be very disappointing for the Applicant and many others, there is no basis to set it aside.

[5] With regard to the request for a TRP, the Officer denied it simply "[f]or the reasons noted above" on the permanent residence application. The Respondent has indicated that, due to a June 2017 change in the regulatory instrument used by Immigration Refugees and Citizenship Canada to delegate ministerial responsibility, the Officer did not in fact have the delegated authority to decide requests for TRPs pursuant to s. 24(1) of the IRPA. In light of this, it is agreed that the Applicant's request for a TRP will be determined anew by another officer. As a result, in my view the challenge to the September 21, 2017 refusal of a TRP is now moot.

[6] Accordingly, and for the following reasons, the application for judicial review is dismissed.

II. BACKGROUND

[7] The Applicant is a 32 year-old citizen of Trinidad and Tobago. Together with his parents and two siblings, he entered Canada in 1987 or 1988 (there are conflicting dates of arrival in the record but nothing turns on this). The Applicant's parents separated shortly after the family arrived in Canada and eventually divorced. Growing up, the Applicant lived with his father and his father's new family for several years. Later, he lived with an aunt who became his closest parental figure (and who, sadly, suffered a fatal heart attack in 2006) and with his mother again.

[8] The Applicant completed high school in Scarborough. He studied mechanical engineering at Humber College and later on Business Administration at Durham College. Although he did not complete either program, he was gainfully employed in a variety of occupations throughout his adult life until he was incarcerated.

[9] In 2009 the Applicant was involved in a motor vehicle accident and suffered serious injuries to his back and neck. He had to take a medical leave from his job as an order picker and forklift operator. He began using marijuana more regularly to manage his pain and became dependent on it to function.

[10] In 2012 the Applicant was charged with possession of 10 grams of marijuana. There is no indication in the record as to how this charge was disposed of. The Applicant acknowledged in his application for an exemption that around this time he was not just using marijuana, he was also trafficking it. He had begun selling marijuana to cover the cost of what he was consuming. He stated: “As time went on and I began using it more frequently the amount I would have to sell in order to support my habit also increased.” The Applicant also acknowledged trafficking in harder drugs at this time since “the sale of other harder drugs which were more profitable also became more lucrative.” While not charged with trafficking cocaine in 2012, the Applicant has admitted that he was doing so in ever-larger amounts around that time.

[11] In July 2013, the Applicant was arrested and charged with possession of cocaine and marijuana for the purpose of trafficking. The Applicant was alleged to have been in possession of two kilograms of cocaine for the purpose of trafficking. The quantity of marijuana involved is not indicated in the record. The Applicant was also charged with possession of a loaded prohibited firearm. Apart from the fact that it was prohibited, the nature of the firearm is not indicated in the record.

[12] After being held in custody for one week, the Applicant was released on bail with his father and his uncle as sureties. The bail included a term of house arrest.

[13] In March 2014, while he was on bail, the Applicant married a woman he had known since high school and with whom he had recently become romantically involved. His partner became pregnant and the Applicant resolved to "do the honourable thing and try starting a family." The relationship was short-lived. The two separated in July 2014. Their daughter (who I will refer to as A. in these reasons) was born on November 7, 2014. The Applicant's wife initiated divorce proceedings sometime shortly after the Applicant was sentenced. The Applicant has had no contact with his daughter since his incarceration. I will return to the Applicant's relationship with his daughter below.

[14] Around the time he and his wife separated, the Applicant became involved romantically with a woman who I will refer to as R.T. in these reasons. The Applicant and R.T. had known each other for some 15 years, but it was only around the summer of 2014 that their relationship became a romantic one. The Applicant was still on bail at the time. R.T. has two children from a previous relationship. I will also discuss the Applicant's relationship with R.T. and her children in more detail below.

[15] On October 23, 2014, the Applicant was convicted of the three charges he was facing. He remained on bail without incident until he was sentenced on January 14, 2015 – that is, for a total of approximately 18 months from the date of his original release. He received a sentence of five years' imprisonment on each count, to be served concurrently.

[16] As a result of the criminal offences he committed, in September 2015 the Applicant was found to be inadmissible under s. 36(1)(a) of the IRPA and a deportation order was issued. The Applicant then sought the restoration of his permanent resident status through an exemption on H&C grounds under s. 25(1) of the IRPA.

III. Legal Framework

[17] As has been noted many times, s. 36(1) of the IRPA reflects a form of social contract. In exchange for the opportunity to reside in Canada, permanent residents (and foreign nationals) are expected not to commit serious criminal offences. The IRPA recognizes that immigration brings many benefits to Canada and that the "successful integration of permanent residents involves mutual obligations for those new immigrants and for Canadian society," including the obligation of the former to avoid serious criminality (*Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at paras 1-2 [*Tran*]; see also s. 3(1) of the IRPA). The IRPA "aims to permit Canada to obtain the benefits of immigration, while recognizing the need for security and outlining the obligations of permanent residents" (*Tran* at para 40). When a permanent resident commits a serious criminal offence (as defined), this breach of the social contract can lead not only to the consequences imposed by the criminal courts but also to the loss of his or her immigration status and removal from Canada.

[18] The obligation to avoid serious criminality lest adverse immigration consequences follow applies equally to all permanent residents (and foreign nationals). That being said, the uniform application of this principle to all cases can lead to injustice or unfairness in some. Section 25(1) of the IRPA exists to protect against this result.

[19] This provision authorizes the Minister to grant relief to a foreign national seeking permanent resident status who is inadmissible or otherwise does not meet the requirements of the Act. The Minister may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations under the Act. Relief of this nature will only be granted if the Minister "is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national." These considerations include matters such as children's rights, needs and best interests; maintaining connections between family members; and averting the hardship a person would suffer on being sent to a place where he or she has no connections (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 41). See Annex I to these reasons for the relevant statutory provisions.

[20] An H&C application is a weighing exercise in which an immigration officer is asked to consider different and sometimes competing factors. When, as in the present case, an H&C exemption from criminal inadmissibility is sought, the immigration officer must weigh the public policy reflected in s. 36(1) of the IRPA against the individual circumstances of the case and determine whether the latter outweigh the former so as to warrant making an exception to the usual rule that serious criminality by a permanent resident leads to loss of status and removal from Canada.

[21] In *Kanthasamy*, the Supreme Court of Canada endorsed an approach to s. 25(1) that is grounded in its equitable underlying purpose. The humanitarian and compassionate discretion enacted in the provision is meant to provide flexibility to mitigate the effects of a rigid application of the law in appropriate cases (*Kanthasamy* at para 19). Ministerial Guidelines for

processing requests for H&C relief had directed immigration officers to consider whether an applicant had demonstrated either "unusual and undeserved" or "disproportionate" hardship. In *Kanthasamy*, the majority held that while these words could be helpful in assessing when relief should be granted in a given case, they were not the only possible formulation of when there were H&C grounds justifying the exercise of discretion. Rather, writing for the majority, Abella J. adopted the following approach (at para 33):

> The words "unusual and undeserved or disproportionate hardship" should therefore be treated as descriptive, not as creating three new thresholds for relief separate and apart from the humanitarian purpose of s. 25(1). As a result, what officers should not do, is look at s. 25(1) through the lens of the three adjectives as discrete and high thresholds, and use the language of "unusual and undeserved or disproportionate hardship" in a way that limits their ability to consider and give weight to *all* relevant humanitarian and compassionate considerations in a particular case. The three adjectives should be seen as instructive but not determinative, allowing s. 25(1) to respond flexibly to the equitable goals of the provision.

[22] As Abella J. also observed, "[t]here will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1)" (*Kanthasamy* at para 23). What does warrant relief will vary depending on the facts and context of the case (*Kanthasamy* at para 25). H&C relief is an exceptional and highly discretionary measure (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15 [*Legault*]; *Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4). The onus is on an applicant to present sufficient evidence to warrant the exercise of such discretion in his or her case (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45 [*Kisana*]; *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5 [*Owusu*]; *Ahmad v Canada (Minister of*

Citizenship and Immigration), 2008 FC 646 at para 31; *Zlotosz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 724 at para 22 [*Zlotosz*]).

[23] Section s. 25(1) expressly requires a decision-maker to take into account the best interests of a child directly affected by a decision made under that provision. The "best interests" principle is "highly contextual" because of the "multitude of factors that may impinge on the child's best interests" (*Kanthasamy* at para 35, quoting *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4 at para. 11 and *Gordon v Goertz*, [1996] 2 SCR 27, at para 20). As a result, it must be applied "in a manner responsive to each child's particular age, capacity, needs and maturity" (*Kanthasamy* at para 35). Protecting children through the application of this principle means "[d]eciding what . . . appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention" (*Kanthasamy* at para 36, quoting *MacGyver v Richards* (1995), 22 OR (3d) 481 (CA), at p 489).

[24] Given the fact-specific nature of the inquiry into the best interests of a child affected by the decision, evidence to support one's reliance on those interests must be provided (*Zlotosz* at para 22; *Lovera v Canada (Minister of Citizenship and Immigration)*, 2016 FC 786 at para 38). As the Federal Court of Appeal stated in *Owusu* (at para 5):

> An immigration officer considering an H&C application must be "alert, alive and sensitive" to, and must not "minimize", the best interests of children who may be adversely affected by a parent's deportation: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para. 75. However, this duty only arises when it is sufficiently clear from the material submitted to the decision-maker that an application relies on this factor, at least in part. Moreover, an applicant has the burden of adducing

> proof of any claim on which the H&C application relies. Hence, if an applicant provides no evidence to support the claim, the officer may conclude that it is baseless.

[25] Finally, it is well-established in the jurisprudence that a denial of H&C relief under s. 25(1) is reviewed on the reasonableness standard (*Kanthasamy* at para 44; *Kisana* at para 18; *Taylor v Canada (Minister of Citizenship and Immigration)*, 2016 FC 21 at para 16). The reasonableness of an H&C decision must be assessed holistically, having regard to all relevant facts and factors (*Kanthasamy* at paras 25, 33). On judicial review under the reasonableness standard, it is not the role of the Court to reweigh the evidence and relevant factors (*Kisana* at para 24) or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).

IV. Issues

[26] The central issue in this application for judicial review is whether the Officer's decision is reasonable.

[27] The Officer had to decide whether the specific circumstances of the Applicant's case called for the exercise of discretion to relieve him of a burden under Canadian immigration law that he would otherwise be subject to. In particular, the Officer had to determine whether there were circumstances that warranted exempting the Applicant from being deported from Canada because of his inadmissibility due to serious criminality and, instead, permitting him to remain in Canada as a permanent resident.

[28] The Officer's decision turned on her assessment of four key considerations: (a) the seriousness of the Applicant's criminal conduct; (b) the Applicant's establishment in Canada, including his family and other ties here; (c) the best interests of children who would be directly affected by the Applicant's removal from Canada; and (d) the circumstances in which the Applicant would be likely to find himself if he were removed to Trinidad and Tobago.

[29] The Applicant submits that the Officer committed reviewable errors in respect of each of these factors and in her overall balancing of relevant factors.

V. Analysis

[30] I will consider the Officer's assessment of these factors individually and then address her overall balancing of them.

(a) *Seriousness of the Applicant's Criminal Conduct*

[31] The Officer concluded that "[d]espite the positive steps taken the applicant's criminal convictions weigh heavily against him in his request for an exemption." The Applicant challenges the Officer's determination that, despite the positive factors she identified, the seriousness of the offences he committed weighed heavily against him. In my view, the Officer's conclusion was reasonable given the record before her.

[32] In support of his request for an H&C exemption, the Applicant provided evidence of his remorse and acceptance of responsibility for his criminal conduct. He also provided evidence of numerous steps he had taken towards rehabilitation and to prepare himself for re-integration into the community as a responsible and law-abiding person.

[33] The Officer found it was “very evident” from the Applicant’s detailed submissions that he felt “much remorse” for his decision to become involved with drugs and drug trafficking. The Officer acknowledged the Applicant had accepted responsibility for his actions and felt he deserved a second chance in Canada. Letters from his family spoke to the Applicant’s good character, how close the family is and why the Applicant should be given an opportunity to rehabilitate in Canada rather than be returned to Trinidad and Tobago. The Officer found that the “statements made by the applicant, his family and the steps he has taken while in prison to enhance his skills all weigh in his favor.”

[34] The difficulty for the Applicant’s position is that he provided the Officer with little, if any, evidence addressing the objective seriousness of those offences. The Applicant stated in his application that the loss of employment income due to the motor vehicle accident combined with his dislocation from his family, the loss of his aunt and other factors all “propelled” him into a life of drug use and drug dealing. These events may have helped to explain what happened but they do little, if anything, to mitigate the seriousness of the offences the Applicant committed. In particular, the personal circumstances the Applicant pointed to do not address the objective seriousness of possessing two kilograms of cocaine for the purpose of trafficking as well as a loaded prohibited firearm. Offences like these create a serious risk to the safety of all members of the community. Their seriousness is indicated by the terms of imprisonment imposed on the Applicant. While the Applicant now sincerely regrets his failure to “reflect deeply enough on the seriousness of the situation” and his having “continued on in the lifestyle [he] was living” after the 2012 marijuana possession charge, he offered little, if anything, to excuse his subsequent

conduct or mitigate its seriousness. In light of this, the Officer did not err in her assessment of the seriousness of the Applicant's criminal conduct.

(b) *Establishment in Canada*

[35] The Applicant has lived in Canada for over 30 years. He was educated in Canada, has maintained steady employment, and has supported himself. The Applicant's immediate family all live in Canada. The Officer found that the supporting letters submitted by Applicant's family and friends were "detailed and clearly indicate their close and ongoing relationship." With respect to these letters, the Officer concluded:

> It is clear from the letters provided, that the family is devastated by the events that lead [*sic*] to the applicant's incarceration, and how desperate they are to have him remain in Canada. They speak to giving the applicant a second chance and how he has already taken steps to rehabilitate himself while in prison. I give the applicant's degree of establishment considerable weight.

[36] This positive conclusion is amply-supported by the evidence and, naturally, the Applicant takes no issue with it.

[37] The Officer also recognized that Applicant's relationship with R.T. was an important part of the request for an IRPA s. 25(1) exemption. The Applicant submits, however, that the Officer erred in minimizing the significance of this relationship once she determined that the Applicant and R.T. were not common law partners. I do not agree.

[38] After reviewing the relevant evidence, the Officer stated the following conclusions with respect to the Applicant's relationship with R.T.:

> While the applicant may have a close relationship with [R.T.] there is insufficient evidence that it is common law. I note that they began their romantic relationship approximately six months before the applicant went to prison in January 2015, and there is insufficient evidence or any statements of where they lived together or for how long. I am not satisfied the applicant has provided sufficient evidence of his common law marital status. While I recognize the applicant may be in a relationship with [R.T.], there is insufficient evidence that the level of interdependency is such [that] a hardship would be created whether for the applicant or [R.T.].

[39] The Officer had to address the question of whether the Applicant and R.T. were in a common law relationship because that was how the relationship was described in the H&C application. The Applicant himself identified R.T. as his common law spouse, stating that they had entered into a common law relationship on September 1, 2014. This characterization of their relationship was reiterated in legal submissions supporting the request for an exemption.

[40] The only evidence offered in support of this characterization was an affidavit from R.T. dated June 25 (or 28 – the date is partially illegible), 2015. In its entirety, this affidavit reads as follows: "I, [R.T.], of [. . .] has [*sic*] been in a Common Law Relationship with Brendon Gannes since September 2014."

[41] There is no indication in the record of the purpose for which this affidavit was prepared (it was executed a year before the H&C application was submitted). Even apart from its conclusory character, the affidavit is problematic. Was R.T. stating that her romantic relationship with the Applicant began in September 2014 or that it began earlier but became a common law one in September 2014? If the former, the affidavit cannot be true because a relationship cannot be a common law one from the moment it begins. While the required duration varies depending

on the context in which the issue arises, some period of cohabitation is required before a relationship becomes a common law one. The same problem arises with respect to the Applicant's statement. On the other hand, if R.T. (and the Applicant) meant that the relationship had become a common law one in September 2014, some evidence of prior cohabitation to support this bald assertion was required. The Officer examined the record to see if there was any such evidence. She found none. The Applicant cannot point to any either and, indeed, does not take issue with the Officer's conclusion that he and R.T. were not in a common law relationship.

[42] If the relationship was not a common law one, the Officer then had to determine from the evidence before her how to characterize it.

[43] In a lengthy and articulate letter in support of the request for an exemption, the Applicant had only this to say about his relationship with R.T.:

> I am currently in a serious relationship with my girlfriend [R.T.]. She visits with me regularly and participates in the private family visit program. She has two children of her own and she also brings them to the visits. We love each other very much and plan to have a future together; my leaving the country would also mean the loss of that relationship.

[44] In her own letter in support of the Applicant's request for an H&C exemption dated June 1, 2016, R.T. referred to the Applicant as her "boyfriend". She stated that she and the Applicant had known each other for almost 15 years. He was the person she turned to "each and every day for everything." She stated that the Applicant gave her "a reason to smile every day" and he "plays a huge role in my life." She also stated: "I have had a terrible past year, and

without Brendon by my side, I don't know how I could've gotten through it. He is definitely my strength, and I know I am his as well."

[45] R.T. also indicated in her letter that since the Applicant's incarceration in January 2015, they speak on the telephone frequently. R.T. lives in Scarborough but she visits the Applicant regularly at Collins Bay Institution in Kingston, typically three to four times per month. As well, every six weeks R.T. is entitled to stay overnight with the Applicant under the private family visit program. R.T.'s children sometimes accompany her to see the Applicant. R.T. wrote that she looks forward to "starting our lives together" once the Applicant is released "by getting married and also having children."

[46] In summary, the evidence before the Officer indicated that the Applicant and R.T. had begun a romantic relationship some months before the Applicant was sentenced. There was no evidence that they cohabited. Their relationship has continued while the Applicant has been in the penitentiary. Despite the challenges, they have remained in regular contact and provide emotional and other kinds of support to one another. They care for one another. Both hope for a life together after the Applicant is released.

[47] Contrary to the Applicant's submission, the Officer did not simply end her analysis with the conclusion that the relationship was not a common law one. But once she looked further, the record provided few details about how the lives of the Applicant and R.T. had become interconnected or what their plans were for the future. Considering the evidence before her, in my view the Officer reasonably concluded that while the Applicant and R.T. had a "close"

relationship, there was "insufficient evidence that the level of interdependency is such [that] a hardship would be created whether for the applicant or [R.T.]."

[48] The Applicant also submits that the Officer's reference to "hardship" reflects a failure to assess his relationship with R.T. through the wider lens required by *Kanthasamy.* I do not agree. The Officer's reasons concerning the relationship between the Applicant and R.T. were responsive to submissions that were cast solely in terms of the hardship that would result from the Applicant's deportation given this relationship. More importantly, I do not see how this aspect of the Applicant's request for an exemption could be cast in any other terms.

(c) *Best interests of the child*

[49] The Officer noted the following about the best interests of the child aspect of s. 25(1) of the IRPA:

> With respect to the best interest of the child I am aware that it is an important factor and should be given significant weight in the assessment of an H&C application; however I am also aware that it is not necessarily a determinative factor. In this particular case the applicant has one child who is almost three years old and [has] two step children ages almost five and eight.

[50] With respect to the Applicant's daughter, the Officer concluded that the Applicant had provided insufficient information or any evidence as to how her best interests would be affected by the decision. With respect to R.T.'s children, the Officer stated: "As noted above the applicant provides insufficient information with respect to the details of his relationship to the children before he was incarcerated and the time when he entered into a romantic relationship with [R.T.] or how their best interest will be affected."

[51] The Officer stated her overall conclusion concerning the best interests of children who would be affected by her decision as follows:

> While I am alert, alive and sensitive to the issue of the best interest of the child, however the applicant bears the onus of explaining how the children's well-being would be affected by the outcome of his request for an exemption. It is not sufficient merely to state he has one child and two step-children and that there [*sic*] best interest will be affected.

[52] The Applicant submits that the Officer committed a reviewable error by giving no weight to the best interests of his daughter or R.T.'s children and, further, by failing to consider his niece's interests at all.

[53] In my view, having regard to the evidence before her, the Officer gave sufficient consideration to the interests of the children who would be affected by her decision.

[54] When deciding an H&C request that engages the best interests of a child, an immigration officer must do more than simply state that the interests of the child have been taken into account. A child's best interests must be "'well identified and defined' and examined 'with a great deal of attention' in light of all the evidence" (*Kanthasamy* at para 39, quoting *Legault* at paras 12 and 31 and referencing *Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165 at paras 9-12). A decision under s. 25(1) of the IRPA will be found to be unreasonable if the interests of children affected by it are not sufficiently considered (*Baker* at para 75). However, what constitutes sufficient consideration of the best interests of an affected child will depend on the evidence presented on the application.

[55] Four children were mentioned in the request for H&C relief: the Applicant's daughter; R.T.'s two children; and the Applicant's niece (who I will refer to as M. in these reasons). Since their circumstances differ, I will consider them separately.

(i) The Applicant's Daughter

[56] In my view, the Officer conducted a sufficient examination of A.'s best interests having regard to the record before her.

[57] The Applicant stated in his application that in the time between her birth on November 7, 2014, and his incarceration on January 14, 2015, he "spent as much time as [he] could with [his] daughter" and "did everything that [he] could possibly do" to support her. It should be noted that the Applicant and A.'s mother were already separated during this two-month period. The Applicant has not had any contact with his daughter since he was incarcerated. There was no evidence from A.'s mother in the record before the Officer. While he did not say so explicitly, it is reasonable to infer from the information the Applicant did provide that A.'s mother has sole custody of their daughter and that the Applicant has no access rights and does not provide any financial support. Despite offers of assistance from his family, the Applicant had not taken any legal steps to try to preserve his relationship with his daughter. The Applicant was candid with the Officer about the fact that he does not have a relationship with his daughter. He nevertheless hoped that he would have an opportunity in the future to support his daughter and watch her grow up in Canada. The Officer acknowledged that the Applicant wanted to be an active father figure in his daughter's life.

[58] The Applicant bore the onus of presenting evidence that his daughter's best interests favoured his remaining in Canada. He offered none. Given the Applicant's estrangement from his daughter, and in the absence of any evidence suggesting otherwise, it is speculative to think that his future involvement in her life would be in her best interests. (This is not to suggest that having the opportunity to develop a closer relationship in the future could not be a relevant consideration in a different set of circumstances – see, for example, *A.B. v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1170 at paras 28-29). The Officer's conclusion that that Applicant had provided insufficient information or evidence as to how his daughter's best interests would be affected by the outcome of his application for an exemption cannot be faulted.

(ii) R.T.'s Children

[59] In my view, the Officer also reasonably concluded that the Applicant had provided insufficient information or evidence about the details of his relationship with R.T.'s children and how the outcome of the application would affect their best interests.

[60] R.T.'s son was born in January 2010. Her daughter was born in January 2013. The Applicant identified them as his "step-children" in his application. However, all he said about them in his supporting letter was that R.T. "brings them to the visits" at the penitentiary. The only other evidence on the record pertaining to the Applicant's relationship with these children came from R.T., who stated that they talk to the Applicant on the phone "all the time" and they always say they "can't wait for him to come home, so we can start our family."

[61] The evidence suggested that the Applicant was a peripheral figure in the lives of R.T.'s children. There was no evidence of the role, if any, he played in their lives prior to his

incarceration in January 2015. Since then, he has for the most part been absent from their lives. It was open to the Applicant to provide specific evidence showing that despite the physical separation he was an important part of these children's lives. Such evidence, if available, would have assisted the Officer in assessing the impact of the Applicant's removal from Canada on the children's best interests. The Applicant offered none.

(iii) The Applicant's Niece

[62] The Applicant submits that the Officer erred by ignoring evidence relating to his niece M. and failing to address her best interests. I do not agree.

[63] The material before the Officer indicated that at some point shortly before the Applicant was incarcerated, M. (who would have been about seven at the time) was diagnosed with leukemia and had to undergo chemotherapy. The Applicant helped support his sister and his niece through this difficult time, including attending at the hospital with them. After describing his niece's illness and the support he provided to her, the Applicant stated the following about their relationship in his letter supporting the application: "I was there for her from the beginning and she has grown attached to me. [M.] doesn't have a Father in her life so my Brother and I are the closest ones to her. I miss my niece terribly and hope that she can overcome this illness and live a happy and healthy life." The Applicant's sister wrote in her own letter: "Brendon dedicated all of his time to his niece during the 1st part of her treatment at the hospital until his day of incarceration. My daughter is looking forward to spending time with her uncle that she loves dearly in the near future." For her part, M. wrote in a letter that the Applicant helped her a lot when she was in the hospital and she missed him.

[64] The Officer does not address M.'s circumstances expressly in her reasons. While it may have been preferable for the Officer to have done so, her failure to do so does not give rise to a reviewable error. I say this for three reasons.

[65] First, as previously noted, the Officer did expressly refer to the detailed letters from the Applicant's family and friends which "clearly indicate their close and ongoing relationship" and that they are "devastated by the events that lead [*sic*] to the applicant's incarceration, and how desperate they are to have him remain in Canada." This would include the letters from the Applicant's sister and his niece. The Officer gave this evidence "considerable weight."

[66] Second, while the Applicant now complains about the Officer's failure to address M.'s best interests expressly, it is far from clear that her best interests were being relied upon in the original application. In submissions offered in support of the application, the Applicant's representative stated that there were three Canadian-born children who would be directly affected by the decision and whose best interests must be considered (my emphasis). Reading the submissions as a whole, it is evident that this was a reference to A. and to R.T.'s two children. A duty to give sufficient consideration to the best interests of a child "only arises when it is sufficiently clear from the material submitted to the decision-maker that an application relies on this factor" (*Owusu* at para 5).

[67] Third, assuming for the sake of argument that M. was a child whose best interests had to be taken into account, as with the other children who would be affected by the decision on the Applicant's H&C request, there was little if any evidence upon which the Officer could assess

the implications of the Applicant's removal for those interests. The Applicant had never been M.'s primary caregiver. Apart from general statements of love and support, there was no evidence regarding the care the Applicant would provide to his niece if he remained in Canada after he was released from the penitentiary. Nor was there evidence showing how M. would be affected if the Applicant were removed from Canada. The most the evidence showed was that the Applicant and M. felt close to one another and looked forward to seeing one another. As Diner J. held in *Zlotosz*, the mere fact of close ties with a child "does not render a positive outcome a foregone conclusion," particularly when the Applicant is not the child's primary caregiver or financial provider (at para 30). Having regard to the record, in my view there is no reason to think the outcome would have been different had the Officer addressed directly the question of M.'s best interests.

(d) *Return to Trinidad and Tobago*

[68] In a second letter submitted in support of his application, the Applicant set out a number of concerns he had about what may happen to him if he is returned to Trinidad and Tobago. The Applicant stated that he fears returning to a place where he has not lived since he was very young. He expected to find himself homeless and unable to find employment. He feared for his safety given the high crime rate in Trinidad and Tobago. He was worried that he will be targeted or even recruited by criminal gangs. He feared that he will be stigmatized and discriminated against in a country where he has no family, friends or community. Apart from his letter, the Applicant offered no information or evidence to support his fears about what his life would be like in Trinidad and Tobago.

[69] The Officer concluded from her own research into country conditions that "the evidence indicates that crime is a problem in Trinidad and Tobago." However, she was "not satisfied there is sufficient evidence that country conditions are such that [the Applicant] would face a hardship that would warrant an exemption."

[70] The Applicant argues that the Officer erred by conducting a comparative examination of the Applicant's life in Canada and what his life would be like in Trinidad and Tobago. I do not agree. The Officer's reasons were responsive to submissions that attempted to draw a stark contrast between the two scenarios in an effort to demonstrate the hardship the Applicant would suffer if deported to Trinidad and Tobago.

[71] Further, in my view the Officer's conclusions with respect to this factor were reasonable. There was no denying that removal to Trinidad and Tobago will be difficult for the Applicant, a fact the Officer accepted. That being said, on the evidence it was far from obvious that the dire fate the Applicant foresaw for himself in Trinidad and Tobago will befall him there. The Officer reasonably considered that the Applicant is young, speaks the native language, is educated, and has a variety of skills that could assist him in establishing himself in Trinidad and Tobago. The Officer found that Applicant had not provided a basis to believe that he bore a profile which would compromise his safety. While the separation from his family will pose challenges, the Officer reasonably concluded that the strong family support the Applicant enjoys in Canada could also be extended to him in one form or another Trinidad and Tobago. The Officer's reasons were cast in terms of hardship but this was responsive to submissions cast in the same

way. I do not read them as treating this factor as determinative, as opposed to instructive (cf. *Kanthasamy* at para 33).

(e) *Overall Balancing*

[72] I have addressed the Applicant's objections to the Officer's specific findings concerning the factors she considered under s. 25(1). In the absence of reviewable error in any of these respects, the only remaining question is whether the Officer erred in balancing the relevant factors and drawing her final conclusion.

[73] The Applicant submits that the Officer failed to view all the circumstances of his case through the wider *Kanthasamy* lens. I do not agree. The Officer was required to weigh the Applicant's lengthy establishment in Canada, the hardship he would face upon return to Trinidad and Tobago, and the interests of children who would be directly affected by his removal against the Applicant's serious criminal offences. The Officer's reasons address all of these factors, including the weight she gave to each of them. Her reasons explain to the Applicant why she reached the result she did. They also allow me to be satisfied that the result falls within a range of possible outcomes (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14). On the evidence before her, the Officer concluded that the seriousness of the Applicant's criminal conduct outweighed the other considerations. In my view, this conclusion is not inconsistent with the equitable underlying purpose of s. 25(1) of the IRPA articulated in *Kanthasamy* and was reasonably available to the Officer.

VI. Conclusion

[74] For these reasons, the application for judicial review is dismissed.

[75] The parties did not suggest any questions of general importance and none arise.

JUDGMENT in IMM-4350-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is stated.

"John Norris"
Judge

ANNEX I

RELEVANT STATUTORY PROVISIONS

Immigration and Refugee Protection Act, SC 2001, c 27

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

[…]

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

[…]

36 (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

FEDERAL COURT

SOLICITORS OF RECORD

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