

Federal Court



Cour fédérale

Date: 20180625

Docket: IMM-5456-17

Citation: 2018 FC 656

Ottawa, Ontario, June 25, 2018

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

RICARDO GONZALEZ MARTIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] Mr. Ricardo Gonzalez Martin is a 27-year-old Mexican citizen who has lived in Canada since September 2009, first on a visitor's visa that was extended until January 2011, and without status thereafter. His two older brothers and their respective families reside in Canada. Since both of his parents passed away, he no longer has any immediate family in Mexico.

[2] Mr. Martin challenges the decision of an immigration officer to refuse his application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds. The H&C factors considered by the immigration officer were family reunification, psychological evidence, establishment in Canada and the best interests of Mr. Martin's niece and nephews.

II. Impugned Decision

[3] The immigration officer first noted that the Applicant has overstayed his visitor status in Canada and that he has been working without work authorization for years. Although this conduct indicates a disregard for the Canadian immigration regime, the immigration officer noted that the documentary evidence shows that the Applicant is a good and reliable employee and that he might be able to secure a labour market impact assessment and work permit to return to Canada in the future.

[4] The immigration officer accepted that the Applicant has significant ties in Canada and that these relationships would necessarily be affected if the Applicant were to return to Mexico. Both of his brothers are permanent residents of Canada, his father passed away when he was a child, his mother died in 2014 and as a result, the Applicant has no remaining family in Mexico. Acknowledging this situation, the immigration officer nevertheless found that the family relationships could adequately be maintained via emails, video chats and phone calls and that the Applicant could visit his brothers in Canada in the future. The immigration officer noted that, in any event, the Applicant does not live in the same city as his brothers and that they have to do some driving to visit one another.

[5] The psychological report filed by the Applicant demonstrates that he suffers from anxiety, depression and suicidal ideation. The immigration officer dealt with this evidence by stating that even if the Applicant were to leave Canada, he would still have the support of his brothers, which Dr. Weinberg indicated in the psychological report is crucial for maintaining the Applicant's stability.

[6] The Applicant has a niece and two nephews and is Isabella's godfather. The immigration officer accepted that the Applicant and Isabella share a special, close relationship but, again, he found that this relationship could be maintained via telecommunication and occasional visits. The immigration officer therefore found that the best interests of Isabella and the Applicant's nephews would not be "severely compromised" by the Applicant's return to Mexico.

[7] Finally, the immigration officer acknowledged and commended the Applicant for his volunteer implications and the fact that he undertook steps to sponsor a child under the Child Sponsor Program with Plan International Canada.

[8] Having examined the Applicant's circumstances, the immigration officer concluded that the requested exemption was not justified by H&C considerations.

III. Issues and Standard of Review

[9] This application for judicial review raises the following questions:

A. *Did the immigration officer properly consider and weigh all of the Applicant's particular circumstances?*

B. *Did the immigration officer err in the application of the best interests of the child analysis?*

[10] The decision of an immigration officer on an H&C application is reviewable on the standard of reasonableness. As long as the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law, this Court will defer to the immigration officer's decision and refrain from intervening (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 43-44).

IV. Analysis

A. *Did the immigration officer properly consider and weigh all of the Applicant's particular circumstances?*

[11] In my view, the immigration officer failed to engage in a global assessment of the relevant H&C factors as mandated by the Supreme Court of Canada in *Kanhasamy*. More specifically, he failed to consider Dr. Weinberg's expert opinion in light of the Applicant's unique personal circumstances. He limited his analysis of that evidence to repeating that the Applicant's family relationships would be negatively impacted by his departure from Canada, while reiterating that the relationships could be maintained via telecommunication and occasional visits.

[12] The immigration officer acknowledged and accepted the psychological evidence offered by Dr. Weinberg about the Applicant's mental health, including his conclusions that the

Applicant has generalized anxiety disorder and major depressive order. He also accepted Dr. Weinberg's finding that the Applicant has suicidal ideation, though the Applicant indicated to Dr. Weinberg that he would not act upon these thoughts due to the impact such an action would have on his family. Finally, the immigration officer accepted that the Applicant's family relationships are crucial for the Applicant's mental stability and protect him from suicidal potential. Yet he did not truly engage in assessing the impact on the Applicant's mental health of being alone, and at least temporarily unemployed, in Mexico.

[13] In order to minimize the proximity between the Applicant and his two brothers, the immigration officer noted that they do not reside in the same city. However, he failed to mention that they all live in the Greater Vancouver area and that they all visit on a weekly basis.

[14] I agree with the Applicant that this assessment reveals the perfunctory and unreasonable nature of the immigration officer's approach to the psychological evidence and its impact on the overall decision.

B. *Did the immigration officer err in the application of the best interests of the child analysis?*

[15] The Applicant argues that the immigration officer made an error of law in setting the standard for the best interests of the child as having to be "severely compromised". While it is true that the immigration officer used those terms at the end of his analysis, he was not, in my view, dismissive of the best interests of the children affected by the decision. He engaged with

the details of the affected children's circumstances and was alert, alive and sensitive to their best interests.

[16] He found that the best interests of the children would not be compromised by the Applicant's return to Mexico. Given that the Applicant does not reside with any of the children impacted by the decision and that he is not their primary care provider or primary source of financial support, this conclusion is reasonable. Maintaining a relationship via telecommunication and occasional visits might not be sufficient for parents or for a child's primary care provider, but it is, in my view, reasonable in the context of extended family.

V. Conclusion

[17] As I am of the view that the immigration officer failed to properly consider the psychological evidence in light of all of the Applicant's particular circumstances, this application for judicial review will be granted and the file remitted back for redetermination. The parties have proposed no question of general importance for certification and none arise from this case.

JUDGMENT in IMM-5456-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The file is remitted back to a different immigration officer for redetermination;
3. No question of general importance is certified.

“Jocelyne Gagné”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5456-17

STYLE OF CAUSE: RICARDO GONZALEZ MARTIN v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JUNE 6, 2018

JUDGMENT AND REASONS: GAGNÉ J.

DATED: JUNE 25, 2018

APPEARANCES:

Shane Molyneaux

FOR THE APPLICANT

Tasneem Karbani
Keith Reimer

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shane Molyneaux Law Office
Barrister and Solicitor
Vancouver, British Columbia

FOR THE APPLICANT

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT