Federal Court  Cour fédérale

Date: 20180725

Docket: IMM-4-17

Citation: 2018 FC 780

Ottawa, Ontario, July 25, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

YANLI YANG
(a.k.a. YANG YANLI)

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Case

[1] The Applicant, Yanli Yang, seeks judicial review of a decision of a Canadian visa officer working in the Hong Kong Consulate [the Officer] who refused her application for a permanent residence visa as a member of the family class [the Decision]. In requesting an exemption on humanitarian and compassionate [H&C] grounds, pursuant to subsection 25(1) of the

Immigration and Refugee Protection Act, SC 2001 c27 [*IRPA*], the Applicant conceded that she is not a member of the family class.

[2] The Applicant is a 67-year-old national of China who is a retired medical doctor. She was sponsored for permanent residence by Ms. Yang Yang [the Sponsor], a Canadian citizen who is her biological child, born in November 1979, and the Sponsor's spouse.

[3] In 1987, the Applicant's husband engaged in an affair and the marital relationship broke down ending in divorce in December. He subsequently disappeared from the life of the Applicant and the Sponsor.

[4] For a variety of reasons, including social stigma from the divorce and concern for the Sponsor's wellbeing, the Applicant turned to her brother and his wife for assistance. The mutual decision was made that they would adopt the Sponsor who was seven years old at the time. It was common at that time in China to have informal adoptions as there was no legal process in place for adoption.

[5] In late 1993, the Sponsor's adoptive parents moved to Japan. At that time the Sponsor was attending one of China's most reputable schools so she stayed in China with the Applicant and her grandparents. When her adoptive parents moved to Canada in 1999 the Applicant accompanied them as a dependent child.

[6] In 2006, the Sponsor met her husband. Her oldest child was born in 2009 with a second child born in 2012. At that time the Sponsor began to experience severe pains and also developed mental health symptoms. At points the pain in her knees was so bad that she was bedridden. The Sponsor consulted a practitioner of Traditional Chinese Medicine [TCM] and through those treatments by the fall of 2013 she reported improvement.

[7] In early 2013 the Sponsor was diagnosed with fibromyalgia, which is incurable. She enrolled in a fibromyalgia group offered by the Toronto Rehabilitation Institute of the University of Toronto and attended several sessions to learn how to cope with the affliction. The Sponsor was also subsequently diagnosed with significant anxiety and mild sleep apnea.

[8] A previous family class application for permanent residence for the Applicant on H&C grounds was refused in August 2013 on the basis that: the Applicant had her parents and brother in China; it was not clear whether the Applicant and the Sponsor had maintained regular contact nor whether the Sponsor had visited the Applicant regularly after she immigrated to Canada; and there was no evidence of close ties between the Applicant and the two children of the Sponsor. The Sponsor applied for judicial review of that refusal but leave was not granted.

[9] On January 25, 2016, in the matter under review, a procedural fairness letter [PFL] was sent to the Applicant confirming that she was not a member of the family class as either a parent or a relative of the Sponsor. The PFL also expressed concerns that there were insufficient H&C grounds to warrant special consideration. The Applicant was given thirty days to submit additional information.

[10] A specific concern identified in the PFL was that given the ages of the Sponsor's children and the limited amount of time they had spent with the Applicant, it was not believable that the children had developed strong emotional ties with the Applicant. The PFL also indicated that the Applicant appeared to be well established financially in China and would not be subjected to undue hardship there if she was refused immigration to Canada. The PFL also expressed concern that it was not believable that the Applicant was the primary person looking after the details of the Sponsor's life before her immigration to Canada in 1999. The PFL noted that the Sponsor was nineteen years old when she willingly came to Canada with her adoptive parents and that it was "not unreasonable to believe that her adoptive parents never ceased to fulfil their roles and responsibilities as parents in [the] [S]ponsor's life".

[11] On April 8, 2016 counsel replied to the PFL addressing each point of concern and providing additional documents. Counsel urged that H&C relief was warranted because the Applicant and the Sponsor had both a close familial connection and a *de facto* family member situation. Information was provided on the best interests of the Applicant's two grandchildren as well as the hardship to both the Applicant and the Sponsor arising from the continued separation, which was exacerbated by the illness of the Sponsor.

[12] On November 10, 2016, the Decision was sent to the Applicant's counsel. After outlining various sections of the *IRPA* by virtue of which the Applicant was not a member of the family class, and the Sponsor was not an eligible sponsor, the Officer concluded:

> Based on all available documentation and information, I am not satisfied that there [are] sufficient and compelling grounds under the principle of best interests of the child, nor are there sufficient and compelling humanitarian and compassionate grounds in this

> case to warrant special consideration to overcome your inadmissibility to Canada. I am therefore refusing your application.

[13] For the reasons that follow, the application judicial review is allowed.

II. **Issues and Standard of Review**

A. *The issue*

[14] The Applicant raises three issues. In my view the resolution of this matter all comes down to whether or not the Decision is reasonable.

[15] The Applicant suggests that one issue is whether the Officer applied the proper test, as set out in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 [*Kanthasamy*], to determine whether H&C relief should be granted.

[16] Having thoroughly reviewed and considered the reasons for the Decision, it is my view that the Officer improperly applied the test for H&C relief by unreasonably focusing on whether there was enough "hardship" to grant relief.

[17] The Applicant also says that the Decision is unreasonable as the Officer's key findings were based on evidentiary errors including material errors of fact and misapprehension of the evidence.

[18] Finally, the Applicant suggests that there is an issue of procedural fairness arising from the Officer's fact-finding and treatment of the evidence in a manner which amounted to veiled

credibility findings in the face of several sworn affidavits put forward by the Applicant and to which the Applicant was not given an opportunity to respond.

[19] The Respondent replies that the issues were all raised in the PFL and, in any event, that no interview was warranted.

[20] The substance of the procedural fairness issue is that the Officer stated there was no reliable evidence submitted to support many of the grounds put forward by the Applicant in response to the PFL. The Applicant in response submits that, as there were sworn affidavits supporting the evidence, the Officer must have made veiled credibility findings.

[21] The issues which the Applicant puts forward as evidentiary errors go to the question of whether or not the outcome in the Decision is reasonable. As I have determined that the Decision is unreasonable I shall decline to address the issue of whether the Officer made veiled credibility findings in breach of procedural fairness.

[22] In addressing the reasonableness of the Decision I will first turn to the issue of whether the Officer properly applied the test as set out in *Kanthasamy* and will then turn to the Officer's evidentiary errors.

B. *The standard of review*

[23] The Supreme Court confirmed that the standard of review of an officer's findings of fact in an H&C application is reasonableness: *Kanthasamy* at para 44.

[24] 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*].

[25] 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.

III. **Did the Officer apply the approach set out in Kanthasamy?**

[26] An overarching objection by the Applicant is that the Officer did not engage with the H&C factors as a whole but rather set out thresholds of hardship that were to be met, thereby failing to follow the analysis mandated in *Kanthasamy*.

[27] The Applicant submits proof of this approach can be found in the fact the Officer did not mention any of the positive factors she put forward. Instead, the Applicant says the Officer discounted her H&C factors by segregating considerations and creating implicit thresholds of hardship against which each individual factor was measured and then discounted. She says that the factors were not weighed as a whole.

[28] The Parties remind the Court that in *Kanthasamy* the Supreme Court approved of the language used in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, [1970] IABD No 1 (QL) [*Chirwa*], to give meaning to the phrase "humanitarian and compassionate considerations" as being:

> those facts, established by the evidence, which would excite in the reasonable man [*sic*] in a civilized community a desire to relieve the misfortunes of another – so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the Immigration Act[.] . . . The Board acknowledged that "this definition implies an element of subjectivity", but said there also had to be objective evidence upon which special relief ought to be granted[.]
>
> *Kanthasamy* at para 13 citing *Chirwa* at 350

[29] Counsel for the Respondent argues that the Applicant failed to provide sufficient evidence to warrant H&C relief and that the Officer did not apply any arbitrary thresholds or engage in segmentation. Instead the Respondent submits the Officer separated the factors that were put forward by the Applicant in order to organize the Global Case Management System [GCMS] notes to address the submissions put forth by the Applicant.

[30] In *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72, 49 Imm LR (4th) 53 [*Marshall*], this Court, when considering *Kanthasamy*, held that Officers must consider the *Chirwa* approach in addition to the traditional hardship factors. It was said that a reviewing court "should have some reason to believe that the Officers have done their job, that is, that H&C Officers have considered not just hardship but humanitarian and compassionate factors in the broader sense": *Marshall* at para 33. As will be seen in the following section, the failure of the Officer to have regard for important evidence in the record makes the Decision unreasonable. It

also leaves the Court with the sense that the Officer did not consider any H&C factors but solely considered hardship.

[31] This concern is demonstrated in the GCMS notes which show that, although the Officer said he or she considered the evidence (medical reports, affidavits, letters of support) to determine whether the circumstances were sufficient to warrant relief, it does not appear they considered any humanitarian and compassionate factors in the broader sense. The Officer failed to apply the approach set out in *Kanthasamy* thereby rendering it indefensible in law and unreasonable on the *Dunsmuir* standard: *Lobjanidze v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1098 at para 12, 55 Imm LR (4th) 287.

[32] To be fair to the Officer, I note that *Kanthasamy* was decided on December 10, 2015, after the submission of this H&C application but eleven months before the Officer's Decision. As recognized by Mr. Justice Brown in *Lobjanidze*, at paragraph 11, the Decision in the present matter was made when Minister's delegates may have still been in the process of transitioning to a fuller acceptance of the decision in *Kanthasamy*. It may be that this could assist in explaining the Officer's undue focus upon hardship (which was set out in the guidelines), but this does not change that, in conducting their H&C assessment, the Officer was required to examine not only hardship but all factors put forward relevant to the issue of whether relief was warranted in line with *Kanthasamy*.

IV. **Did the Officer make findings of fact without regard for the material before them?**

[33] In *Zlotosz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 724, 282 ACWS (3d) 594 [*Zlotosz*], Mr. Justice Diner confirmed that under Chirwa there are what he referred to as "two key criteria" that were mentioned in *Kanthasamy*: (1) a basis for warranting the special relief; and (2) sufficient objective evidence. Justice Diner also observed that:

> [T]he exercise of H&C discretion ultimately requires a subjective analysis. In other words, another officer might have concluded differently by weighing the evidence differently.
>
> *Zlotosz* at para 18

[34] In order to consider the two key criteria, an Officer has to review the evidence, make any necessary findings of fact, then balance and weigh the results. Deference is owed to the Officer's decision but only provided that it is based on and flows from the evidence.

[35] The Applicant has challenged several findings of fact by the Officer. Paragraphs 18.1(3)(b) and 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7 [the *Act*], are therefore applicable:

Powers of Federal Court	**Pouvoirs de la Cour fédérale**
(3) On an application for judicial review, the Federal Court may	(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
. . .	. . .
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate,	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre

prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.
Grounds of review	**Motifs**
(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal	(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :
. . .	. . .
(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;	d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;

[36] The Officer identified six reasons for finding that there were not sufficient and compelling grounds under the principle of the best interests of the child, nor on humanitarian and compassionate grounds, to warrant relief from the provisions of the *IRPA*. The Applicant submits that the Officer made several evidentiary errors in arriving at each of those findings.

[37] In light of my finding that the Officer did not apply the *Kanthasamy* approach, I find it sufficient in allowing this judicial review to review only two of the Officer's findings made without regard for the material in the record.

[38] The Applicant firstly alleges that the Officer made unreasonable findings with respect to the circumstances of the Sponsor's adoption.

[39] Secondly, the Applicant submits that as a result of the first finding, the Officer unreasonably discounted the emotional ties between the Applicant and the Sponsor.

A. *The adoption of the Sponsor*

[40] It is useful at this point to set out the findings made by the Officer with respect to both the adoption of the Sponsor and the emotional bond between the Sponsor and the Applicant. In doing so I will use the exact wording as found in the GCMS notes. I believe the abbreviations used by the Officer can be readily understood. I have added paragraphing to separate out the discrete points made by the Officer and to make it easier to read:

> Extract from Finding 3:
>
> Spnr submitted another stat dec dated 02APR16 explaining the circumstances surrounding her adoption by her maternal uncle and her emotional ties with PA. There is no reliable evidence submitted to this office to date to support the type and degree of social stigma which spnr might have had to face as an 8-yr old child in the PRC, had she not been adopted by her maternal uncle in 1987.
>
> There is no reliable evidence submitted to date to prove that PA was the primary caretaker of spnr from 1994 to 1999. As PA was working during the week and living in the hospital dorm while spnr was living with her grandparents, it is reasonable to believe that spnr's grandparents were her primary caretakers in the absences of her adoptive parents from 1994 to 1999.
>
> As spnr was already a 19-year old adult when she immigrated to Cda with her adoptive parents, it is not reasonable to believe that spnr had no idea that her emigration to Cda with her adoptive parents/family could mean permanent separation from PA.
>
> To date, PA has not submitted reliable evidence to prove the strong emotional connection between her and spnr.

[41] Finding 3 begins by questioning the type and degree of stigma which the Sponsor, an eight-year-old child at the time, might have suffered in China in 1987 as a result of the divorce of

her parents. The Sponsor's April 2, 2016, statutory declaration, which is referred to by the Officer, specifically addresses the type and degree of stigma which she might have suffered had she not been adopted when she stated at paragraph 4:

> Although my uncle had adopted me, it was to help my mother and me. One of the main reasons was to protect me from social stigma towards children of divorced parents. Growing up, I was always told by my family not to mention to anyone that my parents were divorced. People would look at you differently, gossip about it because divorce was considered a shameful thing that time. People ask unwanted questions to little children of divorced parents and make harsh comments about children raised by single parent. The adoption meant that I never faced that because I was not known as being the daughter from a broken family.

[42] The Sponsor's adoptive father, her uncle, the Applicant's brother, submitted a written statement in 2010 with the first H&C application the materials of which were also before the Officer. In his statement the adoptive father describes that the adoption of children between family members was not unusual in China at that time and it was an accepted practice. He clearly stated that "[m]y wife and I could not accept the child being gossiped about by others and feeling suppressed in front of people, and experiencing psychological damage due to family breakdown" as well as "our entire family's goal was to reduce harm to the child caused by the divorce".

[43] In addition to this subjective evidence, there was significant objective evidence put forward about the stigma of divorce. It also addressed the changes in how divorce is viewed which had only begun to occur in the early part of this century, some twenty years after the Applicant's divorce in 1987. These materials include academic articles, newspaper stories, and internet articles about the effect on women and children of divorce in China.

[44] For example, an article published in 2007 in the journal *Marriage & Family Review*, 42:3, entitled "Impacts of Parents' Divorce on Chinese Children: A Model with Academic Performance as a Mediator" contains a section outlining Chinese Cultural Contexts. The Abstract located at the very beginning of the article explains:

> The study examined the impact of parents' divorce on Chinese children's well-being. . . . The well-being of children from divorced families was compared with that of two-parent and widowed families. The results showed that children's academic performance mediated the negative impact of divorce on children's well-being. The societal discriminating attitude towards divorce and single-parent families had a strong negative effect on the children's well-being.

[45] In the main body of the article there is also a discussion entitled the "Social Stigma of Divorce" in which it is said that:

> Stigma associated with divorce is strong, and can sometimes ruin a person's reputation and career. Although Chinese society has become more accepting towards the single-parent family, the overall negative attitude toward divorce can lead to a high level of stress to divorcees and their children.

[46] It is not at all clear from the Officer's reasons, as set out in the GCMS notes, that any of these documents were read by the Officer. Certainly none are mentioned. But, in Finding 3, the Officer said:

> There is no reliable evidence submitted to this office to date to support the type and degree of social stigma which spnr might have had to face as an 8-yr old child in the PRC, had she not been adopted by her maternal uncle in 1987.

[47] With respect, if sworn affidavits, family letters, newspaper articles, and scholarly papers, all attesting to the nature and type of stigma and impact of divorce in China a divorced woman

and her child might experience amounts to “no reliable evidence”, then it is not at all clear what evidence could have satisfied the Officer. By not even acknowledging this evidence which is directly contradictory to the Officer’s statement it leads to a conclusion that the Officer either did not read it or for some unknown reason chose purposefully not to mention this relevant evidence.

[48] Fortunately, it is not necessary to determine which one is the case. It is well known that “the more important the evidence that is not mentioned specifically and analysed in the agency’s reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact “without regard to the evidence”” and, “the agency’s burden of explanation increases with the relevance of the evidence in question to the disputed facts”: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ No 1425 at para 17 (QL) (FC).

[49] In this case, the Court has no hesitation in making the inference that the Officer made an erroneous finding of fact in Finding 3 without regard for the material in the record.

B. *The emotional bond between the Sponsor and the Applicant*

[50] The Officer’s finding that there was no reliable evidence to support the kind of social stigma the Sponsor would have faced is critical to the other findings made by the Officer.

[51] On review of the GCMS notes there is a clear thread running through the findings that appears to be critical of the adoption decision that was made in 1987. It is to the effect that the

Applicant willingly gave her child away and the Sponsor willingly left her mother. The best example of this can be found in the summary near the end of Finding 6:

> PA made the decision to sever her parent/child relnshp with spnr when she allowed her family relative to adopt spnr as their own child, and it was spnr's own choice at age 19 to leave the PRC and immig to Canada with her adoptive parents, knowing it [*sic*] that she is leaving PA behind in the PRC and their separation could be a permanent one.

[52] Phrases such as "she allowed her family relative to adopt spnr" and "it was spnr's own choice at age 19 to leave" are value-laden. When coupled with the Officer's rejection of the stigma of divorce as a reason for the adoption, the Officer's words in Finding 6 suggest that the Applicant and the Sponsor cared little for each other. The finding in that context also appears to be judgmental of a situation which, the evidence shows, was common in China at the time and which the parties believed was best for all concerned.

[53] Importantly, this finding is also not supported by and, flies in the face of, the evidence in the record.

[54] Both the Applicant and the Sponsor made statements that the Applicant and her brother, the adoptive father, were raising the Sponsor together. In a November 2013 letter addressed to Canadian immigration authorities, the Applicant specifically said "[m]y daughter was not adopted because I abandoned her, instead she was loved and cared for by more people because of my grand love, our mother-daughter relationship fundamentally has never changed, our mother-daughter affection was never lessened because of the love of the adoptive parents or long distance either."

[55] The Sponsor in her statutory declaration of April 2, 2016 explains the nature of her relationship with her biological mother, the Applicant, as well as with her adoptive parents. She says that because her biological father was not in her life her uncle became a surrogate father and she still thinks of him as her father. Specifically, she then states that his wife did not take the place of the Sponsor's mother but became like a stepmother. The explanation for why the Sponsor considers the Applicant her mother was the Applicant's continued involvement in the Sponsor's life and her continuing knowledge that the Applicant was her biological mother. She also confirms that from 1994 to 1999 the Applicant was the primary person looking after her when her adoptive parents moved to Japan.

[56] In addition, the Applicant in her November 2013 statement explains the nature and importance of her relationship with the Sponsor as "[k]nown by all people, mother and daughter affection is the basic animal instinct since birth, mother and daughter unification is common sense and human nature. In China, I have a very stable and secure retirement life, only as the growing of ages I miss my child who live afar in a foreign country more and more, and my daughter is nothing but worrying about me. This kind of pain of missing is bitter to the heart, thus I decided to apply to reunite with my daughter."

[57] The Officer was legally required and entitled to consider and weigh the Applicant's statement and the Sponsor's statutory declaration. The Officer was not entitled to ignore their evidence or, by not mentioning it at all, essentially dismiss it out of hand. The failure to discuss this directly relevant evidence not only falls within *Cepeda-Gutierrez*, it also fails to recognize the *Chirwa* approach.

[58] The Court, as already done above, has no hesitation to infer from the omission in the reasons of discussion on this important evidence, that the Officer made an erroneous finding of fact without regard to the evidence before them.

[59] By reviewing and considering the relationship between the Applicant and the Sponsor solely as one of a former mother/daughter not falling within the Family Class provisions in section 117 of the *IRPA* the Officer completely overlooked the fact that section 25, and the historic legislation that gave rise to it, was enacted for a specific reason. In *Kanthasamy*, Madam Justice Abella reviewed the legislative history of the provision and explained the reason for the addition of the original legislative provision from which section 25 arose by setting out the comments made in the House of Commons Debates on February 20, 1967:

> The law establishes general rules as to who may come to Canada and who may stay in Canada. The rules necessarily are general. They cannot precisely accommodate all the variety of individual circumstances. They must be capable of being tempered in their application, according to the merits of individual cases. *There will sometimes be humanitarian or compassionate reasons for admitting people who, under the general rules, are inadmissible.*
>
> [Emphasis in original]
>
> *Kanthasamy* at para 12

[60] It is this understanding that section 25 is to provide an avenue to avert the harsh application of the *IRPA* when H&C considerations warrant, that appears to be missing when examining the reasons and the Officer's unreasonable focus on what the relationship between the Applicant and her Sponsor lacks instead of what it contains.

V. **Conclusion**

[61] Rather than considering whether humanitarian and compassionate reasons exist in the relationship between these two adults, who are biologically mother and daughter, the Officer applied a test of hardship and focused on the fact that the informal adoption eradicated the parent/child relationship. While this approach may be technically correct in determining whether someone is a member of the family class, it may well be a textbook example of the reason that humanitarian and compassionate grounds were introduced to the legislation: to provide a means by which to ameliorate the rigid application of the legislation.

[62] This approach to the H&C application was further rendered unreasonable when, in the course of the analysis, the Officer failed to address important evidence that directly contradicted several of the findings made.

[63] For all these reasons, in accordance with paragraph 18.1(4)(d) of the *Act*, it is my determination that the Decision is based on erroneous findings of fact made without regard to the material before the Officer, and pursuant to paragraph 18.1(3) of the *Act* the Court chooses to exercise its discretion to set the Decision aside and return the matter for redetermination by a different officer.

[64] Given the impact of *Kanthasamy* on the analysis required by an Officer in an application under subsection 25(1) of the *IRPA* and, in light of the nature and extent of the evidence to be considered by an Officer on such an application, the Applicant is to be permitted to file

additional evidence, to update the existing evidence, and to make new or additional submissions prior to having this matter considered afresh by a new officer.

[65] Neither party suggested there was a serious question of general importance for certification nor does one exist on these facts.

JUDGMENT IN IMM-4-17

THIS COURT'S JUDGMENT is that:

1. The application is allowed, the Decision is set aside and the matter is returned for redetermination by a different Officer.

2. Given the impact of *Kanthasamy* on the analysis required by an Officer in an application under subsection 25(1) of the *IRPA* and, in light of the nature and extent of the evidence to be considered by an Officer on such an application, the Applicant is to be permitted to file additional evidence, to update the existing evidence, and to make new or additional submissions prior to the redetermination.

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

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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