Federal Court



Cour fédérale

Date: 20180911

Docket: IMM-2569-17

Citation: 2018 FC 906

Toronto, Ontario, September 11, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

IMELDA MUNETON GUTIERREZ
OCTAVIO FLORES RODRIGUEZ
ALFONSO FLORES MUNETON
RAUL FLORES MUNETON
MARIA FERNANDA FLORES MUNETON
OCTAVIO FLORES MUNETON

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Imelda Muneton Gutierrez (the "Principal Applicant"), her husband Octavio Flores Rodriguez and their children Alfonso Flores Muneton, Raul Flores Muneton, Maria Fernanda Flores Muneton and Octavio Flores Muneton (collectively "the Applicants") seek judicial review of the decision of an Officer (the "Officer") dismissing their application for permanent residence

in Canada on Humanitarian and Compassionate ("H&C") grounds, pursuant to section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"). The decision under review is dated May 25, 2017.

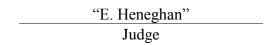
- [2] The Applicants entered Canada in 2009 and resided here for some 8 years prior to the submission of their H&C application. By the time the negative decision was rendered, the eldest son Alfonso had attained the age of 19 years of age and was considered to be an adult, for the purpose of the assessment of the best interests of the children.
- [3] The Officer, in refusing the Applicants' application, noted that in spite of their 8 year period of residence in Canada, the father and eldest son had shown disregard for Canadian laws by failing to file income tax returns or to pay taxes. The Officer noted that the Applicants had shown disregard for Canadian laws by failing to report for removal or to otherwise co-operate with the Canada Border Service Agency.
- [4] The decision of the Officer is a discretionary one, reviewable on the standard of reasonableness; see the decision in *Kisana v. Canada (Minister of Citizenship and Immigration)*, [2010] 1 F.C.R. 360 (F.C.A.).
- [5] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the reasonableness standard requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes which is defensible in respect of the facts and the law.

- [6] Upon considering the evidence contained in the Certified Tribunal Record (the "CTR"), as well as the written and oral submissions of Counsel, I am not satisfied that the decision meets the applicable standard of review.
- [7] I agree with the Applicants that the Officer unreasonably focused upon the issue of unauthorized employment in assessing the H&C application.
- [8] As well, I am not satisfied that the Officer reasonably addressed the issue of generalized hardship. I refer to the decision in *Gonzalez v. Canada (Citizenship and Immigration)*, [2015] 4 F.C.R. 535 (F.C.), where the Court said at paragraph 55 that "...an H&C applicant may raise hardship that is also faced by others in the country of removal".
- [9] In my opinion, the decision does not meet the standard of reasonableness as described above.
- [10] Accordingly, the application for judicial review is granted. The decision of the Officer is set aside and the matter is remitted to a different Officer for redetermination. There is no question for certification arising.

JUDGMENT in IMM-2569-17

THIS COURT'S JUDGMENT is that the application for judicial review is granted.

The decision of the Officer is set aside and the matter is remitted to a different Officer for redetermination. There is no question for certification arising.



FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2569-17

STYLE OF CAUSE: IMELDA MUNETON GUTIERREZ, OCTAVIO

FLORES RODRIGUEZ, ALFONSO FLORES

MUNETON, RAUL FLORES MUNETON, MARIA

FERNANDA FLORES MUNETON, OCTAVIO FLORES MUNETON v THE MINISTER OF CITIZENSHIP AND

IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 8, 2018

JUDGMENT AND REASONS: HENEGHAN J.

DATED: SEPTEMBER 11, 2018

APPEARANCES:

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Catherine Vasilaros FOR THE RESPONDENT

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