

Federal Court



Cour fédérale

**Date: 20180911**

**Docket: IMM-1235-18**

**Citation: 2018 FC 902**

**Ottawa, Ontario, September 11, 2018**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ERADOR DORVILUS**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Dorvilus seeks to set aside a decision by a Canadian Border Services Agency Inland Enforcement Officer [the Officer] to not defer the execution of his removal scheduled for March 21, 2018. The deferral was requested until a decision is made on his Humanitarian and Compassionate [H&C] application for permission to make an application for permanent residence from within Canada. The H&C application was received by Immigration, Refugees and Citizenship Canada – Backlog Reduction Office, on November 30, 2017.

[2] Based on the submissions made in support of the deferral, the Officer considered whether a deferral was warranted considering (1) the outstanding H&C application, and (2) the best interests of the applicant's children.

[3] Having reviewed the decision and counsel's submissions, I am unable to find that the Officer's conclusion and analysis based on the pending H&C application was unreasonable. Counsel submitted that this is one of those instances where his client's removal from Canada would weaken his H&C application to the extent that a positive determination would be very unlikely. He says this because one of the bases of that application is that the applicant has been financially supporting his children overseas and that would cease if he were removed to Haiti. He urges the Court to find that the Officer erred in failing to properly consider this consequence.

[4] Despite counsel's able submission, I remain unconvinced that a removal officer is required to consider such a fact when the determination of the H&C application is as far in the future as is here the case. It may be a relevant consideration where it can be shown that the determination is close at hand but here the decision appears to be two years off, at best.

[5] However, I have some concerns regarding the Officer's analysis of the best interests of the applicant's children.

[6] Mr. Dorvilus left Haiti some 30 years ago and lived for a number of years in The Bahamas. He remained there until he came to Canada in 2015. He left The Bahamas only when

told that his work permit would not be further extended. He has four children. In an affidavit in support of his H&C application he swears:

I have four children, three in Haiti and one in Bahamas. My common-law (customary) spouse Rosiana Hercule is living in Haiti with our two daughters: Rosemanie (17 yrs old) and Eraldine (15 yrs old). I also have two other children: Maraya (18 yrs old) who lives in Bahamas with her mother, and Dieusin (23 yrs old) who lives in Haiti. Another child died.

...

I've always supported my family. During the years I worked in Bahamas, I provided financial support. Since coming to Canada, I've been working at Peninsula Alloy. I send money regularly to Rosiane [*sic*] and my children (including Maraya and Dieusin). I send money for all my children. Every month, I try and send at least \$100. Sometimes I send \$150 sometimes \$200.

My four children are still in school. Dieusin is still taking courses at Lycee Justin L'Herisson. The others are also in school. I send money for their education. Dieusin wants to be an engineer. Rosemanie wants to be a nurse. Maraya is studying at Bahamas Technical and Vocational Institute.

[7] In the deferral request, counsel writes:

[T]he best interests of his children depend on him remaining in Canada. They rely on his financial contributions to maintain their existence and education in Haiti (and Bahamas).

[8] In the decision, the Officer writes:

I acknowledge the statements from counsel and I'm sensitive to Mr. Dorvilus' family's circumstances in Haiti and in the Bahamas...

...

I further not [*sic*] that counsel has provided no evidence to demonstrate that Mr. Dorvilus is the father of any children living in Haiti or the Bahamas. Counsel also provided no documentation to

demonstrate that Mr. Dorvilus sends money to his wife in Haiti or to any of his children. [emphasis added]

[9] Mr. Dorvilus submits that the statements above show that the Officer ignored or overlooked his affidavit evidence that he had four children he supported in Haiti and The Bahamas.

[10] The respondent submits that when the Officer wrote that “counsel has provided no evidence” the Officer meant that there was no evidence provided to corroborate the statements in the affidavit that Mr. Dorvilus had four children and that he sent them money.

[11] If the respondent’s interpretation is correct, namely that the Officer’s concern was the lack of corroborative evidence to support the sworn statements, then this raises a question of why any corroborative evidence was required. Either the Officer believed Mr. Dorvilus’ sworn statement or he did not.

[12] If the Officer did not believe Mr. Dorvilus, then some explanation was required to support that finding. The Officer offers no explanation or reason why that disbelief was reasonably held. That is a reviewable error.

[13] If the Officer did believe Mr. Dorvilus (a position the respondent appeared to take at the hearing) then the Officer was required to engage with that evidence and provide some reason why the financial support to his children was not a basis for granting the deferral. However, no rationale is provided by the Officer and thus, contrary to the respondent’s submission, it cannot

be said that the Officer was alert, alive, and sensitive to the best interests of the children affected.

That is a reviewable error.

[14] For these reasons, the decision cannot be said to show justification, transparency and intelligibility. It is not reasonable and must be set aside.

[15] No party proposed a question for certification, and there is none on these facts.

**JUDGMENT IN IMM-1235-18**

**THIS COURT'S JUDGMENT is that** the application is allowed, the decision of the enforcement officer refusing a deferral of removal is set aside, the request is to be determined by a different enforcement officer, with the applicant having the right to submit further material in light of the delay since the initial request was made, and no question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1235-18

**STYLE OF CAUSE:** ERADOR DORVILUS v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 6, 2018

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** SEPTEMBER 11, 2018

**APPEARANCES:**

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