Federal Court  Cour fédérale

Date: 20181017

Docket: IMM-1545-18

Citation: 2018 FC 1042

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, October 17, 2018

PRESENT: Mr. Justice Grammond

BETWEEN:

DAHO THIERRY DOUTI
DOUTI NGO NGAN MINTAMAK VÉRONIQUE
DOUTI FRANCK OWEN TOUAHÉ
DOUTI ROYCE NOLAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. and Ms. Douti, along with two of their children, applied for an exemption on humanitarian and compassionate [H&C] grounds. As they are citizens of different countries, they claim that without this exemption, their removal from Canada would result in the separation of their family. A Minister's delegate dismissed their application. They are now applying for

judicial review of that decision. I dismiss their application, because the Minister's delegate reasonably concluded that the family could all live in France.

[2] This Court reviews decisions of this nature on a standard of reasonableness (*Kanthasamy v Canada (Citizenship and Immigration*), 2015 SCC 61 at para 44, [2015] 3 SCR 909 [*Kanthasamy*]). This means that I must not ask myself what decision I would have rendered. I simply need to ensure that the decision under review is based on a defensible interpretation of the applicable legal principles and on a reasonable assessment of the evidence before the decision-maker.

[3] In this case, the officer who made the decision on behalf of the Minister had to apply section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, which says that the Minister may grant the requested relief if he *"*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.*"*

[4] A decision made under section 25 is discretionary. The decision-maker must weigh several relevant factors, but there is no rigid algorithm that determines the outcome. In that context, my role is not to assess the relevant factors or exercise the discretion anew, but simply to verify that the decision-maker turned his or her mind to the relevant factors and gave them due consideration.

[5] This case stems from an H&C application authorizing Mr. and Ms. Douti to apply for permanent residence from within Canada. The application was based on the following facts. Mr. Douti is a citizen of Ivory Coast. He has lived in Canada since 2011, but his refugee claim was denied so he currently has no status. His spouse, Ms. Douti, is a German citizen. She has lived in Canada several times since 2008 on study or work permits. Mr. and Ms. Douti have four minor children who live with them in Canada. Two of the children are Canadian citizens, one is a German citizen and one is an American citizen. The main reason for the H&C application was to avoid separating the family. Mr. and Ms. Douti claim that there is no country where the entire family could legally live. Their removal from Canada would therefore result in [TRANSLATION] "the total dispersal of the family."

[6] Their application was dismissed on April 27, 2017, but upon agreement with the Minister that decision was set aside and the case was referred to another officer for redetermination. On March 15, 2018, their application was dismissed again. In his reasons, the Minister's delegate dismissed the arguments regarding the separation of the family. He noted that Ms. Douti is a German citizen and that as such she could live in any country in the European Union. He also noted that Ms. Douti previously lived in France at various times, including between 2014 and 2016. He cited a French Government information document that indicates that [TRANSLATION] "if you are European or Swiss, you may be accompanied or joined by your immediate family in France" and that also describes the procedure for non-European spouses or children to obtain a residence card. The officer concluded that Mr. and Ms. Douti did not demonstrate that their family would be separated if removed from Canada.

[7] I consider this decision to be entirely reasonable. In an H&C application, the burden of proof falls on the applicant (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 35, [2010] 1 FCR 360 (CA)). That means that Mr. and Ms. Douti had to show to the officer that their removal would result in the family's separation. Given Ms. Douti's German citizenship, the option of living in Europe could not be ignored. Hence, Mr. and Ms. Douti had the burden of demonstrating why it would be impossible for them to live in Europe. Since they did not discharge that burden, they cannot now complain that the Minister's delegate dismissed their claims.

[8] Mr. and Ms. Douti also claim that the Minister's delegate did not take account of the best interests of the children, rendering the decision unreasonable. The Minister's delegate, however, dedicated an entire page of his reasons to an analysis of the children's interests. I consider that his analysis was reasonable. Given that arguments about the children's best interests were merely a reformulation of the arguments about the family's separation, he was right in dismissing them.

[9] Mr. and Ms. Douti also claim that the Minister's delegate should have given more weight to the children's need for stability, which would require that they remain in Canada. Without denying the effect moving can have on children, I consider this to be part of the inherent hardship of removal. In that regard, the Justice Rosalie Abella of the Supreme Court of Canada stated that "[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). I also note that Mr. and

Ms. Douti have not claimed any particular hardship associated with living in France. Furthermore, the children all speak French, and some of them have previously lived in France.

[10] As for the applicants' degree of establishment, I consider that the way the Minister's delegate exercised his discretion was not unreasonable.

[11] Given that the decision made by the Minister's delegate was reasonable, the application for judicial review is dismissed.

JUDGMENT in IMM-1545-18

THE COURT ORDERS that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

François Kasenda Kabemba	FOR THE APPLICANT
Sarah Jiwan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cabinet François K. Law Office Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT