Federal Court Cour fédérale

Date: 20191108

Docket: IMM-736-19

Citation: 2019 FC 1404

Ottawa, Ontario, November 8, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

YANTING CAO
HAO HUI DAVID CAO (MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Yanting Cao, the Principal Applicant, is a citizen of China and a permanent resident of Peru. Her minor son David was born in, and is a citizen of, Peru. They illegally entered Canada in 2015 and sought protection. The Refugee Protection Division [RPD] refused their

claim. They did not appeal that decision. An application for a pre-removal risk assessment was rejected. Ms. Cao and her son were subsequently scheduled to be removed from Canada to Peru.

[2] Ms. Cao believed she was unable return to Peru, having been outside of that country for more than six months. On January 31, 2019, she requested that the Canada Border Services Agency [CBSA] defer her removal scheduled for February 1, 2019, pending receipt of written confirmation from the Peruvian authorities that she would be granted entry on return to Peru. Deferral was also sought on the basis that it was in David's best interests to allow him to complete his first grade studies in Canada.

[3] The request for deferral was refused. Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], Ms. Cao initiated an Application for Leave and for Judicial Review of the refusal decision and brought a motion seeking a stay of removal pending final disposition of the Application. On February 1, 2019, this Court granted a stay.

[4] In seeking judicial review, Ms. Cao raises two issues:

A. Did the Officer err in concluding that Ms. Cao was able to return to and enter Peru?

B. Was the Officer's refusal to defer removal pending David's completion of first grade unreasonable?

[5] Having considered the submissions I am not convinced the Officer committed any error warranting the Court's intervention. The Application is dismissed for the reasons that follow.

II. Standard of Review

[6] A request for deferral of removal is a discretionary decision to be reviewed against a standard of reasonableness (*Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 25). A decision is reasonable where the reasons provided are justified, transparent and intelligible and the decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and the law (*Dunsmuir v. New Brunswick,* 2008 SCC 9 at para 47).

III. Analysis

A. *Did The Officer err in concluding Ms. Cao was able to return to and enter Peru?*

[7] Ms. Cao was originally scheduled to return to Peru on January 31, 2019. On January 29, Ms. Cao informed CBSA officials that she had been advised by the Peruvian Consulate that she no longer had status in Peru. The January 31, 2019 removal was cancelled and the Removals Officer contacted the Peruvian Consulate and the CBSA Liaison Officer in Peru. The Consulate did not respond. However, the Liaison Officer advised that Peruvian authorities had confirmed that Ms. Cao and her son would be granted entry to Peru. It appears the removal was then rescheduled.

[8] In considering the request for deferral of removal on February 1, 2019, the Officer reviewed and considered the actions taken on January 29. The Officer noted the advice provided by the CBSA Liaison Officer and further noted that Ms. Cao's Peruvian national identification

card describes her resident status in Peru as indefinite. The Officer considered the Peruvian legislation Ms. Cao relied upon to advance the view that her absence from Peru had impacted her status noting that it did not purport to apply to individuals with permanent resident status in Peru. The Officer also noted that the RPD had concluded that Ms. Cao had not lost her status in Peru.

[9] On the basis of these facts the Officer concluded that Ms. Cao would be granted entry to Peru. This determination was not unreasonable. Ms. Cao's evidence was considered and the Officer was entitled to rely on the information provided by the CBSA Liaison Officer in Peru.

[10] It was not unreasonable for the Officer to conclude that upon removal from Canada Ms. Cao would be able to return to and enter Peru.

B. *Did the Officer err in refusing to defer removal pending David's completion of first grade?*

[11] In seeking deferral, Ms. Cao requested that "removal from Canada be delayed for a temporary period of time, until the minor child completes the current school year, which will take place in June 2019, as the child would have to restart grade 1 in Peru." In support of this ground for deferral the request noted that completion of a school year and a child's short term best interests have been recognized as valid factors for a deferral officer to consider. No evidence or submissions beyond these assertions were placed before the Officer.

[12] The respondent takes the position that this issue is now moot, the school year having been completed prior to the hearing of this Application.

[13] An issue is moot where a tangible and concrete dispute no longer exists. A court may nonetheless exercise its discretion to consider and determine an issue that is moot (*Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342 at page 353 [*Borowski*]). The jurisprudence provides guidance in respect of the criteria to be considered in determining whether an issue that is moot should be decided (*Borowski* at pages 353 to 363).

[14] With the school year having been completed prior to the hearing of this matter I am satisfied that this issue is moot.

[15] Should I, nonetheless, consider and decide the issue? The issue in dispute arises from an exercise of discretion based on the facts before the Officer. A determination of the issue here will be of little to no value in considering any future deferral request made on a similar basis. Should removal be attempted in the future and in the course of David's school year it would be open to Ms. Cao to seek a deferral based on the circumstances as they exist at that time.

[16] Having concluded that this issue is moot and considering the above-noted circumstances and the criteria set out in *Borowski*, I find that there is no basis upon which to exercise my discretion to decide this question.

IV. Conclusion

[17] The application is dismissed. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-736-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and

2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-736-19
STYLE OF CAUSE:	YANTING CAO HAO HUI DAVID CAO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 23, 2019
JUDGMENT AND REASONS:	GLEESON J.
DATED:	NOVEMBER 8, 2019

APPEARANCES:

Peter Lulic	FOR THE APPLICANTS
David Cranton	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Peter Lulic Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT