Federal Court Cour fédérale

Date: 20210625

Docket: IMM-7814-19

Citation: 2021 FC 667

Ottawa, Ontario, June 25, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

AR-JAY RAMOS AND GRACIELA MANIQUIS

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of an Inland Enforcement Officer [the "Officer"] of the Canada Border Services Agency [CBSA], dated December 20, 2019, refusing the Applicants' deferral of removal [the "Decision"].

II. Background

[2] The Applicants, Ar-Jay Ramos and Graciela Maniquis, are citizens of the Philippines. They landed in Canada in June of 2015 under the Manitoba Provincial Nominee Program and became permanent residents. They are common-law partners and have three children (aged 13 years old, 6 years old and 2 years old), whom are all Canadian citizens.

[3] In their application for permanent residence, the Applicants had misrepresented that they were married and failed to disclose Mr. Ramos's existing marriage and child. The Applicants were found to be inadmissible to Canada for misrepresentation and exclusion orders were issued against them.

[4] The Applicants appealed their removal order. The appeal was dismissed before the Immigration Appeal Division on or about August of 2018. Their application for leave and for judicial review was dismissed on November 18, 2019. The Applicants had further applied for a Pre-Removal Risk Assessment in December of 2018, which was refused on February 28, 2019.

[5] On March 27, 2019, an in-person interview was held between the Applicants and another CBSA officer. The Applicants made a verbal request to defer their removal so that their children could finish the school year. The deferral was granted. However, at the end of the 2019 school year, the Applicants remained in Canada.

[6] A removal interview was conducted on November 13, 2019 between the Officer and the Applicants. The Applicants stated that they did not know whether their three children would accompany them to the Philippines. They further indicated that Mr. Ramos's sister and father currently lived in Winnipeg and could take care of the Applicants' children if the Applicants were removed.

[7] Ms. Maniquis followed-up with the Officer by email on November 19, 2019 to indicate that the children were not coming to the Philippines. Ms. Maniquis further requested that the Applicants remain in Canada, until after Christmas, so that the family could be together during the holidays.

[8] The Applicants were notified in person and by letter on December 6, 2019, that their removal from Canada to the Philippines was scheduled for January 3, 2020. At this meeting, the Officer was advised verbally that the children would be staying with an aunt in Canada.

[9] On or around December 10 or 12 of 2019, the Applicants applied for Canadian passports for their children.

[10] On December 13, 2019, the Applicants submitted an application for permanent residence on humanitarian and compassionate [H&C] grounds.

[11] The Applicants then, on December 16, 2019, asked the CBSA to defer their removal from Canada until June 30, 2020, which was refused in the Decision at issue, dated December 20,

2019. The deferral request was submitted on basis of four grounds: (1) the Applicants were provided with little time to prepare for the care of their children; (2) the Applicants were waiting for the Canadian passports of their children to be processed; (3) the Applicants have submitted an H&C application; and (4) that psychological, physical harm and hardship will be suffered by the family if forced to undergo severe disruptions to their lives in a short period of time. As it relates to their children, the Applicants have described the health conditions of their children, including their eldest child's significant psychological difficulties and suicidal ideation.

[12] Later this same day, the Applicants sought a shorter deferral so that they would have extra time to prepare their motion for a stay of their removal. The Officer refused the Applicants' second deferral request on December 23, 2019. The stay motion was heard on December 31, 2019 and granted.

[13] The Applicants are now seeking judicial review of the Decision, refusing to defer their removal from Canada. The Applicants seek an Order setting aside the Decision and referring the matter back to a different officer for reconsideration. The Applicants also seek costs.

III. Decision Under Review

[14] The Officer refused the Applicants' deferral of removal, finding that:

A. The Applicants were notified of their imminent removal on March 27, 2019, a deferral request had been previously approved and there was ample time for the Applicants to make arrangements for their children.

B. The Officer was advised verbally that Mr. Ramos's sister and father would be caring for the children in Canada and no evidence has been provided to indicate what type of care the Applicants are referring to, nor what planning is still needed.

C. The passports for the children should be received prior to the removal date. Nonetheless, the only flights booked were for the Applicants, as the Applicants had indicated that the children would not be departing with them.

D. The H&C application for permanent residence does not stay removal. Further, it was not submitted in a timely manner.

E. There are insufficient reasons to believe that the children would suffer irreparable harm. The treating psychologist's recommendations appear to be indefinite in nature and removal cannot be indefinitely deferred.

IV. Issues

[15] The issues are:

A. Have the Applicants included inadmissible affidavit evidence?

B. Was the Decision refusing to defer the Applicants' removal from Canada unreasonable?

V. Standard of Review

[16] The standard of review applied to the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

VI. Relevant Provisions

[17] The relevant provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the "*Act*"] include:

Enforceable removal order	**Mesure de renvoi**
48 (1) A removal order is enforceable if it has come into force and is not stayed.	**48 (1)** La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.
Effect	**Conséquence**
(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible.	**(2)** L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être exécutée dès que possible.

VII. Analysis

A. *Admissibility of the Affidavit Evidence*

[18] The Respondent submits that the affidavits of Mr. Ramos, Ms. Maniquis and certain portions of the affidavit of Maria Ingrid Ruiz, an articling student with counsel for the Applicants, are inadmissible, as they were not before the Officer, including the:

A. Affidavit of Mr. Ramos, sworn December 22, 2019;

B. Affidavit of Ms. Maniquis, sworn December 22, 2019;

C. Affidavit of Mr. Ramos, sworn February 7, 2020; and

D. Affidavit of Ms. Ruiz, sworn December 23, 2019, at paragraphs 4 to 8 and Exhibits C, D and E.

[19] The general rule is that evidence that was not before the Officer is not admissible on judicial review. There is a list of exceptions to this, which is not closed (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20):

A. An affidavit may provide general background in circumstances where that information might assist in understanding the issues relevant to the judicial review. Care must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider.

B. Affidavits may be necessary to bring to the attention of the judicial review court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, so that the judicial review court can fulfil its role of reviewing for procedural unfairness.

C. An affidavit may highlight the complete absence of evidence before the administrative decision-maker when it made a particular finding.

[20] The Applicants argue that Mr. Ramos and Ms. Maniquis's affidavits provide background context and further demonstrate the "absence of evidence". The affidavits rather attempt to substantiate the Applicants' position that they had little time to prepare for the care of their children. This evidence was not before the Officer, goes to the merits of the Decision, and is inadmissible.

[21] The Applicants further submit that Ms. Ruiz's affidavit demonstrates "the absence of the Officer's engagement with the information that was before the Officer", who had the opportunity to access the Canada Post tracking number and calculate the timeframe in which the Applicants could receive their children's passports. However, the Officer considered the timeframes relevant to the processing of the children's passports, finding that the Applicants "should have the [children's] Canadian passports prior to their removal date of January 3, 2020".

[22] This evidence does not meet an exception to the general rule that evidence that was not before the decision-maker is not admissible on judicial review. The identified sections and exhibits of this affidavit are therefore also inadmissible and have not been considered.

B. *Reasonableness of the Decision*

[23] It is the Applicants' position that the Officer refused to defer the Applicants' removal from Canada until they could make adequate arrangements for the care of their children and

pending the receipt of their children's passports. It was impractical and impossible for the Applicants to formulate a realistic plan when no departure date had been provided.

[24] The Applicants further assert that the Officer's Decision was unreasonable in that she failed to consider the short-term best interests of the children and failed to appreciate the risks to the children if their parents are removed within a short timeframe. Their eldest child's psychological well-being is at risk and he experiences passive suicidal thoughts. The middle child is experiencing medical issues with respect to a chest infection and lack of bone density growth. The youngest child is only two years old and is breastfeeding. Separation of the Applicants from their children will cause irreparable harm to the family unit.

[25] A reasonable decision must be justified, intelligible and transparent (*Vavilov*, above at para 95). It is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and the law that constrain the decision-maker (*Vavilov* at para 85). The decision must further be reasonable in light of the evidentiary record and the general factual matrix that bears upon it (*Vavilov* at para 126).

[26] The Minister is bound to execute a valid removal order. The discretion that an enforcement officer may exercise is very limited, restricted to *when* a removal order will be executed (*Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 54 [*Lewis*]). Subsection 48(2) of the *Act* requires the enforcement of removal orders as soon as possible. In exercising this discretion, an enforcement officer may consider factors such as illness, effective travel arrangements, pending births and deaths, timely H&C applications that

remain pending and the children's school years (*Lewis*, above at para 55; *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paras 49, 51 [*Baron*]).

[27] As it relates specifically to the existence of a pending H&C application, this is not a bar to the execution of a valid removal order (*Lewis* at paras 56-57). Absent special considerations, including threats to personal safety, such applications will not justify deferral (*Baron*, above at para 51). The Federal Court of Appeal has further stated (*Lewis* at para 57):

> [57] Thus, under this well-established line of authority, the mere fact that an H&C application has been made shortly before the removal date by those subject to being removed or the fact that they might take their Canadian-born children with them when they are removed from Canada does not mean that a deferral under section 48 of the IRPA is warranted. Nor is an enforcement officer entitled to engage in a full-blown analysis of the best interests of such children as so doing would usurp the function of H&C officers under section 25 of the IRPA.

[28] Nevertheless, an enforcement officer may engage in a "truncated consideration" of a child's short-term best interests where a child might be affected by their parents' removal (*Lewis* at para 58). This consideration includes (*Lewis* at para 83):

> [83] In previous cases, such short-term best interests have been found to include matters such as the need for a child to finish a school year during the period of the requested deferral (see, e.g. *Munar* at para. 40; *Khamis* at para. 30) or maintaining the well-being of children who require specialized ongoing medical care in Canada (see, e.g. *Danyi* at paras. 36-40). In addition, as noted in *Munar* at paragraphs 40-42, the short-term needs of a child that an enforcement officer must consider include ensuring that there will be someone to care for the child after his or her parent(s) are removed if the child is to remain in Canada.

[29] The Officer's consideration of the children's short-term best interests was reasonable. The Officer found that the Applicants had been given ample time to prepare and arrange care for their children, having initially been informed of their impending removal from Canada on March 27, 2019. The Applicants had previously been granted a deferral request until June of 2019, the end of their children's school year. In an email follow-up subsequent to the November 13, 2019 removal interview, Ms. Maniquis's only request was that the removal occur after Christmas, so that the family could be together.

[30] The Applicants had clearly communicated to the Officer that the children were to remain in Canada with the Applicants' family members. Mr. Ramos's biological farther and sister currently live in Winnipeg. The Applicants' December 16, 2019 deferral request states only that further time is required to make arrangements for the children. The Officer was reasonable in finding that no evidence had been provided to indicate what type of care was now required. The Applicants, having communicated that the children would be remaining in Canada under the care of Mr. Ramos's family, cannot now allege the Officer failed to make the appropriate inquiries.

[31] The Officer considered the short-term best interests of the children and was not required to undertake a full H&C analysis of the children's long-term best interests (*Lewis* at para 61). She did not err in finding that based on the children's circumstances, there would be no difference in the Applicants' departures occurring on January 3, 2020 or being deferred until June 30, 2020, as requested by the Applicants.

[32] Further, I find that any mistake in the Officer's finding that the children's passports would be received by the Applicants prior to their removal date from Canada has no material impact on the Decision. Plane tickets were only booked for the Applicants for January 3, 2020. This was done in reliance on the Applicants' statements that the children would remain in Canada. The Applicants further commenced the passport application process subsequent to the scheduling of their removal. As such, they could have benefitted from an expedited processing time if they so desired.

[33] While I have reviewed the Decision based on the evidence before this Court, I note the Applicants' arguments are primarily focused on not having enough time to make arrangements for the care of their children. The Applicants were informed of their impending removal from Canada on March 27, 2019. Now, over two years later, they were provided with a lengthy timeframe in which to prepare themselves and their children for their impending removal. The Applicants were granted a deferral until the end of the children's school year in 2019. Their removal, subsequently scheduled for January 3, 2020, fell after Christmas, as requested by the Applicants, so that the family could spend the holidays together. The Applicants' stay motion was granted on December 31, 2019. At this stage, the Applicants have received more than ample time to prepare for their removal from Canada and for the care of their children.

[34] As stated above, the Minister is bound to execute a valid removal order and discretion to defer is limited. In such circumstances, the Applicants' bald statements that their care plans fell through, in conjunction with effectively over two years of time to prepare such care plans, is devoid of any reasonable basis to find for the Applicants.

VIII. Conclusion

[35] This Application is dismissed without costs. There is no question for certification.

JUDGMENT in IMM-7814-19

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed without costs; and

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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