

Federal Court



Cour fédérale

Date: 20220502

Docket: IMM-3325-21

Citation: 2022 FC 633

Ottawa, Ontario, May 2, 2022

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**EZEQUIEL MOACIR SILVA
MADELEINE CRISTINE SALLES DA
SILVA
GABRIELLE TATIANA SALLES SILVA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This Application is for judicial review of a negative decision made by a senior immigration officer [the Officer] and dated April 30, 2021 [the Decision]. The Decision disposed of an application for permanent residence on humanitarian and compassionate [H&C] grounds.

[2] The Applicants are a husband [the Principal Applicant] and wife and their adult daughter [the Daughter]. They were all born in Brazil and they assert Brazilian citizenship. They all hold Portuguese passports.

[3] The family moved from Brazil to Portugal, but when the economic crisis hit, they moved to Canada. They overstayed their visas and have since been in Canada without status and without work permits.

[4] The Principal Applicant has worked in construction, as a bass player and music director for the Marc Joseph Band, and as a DoorDash delivery driver. The Principal Applicant's wife has worked as a cleaner. They did not provide information about their contracts of employment or dates of employment, and there was no information about their employment income. They have both volunteered their time for charitable causes and are well liked in their community. The Daughter has attended high school.

I. The Decision

[5] The Officer attributed very good weight to their community engagements and their relationships. He also gave "favourable" and "some positive weight" to their employment. The Officer concluded that they would not experience undo hardship if removed to Portugal because they had been well established there before coming to Canada. The Principal Applicant had worked as a musician, and his wife had been a sales manager for 7 years. The Officer also concluded that the adaptability they had shown in Canada would ease their re-establishment if

they returned to Brazil. Even so, he attributed weight to the fact that they would face some hardship on removal.

[6] The psychological report [the Report] showed that the Principal Applicant and his wife suffered from severe anxiety and that they were moderately depressed. It also showed that the Daughter had severe anxiety and was severely depressed.

[7] The Officer criticized the Report for being based on one interview and on facts presented by the Applicant. These criticisms, however, were not material because there was in fact only one interview as the Report stated and because the facts were not in dispute. In any event, the Officer did not take issue with the diagnoses. He said, "I have attributed some weight to the Applicants' mental health as a negative component (in the case of the family's removal) of this application".

[8] Regarding the Daughter, the Officer noted that although the Report mentioned that she had been attending weekly psychotherapy sessions for approximately five months, there was no information provided about any treatment she had received or any progress she may have made. The Officer nevertheless gave some weight to her well-being as a negative factor in the application. He also gave positive weight to her success at school.

II. The Issues

[9] The Applicants submit that the decision is unreasonable because the Officer minimized:

1. The Applicants' establishment;
2. Their employment; and
3. Their psychological report.

[10] The Applicants also criticized the Officer for failing to consider the Daughter's relationship with her boyfriend and for using the Applicants' establishment in Canada against them when finding that their adaptability shown by their establishment in Canada would reduce their hardship if they relocated to Brazil.

III. Discussion

[11] The difficulty is that the Officer attributed some positive weight to their employment (even though he lacked information about their contracts and earnings) and "very good weight" to the meaningful relationships they had established and to their community engagement. He also gave some weight to the psychological report and the mental issues it raised.

[12] I recognize that the Applicants submit that it was unreasonable of the Officer not to assign greater positive weight to their employment and establishment and greater negative weight to their mental health issues. However, I am not persuaded that the Officer misapprehended the facts or that his conclusions were unreasonable.

[13] Further, although the Officer criticized the psychological report, he nevertheless accepted the diagnoses it presented. In my view, the hardship analysis was reasonable because it was separate from the Officer's conclusions about establishment.

[14] Lastly, the Officer noted that he had no submissions from the Daughter. Counsel both acknowledged that this observation was accurate. The Officer did have evidence in the form of letters from the Daughter's boyfriend, the boyfriend's mother, and another friend, showing that the Daughter had formed a close relationship with her boyfriend. However, there was no evidence from the Daughter confirming the existence or significance of a boyfriend. In these circumstances, I have concluded that it was reasonable of the Officer to disregard the alleged relationship.

IV. Conclusion

[15] For all these reasons, an Order will be made dismissing the application for judicial review.

V. Certification

[16] No question was posed for certification for appeal.

JUDGMENT IN IMM-3325-21

THIS COURT'S JUDGMENT is that this application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3325-21

STYLE OF CAUSE: EZEQUIEL MOACIR SILVA, MADELEINE
CRISTINE SALLES DA SILVA, GABRIELLE
TATIANA SALLES SILVA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY TELECONFERENCE USING ZOOM

DATE OF HEARING: APRIL 6, 2022

JUDGMENT AND REASONS SIMPSON J.

DATED: MAY 2, 2022

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