**Date: 20071127**

**Docket: IMM-1862-07**

**Citation: 2007 FC 1243**

**Ottawa, Ontario, November 27, 2007**

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

**BETWEEN:**

**RUBEN ALEJANDRO RODRIGUEZ RIVERO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision rendered April 18, 2007, wherein the Immigration Officer (the officer) denied the application for permanent residence from within Canada on humanitarian and compassionate grounds (the H&C) pursuant to subsection 25(1) of the Act.

## BACKGROUND

[2] Ruben Alejandro Rodriguez Rivero (the applicant) is a 31 year-old citizen of Uruguay.

[3] His half-brother is a Canadian citizen.

[4] His half-brother made an application for sponsorship of his mother and the applicant in 1999. However, the applicant abandoned his brother's application because at that time, he did not want to come to Canada. His mother became a permanent resident in May 2002.

[5] He arrived in Canada December 14, 2005 with a temporary visa to visit his mother and half-brother. His temporary visa was extended several times and he made an H&C application for permanent residence on May 11, 2006.

[6] On April 18, 2007, his H&C application was denied. It is this negative decision that forms the object of the present application for judicial review.

## DECISION UNDER REVIEW

[7] The officer determined that the H&C considerations did not justify granting an exemption from the requirement that he apply for a permanent resident visa from outside Canada.

## ISSUE FOR CONSIDERATION

[8] Did the officer err in overlooking relevant evidence, misapprehending relevant evidence, as well as making perverse findings of fact unsupported by the evidence?

## PERTINENT LEGISLATION

[9] Subsection 25(1) of the Act reads as follows:

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| 25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations. | 25. (1) Le ministre doit, sur demande d'un étranger interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient. |

## STANDARD OF REVIEW

[10] The H&C decision is a discretionary decision and the applicable standard of review for an H&C decision rendered by an immigration officer is reasonableness *simpliciter* (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paragraph 62).

[11] The Supreme Court, in *Law Society of New-Brunswick v. Ryan,* [2003] S.C.R. 247 [footnotes omitted] explained the reasonableness standard at paragraphs 55 and 56:

> A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see *Southam*, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see *Southam*, at para. 79).
>
> This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.

**ANALYSIS**

[12] The applicant submits that the officer erred in her assessment of the considerable evidence submitted on the family and their emotional interdependency, the disastrous effect a separation would have on the family unit and the hardships the individual members of the family unit would suffer.

[13] The applicant refers the Court to Exhibit A-2, which is an affidavit of his mother. It appears from the document that his mother travelled to Uruguay from December 2002 to January 19, 2003, from December 2003 to April 2004 and from December 2004 to March 2005. She ends

her affidavit by explaining that with every year that passes by, the trip gets harder on her and is very tiring.

[14] The officer clearly takes that evidence into account since she states that the applicant's mother visited him several times. The officer also mentions that the mother also traveled to Uruguay in November 2006, to attend a wedding, while the applicant remained in Canada.

[15] In my opinion, the officer assessed the emotional interdependency – which she admitted was present in their situation – but clearly specified that this factor was not sufficient in itself to grant an exemption.

[16] The applicant alleges that the officer had no evidence before her purporting to the fact that the applicant could apply for permanent residence from outside Canada and that she never assessed the chances of being accepted as an independent skilled worker. That was not her role. The officer's duty was to make a discretionary decision as to whether the applicant would suffer unusual, undeserved or disproportionate hardship if he was to file an application for permanent residence from abroad, not to conduct a preliminary evaluation of the application's chances of being accepted. Moreover, she pointed out that the applicant had proven to be able to travel since he came to Canada several times and always obtained the necessary visas to do so.

[17] In support of his affidavit submitted for this judicial review, the applicant submits Guidelines from the Quebec government about the Family Class. Those documents and the general argument concerning the fact that the applicant would not get accepted in Quebec

because he did not fall within a category of the Family Class were not before the decision-maker. The only argument raised by the applicant is one stating that because he did not speak French, he could not be selected by Quebec. The officer gave little weight to that argument and mentioned that he could have learned French while he was in Canada and would still have the chance to learn it in Uruguay while applying for a permanent resident visa.

[18] The applicant also alleges that the officer speculated when she determined that the applicant could find employment upon his return to Uruguay. I cannot conclude that this was not supported by the evidence before her. As she stated herself, she had no evidence before her purporting that he could not find employment. The only evidence she had was that he had been working in Uruguay for ten years prior to his arrival in Canada. Therefore, it was reasonable for her to infer that he would find employment.

[19] A complete reading of the decision leads me to find that the officer made a thorough and comprehensive analysis of all of the H&C grounds raised by the applicant. The alleged mistake made by the officer in mentioning that the mother suffered "osteoarthritis" ("arthrose" in French) instead of "osteoporosis" (note that the only relevant information I could find in the applicant's mother's medical file was "joint pains"), while it may be a more serious condition, is not sufficient for this Court to intervene when the global decision remains reasonable.

[20] The applicant has not rebutted the presumption that the decision-maker has considered all of the evidence and that the assessment of weight to be given to the evidence is a matter within her discretion and expertise (*Woolaston v. Canada (Minister of Employment and Immigration)*, [1973]

S.C.R. 102, *Shah v. Canada (Minister of Public Security and Emergency Preparedness,* 2007 FC 132).

[21] The officer concluded in her reasons that the applicant had failed to demonstrate that he would suffer unusual, undeserved or disproportionate hardship if he was required to apply for permanent resident visa from Uruguay, and thus refused to grant an exemption under subsection 25(1) of the Act.

[22] In light of the evidence before the officer and the reasons given by her, I find this conclusion to be reasonable and see no reason to interfere with it.

[23] For the above reasons, this judicial review is denied.

[24] Counsel did not propose any questions for certification.

## JUDGMENT

1. The application is dismissed.

2. There is no question for certification.

"Pierre Blais"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1862-07 |
| **STYLE OF CAUSE:** | RUBEN ALEJANDRO RODRIGUEZ RIVERO v. MCI |
| **PLACE OF HEARING:** | Montreal, Quebec |
| **DATE OF HEARING:** | November 21, 2007 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Mr. Justice Blais |
| **DATED:** | November 27, 2007 |

**APPEARANCES:**

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| Me Jeffrey Nadler | FOR THE APPLICANT |
| Me Evan Liosis | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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