

Date: 20080403

Docket: IMM-3045-07

Citation: 2008 FC 439

Toronto, Ontario, April 3, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**CHOON SOO YOON
HEE SOON KANG**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application is a challenge to a Humanitarian and Compassionate (H&C) decision rejecting the plea of an elderly couple from Korea to apply for permanent residence from within Canada.

[2] The decision under review is in the form of CAIPS notes which, in my opinion, do not meet the standard of reasons as required by *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817. The H&C Officer's statement does not include a critical analysis of the undue

hardship that would be suffered by the Applicants at their ages of 71 and 72. The Applicants' plea for H&C relief is focussed on the fact that they: have been in Canada for two years; are totally dependant on their three Canadian daughters in Canada to support them; have no friends or relatives in Korea who might care for them; there is doubt that the daughters could sponsor them as family members should they be required to return to Korea; and their daughters need their support in raising their own children. The mediocre response given by the H&C Officer to this well supported application includes the findings that: "it is reasonable to believe that [the Applicants] would have some friends or family ties in Korea" (Tribunal Record, p. 20); and the Applicants' daughters are "established enough to meet the LICO standards for sponsorship of their parents after eight years in Canada" (Tribunal Record, p. 23). A scrutiny of the record discloses that there is no evidence to support these two statements.

[3] The H&C Officer also made the following statement which is seriously challenged in the present Application:

Although there is some hardship in being temporarily separated from their children while awaiting overseas processing, I am not of the opinion that this hardship would be unusual or disproportionate.

(Tribunal Record, p. 23)

There is absolutely no evidence on the record to substantiate the notion that the Applicants would only be temporarily separated from their children should they be required to return to Korea. The major point being advanced by the Applicants is that they are completely dependant on their children, and that any return to Korea would place them in an acutely undue hardship situation. In my opinion, the H&C Officer failed to grasp the essential point of the Application.

[4] In my opinion, the decision under review is unreasonable, and, consequently, it is rendered in reviewable error.

ORDER

Accordingly, I set aside the decision under review and refer the matter back for re-determination by another H&C officer.

There is no question to certify.

"Douglas R. Campbell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3045-07

STYLE OF CAUSE: CHOON SOO YOON, HEE SOON KANG v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 3, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: APRIL 3, 2008

APPEARANCES:

JOSHUA LANG FOR THE APPLICANTS

RICKY Y. M. TANG FOR THE RESPONDENT

SOLICITORS OF RECORD:

ORMSTON, BELLISSIMO, ROTENBERG
BARRISTERS AND SOLICITORS
TORONTO, ONTARIO FOR THE APPLICANTS

JOHN H. SIMS, Q.C.
DEPUTY ATTORNEY GENERAL OF CANADA FOR THE RESPONDENT