Date: 20080402

Docket: IMM-1094-07

Ottawa, Ontario, April 2nd, 2008

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

SUSHIL KISANA, SEEMA KISANA
and
LOVLEEN KISANA by her Litigation Guardian Sushil Kisana

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

UPON hearing this application for judicial review of a decision of an immigration officer refusing to grant the applicant an exemption from the requirements for permanent residence on humanitarian and compassionate grounds on February 4, 2008;

AND UPON issuing Reasons for Judgment on March 6, 2008, in which the parties were requested to provide submissions in writing with respect to whether any serious questions of general importance should be certified pursuant to paragraph 74(*d*) of the *Immigration and Refugee*

Protection Act, S.C. 2001, c. 27 (the *Act*), and reserving Judgment until those submissions were received;

AND UPON receiving questions from the applicant as follow:

1. In light of the Federal Court of Appeal's judgment in *De Guzman v. M.C.I.*, [2005] F.C.J. No. 2119 and the Supreme Court of Canada's judgment in *Baker v. M.C.I.*, [1999] S.C.J. No. 39, does fairness require that an officer conducting an interview and assessment of an application by a child for landing in Canada to join her parents be under a duty to obtain further information concerning the best interests of the child if the officer believes that the evidence presented is insufficient?

2. Can 'hardship' in the context of humanitarian and compassionate consideration be considered as an overarching factor, under which the best interests of a child is but one factor, or must the two concepts actually be seen to be one and the same in the context of an application made by a child to immigrate to Canada to join her parents?;

AND UPON considering submissions from the respondent asserting that the first question is answered by *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] F.C.J. No. 158, which holds that the onus is on the applicant to bring forward all relevant evidence necessary to make their case and the applicant's reply that consideration of the best interests of the child can impose an additional burden on immigration officers in order to provide a fair hearing where the applicant is herself a child;

AND UPON being satisfied that the applicant's first question is a serious one of general importance which would be dispositive of her case;

AND UPON being satisfied that the second question proposed by the applicant has been answered by this Court, which has regularly held that the best interests of a child directly affected

are not a determinative factor in an assessment of undue hardship such that they cannot be coterminous concepts;

AND UPON being further satisfied that the second question is also one which is narrowly predicated on the specific facts of this case, such that it is not one of general importance as required by paragraph 74(*d*) of the *Act*;

IT IS THE JUDGMENT OF THIS COURT that the application for judicial review is dismissed, and the following question, as submitted by the applicant, is certified pursuant to paragraph 74(*d*) of the *Act*:

> Does fairness require that an officer conducting an interview and assessment of an application by a child for landing in Canada to join her parents be under a duty to obtain further information concerning the best interests of the child if the officer believes that the evidence presented is insufficient?

"Richard G. Mosley"
Judge