Federal Court  Cour fédérale

Date: 20110408

Docket: IMM-3941-10

Citation: 2011 FC 441

Ottawa, Ontario, April 8, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

PARMANAND RAMAISCHRAND,
SALOME RAMAISCHRAND,
SASKIA SANDYA RAMAISCHRAND

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Ramaischrand and his family seek judicial review of a negative decision made on June 22, 2010 by an Immigration Officer of Citizenship and Immigration Canada. The Officer found that the applicants' circumstances did not warrant an exemption from the requirement to apply for permanent residence from outside of Canada. For the reasons that follow, this application is dismissed.

[2] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA").

BACKGROUND

[3] Mr. Ramaischrand, his wife and daughter are from Guyana and came to Canada as visitors in 2002. They sought refugee protection in July 2003 and their claim was refused in October 2004. An application to this Court for judicial review of the Refugee Protection Division's negative decision was dismissed in July 2005. They filed their application for permanent residence on humanitarian and compassionate ("H&C") grounds in November 2005. The family has relatives here, the adults are both employed and involved in the community and their child is in school. Mr. Ramaischrand has three daughters from a previous relationship who continue to reside in Guyana.

DECISION UNDER REVIEW:

[4] After considering the applicants' relationships, the level of their establishment in Canada, the difficulties that would arise for the applicant child if returned to Guyana and the struggle in re-establishing themselves financially in their home country, the Officer concluded that separation from friends and family is a result of becoming a resident in another country, that the applicant child could transition into academic life in Guyana with the support of her parents and that she and Mr. Ramaischrand would benefit from being re-united with his three daughters (the applicant child's half-sisters). The Officer found that there was no evidence to suggest the child's welfare would be compromised or that the applicants could not, with time, re-establish themselves in the Guyanese

community. The Officer also held that they would not be personally affected by levels of crime in Guyana.

ISSUES:

[5] As framed by the parties, the issues are whether the Officer erred:

1. in concluding that the serious criminal activity in Guyana did not amount to unusual and undeserved or disproportionate hardship;
2. in analyzing establishment;
3. in failing to obtain a risk assessment;
4. in considering the best interests of the child.

ANALYSIS

Standard of Review

[6] As noted by Justice Robert Mainville, as he then was, in *Medina v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 504 at paragraph 23:

> In judicial review proceedings concerning discretionary decisions of administrative bodies, the standard to apply is usually one of reasonableness: "[w]here the question is one of fact, discretion or policy, deference will usually apply automatically (*Mossop*, [1993] 1 S.C.R. 554 at pp. 599-600; *Dr. Q*, [2003] 1 S.C.R. 226 at para. 29; *Suresh*, [2002] 1 S.C.R. 3 at paras. 29-30)": *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 53 (Emphasis added).

The reasonableness standard applies here: *Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 646, at paras. 10 to 13.

> *Did the Officer err in concluding that the serious criminal activity in Guyana did not amount to unusual and undeserved or disproportionate hardship?*

[7] H&C applications must present a particular risk that is personalized to the applicant: *Lalane v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 6 at paras. 1 and 38. The applicant is charged with the burden of demonstrating such risk. In the case at bar, the following answer was provided on the H&C application in response to the question, *What excessive hardship will you suffer if you have to submit your application at a visa office outside Canada as required by law?*

> I have no place to live if I have to go back. I will have to get a job and this will be difficult. We lost our business and to start another would not be feasable [sic] and all the crime against business in the country it will be too dangerous. I will have to start life all over and this will create a lot of hardship for me and my family. The situation is worse off now than before.

[8] This is the only reference made to crime in the entire record. The applicants have alleged that the Officer failed to consider the "country condition documentation which confirms the lack of police protection and lawlessness". However, no such documentation is included in the record. It was only in their application for judicial review that the applicants included evidence of this kind. Instead, the H&C application focused on establishment and the best interests of the child. As such, and based on the lack of evidence, it cannot be said that the Officer erred in concluding that the applicants would not face unusual and undeserved or disproportionate hardship by reason of the crime levels in Guyana.

[9] Even if generalized risk could be proven, this is not enough to succeed in an H&C claim: *Paul v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1300 at para. 8. As noted by

Justice Shore in *Lalane*, above, at para. 38, there must be a link between evidence supporting generalized risk and that of personalized risk. Otherwise, "every H&C application made by a national of a country with problems would have to be assessed positively, regardless of the individual's personal situation, and this is not the aim and objective of an H&C application". The Officer therefore reasonably concluded that the applicants did not establish that their circumstances indicate personal risk.

Did the Officer err in analyzing establishment?

[10] The applicants refer to *Amer v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 713, 81 Imm. L.R. (3d) 278, relying on *Jamrich v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 804 (F.C.T.D.), and *Raudales v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 385, for the proposition that the Officer failed to consider the degree of the applicants' establishment in Canada. In those cases, the Officer made a determination regarding establishment without analyzing the applicant's particular circumstances. Those decisions can be distinguished from the instant case. Here the Officer clearly examined the applicants' employment, volunteer background, educational and vocational training, as well as their efforts with various community groups. As such, the Officer carefully reviewed the significant evidence of establishment of this particular family: *Singh v. Canada*, 2009 FC 1062 at para. 11. No error was made.

Did the Officer err in failing to obtain a risk assessment?

[11] The applicants maintain that because a risk was alleged, the Officer disregarded Citizenship and Immigration Canada's Guidelines and Procedures ("Guidelines") in not sending their file for a separate pre-removal risk assessment. Such Guidelines do not have the force of law and are not binding on officers: *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para. 20.

[12] The facts of this case are not similar to those considered by the Court in *John v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 85, relied upon by the applicants in support of the proposition that the Officer ought to have taken the guidelines into consideration. In *John*, the factors that engaged the relevant guidelines in that case were clearly set out in the application. That was not done here. The applicants alleged hardship with respect to finding work and re-integrating into the Guyanese community. They did not advance any personalized risk to their safety. Thus, there was no need for the Officer to obtain a risk assessment.

Did the Officer err in considering the best interests of the child?

[13] The Officer thoroughly considered the best interests of the applicant child as well as the best interests of the principal applicants' daughters in Guyana. The Officer acknowledged the difficulty in transitioning back to life in Guyana but noted the applicant child would have the continued support of her parents if returned to Guyana. She would also have the opportunity to know her three half-sisters who still reside there. Although it was recognized that the principal applicant would be "better able" to provide financial assistance to his daughters in Guyana by working in Canada, the

Officer found there was insufficient evidence to suggest he could not continue to provide support to them upon return. His daughters would also benefit from his physical presence.

[14] The applicants rely on *Owusu v. Canada*, 2003 FCT 94, aff'd 2004 FCA 38, [2004] 2 F.C.R. 635; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 and *De Guzman v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436, asserting that the Officer failed to meaningfully consider the best interests of the child in light of international human rights instruments, namely that the child would be at risk if she were to return to Guyana. However, as previously noted, the applicants have failed to demonstrate that the child would be at a particularized risk of danger. Indeed, their only reference to crime was in one small paragraph located in a supplementary information form.

[15] Furthermore, in *Owusu*, although the Officer had failed to consider the best interests of the child, the application was dismissed by the Federal Court because Mr. Owusu failed to provide any evidence to support his best interests of the child claim. The Federal Court of Appeal upheld that finding and specified at para. 5 that "an applicant has the burden of adducing proof of any claim on which the H&C application relies. Hence, if an applicant provides no evidence to support the claim, the officer may conclude that it is baseless". The same applies here. If the applicants expected the Officer to consider the impact of crime in Guyana on the applicants, they should have included that evidence in the record.

[16] The applicants' reliance on *E.B. v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 110 is also misplaced. In that case, the applicant children had suffered trauma from seeing a

vicious attack on their mother in Guyana and from their fear of returning to that country. The officer failed to take into consideration the impact of a return on their psychological well-being. There is no evidence of a comparable nature in this case.

[17] The Officer reasonably concluded that there was insufficient evidence to demonstrate the applicant child's welfare would be compromised if returned to her country of origin, accompanied by her parents who would be in a position to provide her with the necessary support and love to integrate into that community.

[18] No serious questions of general importance were proposed.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application for judicial review is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3910-10
STYLE OF CAUSE:	PARMANAND RAMAISCHRAND, SALOME RAMAISCHRAND, SASKIA SANDYA RAMAISCHRAND and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

George J. Kubes	FOR THE APPLICANT
Amy King	FOR THE RESPONDENT

SOLICITORS OF RECORD:

GEORGE J. KUBES Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
MYLES J. KIRVAN Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT