

Federal Court



Cour fédérale

Date: 20111212

Docket: IMM-2137-11

Citation: 2011 FC 1457

Toronto, Ontario, December 12, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

RACHEL JOHN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] In the present Application the Applicant argues that the Humanitarian and Compassionate decision under review was made in reviewable error because it does not contain an analysis of the best interests of her three Canadian born children should she be required to return to Granada.

[2] The central argument placed before the Officer who made the decision is as follows:

The main hardship for the family if they were to return to Grenada would be the lack of support for the children. Their many aunts and uncles live in Canada. They have provided a network for the children. They have been the advocates for the children who have

learning disabilities. These learning challenges would not be addressed in Grenada.

The family has an extensive family support system in Canada. The children's great grandmother lives in Toronto. Children often learn from their elders. Moreover, there is no home or place in which the family could reside if they were forced to go to Grenada. The children have no home other than their home in Toronto. It is submitted that it would be confusing and difficult for the children to move to a country, which for them is an unknown.

(Tribunal Record, p. 67)

[3] In the decision rendered the Officer acknowledges the evidence stated in the Applicant's argument but, without analysis, only makes the following finding:

I am not satisfied that these children would face hardship if subject were required to leave Canada (Tribunal Record, p. 4).

The law with respect to determining the best interests of children is clear: to come to a reasonable decision, a decision-maker must demonstrate that he or she is alert, alive and sensitive to the best interests of the children under consideration (see: *Kolosovs v Canada (Citizenship and Immigration)* 2008 FC 165). I find that the Officer failed to meet this primary requirement.

[4] As a result, I find that the decision under review was rendered in reviewable error.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside and the matter is referred back for redetermination by a different H&C officer.

There is no question to certify.

“Douglas R. Campbell”

Judge

Federal Court



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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2137-11

STYLE OF CAUSE: RACHEL JOHN V. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 12, 2011

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

DATED: December 12, 2011

APPEARANCES:

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