Federal Court  Cour fédérale

Date: 20120113

Docket: IMM-609-11

Citation: 2012 FC 50

Ottawa, Ontario, January 13, 2012

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

HWA JA KWON
SUNG DING LEE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

THE PROCEEDING

[1] Hwa Ja Kwon and Sung Ding [the Applicants], seek judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection* Act, SC 2001, c27 [the Act] of a decision of a Citizenship and Immigration Officer [the Officer] dated January 11, 2011, wherein he refused the

Applicants' request for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds [the Decision].

[2] For the following reasons, the application for judicial review will be allowed.

THE BACKGROUND

[3] The Applicants are a husband and wife from South Korea. She has been a homemaker while in Canada but previously worked in Korea as an insurance broker and businesswoman. He is a retired school principal and former music teacher. The Applicants have three adult children in Korea. Their fourth child [the Daughter] is a Canadian citizen and the mother of her own two daughters now aged 9 and 11 [the Granddaughters].

[4] The Daughter's married life in Canada was a nightmare. Her young family lived with her husband's parents who were abusive. There was physical violence. As well, the Daughter's husband was an alcoholic who accumulated serious debts. The Daughter eventually ended the marriage but thereafter she was left alone as a student with no money and two young children.

[5] The Applicants came to the rescue. They moved to Canada on August 14, 2009, purchased a home for their Daughter and Granddaughters, learned basic English and provided a loving, stable and safe environment for them. Their efforts over the last two years have borne fruit. Their Granddaughters are doing well at school and their Daughter has completed her studies and has

secured employment as a registered nurse. However, her shift work means that she is often not home in the evening and on weekends.

[6] After the marriage ended, the Daughter's husband suffered a brain injury in a motorcycle accident. He is permanently mentally disabled. He is not able to play any role in the upbringing of his children.

[7] At present, the Applicants are effectively parenting their Granddaughters because their Daughter's nursing shifts do not permit her to be at home on a regular basis. It is not disputed that the Daughter very much wants the Applicants to stay with her family in Canada and, on April 8, 2010, the Applicants made their H&C application.

THE ISSUE

[8] The parties agree that the Applicants will not endure any disproportionate or unusual and undeserved hardship if they return to Korea to make their application for permanent residence. Accordingly, this case concerns the Officer's obligation under section 25 of the Act to make the Decision "taking into account the best interests of a child directly affected".

[9] Against this background, the determinative issue is whether the Officer adequately considered the best interests of the Applicants' Granddaughters.

THE STANDARD OF REVIEW

[10] The reasonableness standard applies to the consideration of the best interests of the Granddaughters. See *Zambrano v Canada (Minister of Citizenship of Citizenship and Immigration)*, 2008 FC 481, 326 FTR 174 at para 31.

THE DECISION

[11] Regarding the Granddaughters, the Officer wrote, under the heading "Factors" that the Applicants "also provide much needed emotional support as the grandchildren and their mother have suffered great stress due to domestic violence and on going disputes within the family". It is noteworthy that this observation was written in the present tense. The Officer also noted that the Applicants' departure would leave the divorced Daughter raising her young children alone when she must work full time to support them. As well, under the heading "Supporting a Positive Decision", the Officer again wrote in the present tense that the "applicants provide needed emotional and psychological support".

[12] However, the Granddaughters' current need for the emotional and psychological support which the Applicants provide is not mentioned in the narrative portion of the Decision. There, the Officer appears to conclude that, because the immediate crisis has passed and because the Granddaughters are doing well in school, the Applicants are no longer needed.

[13] In my view, this inconsistency makes the Decision unreasonable. It has only been two years since two young children were removed from what the Officer acknowledged were “dramatic hostilities” and placed in new surroundings without their father and under the care of grandparents whom they did not know and with whom they could not communicate. The only constant has been their mother who was absent much of the time as a student and then as a young nurse. It is to the Applicants’ great credit that they learned basic English and successfully provided a stable home for their young Granddaughters.

[14] It is clear to me that these relatively recent changes, together with the preceding traumatic events, indicate that the continuity and stability afforded the Applicants’ ongoing presence must be of paramount importance to the Granddaughters’ continued emotional and psychological wellbeing.

[15] In my view, given that the Officer recognized that the Granddaughters needed emotional and psychological support on an ongoing basis, his failure to squarely address the impact of the Applicants’ departure on their Granddaughters was unreasonable.

[16] As well, there was a suggestion in the Decision that there should have been psychologists’ reports on the Granddaughters showing evidence of ongoing or permanent trauma to justify the H&C application. However, in my view, expert opinions were not required. On these facts, it is obvious that the departure of the Applicants would deprive the Granddaughters of the emotional and psychological support which the Officer concluded they required.

CERTIFIED QUESTION

[17] No question was posed for certification pursuant to section 74 of the Act.

JUDGMENT

THIS COURT'S JUDGMENT is that, the application for judicial review is allowed and the H&C application is hereby sent back for reconsideration by another officer. The Applicants may file fresh evidence on the reconsideration.

"Sandra J. Simpson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-609-11
STYLE OF CAUSE:	HWA JA KWON et al v MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	August 9, 2011
REASONS FOR JUDGMENT:	SIMPSON J.
DATED:	January 13, 2012

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