Federal Court

Cour fédérale

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SUBJECT / OBJET :

Court File No. / N° du dossier de la Cour: **IMM-3951-16**

Between / entre : **VLADIMIR ARZOUMANOV ET AL v. MCI**

Enclosed is a true copy of the Order / Judgment / Vous trouverez ci-joint une copie conforme de l'ordonnance / jugement / motifs de: **The Honourable Madam Justice Mactavish** dated / daté du **23-FEB-2017**

COMMENTS / REMARQUES :

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Federal Court  Cour fédérale

Date: 20170223

Docket: IMM-3951-16

Toronto, Ontario, February 23, 2017

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

VLADIMIR ARZOUMANOV
STELLA ARZOUMANOVA
ARTYOM ARZOUMANOV
VITALI ARZOUMANOV

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

UPON CONSIDERING this application for judicial review of the decision of an immigration officer dated September 14, 2016 refusing the applicants' application for permanent residence on humanitarian and compassionate grounds;

AND UPON considering the written and oral submissions of counsel for the applicants and for the Minister;

AND UPON concluding that the application for judicial review should be granted for the following reasons:

Mr. Arzumanov suffers from severe coronary artery disease and ischemic cardiomyopathy with a history of cardiac arrest. In 2009, he suffered a cardiac arrest. He was resuscitated, but remained in a coma for four days. According to the medical evidence that was before the officer, despite having received optimal medical therapy, including the implantation of a single chamber cardioverter-defibrillator (ICD), Mr. Arzumanov has nevertheless continued to suffer a series of life-threatening arrhythmias.

The health situation of Mr. Arzumanov has been such that the removal of the applicants has been administratively deferred by the Canada Border Services Agency since 2011. The most recent medical information in the record that was before the H&C officer notes that Mr. Arzumanov had received a new cardiac device in June of 2016, but that "flying is not recommended until he is seen in the clinic September 12, 2016 for his next follow up".

In considering Mr. Arzumanov's health in the context of his H&C application, the H&C officer noted the medical evidence in the record relating to what the officer referred to as the "precarious circumstances that have followed subsequently in regards to his ICD and overall health". The officer nevertheless concluded that "I find it reasonable to conclude that, on a balance of probabilities, [Mr. Arzumanov] would eventually be well enough to be cleared by medical professionals for flying". In my view, this finding was unreasonable.

The record demonstrates that Mr. Arzumanov has not been fit to fly for many years, and the most recent medical evidence in the record indicates that flying was still not recommended for him. In light of this, the conclusion that Mr. Arzumanov would eventually be well enough to be cleared by medical professionals for flying is one that is speculative, and not supported by the evidence that was before the officer. While I accept that there is a *possibility* that Mr. Arzumanov may eventually be cleared to fly, the evidence before the officer does not support a finding that this will *probably* be the case.

I also agree with the applicants that the H&C officer erred in assessing their establishment in Canada. The officer had a generally positive view of the applicants' employment histories, savings and financial management, volunteerism and community involvement, while also noting the many friends that they have made in this country. The officer nevertheless concluded that the applicants could maintain their friendships through channels such as email and Skype, and that Vitali could continue with his volunteer activities in Israel.

What the officer did not consider, however, was the significance of the fact that the applicants' establishment in Canada developed in circumstances that were beyond their control. This is a relevant consideration, one that is specifically referenced in the Policy Manual relating to H&C applications.

The relevant position of the Manual states that "Positive H&C consideration may be warranted when the period of inability to leave Canada due

to circumstances beyond the applicant's control is of considerable duration and when there is evidence of a significant degree of establishment in Canada".

This issue was put before the H&C officer by the applicants. Citing the Supreme Court of Canada's decision in *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909, the applicants' H&C submissions asked the H&C officer to consider whether a fair-minded Canadian would deny the applicants' application for permanent residence in circumstances where Mr. Arzumanov is not, and has not been, fit to fly, and the family has become "fully settled" during the nine years that they have spent in Canada.

Nowhere, however, did the H&C officer ever consider the circumstances under which the applicants had become established in Canada. The failure to have regard to this relevant consideration is a further basis on which to find that the officer's decision was unreasonable.

For these reasons, the application for judicial review is allowed. I agree with the parties that the case is fact-specific and does not raise a question for certification.

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is allowed and the matter is remitted to a different H&C officer for re-determination.

"Anne L. Mactavish"
Judge

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the ____ day of FEB 23 2017 A.D. 20__

Dated this ____ day of FEB 23 2017 20__

CHERLIN McCOLMAN
REGISTRY OFFICER