Federal Court Cour fédérale

Date: 20170914

Docket: IMM-487-17

Citation: 2017 FC 833

Ottawa, Ontario, September 14, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

FOUZIEH OLFATI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of a decision of a Senior Immigration Officer of Citizenship and Immigration Canada dated January 30, 2017, which refused the applicant's application for permanent residence from within Canada on humanitarian and compassionate grounds (H&C application).

I. FACTS

[2] The applicant is an Iranian citizen who is currently in Canada living with her adult son (Amir Reza) who is a Canadian citizen and who suffers from mental illness. The rest of the applicant's family lives in Iran.

[3] As part of her H&C application, the applicant submitted two letters from her son's medical professionals. In one letter, dated April 1, 2015, Dr. S. Akbar Bayanzadeh stated that Mr. Reza "has been suffering from chronic co-occurring conditions of psychiatric illness and addiction issues that could potentially be quite disrupting and debilitating at times." The letter went on to indicate that Mr. Reza's situation "has led to the adoption of self-destructive behaviour that in turn, contributed in the aggravation of his psychosocial problems." The letter also indicated that Mr. Reza "is in need of a great deal of care and a consistent level of support" because of the nature of his psychiatric condition. Dr. Bayanzadeh indicated that he understood that the needed care and support could only be offered by Mr. Reza's parents. It is notable that, though this letter is submitted in support of the applicant's H&C application, it actually made reference to Mr. Reza's father's visa/residency permit in Canada.

[4] The second of the two letters from Mr. Reza's medical professionals, dated November 21, 2014, was from Dr. Aileen Moric and stated that Mr. Reza was admitted to hospital five times in four years, three of those times being in the previous month. Dr. Moric stated that Mr. Reza would greatly benefit from having his family with him for support. Dr. Moric also

indicated that she had witnessed Mr. Reza's improved condition when his mother had accompanied him on his visit to see her.

II. IMPUGNED DECISION

[5] In the impugned decision, the officer summarized the letters from Drs. Moric and Bayanzadeh. The officer noted that Dr. Moric's letter was over two years old, did not indicate when the applicant had accompanied her son to visit Dr. Moric, and provided no details concerning the nature of the applicant's support for her son. The officer also noted the absence of any evidence of hospital stays after November 21, 2014.

[6] With regard to the letter from Dr. Bayanzadeh, the officer noted that it was over a year and a half old and did not indicate what type of support could be offered to Mr. Reza exclusively by his parents.

[7] The officer concluded that there was insufficient evidence to indicate (i) what type of support the applicant gives to her son, (ii) that only the parents can offer that support, (iii) that Mr. Reza would not be able to access care and support in Canada, or (iv) that the applicant is financially stable. The officer also noted the absence of a letter of support from the applicant's son.

[8] The officer concluded that the difficulty of separation between family members was not exceptional so as to justify granting the H&C application. The officer noted that the applicant and her family have other options such as sponsorship. The officer also noted that the difficulties

the applicant may encounter in leaving Canada to apply for permanent residence arise from the normal and foreseeable working of the law. Finally, the officer stated:

> While I give positive consideration to the applicant's family ties in Canada, in view of the limited evidence before me, I find the applicant has not demonstrated that she has an interdependent relationship with her son that carries significant weight.

III. ISSUES

[9] The applicant argues that the officer erred in several respects in the impugned decision:

A. The officer failed to consider s. 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

B. The officer applied the wrong legal test when stating that the applicant had failed to demonstrate that she has an interdependent relationship with her son that carries significant weight.

C. The officer unreasonably concluded that the evidence concerning the type of support the applicant could offer to her son was insufficient.

D. The officer unreasonably concluded that the evidence that no one else could offer such support was insufficient.

E. The officer's observation that Mr. Reza has access to care and support in Canada was off point and not relevant.

F. The officer's conclusion that other options such as sponsorship were open to the applicant was unreasonable because it failed to address Mr. Reza's need for family support.

G. The officer erred with regard to the age of the medical letters that were submitted in support of the applicant's H&C application.

IV. ANALYSIS

[10] In considering the officer's decision, I must bear in mind that the applicant bore the burden of convincing the officer that the exceptional remedy sought should be granted: *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45 [*Kisana*]. I must also bear in mind that the officer has expertise deserving of deference, and that the remedy sought is discretionary. The standard of review is reasonableness: *Kisana* at para 18; *Majdalani v Canada (Citizenship and Immigration)*, 2015 FC 294 at paras 16, 24.

[11] The applicant argues that the standard of review on a question of law, such as the applicable legal test or the relevant factors for consideration in the exercise of discretion, is correctness. However, the applicant relies on jurisprudence that pre-dates the Supreme Court of Canada's decision in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]. *Dunsmuir* ruled that, with few exceptions not applicable here, the standard of review on a question of law is reasonableness: paras 54, 55, see also *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 30.

A. *Paragraph 117(1)(h) of the IRPR*

[12] Paragraph 117(1)(h) of the IRPR provides for a particular category of foreign national who may qualify as a member of the family class. It provides as follows:

Member	**Regroupement familial**
117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is	**117 (1)** Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les

	étrangers suivants :
…	[…]
(h) a relative of the sponsor, regardless of age, if the sponsor does not have a spouse, a common-law partner, a conjugal partner, a child, a mother or father, a relative who is a child of that mother or father, a relative who is a child of a child of that mother or father, a mother or father of that mother or father or a relative who is a child of the mother or father of that mother or father	**h)** tout autre membre de sa parenté, sans égard à son âge, à défaut d'époux, de conjoint de fait, de partenaire conjugal, d'enfant, de parents, de membre de sa famille qui est l'enfant de l'un ou l'autre de ses parents, de membre de sa famille qui est l'enfant d'un enfant de l'un ou l'autre de ses parents, de parents de l'un ou l'autre de ses parents ou de membre de sa famille qui est l'enfant de l'un ou l'autre des parents de l'un ou l'autre de ses parents, qui est :
(i) who is a Canadian citizen, Indian or permanent resident, or	**(i)** soit un citoyen canadien, un Indien ou un résident permanent,
(ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.	**(ii)** soit une personne susceptible de voir sa demande d'entrée et de séjour au Canada à titre de résident permanent par ailleurs parrainée par le répondant.

[13] The idea of s. 117(1)(h) is that a relative of a sponsor for permanent residence may be a member of the family class, even if he or she would not otherwise qualify, if the sponsor has no other family member in Canada or available for sponsorship.

[14] The applicant argues that the officer's failure to address s. 117(1)(h) was an error.

[15] I cannot agree. As noted by the respondent, there was no need for the applicant to rely on s. 117(1)(h) since she already qualified as a member of the family class under s. 117(1)(c) as the mother of the potential sponsor. I see no error here.

[16] The applicant argues that the provision in question acknowledges the desire to avoid a person being in Canada without family. Nevertheless, I am not convinced that the officer's failure to discuss this provision was unreasonable.

B. *Whether evidence of interdependent relationship between applicant and son must be significant*

[17] The applicant argues that, by requiring evidence of an interdependent relationship between the applicant and her son "that carries significant weight", the officer imposed on the applicant a standard of proof that is higher than the balance of probabilities. The applicant submits that this was an error.

[18] In my view, the officer's observation that the applicant had not "demonstrated that she has an interdependent relationship with her son that carries significant weight" was simply another way of saying that the evidence on that point was of insignificant weight, and therefore insufficient. I am not convinced that the officer applied an inappropriate standard of proof.

C. *Evidence of type of support applicant could offer*

[19] The applicant argues that it is clear from the medical letters she submitted that the support she provides is family support, and that it was unreasonable for the officer to demand further detail as to the specific tasks performed by the applicant for her son.

[20] In my view, the officer was well aware of the content of the medical letters, and was not unreasonable in noting the lack of detail concerning the type of support the applicant gives to her son. In addition to this lack of detail, the officer also noted the lack of current information concerning Mr. Reza's situation and support needs.

D. *Evidence that no one else could offer such support*

[21] The applicant argues that it is obvious that only family members can offer the required family support, and that it was unreasonable for the officer not to accept the indication in the medical evidence that Mr. Reza "would greatly benefit from having his family here with him".

[22] Once again, it is my view that the officer was well aware of the content of the medical letters, and was not unreasonable in being concerned about the lack of detail and current information. It was open to the officer not to follow the recommendations in the medical letters.

E. *Relevance of Mr. Reza's access to care and support in Canada*

[23] The applicant argues here again that the medical letters clearly call for family support, and that the officer's observation that Mr. Reza has access to non-family support misses the point.

[24] As noted above, I am satisfied that the officer understood the evidence and that the observations in the impugned decision, including with regard to Mr. Reza's access to care and support in Canada, were reasonable.

F. *Reasonableness of other options open to applicant*

[25] The applicant argues that the officer's statement that sponsorship is an option open to her is unreasonable because it fails to consider that the applicant would have to leave Canada to pursue that option, which would leave Mr. Reza without family support.

[26] Again, in my view, it was reasonable for the officer to be unsatisfied with the sufficiency of the evidence as to Mr. Reza's need for support during the period that the applicant would be outside Canada if she pursued the option of sponsorship.

G. *Age of letters from medical professionals*

[27] The applicant argues that the officer misunderstood the evidence when observing that the medical letters were one and half and two years old. The applicant notes that her H&C

application was filed on February 4, 2016, at which time the medical letters were less than 10 months and 15 months old.

[28] The respondent notes that the age of the medical letters as described by the officer is correct from the point of view of the date of the decision: January 30, 2017. Based on this, I am satisfied that the officer did not misunderstand the evidence.

[29] At the hearing of the present application, applicant's counsel followed up on this issue by arguing that the officer was obliged to consider the applicant's H&C application as of the date it was filed and not as of the date of the decision. However, the applicant was not able to provide any authority in support of that argument, and backed away from this position in a subsequent letter to the Court. The respondent notes that the applicant had a duty to update her application as necessary: see *Bailey v Canada (Citizenship and Immigration)*, 2012 FC 983 at para 23; *Jane Doe v Canada (Citizenship and Immigration)*, 2010 FC 285 at para 19. It would seem to follow from that that the relevant date for consideration of an H&C application is the date of the decision.

V. CONCLUSIONS

[30] For the foregoing reasons, the present application should be dismissed. The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT in IMM-487-17

THIS COURT'S JUDGMENT is that:

1. The present application for judicial review is dismissed.

2. No serious question of general importance is certified.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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