Federal Court  Cour fédérale

Date: 20160913

Docket: IMM-1398-16

Citation: 2016 FC 1039

Vancouver, British Columbia, September 13, 2016

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

JUDITA SULEK

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

Reasons delivered orally at Vancouver on September 12, 2016

[1] Judita Sulek seeks judicial review of the decision of the Immigration Appeal Division (IAD) of the Immigration and Refugee Board cancelling the stay of removal that had been made against her.

[2] Ms. Sulek is a citizen of Austria. She is also a permanent resident of Canada and has lived in this country (with one brief interruption) since 1984. During her time in Canada,

Ms. Sulek has accumulated a lengthy criminal record, with her convictions dating back to 1993. She has also been diagnosed as suffering from bipolar disorder, as well as a generalized anxiety disorder and substance abuse.

[3] In 2006, Ms. Sulek was convicted of three counts of using stolen credit cards. As a result of these convictions, she was reported as being inadmissible to Canada for serious criminality. In 2011, the Immigration Division of the Immigration and Refugee Board issued a removal order against Ms. Sulek.

[4] Following an appeal to the IAD, Ms. Sulek's removal was stayed for a period of three years, subject to certain conditions. Amongst other things, Ms. Sulek was required to not commit any further criminal offences, and she was ordered to comply with all of the parole conditions that had been imposed upon her.

[5] Subsequent to the granting of the stay, Ms. Sulek breached several of the conditions that had been imposed on her by the IAD. Of particular importance, Ms. Sulek amassed six more criminal convictions, including one count of possession of cocaine, one count of theft under $5000 and four counts of failing to comply with conditions of her parole. As a result, the Minister applied to the IAD for reconsideration of the stay of Ms. Sulek's removal order.

[6] Following a hearing, the IAD determined that the stay of Ms. Sulek's removal should be cancelled. In coming to this conclusion, the IAD had regard to the factors established by the Immigration Appeal Board in *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No. 4 (QL). The IAD concluded that the negative considerations in Ms. Sulek's

case outweighed the positive considerations, and there were insufficient humanitarian and compassionate considerations to justify a further stay of her removal.

[7] Ms. Sulek contends the IAD's decision was unreasonable for two reasons. First, she says that having found her testimony to be "generally disjointed and confused", it was unreasonable for the IAD to rely on her testimony as the sole basis for finding that Ms. Sulek would have the support of her family should she be returned to Austria. Second, Ms. Sulek submits that the IAD erred by failing to properly consider the impact that her removal from Canada would have on her mental health, as required by the Supreme Court of Canada in the *Kanthasamy* case (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 S.C.R. 909).

[8] Dealing first with the issue of family support, Ms. Sulek was asked at her IAD hearing whether she could expect to receive assistance from her family in Europe in re-establishing herself in Austria. Ms. Sulek clearly stated that if she was returned to Austria, she expected that her mother and brothers would probably help her get settled. Her evidence on this point was neither disjointed nor confused.

[9] Ms. Sulek argues, however, that it was unreasonable for the IAD to have selectively relied on her testimony on this point to find that she would indeed have family support in getting established in Austria. I do not accept this submission.

[10] Ms. Sulek was represented by counsel at her IAD hearing, and a designated representative was also appointed to represent her interests before the IAD. There was no suggestion at any point that Ms. Sulek was not competent to testify, nor is there any such suggestion in any of the three letters from her psychiatrist that were provided to the IAD.

[11] Nor was there any suggestion in counsel's submissions to the IAD that Ms. Sulek's testimony on this point was unreliable. Indeed, counsel for Ms. Sulek made specific reference to her evidence on this issue in the written submissions that were filed on Ms. Sulek's behalf after the IAD hearing was completed. Counsel simply argued that the support that Ms. Sulek could expect to receive from her family would be insufficient to meet her needs.

[12] Finally, although not specifically mentioned by the IAD, it is apparent from a review of the record that Ms. Sulek's evidence on this point was consistent with the evidence that she had provided to the IAD in 2011, at least in so far as her contact with her mother was concerned.

[13] In these circumstances, it was entirely reasonable for the IAD to have regard to Ms. Sulek's testimony in relation to the issue of the availability of family support for her in Austria.

[14] For the same reason, I am not persuaded that the IAD erred in relying on Ms. Sulek's testimony regarding the alleged drug use of her roommate (and former romantic partner), and the psychological abuse that she allegedly suffers at his hands. It was not unreasonable for the IAD to have concerns about Ms. Sulek's living situation and the impact that this would have on her prospects for rehabilitation, particularly in light of the fact that she continued to reoffend by using cocaine and drinking alcohol after her removal was stayed by the IAD in 2011.

[15] This takes us to the IAD's alleged failure to have regard for the impact that Ms. Sulek's removal from Canada would have on her mental health.

[16] Ms. Sulek submits the Supreme Court of Canada held in *Kanthasamy* that it was an error in a humanitarian and compassionate assessment to only consider the availability of medical

treatment in the country of removal, and not to consider the impact that removal would have on the mental health of the individual in question. The facts of this case are, however, readily distinguishable from the facts in *Kanthasamy*.

[17] *Kanthasamy* involved a young Sri Lankan Tamil who suffered from Post-Traumatic Stress Disorder and depression as a result of his experiences in Sri Lanka - the country where he had been detained and tortured. In assessing Mr. Kanthasamy's H&C application, an immigration officer accepted the doctors' diagnosis, but nevertheless concluded that Mr. Kanthasamy had provided insufficient evidence to show that he would be unable to obtain medical care in Sri Lanka. However, the immigration officer gave no consideration to medical evidence that indicated that Mr. Kanthasamy's condition would deteriorate if he were forced to return to Sri Lanka, the location of his mistreatment.

[18] In contrast, the psychiatric evidence that was before the IAD in this case, does not suggest that returning Ms. Sulek to Austria would exacerbate her mental health problems. Moreover, the IAD accepted that Ms. Sulek would indeed suffer some hardship if she were returned to Austria, but found that medical care for her would be available if she needed it.

[19] In the absence of medical evidence suggesting that Ms. Sulek's mental health would suffer if she were removed from Canada, her argument based on the Supreme Court's decision in *Kanthasamy* must therefore also fail.

[20] Consequently, Ms. Sulek's application for judicial review is dismissed. I agree with the parties that this case does not raise a question that is suitable for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

"Anne L. Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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