Federal Court  Cour fédérale

Date: 20161206

Docket: IMM-2521-16

Citation: 2016 FC 1344

Ottawa, Ontario, December 6, 2016

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ANDREA AYON DE LA ROCHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant asks this Court to review a decision of an Immigration Officer [officer], dated May 25, 2016, dismissing her application based on humanitarian and compassionate grounds [the H&C application].

[2] The applicant had the burden to establish humanitarian and compassionate considerations, based on her personal circumstances, in order to facilitate the processing of her

application for permanent residence within Canada. The grant of an H&C application is discretionary. The applicable standard of review of the impugned decision is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190 at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 (CanLII), [2009] 1 SCR 339 at para 59). The issue today is whether the refusal to exempt the applicant, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] from applying for a permanent visa from outside Canada, falls within a range of possible and acceptable outcomes.

[3] The relevant facts are not contested.

[4] The applicant is a 48 year old female citizen of Mexico who left her country in 2006 and lived in the United States of America for two years. She arrived in Canada in 2008, seeking refugee protection on the ground that members of organized crime and a federal police officer had threatened her. In 2010, the Refugee Protection Division of the Immigration and Refugee Board of Canada – who did not believe that there was still a danger – denied her asylum claim, concluding that she had an internal flight alternative in Monterey or Cancun. In 2015, the applicant made an H&C application based on her establishment in Canada, the discrimination that she would face in the labour market based on age and gender and, finally the best interest of her grandson.

[5] In dismissing the H&C application, the officer noted that the applicant would not be returning to an unfamiliar country, language or culture. She will be capable of re-establishing herself, as she had already moved to the United States and Canada and secured employment in

the cleaning and janitorial industry. Furthermore, the officer did not consider that the applicant would personally face discrimination, as there was no evidence that, before leaving Mexico, she was refused jobs opportunities or was forced to leave her previous job due to her gender or age. The officer also noted that the applicant lived most of her life in Mexico and was well established with an already existent social network, including two daughters and several siblings. Moreover, while her son, daughter-in-law and grandson reside in Canada, there was no proof that they are dependent on her and that her leaving Canada would negatively impact their relationship.

[6] The applicant reasserts before this Court that if she is forced to apply for her permanent resident visa from outside of Canada, she will personally face disproportionate, undeserved and unusual hardship. The applicant submits that the officer made speculative statements and that there is no evidence supporting the finding that the applicant's skills acquired in Canada are transferable in Mexico. The applicant also submits that due to her age and gender, no one will employ her in Mexico, or that she will otherwise be discriminated. Furthermore, the applicant submits that there is no legal requirement to demonstrate that she has been personally discriminated, and that she can rely on general country conditions which show there is age and gender discrimination in Mexico. In this regard, the applicant submits that the officer did not consider all the relevant documentary evidence and that the laws in Mexico, which prohibit discrimination, are rarely followed and their enforcement mechanisms are not useful.

[7] The respondent invites the Court to dismiss the present application for judicial review, as the applicant is merely in disagreement with the result and has been unable to point out any

reviewable error in the reasoning of the officer. Respondent's learned counsel remarks that the applicant mentions in her H&C application: "[In Mexico] if I do what I do [in Canada], my salary would be around $80 per week. [In Canada] I make around $1000 per week". While the applicant may find it difficult to return to Mexico, the respondent stresses that subsection 25(1) of the IRPA does not have the objective to make up for the differences in the pay or standard of living between Canada and other countries. While the applicant would be much better if she was allowed to stay in Canada, it remains that numerous persons in her condition are required to make an application for permanent resident visa from outside Canada and have to wait long delays before being accepted.

[8] I endorse the grounds of dismissal submitted by the respondent. I agree with the respondent that the applicant merely invites the Court to reassess the evidence and substitute itself to the administrative decision-maker. In the present case, no reviewable error has been made by the officer. The conclusion of the officer that the applicant has not established that a positive exemption is warranted on H&C grounds is not unreasonable. The reasons are focused on all three factors that needed to be analyzed in the applicant's H&C application: her establishment in Canada, the discrimination that she would face in Mexico and the best interest of her grandson. The officer explained why each of these reasons were either not sufficient for an exemption grant or were simply not proved by balance of probabilities. While a cursory review of the relevant H&C factors will not be sufficient, nor a selective reading of contradictory relevant evidence can hold, I am satisfied that the officer carefully reviewed all the applicant's submissions and evidence on record, and was not satisfied that her particular situation warranted an exemption on H&C grounds. The conclusion is supported by intelligible reasons and an

articulate reasoning which is not arbitrary or capricious. In particular, the applicant's past ability to re-establish herself in both the United States and Canada demonstrates that she should be able to find employment and re-establish herself in Mexico, a country in which she lived most of her life and have already an existent network. It was not unreasonable for the officer to conclude that her gained skills in the cleaning and janitorial industry in the United States and Canada would be transferable to Mexico and could help her find employment. Furthermore, there was no proof that the applicant has in the past faced any discrimination, and while the situation is not perfect, there are laws prohibiting discrimination. The dismissal of the H&C application is an acceptable outcome.

[9] The present application for judicial review is dismissed. There is no question of general importance to certify in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the present judicial review application be dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2521-16
STYLE OF CAUSE:	ANDREA AYON DE LA ROCHA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	NOVEMBER 30, 2016
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	DECEMBER 6, 2016

APPEARANCES:

Me Sandra Palmieri	FOR THE APPLICANT
Me Zoé Richard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Me Sandra Palmieri Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT