Federal Court  Cour fédérale

Date: 20170323

Docket: IMM-4063-16

Citation: 2017 FC 308

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 23, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

JOCELYNE FILS-AIMÉ

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, a Haitian national, has filed an application for judicial review of a decision by an immigration officer [the Officer] who, on August 31, 2016, dismissed her application for permanent residence on humanitarian and compassionate grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [the Act].

[2] The applicant arrived in Canada in May 2015 in order to assist one of her sons, Vladimir Gelin, age 37 and a Canadian citizen, who was in two car accidents between 2011 and 2013 that left him with cervical and lumbar sprains. At that time, the applicant had a temporary resident visa that was issued in 2012 and valid until February 25, 2017. Until her arrival in Canada, the applicant had always lived in Haiti, where her other son, Jean Richard Nicholas, her daughter, Nedji Mondésir, and her grandson, Wendji Mondésir, also live.

[3] The applicant's permanent residence application is based essentially on the needs of her son, Vladimir Gelin, whom the applicant claims is the backbone of the entire family. The applicant feels that her presence in Canada, as well as the potential presence of her daughter and grandson, are necessary to help Vladimir.

[4] This did not convince the Officer, who noted:

a. the lack of details on the care that the applicant provides to her son, whose condition appears to be stable, and on the potential presence of other people in Vladimir's circle who could provide him with the support his condition requires;

b. that it is Vladimir who financially supports his mother while she is in Canada, which suggests that he has returned to the job market and thus that there is less of a need for the applicant to be present;

c. that Vladimir financially supports the applicant to the detriment of his own health, which does not support the applicant's permanent residence application; and

d. that the applicant has not demonstrated that she has integrated into society since arriving in Canada.

[5] The applicant is essentially accusing the Officer of having failed to review her application from the perspective of the best interests of the child, as she claims is required, even though Vladimir is 37 years old, by *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 [*Kanthasamy*].

[6] I cannot agree with this point of view.

[7] From the outset, it is important to keep in mind that the Court must review the Officer's decision according to the reasonableness standard, which involves considerable restraint with respect to the Officer's findings of fact and of mixed fact and law (*Kisana v. Canada (Citizenship and Immigration)*, 2009 FCA 189 at paragraph 18 [*Kisana*]; *Basaki v. Canada (Citizenship and Immigration)*, 2015 FC 166 at paragraph 18).

[8] It is also important to keep in mind (i) that an exemption granted under section 25 of the Act constitutes an exceptional measure, since the Act stipulates that permanent resident status must be requested from outside Canada; (ii) that decisions made in this regard are highly discretionary; (iii) that it is not for the administrative decision-maker to inform claimants of any gaps in the evidence so that they can resolve them; and (iv) that it is certainly not for the Court to re-weigh the relevant factors when reviewing the exercise of this discretionary power (*Abeleira v. Canada (Citizenship and Immigration)*, 2015 FC 1340 at paragraphs 12, 14 and 15; *Nicayenzi v. Canada (Citizenship and Immigration)*, 2014 FC 595 at paragraphs 15, 16 and 25; *Daniel v. Canada (Citizenship and Immigration)*, 2011 FC 797 at paragraph 11; *Abdirisaq v. Canada (Citizenship and Immigration)*, 2009 FC 300 at paragraph 3; *Kisana* at paragraph 45).

[9] In the case at hand, the argument based on *Kanthasamy* is a false debate, since the Officer did, in fact, consider the exemption request from the perspective of Vladimir's situation, and the respondent rightly acknowledges that, under some circumstances, the principle of the best interests of the child can be applied in cases where "the child" in question is over the age of 18.

[10] Ultimately, the applicant is instead accusing the Officer of having not given enough weight to Vladimir's medical condition and the fact that she would be the only person capable of taking care of him. However, in light of the evidence that she had available to her, I cannot say that the Officer's conclusions are unreasonable in this regard. For one, the medical evidence on file dates back to 2013 and 2014, and nothing supports how counsel for the applicant interpreted it at the hearing for this application. Moreover, as the Officer noted, the evidence provides no details on the nature and scope of the care that Vladimir requires. Lastly, as the Officer also noted, there is nothing in the evidence to indicate whether other people in Vladimir's circle would be able to provide him with the support that his condition requires, regardless of what it may be. Yet, the applicant only arrived in Canada in May 2015, nearly two years after Vladimir's second accident occurred. Supposing that the situation required it, someone other than his mother must have been caring for him during that time. In short, the Officer found that the evidence for Vladimir's medical condition and the care required was vague and could be given little weight. I cannot say that she erred in drawing such a conclusion.

[11] Regardless, it is not for the Court to re-weigh the evidence that the administrative decision-maker had before her and draw its own conclusions, namely with respect to the weight to be given to the various relevant factors in reviewing an exemption request under subsection 25(1) of the Act. That is not the Court's role (*Pathinathar v. Canada (Citizenship and*

Immigration), 2015 FC 1312 at paragraph 17, citing *Negm v. Canada (Citizenship and Immigration)*, 2015 FC 272 at paragraph 34; *Paniagua v. Canada (Citizenship and Immigration)*, 2008 FC 1085 at paragraph 8; *Orellana Ortega v. Canada (Citizenship and Immigration)*, 2012 FC 611 at paragraph 14).

[12] The applicant did, in fact, attempt to further develop and improve her case, namely with respect to Vladimir's current state of health and the type of assistance that she provides to him by submitting additional evidence in support of this application. However, as the respondent rightly notes, since this evidence was not available to the Officer, the Court cannot consider it (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paragraph 19).

[13] Lastly, there is no merit to the applicant's argument that if the Officer had reservations about the quality of the evidence provided in support of the exemption request, she had a duty to report any gaps to the applicant and allow her to resolve them. The Officer was not obliged to do so (*Kisana* at paragraph 45).

[14] Therefore, this application for judicial review will be dismissed. Neither party requested that a question be certified for the Federal Court of Appeal. I do not see any questions to be certified either.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified.

"René LeBlanc"
Judge

Certified true translation
This 13th day of August, 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

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