Federal Court  Cour fédérale

Date: 20170628

Docket: IMM-4729-16

Citation: 2017 FC 630

Toronto, Ontario, June 28, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

NELLY CEDANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

JUDGMENT AND REASONS

[1] Ms. Nelly Cedana (the "Applicant") seeks judicial review of the decision of an Officer, dismissing her application for permanent residence on Humanitarian and Compassionate ("H&C") grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant is a citizen of the Philippines. She came to Canada in 2009 as a member of the Live-in Caregiver Program with the goal of becoming a permanent resident of Canada.

[3] Difficulties ensued and the Applicant's original employment offer was not available. Ultimately she went to work for a couple who reduced her hours. She took on other work as a housecleaner.

[4] The Applicant alleges that the employers exploited and abused her; however, it is not necessary for me to make any findings in that regard.

[5] By an anonymous letter, this situation came to the attention of the Canadian Immigration authorities and the Applicant was convoked for an admissibility hearing before the Immigration Division of the Immigration and Refugee Board of Canada.

[6] The Applicant was found to be inadmissible to Canada pursuant to paragraph 40(1)(a) of the Act. As a result of that finding, she is inadmissible to Canada for a period of 5 years.

[7] The Applicant sought relief by means of the H&C process, pursuant to subsection 25(1) of the Act. In a decision dated February 22, 2013, her application was denied.

[8] An H&C decision is reviewable on the standard of reasonableness; see the decision in *Kanthasamy v. Canada (Minister of Citizenship and Immigration)*, [2015] 3 S.C.R. 909 at paragraph 44.

[9] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47, the standard of reasonableness requires that the decision be justifiable, intelligible and transparent, and fall within a range of acceptable outcomes.

[10] Upon hearing the submissions of Counsel and reading the material filed, I am not satisfied that the decision of the Officer meets that standard.

[11] The Officer apparently did not appreciate the purpose of the H&C process, that is to overcome non-compliance with the statutory and regulatory obligations imposed by the Act and the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (the "Regulations"). I am not satisfied that the Officer appreciated the effect of the recent decision of the Supreme Court of Canada in *Kanthasamy, supra,* in dealing with H&C applications. That decision emphasizes the equitable purpose of H&C relief.

[12] As well, the Officer's cursory dismissal of the psychiatric report was not reasonable, in my opinion. The Officer was not entitled to undervalue the report solely on the grounds that it was based upon the Applicant's own words.

[13] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different officer for redetermination, there is no question for certification arising.

JUDGMENT FOR IMM-4729-16

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different officer for redetermination, there is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4729-16
STYLE OF CAUSE:	NELLY CEDANA v. MCI AND MPSEP
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

Mark Rosenblatt	FOR THE APPLICANT
Khatidja Moloo-Alam	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Mark Rosenblatt Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENTS