Federal Court  Cour fédérale

Date: 20170731

Docket: IMM-243-17

Citation: 2017 FC 744

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 31, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ÉLIMIDE DESSOURCES PAUL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Élimide Dessources Paul, is seeking judicial review of a decision by an immigration officer dated December 22, 2016, refusing her application for permanent residence on humanitarian and compassionate grounds [H&C application].

[2] The applicant is a citizen of Haiti. She entered Canada on October 14, 2013, and claimed refugee protection. Her application was rejected by the Refugee Protection Division on January 27, 2014. She filed an application for leave and judicial review, but it was dismissed by this Court on May 20, 2014.

[3] The applicant filed an initial H&C application, but it was refused on May 19, 2016. On July 26, 2016, she filed a second H&C application in the context of special measures granting citizens of Haiti the right to file an H&C application without risk of removal while their application is reviewed. The application is based on the best interests of the child, her degree of establishment and the unfavourable conditions in her country of origin. The applicant states that she is the mother of three children who still reside in Haiti. Two of the children are still minors. She claims that her removal to Haiti would greatly affect her children because she would no longer be able to support them or pay their educational fees. Concerning her degree of establishment, the applicant states that she is integrated into Canadian society and that she has a full-time job that allows her to earn a living with dignity. Lastly, the applicant alleges a fear of the insecurity and instability in her country of origin. She states that there are no job prospects for her in Haiti and that she is at risk of being abused and ridiculed because she would be returning from abroad, which would have a destructive and major physical and psychological impact on her.

[4] The officer refused her H&C application on the ground that the evidence she submitted was not sufficient to establish that she was the mother of children living abroad whose well-being would be directly affected by the refusal of the H&C application, that she had

achieved a substantial degree of establishment in Canada, and that she would face unfavourable conditions in her country of origin.

[5] The applicant criticizes the immigration officer for (1) calling into question the authenticity of her children's birth certificates without allowing her to be heard, thus violating the rules of natural justice and procedural fairness; (2) erring in the assessment of her establishment in Canada; (3) confusing the separate criteria set out in sections 25 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]; and (4) analyzing the H&C application as though it was an application under section 25 of the IRPA even though it was based on a temporary public policy dated February 4, 2016, for Haitian nationals, among others.

II. Analysis

A. *Standard of review*

[6] It is well established that the applicable standard of review for an immigration officer's decision as to whether or not to grant an exemption on humanitarian and compassionate grounds is reasonableness. The decision is highly discretionary and raises questions of mixed fact and law, calling for deference from this Court (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 10, 44; *Bakenge v Canada (Citizenship and Immigration)*, 2017 FC 517 at paras 12–13 [*Bakenge*]).

[7] When the standard of reasonableness applies, the role of the Court is to determine whether the decision falls within a range of "possible, acceptable outcomes which are defensible

in respect of the facts and law". As long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility", it is not open to this Court to substitute its own view of a preferable outcome (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]).

[8] The standard of review for procedural fairness issues is correctness (*Khosa* at para 43; *Mission Institution v Khela*, 2014 SCC 24 at para 79). The question that arises in this matter is not whether the decision was correct, but whether the procedure employed by the decision-maker was fair (*Majdalani v Canada (Citizenship and Immigration)*, 2015 FC 294 at para 15; *Krishnamoorthy v Canada (Citizenship and Immigration)*, 2011 FC 1342 at para 13).

B. *Authenticity of the birth certificates and breach of procedural fairness*

[9] The applicant argues that the officer infringed her right to procedural fairness by ruling on the authenticity of her children's birth certificates. She claims that the officer should have called her for an interview so that she could be heard.

[10] The Court cannot agree with the applicant's argument.

[11] In discussing the best interests of the child criterion, the officer noted that the applicant stated that she is the mother of three children who are 7, 12 and 19 years of age and who still reside in Haiti, that she stated that she supports them through her work in Canada and that if her H&C application were refused, her children could no longer pursue their education because she

pays their educational fees. The officer also noted that in support of her claims, the applicant submitted a copy of the birth certificates of two of the three children and a letter of support that mentions the three children. The officer found that the handwriting on the first birth certificate is practically illegible and that several pieces of information are missing on the scanned cropped copy of the second birth certificate. It is in this context that the officer stated that the authenticity and security markers of the documents could not be assessed because of the poor quality of the copies. While the officer commented on some of the deficiencies regarding the birth certificates, he did not rule on the authenticity of the birth certificates.

[12] The officer's decision to give little weight to the factor of the best interests of the child is based on the insufficiency of the evidence and the absence of information supporting the allegations made by the applicant in connection with the declared children (*Joseph v Canada (Citizenship and Immigration)*, 2015 FC 661 at paras 27–28). It is settled law that since applicants have the onus of establishing the facts on which their claim rests, they omit pertinent information from their written submissions at their peril (*Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6 at para 50 [*Lalane*]). Apart from the two birth certificates of inferior quality and several letters of support that do not establish family connections, the applicant has no other evidence that can establish in a satisfactory manner a connection with the children or that she helps support them with her employment income. The officer also correctly noted that the applicant provided no information concerning the children's lifestyle, activities, grade levels or location of residence or concerning who they live with or their relationship with their biological father.

[13] Because the officer's finding is based on insufficient evidence and not on the authenticity of the two birth certificates, the Court is of the view that the officer was not required to provide the applicant with the opportunity to be heard and therefore did not breach the principles of procedural fairness.

C. *Establishment of the applicant*

[14] The applicant claims that the officer erred by deciding that she did not demonstrate that she has a stable job or that she has a certain level of financial autonomy. She also criticizes the officer for not giving sufficient weight to the fact that a Quebec selection certificate [QSC] was issued to her or to the letters of support that she submitted in support of her application and for giving more weight to the presence of her brothers and sisters who live in Haiti than to that of those who live in Canada.

[15] However, the officer recognized the various pieces of evidence filed in the record. He noted that the applicant submitted letters of support and a tax summary filed in Canada to support her statement that she has formed strong ties to Canada and has integrated herself into the job market. The officer also noted the QSC issued by the Quebec authorities and explicitly stated that he took it into account along with all of the other evidence in the record. The officer recognized that the applicant has been in Canada for a little more than three years and that she seems to be appreciated by those in her social network. The officer also noted, however, that the applicant still has family in Haiti.

[16] While the officer recognized some positive aspects of her establishment, he was of the opinion that the applicant submitted limited evidence and he gave more weight to the fact that the applicant failed to demonstrate that she has a stable job and a certain degree of financial autonomy. The officer noted that the only evidence submitted by the applicant regarding her income demonstrates that in 2015 she earned $4,700.00 in employment income and $3,965.52 in social assistance benefits. The officer stated that he could not conclude, in the absence of other evidence, that the applicant's employment situation in Canada is such that the financial needs of her loved ones abroad would be affected if she were to return to her county of origin. Considering the limited evidence in the record, the officer was of the opinion that the applicant failed to demonstrate sufficient establishment, and he gave little weight to that factor.

[17] A review of the record shows that the officer's finding is supported by the evidence in the record. First, the applicant submitted a letter dated June 4, 2016, in which her employer states that she has worked for the company on a contract basis since March 2, 2016. The letter does not indicate what the applicant's job is, the number of hours she works or her salary. The applicant filed a second letter, the author of which states that he has known the applicant for one year and that she is a hard worker, but gave no more details. In the absence of more information concerning the applicant's work and her financial situation, it was reasonable for the officer to find that the applicant failed to demonstrate that she has a stable job and a certain level of financial autonomy.

[18] Regarding the weight given to the QSC and to the important relationships in Haiti, the applicant did not demonstrate that the balancing exercise carried out by the officer was

unreasonable. It is important to note that it is not for this Court to reassess the evidence before the officer or to substitute its own assessment of the evidence for that of the officer.

D. *Sections 25 and 97 of the IRPA*

[19] The applicant claims that the officer confused the different criteria set out in sections 25 and 97 of the IRPA. She relies on an excerpt from the reasons where the officer criticizes her for failing to [TRANSLATION] "explain the connection between the conditions [in her country of origin] and her situation and for failing to demonstrate that they apply to her specific case".

[20] The Court cannot agree with the applicant's argument that the officer analyzed the risks pursuant to section 97 of the IRPA. To the contrary, his analysis involved the difficulties the applicant would face if she were to return to Haiti.

[21] It is important to remember that the applicant alleges a fear of the insecurity and instability in Haiti. She claims that there are no job prospects for her if she were to return to her country of origin. She also adds that she would be abused and ridiculed because she would be returning from abroad.

[22] Concerning the economic reality in Haiti, the officer recognized that the economic situation and access to employment can pose significant challenges for all Haitian nationals. The officer pointed out, however, that the applicant failed to demonstrate her socio-economic profile, as she did not submit information concerning her past in Haiti, where she lived, the job she had, how she earned a living or the challenges she faced. The officer found that there was insufficient

information to establish a picture that was representative of the economic reality that awaits the applicant if she were to return to Haiti.

[23] The officer also examined the general conditions in Haiti, including the insecurity and instability in the country. The officer stated, however, that it is not sufficient to name the unfavourable circumstances, but that there needs to be a demonstration of how the conditions could have a negative impact. It is in this context that the excerpt relied on by the applicant must be read.

[24] It is well established that the applicant has the burden of establishing a link between the difficulties alleged in her H&C application and her personal situation (*Bakenge* at para 32; *Piard v Canada (Citizenship and Immigration)*, 2013 FC 170 at para 18*; Lalane* at paras 38–39, 42).

[25] The officer identified the alleged difficulties, considered the evidence submitted by the applicant and found that the applicant failed to demonstrate a link between the unfavourable conditions in Haiti and her personal situation. After reviewing the evidence in the record and the officer's reasons, the Court cannot find that the officer confused the criteria set out in sections 25 and 97 of the IRPA or that the officer's conclusion was unreasonable.

E. *Temporary public policy dated February 4, 2016*

[26] The applicant submits that the officer erred in his interpretation and application of section 25 of the IRPA by not considering the departmental directives regarding the temporary

public policy dated February 4, 2016, that concerns Haitian nationals, among others. In support of her claims, the applicant referred to an excerpt from the decision where the officer indicates that it was up to her to demonstrate that having to obtain a permanent resident visa outside Canada would impose humanitarian and compassionate circumstances on her, justifying the granting of an exemption.

[27] In support of her claims before the Court, the applicant submitted two documents. The first is from the Canadian government Internet site and is entitled "*Humanitarian and Compassionate Considerations under the February 4, 2016 Temporary Public Policy for nationals of Haiti and Zimbabwe"* [Guide]. The Guide explains how to file an application for permanent residence on humanitarian and compassionate grounds in Canada under the *"February 4, 2016 Temporary Public Policy for nationals of Haiti and Zimbabwe"* [Policy] and the criteria that must be met for filing such an application. The second document on which the applicant relies is entitled *"Notice – Update—Additional time given to people from Haiti and Zimbabwe affected by the lifting of the temporary suspension of removals to apply for permanent residence in Canada"*. The purpose of the notice, dated February 5, 2016, is to give nationals covered by the Policy an additional six months to file an application for permanent residence on humanitarian and compassionate grounds in Canada. While the Policy itself was not submitted in the context of the application for judicial review, the Court retains from the documents submitted that the purpose of the Policy is to give Haitian nationals who meet the eligibility criteria set out in the Policy the opportunity to file an application for permanent residence and remain in Canada without risk of removal while their application is reviewed until a decision is made on their H&C application.

[28] The applicant was therefore mistaken about the intent of the Policy because it is not to ensure the favourable processing of an application presented under section 25 of the IRPA. The applicant must still demonstrate the existence of sufficient humanitarian and compassionate considerations justifying an exemption from the application of subsection 11(1) of the IRPA, which states that a person who wants to immigrate to Canada must file an application for permanent residence outside Canada.

[29] The Court is therefore of the opinion that the applicant's argument in this regard is without merit.

III. Conclusion

[30] After reviewing the officer's decision and the records of the parties, the Court finds that the officer's decision falls within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law" and that it is justified in a manner that meets the test of transparency and intelligibility of the decision-making process (*Dunsmuir* at para 47). The Court also cannot validly find in this case that there was a breach of the principles of natural justice or procedural fairness.

[31] For all of these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification and the Court is of the opinion that this case does not give rise to any.

JUDGMENT in IMM-243-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-243-17
STYLE OF CAUSE:	ÉLIMIDE DESSOURCES PAUL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JULY 12, 2017
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	JULY 31, 2017

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