Federal Court  Cour fédérale

Date: 20170725

Docket: IMM-5292-16

Citation: 2017 FC 721

Ottawa, Ontario, July 25, 2017

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

MEDINA LURENA BRUCE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PROTECTION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of a decision dated December 21, 2016 whereby an Officer refused to defer the Applicant's removal. A stay of removal pending the outcome of this proceeding was granted by this Court on December 30, 2016.

[2] The Applicant is a citizen of Saint Vincent and the Grenadines who has been living in Canada since May 23, 2000. She has a Canadian-born son born on May 10, 2013. It is anticipated that her son would leave with her if she were to be removed.

[3] Three issues were raised by the Applicant before the deferrals officer: the Applicant's establishment in Canada, the Applicant's schizophrenic condition and the best interests of the child [BIOC]. Arguments pertaining to the BIOC were focused upon the impact on the child by the mother's removal. These submissions were based on the same grounds as the Applicant's pending humanitarian and compassionate [H&C] application.

[4] It is common ground that the Officer's discretion is limited and enforcement of the removal order is to be done as soon as possible, being deferred only for those applications where failure to defer raises a fairly strong case that the Applicant will be exposed to a risk of death, extreme sanction or inhumane treatment, which in the case of a pending H&C application entails the Applicant's personal safety being at risk (*Wang v. Canada*, 2001 FCT 148; *Baron v. Canada*, 2008 FC 342).

[5] I find that the Applicant is for the most part, asking the Court to impose a standard on the removals officer in the nature of a mini-H&C assessment based upon the principles described in the Supreme Court decision of *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. The Federal Court of Appeal in *Lewis v Minister of Public Safety and Emergency Preparedness*, 2017 FCA 130 has recently confirmed that *Kanthasamy* has not changed the law on the nature of the removals officer's assessment, including that pertaining to

the BIOC. While BIOC considerations are relevant, any such analysis should focus on the short-term interests of the child that will be directly affected by removal. In this case, the Applicant has argued that the BIOC of the child is directly related to the risk to her personal safety from the deterioration of her psychological condition if removed. Furthermore, neither the Officer's assessment, nor that of the Court is intended to reflect on the chances of success of the pending H&C application.

[6] I find the only issue central to the determination of this case is the short-term impact of removal on the mother's psychological condition and the availability of treatment in Saint Vincent and the Grenadines.

[7] The Applicant has raised personal safety issues relating to the impact of the Applicant's removal on her schizophrenia. The Applicant submits that the Officer failed to address the evidence of letters from her treating psychiatrist, family doctor and nurse-practitioner, each of which expressed the opinion that if the Applicant were removed to Saint Vincent and the Grenadines, her illness will be exacerbated.

[8] To a certain extent the failure to refer specifically to the reports is excused because the Officer's focus was on the short-term situation, while the reports do not specifically address her situation upon removal in the short-term. Moreover, the Officer actually under-stated the seriousness of her condition as being "currently well controlled by her medication". In fact, she was not taking her medication in 2016, and nor did her psychiatrist in 2016 indicate that she should be doing so. He recommended that if she felt medication was necessary, antipsychotic

Perphenoeine with a low initial dose of 2 mg would be appropriate. Additionally, the evidence indicates that when first recommended in 2013, she declined to take the medication because she was pregnant. There is no indication that she has ever taken medication to treat her condition.

[9] The 2016 report was provided for the purpose of supporting her remaining in Canada. Based on her self-reported description of her symptoms in the 2013 report, the Applicant was diagnosed with what the physician described in the 2016 report as perceptional hallucinations. Otherwise, the report indicates that she was in good health, that her thought form was logical and coherent and negative for delusions or obsessions, she was not suicidal or homicidal and that her insight and judgment were good. The report and evidence notes that she had learned to ignore the condition and that she had coped well with the problem. No issues were reported with her being unable to care for her child

[10] While the psychiatrist's belief that her situation will deteriorate upon removal is a relevant consideration in an H&C application because of the family, social and medical support in Canada, it is not unreasonable to conclude that it is speculative in the short-term, particularly in a situation where she could take her prescribed medicine, if there was some deterioration in her condition.

[11] Moreover, the Officer's conclusion principally was that it was speculative that she would be unable to obtain the treatment she needs in Saint Vincent and the Grenadines given the lack of evidence to support the presumption. The Applicant takes issue with the fact that the Officer referred to the Caribbean community having a system of referrals between the islands, where if

any treatment is not available on one island, the patient could be referred to an island where the treatment is available. The Applicant argues that "the officer does not provide any evidence that there would be any psychiatric treatment available on one of the other islands, let alone evidence that it would be available for the Applicant's needs". I agree with the Respondent that it is not up to the Officer to provide such evidence, but rather the Applicant to demonstrate that treatment would not be available if removed, which in the Officer's opinion was not sufficiently forthcoming.

[12] I also do not find speculative the conclusion that her family and her husband would not continue to support her financially after her arrival in Saint Vincent and the Grenadines. In particular, her statutory declaration indicates the strong love and affection that exists between the Applicant, her husband and the child, including their marriage on the day before his removal from Canada. On the basis of this evidence I find it not to be speculative that he will continue in his efforts to be reunited with the Applicant and his child and support them in every way possible. If she obtains permanent residency, it is her intention to sponsor his return to Canada. He was originally deported to Saint Vincent and the Grenadines and was residing in Trinidad and Tobago in December 2016. The Applicant and child also have extended family in Saint Vincent and the Grenadines.

[13] I therefore do not find the Officer's conclusion that the Applicant's personal safety due to her medical condition and that of her child would be jeopardized by removal, to be speculative in the short-term, and the decision therefore, to be reasonable in the circumstances.

[14] Accordingly, the application is dismissed and no question is certified for appeal.

JUDGMENT FOR IMM-5292-16

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5292-16
STYLE OF CAUSE:	MEDINA LURENA BRUCE v THE MINISTER OF PUBLIC SAFETY AND EMERGNECY PREPAREDNESS
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