Federal Court  Cour fédérale

Date: 20180223

Docket: IMM-3604-17

Citation: 2018 FC 210

Toronto, Ontario, February 23, 2018

PRESENT: The Honorable Mr. Justice Grammond

BETWEEN:

THI VAN TUONG TRAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Thi Van Tuong Tran applied to sponsor her mother and three siblings for permanent residence in Canada. Her application was denied. She now seeks judicial review of that denial. For the reasons that follow, I am denying her application.

I. Facts and Decision under Review

[2] Ms. Thi Van Tuong Tran, the Applicant, is a citizen of Vietnam. In 2004, she married Mr. Van Duc Mai, who sponsored her to come to Canada. She is now a permanent resident of Canada. They are seasonally employed in the fishing industry in Prince Rupert, British Columbia.

[3] In 2009, Ms. Tran and her husband applied to sponsor Ms. Tran's mother and three of Ms. Tran's siblings (as dependents of her mother) for a Canadian permanent resident visa. Her other family members all reside in Vietnam.

[4] In a letter dated April 13, 2016, an officer from the Mississauga Case Processing Centre refused her sponsorship application because she did not have the minimum necessary income [MNI] required before someone is eligible to act as a sponsor.

[5] Ms. Tran then appealed to the Immigration Appeal Division [IAD] of the Immigration and Refugee Board. She acknowledged her income was too low, but she asked to be relieved of the MNI requirement on the basis of section 67(1)(*c*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Under that provision, the IAD may allow an appeal if "sufficient humanitarian and compassionate [H&C] considerations warrant special relief in light of all the circumstances of the case." In reviewing the case, the IAD must take into account "the best interests of a child directly affected by the decision."

[6] On July 26, 2017, the IAD dismissed the appeal. It estimated the gap between Ms. Tran's family income and the MNI to be $22,000. It expressed concerns with Ms. Tran's credibility as to the accuracy of her salary for 2016 and the fact that she made profits from the sale of a house. The IAD also reviewed the factors relevant to an H&C decision. It gave positive weight to Ms. Tran's establishment in Canada, but noted that the best interests of her 12-year old son was not, given the context, a significant factor and that the family would "suffer few hardships" if the appeal was dismissed.

[7] Ms. Tran brought an application for judicial review of the IAD's decision [Decision] before the Federal Court.

II. Analysis

[8] This Court reviews H&C decisions on a standard of reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44, [2015] 3 SCR 909 [*Kanthasamy*]; *Chung v Canada (Citizenship and Immigration)*, 2017 FCA 68 at paras 15-18). This means that I must ensure that the decision under review is based on a defensible interpretation of the applicable legal principles and a reasonable assessment of the evidence.

[9] Ms. Tran first argues that the IAD made an unreasonable assessment of the evidence when it estimated the MNI shortfall to be $22,000. The IAD suggested that there were "issues with [Ms. Tran's] credibility *vis-à-vis* the *reliability* of the family's income" and believed that she had "inflated her current income to $36,000" (Decision at para 16). The IAD's conclusions seem to be based on a discrepancy between a letter from Ms. Tran's employer, which states that

her employment income for 2016 would be $36,000, a set of paystubs that show that she had earned $27,000 as of November 15, 2016, as well as on Ms. Tran's inability to explain the discrepancy during her testimony. If one assumes that her income is spread evenly throughout the year, it would indeed be difficult to believe that her year-to-date income would rise from $27,000 to $36,000 over the last month and a half of the year. Yet, a closer review of the paystubs shows that Ms. Tran earned $3000 per two-week period, not per month. She testified that she was employed from the beginning of July to the end of December. Hence, there was no inconsistency in the evidence that could ground a negative credibility finding with respect to her 2016 income.

[10] However, I am not persuaded that this error would have changed the IAD's decision. Even if we consider that Ms. Tran has an annual income of $36,000, the parties agreed before me that this would lead to a shortfall of $15,000 below the MNI. This remains a significant gap.

[11] Ms. Tran also argues that the IAD failed to properly take into account the best interests of her son, as mandated by section 67(1)(*c*) of IRPA. I disagree. The IAD considered the situation of the family globally. This is not a situation where a child would be separated from one of his parents or removed to a country with which he or she is unfamiliar. Rather, Ms. Tran's argument is that allowing her application would facilitate relationships between the grand-mother and her grand-son. However, a similar argument could be made in many, if not most, cases of family reunification. Even though IRPA's purposes include facilitating family reunification, this must be done in conformity with IRPA's detailed prescriptions, which include the MNI requirement. Without more, it was reasonable to decide that the relationship between grand-parent and grand-

child is not sufficient to warrant H&C relief. Like the hardship inherent in a person's removal from Canada (*Kanthasamy* at para 23), the hardship inherent in the fact that members of a family reside in two different countries is not sufficient to warrant H&C relief.

[12] Lastly, Ms. Tran argues that the IAD unreasonably failed to take into account the seasonal nature of her employment. Given the seasonal nature of the fishing industry, she and her husband receive employment insurance benefits for part of the year. However, section 134(1.1)(b)(iv) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], states that employment insurance payments are not taken into account while ascertaining whether a sponsor's income exceeds the MNI. Nevertheless, Ms. Tran argues that, in the context of a seasonal industry, employment insurance payments should be taken into account when examining H&C factors, as they tend to establish her capacity to sponsor her mother and siblings. I disagree. In enacting the Regulations, the government made a policy choice with respect to the reliance on employment insurance benefits to garner the financial resources required to be allowed to sponsor a relative. I understand that this policy choice may have a disproportionate impact on persons employed in the fishing industry or other seasonal industries. While I have sympathy for Ms. Tran and persons in a similar situation, I am unable to give effect to her submissions without in effect carving a potentially wide exception to section 134(1.1)(b)(iv).

[13] To summarize, while I found that the IAD made an error in calculating Ms. Tran's income and MNI shortfall, I am of the view that this error did not affect the result. A decision is still reasonable if it contains an error that would not have changed the outcome (*Castillo*

Mendoza v Canada (Citizenship and Immigration), 2010 FC 648 at para 24). The IAD considered all relevant H&C factors, and came to the conclusion that they were insufficient to warrant special relief. This was a reasonable exercise of the discretionary power granted to the IAD.

JUDGMENT in IMM-3604-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. No question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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