Federal Court  Cour fédérale

Date: 20190301

Docket: IMM-4180-18

Citation: 2019 FC 250

Ottawa, Ontario, March 1st, 2019

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

GLADYS HERMINIA GUERRERO VALENZUELA
JAVIER GUERRERO CARRILLO
JOSUE GUERRERO GUERRERO

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Gladys Herminia Guerrero Valenzuela, her husband Javier Guerrero Carrillo and their son Josue Guerrero Guerrero are citizens of Spain of Peruvian origin. They disagree with the decision of an Immigration Officer who rejected their application for permanent residence in

Canada on humanitarian and compassionate [H&C] grounds. Although the Officer analyzed many factors in her decision, the Applicants only challenge her finding that there was insufficient evidence that Ms. Valenzuela's father needs her as a full-time caregiver due to his dementia and paraplegia. The Officer found that the medical evidence did not support the allegations that Ms. Valenzuela's father suffered from those medical conditions. She further found that there was insufficient evidence that Ms. Valenzuela's mother, her siblings living in Burnaby, British Columbia, and Bellingham, Washington State, and/or external resources could not provide her father the care he needs.

II. Facts

[2] Ms. Valenzuela's parents, 85-year-old Nicolas and 74-year-old Maria Pilar, are Canadian citizens who live in Burnaby, British Columbia. Two siblings of Ms. Valenzuela, Eva Pilar and Omar, are also Canadian citizens residing in Burnaby.

[3] Ms. Valenzuela has three other siblings. Oscar Nicolas, a Spanish citizen who lives in Spain with his family, and Nelly Guerrero and Orestes, American citizens who respectively live in Bellingham and Seattle, Washington State.

[4] In 2012, Ms. Valenzuela and her son Josue unsuccessfully applied for temporary resident visas to visit their family in Canada. In June 2014, Mr. Carrillo and Josue were able to travel to Canada after having obtained their Spanish citizenship.

[5] It is only after Ms. Valenzuela obtained her own Spanish citizenship, in 2015, that the entire family travelled to Canada for an extended visit with Ms. Valenzuela's parents; Nicolas's health was then deteriorating.

[6] Since April 2016, the Applicants successfully submitted two applications to extend their stay; a third one was filed in June 2018 and is still in progress. Meanwhile, Ms. Valenzuela applied for a study permit for herself and for Josue, while Mr. Carrillo applied for an open work permit. Those applications were all denied.

[7] In June 2016, Nicolas was admitted to a hospital with symptoms of a stroke. The Applicants indicate in their H&C application that he suffered a stroke which limited the use of his legs. Ms. Valenzuela had to step in as a primary caregiver for her father, as her mother found it increasingly draining to continue caring for her husband, due to his loss of physical mobility and dementia. Ms. Valenzuela's other siblings were unable to help due to their place of residence, for some of them, or their work and family obligations. However, they were willing to pay for the Applicants' living expenses.

[8] In their H&C application, the Applicants state they have strong ties to Canada, as most of their relatives live in Burnaby or in Washington State. Josue has become good friends with his American cousins and teaches them Spanish while he learns English from them. Finally, the Applicants explain that during the time they spent in Canada, they have integrated into their church community.

III. Impugned Decision

[9] The Officer considered and weighed all the factors put forth in the application: the Applicants' family and community ties in Canada, the fact that Ms. Valenzuela's siblings were willing to support the Applicants financially, the best interests of the Ms. Valenzuela's son, and the care needed by Ms. Valenzuela's father. The Applicants do not challenge the Officer's analysis of the first three factors, nor do they argue that unreasonable weight was given to them. The Applicants rather argue that the error the Officer committed in her analysis of Nicolas's health condition is sufficient to render her decision unreasonable.

[10] The Officer acknowledged that Nicolas has a "variety of health concerns". Yet, she found the evidence to be limited, noting the "absence of any evidence with regard to her father's dementia or paraplegia of his lower limbs" beyond Ms. Valenzuela's and her mother's personal statements. In addition, while the Officer recognized that Ms. Valenzuela's siblings may have personal or family obligations, she found that there was insufficient objective evidence to demonstrate hardship or consequences her father may experience if she returns to Spain. The care she provides to her father could be obtained through outside agencies or businesses, or community resources. In addition, the Applicants can continue to visit Canada to provide temporary assistance to their family.

[11] While the Officer indicated being sympathetic to the Applicants' situation, she concluded that there were not sufficient H&C grounds to warrant relief.

IV. Issues

[12] This application for judicial review raises a single issue:

> *Did the Officer err in declining to exercise her discretion to grant the Applicants exceptional H&C relief?*

[13] The proper standard of review in analyzing a decision based on H&C applications under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 is reasonableness (*Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at paras 21-23; *Walker v Canada (Citizenship and Immigration)*, 2012 FC 447 at paras 31-32).

V. Analysis

[14] The decision to grant relief on H&C grounds is discretionary. While H&C relief aims to "mitigate the rigidity of the law in an appropriate case" and "to offer equitable relief in circumstances that would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another", it "is not intended to be an alternative immigration scheme" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 19, 21, 23). It is incumbent on the person requesting relief to demonstrate why it should be granted (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189).

[15] The Applicants submit that the Officer ignored evidence about Nicolas's dementia and paraplegia. They point to various medical documents concerning his health which, according to them, show that he had symptoms of dementia and mobility issues. According to the information in his health profile form, he was found unconscious at the corner of a busy intersection, which is

consistent with dementia. In addition, he was prescribed a walker as well as various other measures, such as leg strength exercises, in order to decrease his fall risk. The statements submitted by Ms. Valenzuela and her mother are further evidence of Nicolas's dementia and mobility issues.

[16] In her decision, the Officer writes that "beyond [Ms. Valenzuela's] statements, I note the absence of any evidence with regard to her father's dementia or paraplegia of his lower limbs". The officer did not ignore the evidence before her as she acknowledged "that the PA's father has a variety of health concerns". However, and as pointed out by the Respondent, Nicolas's treating doctor makes no mention of any dementia symptoms or mobility issues. In my view, it was reasonable for the Officer to consider that Dr. Sutcliffe's silence on these conditions was significant as they are serious medical conditions that should be diagnosed by a doctor and that should not be ignored by a treating doctor. It was also reasonable for the Officer to find that although there was evidence that Ms. Valenzuela's father had limited mobility (he walks with the help of a walker and is prescribed specific leg exercises), there was no evidence of paraplegia. In that regard, it was open for the Officer to find that the evidence submitted was "very limited".

[17] In any event, the real question is whether there was sufficient evidence of the consequences that the Applicants and their family would face should the Applicants return to Spain.

[18] Ms. Valenzuela's sister living in Burnaby provided a statement indicating that she worked full-time, while her brother also living in Burnaby indicated that he was a small business owner.

[19] While the Officer acknowledged that Nicolas "requires 24/7 full time care", that he is "elderly and sick" and that he has "a variety of health concerns", she found that the Applicants had not provided sufficient evidence that Ms. Valenzuela's siblings living in Burnaby and their mother could not care for Nicolas should the Applicants return to Spain. In addition, the Officer also noted that the services provided by Ms. Valenzuela to her father could also be provided by "outside agencies or businesses, or community resources, if required". The Officer did not have to treat as determinative the doctor's recommendation that Nicolas be cared for by family members (*Olfati v Canada (Citizenship and Immigration)*, 2017 FC 833 at paras 21-24). As such, it was reasonable to conclude that Nicolas will be receiving an appropriate level of care even if the Applicants return to Spain.

[20] Furthermore, as this factor is only one of the four factors considered by the Officer and since I have to consider that she properly assessed and weighed the other three factors, the Applicants have not convinced me that the Officer's assessment of the evidence regarding Ms. Valenzuela's father would be so unreasonable as to invalidate her decision.

VI. Conclusion

[21] In my opinion, the Officer properly assessed and weighed the evidence regarding the H&C considerations and her decision, taken as a whole, is reasonable. With respect to the

medical condition of the Principal Applicant's father, the Officer reasonably considered that the family's situation did not justify granting the Applicants the requested exemption on H&C grounds.

[22] This application for judicial review is therefore dismissed. The parties proposed no question of general importance for certification and none arises from the facts of this case.

JUDGMENT in IMM-4180-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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