Federal Court Cour fédérale

Date: 20190214

Docket: IMM-2584-18

Citation: 2019 FC 189

Toronto, Ontario, February 14, 2019

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

JULIE MAE SANIE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Decision given orally from the Bench in Toronto on February 11, 2019)

I. PROCEEDING

[1] This application is for judicial review of a decision of an Immigration Officer [the Officer], dated May 24, 2018, in which he or she refused the Applicant's application for a permanent resident visa as a member of the Live-in Caregiver Class [the Decision]. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. BACKGROUND

[2] The Applicant is a thirty-two year old citizen of the Philippines. In October 2013, she arrived in Canada under the Temporary Foreign Workers Program [the Workers Program]. She was employed by Extreme Pita in Edmonton, Alberta for 11 months. However, in April 2014, the Federal Government placed a four year moratorium on the Workers Program. This meant that there was no longer any prospect of permanent residence for food service workers.

[3] The Applicant decided to apply to the Live-in Caregiver Program [LIC]. She connected with an agency that places caregivers [the Agency] and obtained an offer of employment. Her employer applied for and received a Labour Market Impact Assessment [LMIA] allowing her to hire the Applicant as a LIC.

[4] The Applicant asked the Agency whether she needed to leave Canada in order to apply for the LIC program because she had heard of other individuals having to do so. She states that the Agency advised her that this was no longer a requirement.

[5] The Applicant applied for a work permit as a LIC. Her application was approved and she was granted an employer specific work permit pursuant to the LMIA. She was later granted an extension of her permit. Both work permits erroneously included the following statement "Eligible to apply for permanent residence after completing employment requirements" [the Statement].

[6] The Applicant completed her application for permanent residence without professional assistance and states that she had no reason to believe she was not qualified.

[7] By letter dated October 23, 2017 [the Procedural Fairness Letter], the Applicant was advised that she was not a member of the LIC class because she had not complied with the requirements for membership in the class. Specifically, she did not apply from outside Canada.

[8] The Applicant submitted a letter in response [the Response] explaining that, in 2014, she applied for a change of status from the Workers Program to the LIC program using the IMM5710 Form. In that form, she clearly set out that she was applying for an initial work permit with her new employer and that she was applying for an LIC program work permit. She states that the online validation of this form gave no indication that this change of status was not a valid option. Her application was approved and she was given the work permits which included the Statement described above.

[9] Along with her Response, the Applicant provided copies of her work permits, her LMIA, her LIC employment contract and her credentials which included, her Bachelor of Elementary Education Diploma, proof of her Master's level course work in education, certificates of employment as a teacher in the Philippines, her certificate as a Child Development Assistant from the Government of Alberta, her Canadian Language Benchmark Assessment Report, her First Aid training certificate and five character references [the Credentials].

III. DECISION

[10] The negative decision was communicated to the Applicant in a letter dated May 24, 2018. The letter read in part:

> Humanitarian and Compassionated factors were assessed to determine whether there are sufficient grounds to justify an exemption from certain legislative requirements to allow for your request.

[11] The Officer's GCMS note dated May 24, 2018 provides details about the Decision. It states:

> PA entered Canada 08Oct2013 as low-skilled worker – kitchen helper at Extreme Pita. She received LMO as LCP but did not apply nor was assessed from outside Canada. WP as LCP issued 14Jan2015 by CPCV, and erroneously issued with remarks that she is eligible to apply for permanent residence after completing employment requirements that must be met to be eligible under the LCP program.
>
> […]
>
> PA does not meet the requirements of the LCP program, as she did not apply from outside of Canada and she has not been assessed as to whether or not she meets the requirements of education/experience/language ability.
>
> […]
>
> I have considered all the above information, but have not assessed PA's credentials. It appears that PA may be eligible under the new Caregiver class. The fact remains that the requirements for the LCP program is that she needs to be assessed on her credentials overseas, prior to coming to Canada. It is clearly laid out in our regulations that this is not a category that is eligible to apply for their initial work permit as an LCP from within Canada. The onus rests with the client to find out what is required to apply for the various categories. We have many ways for the client to obtain appropriate information, including our website and the Call Centre, along with the Act and Regulations, which all are available to the public. Simply because her work permit states "Live-in Caregiver' does not mitigate the requirement that she must have applied for

> the intial [sic] work permit from outside of Canada. Neither does the remarks telling her that she may be eligible to apply for permanent residence after meeting employment requirements. A foreign national can work as a live-in caregiver, without being under the LCP program, which is the case for this client.
>
> Application refused as PA does not meet R113(1)(b), that being she did not enter Canada as a live-in caregiver and her credentials have never been assessed. I have considered the H&C factors presented and do not find that there is sufficient grounds to justify waiving the requirement that PA meet R113(1)(b) and R112. Request for H&C refused.

IV. **ISSUE**

[12] Whether it was reasonable of the Officer to conclude that there were insufficient humanitarian and compassionate grounds to justify a waiver of the requirement that the Applicant apply for her work permit from outside Canada?.

V. **DISCUSSION**

[13] The Respondent submits that the Applicant did not request a humanitarian & compassionate [H&C] exemption and that the doctrine of legitimate expectations on which she relies does not apply on the facts of this case.

[14] In my view, neither of these submissions is supported by the record. It is clear that although the Applicant, who was unrepresented at the time, did not characterize her Response as a request for H&C relief that is how it was understood by the Officer. Both the Decision and the GCMS note make it plain that the sufficiency of H&C factors was the issue. It is also clear that the Applicant's position is that the Decision is unreasonable. There is no reliance on the doctrine of legitimate expectations.

[15] In my view, the Decision was unreasonable because:

- The Applicant's positive letters of reference, which showed that she had met the employment requirements were not mentioned.
- The Officer imposed a duty on the Applicant to check the website and the regulations under the IRPA to ensure that the Statements on the work permits were accurate.
- The Applicants credentials were not assessed to determine whether she would have qualified had she been assessed overseas.

[16] There was also a question about whether an applicant must show hardship to be successful on an application for H&C relief. In my view, unfairness alone may support a positive conclusion but, in this case, one can infer some hardship. The Applicant came to Canada to become a permanent resident and spent six years working in good faith to achieve that objective. The waste of time she experienced through no fault of her own is, in my view, a hardship.

[17] For these reasons, the application for judicial review will be allowed.

VI. **CERTIFICATION**

[18] No question was posed for certification for appeal.

JUDGMENT in IMM-2584-18

THIS COURT'S JUDGMENT is that the application is allowed and the Applicant's request for H&C relief is to be reconsidered by another officer in light of these reasons.

"Sandra J. Simpson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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