Federal Court  Cour fédérale

Date: 20210716

Docket: IMM-5783-19

Citation: 2021 FC 748

Ottawa, Ontario, July 16, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

QUENINE ROSA MA CANEO

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Immigration Appeal Division, Immigration and Refugee Board of Canada [the "Panel"], dated September 11, 2019, denying the Applicant's appeal of an Exclusion Order made against her on the basis of misrepresentation [the "Decision"], pursuant to subsection 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the "*Act*"].

II. Background

[2] The Applicant, Quenine Rosa Ma Caneo, is a citizen of the Philippines. She came to Canada in 2013, as a dependent on the permanent residence application of her mother.

[3] The Applicant's mother had worked in Canada as of 2004, under the Live-In Caregiver Program. The Applicant's mother was granted a work permit and then became a permanent resident of Canada in 2013.

[4] The Applicant has a daughter, who was born on August 24, 2012. At the time of landing, neither the Applicant, nor her mother had declared the Applicant's daughter as a dependent.

[5] The Applicant became a permanent resident of Canada on May 31, 2013.

[6] On June 27, 2013, the Applicant's mother submitted an application to have her granddaughter added as a dependent. The application was refused, as the Applicant's mother had already landed. On December 20, 2013, the Applicant applied to sponsor her daughter to Canada.

[7] A procedural fairness letter was sent to the Applicant and the Applicant and her mother were referred to an admissibility hearing on the basis that they were allegedly inadmissible to Canada for misrepresentation, pursuant to subsection 40(1)(a) of the *Act*. Exclusion orders were issued against both the Applicant and her mother.

[8] The Applicant and her mother appealed this decision to the Immigration Appeal Division. They did not challenge the finding of misrepresentation, but rather argued that there was sufficient humanitarian and compassionate considerations to find an exception to their inadmissibility, pursuant to subsection 67(1)(c) of the *Act*. The Panel allowed the Applicant's mother's appeal, but dismissed that of the Applicant. The Applicant seeks an Order quashing the Decision and remitting the matter to the Immigration Appeal Division for redetermination.

III. Decision Under Review

[9] The Panel considered whether, pursuant to subsection 67(1)(c) of the *Act*, the Panel should use its authority to grant discretionary relief, in light of the best interests of the child and on the basis of humanitarian and compassionate grounds. The Panel found:

A. The seriousness of the misrepresentation was a negative factor in the appeal;

B. While the Applicant and her mother demonstrated some level of remorse, they continued to place blame and accountability on third parties for the misrepresentations, which detracted from the remorse expressed. Overall, this was a negative factor in the appeal;

C. The Applicant had steady employment and is currently engaged to be married in Canada. There was little evidence of any assets in Canada. The Applicant's level of establishment was considered to be a neutral factor in the appeal;

D. The Applicant's family in Canada would not face undue hardship if the appeal was dismissed;

E. The Applicant maintains a stronger connection to the Philippines, due in part to the fact that her daughter resides there. She would not face undue hardship if she was to return to the Philippines and this was a neutral factor in her appeal; and

F. The Applicant's daughter is said to be living with her biological father in the Philippines, who is a drug addict. The relationship between the Applicant and her daughter's father is acrimonious and the evidence suggests that he does not provide optimal care for the Applicant's daughter. However, no reasonable explanation was provided as to how the Applicant would bring her daughter to Canada. The Panel found that it was in the Applicant's daughter's best interests to have the Applicant reside with her in the Philippines.

[10] The Panel found that the Applicant's mother had met the onus of proof, but not the Applicant. In the case of the Applicant, there was insufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances.

IV. Issues

[11] The issues are:

A. Was there a breach of the duty of procedural fairness, owing to the quality of the interpretation during the hearing?

B. Is the Decision unreasonable?

V. Standard of Review

[12] The issue regarding the quality of the interpretation during the hearing is one of procedural fairness, reviewable on the standard of correctness (*Mowloughi v Canada (Citizenship and Immigration)*, 2012 FC 662 at para 13, citing *Zaree v Canada (Citizenship and Immigration)*, 2011 FC 889 at para 7). The second issue, regarding the merits of the Decision, is reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

VI. Relevant Provisions

[13] Subsections 40(1)(a) and 67(1)(c) of the *Act* provide:

Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants:
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	**a)** directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
Appeal allowed	**Fondement de l'appel**
67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,	**67 (1)** Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :
(a) the decision appealed is wrong in law or fact or mixed law and fact;	**a)** la décision attaquée est erronée en droit, en fait ou en droit et en fait;
(b) a principle of natural justice has not been observed; or	**b)** il y a eu manquement à un principe de justice naturelle;
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	**c)** sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

VII. Analysis

[14] The Applicant alleges she was denied procedural fairness through an inaccurate interpretation during the Immigration Appeal Division hearing. The Panel further made erroneous findings of fact and failed to consider the evidence before the Panel.

[15] It is the Respondent's position that this Court should afford minimal weight to the bald, unsupported allegations regarding the quality of the interpretation at the Immigration Appeal Division hearing. The interpretation was adequate in this case. The Panel's Decision was further reasonable.

A. *Preliminary Matter*

(1) Style of Cause

[16] The style of cause is hereby amended to reflect the correct spelling of the Applicant's name, Quenine Rosa Ma Caneo.

(2) Affidavit Evidence

[17] The Respondent alleges that the affidavits of the Applicant and her mother fail to accord with several evidentiary rules in judicial review proceedings. It is the Respondent's position that the Applicant's mother's affidavit ought to be struck out and the Applicant's should be afforded little weight.

[18] I accept that the Applicant's mother was present at the Immigration Appeal Division hearing and is reporting observations within her personal knowledge at paragraphs 5 to 8 of her affidavit, sworn on October 22, 2019 (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, Rule 12(1); *Federal Courts Rules*, SOR/98-106, Rule 81(1)). To the extent this affidavit is argumentative, however, the evidence is inadmissible and paragraph 9 is hereby struck (*Singh Dhaliwal v Canada (Citizenship and Immigration)*, 2011 FC 1097 at para 19).

[19] I do not find the Applicant's affidavit, sworn October 23, 2019, to be argumentative, as claimed by the Respondent. However, to the extent the Applicant inserts opinions regarding the evidence before the Immigration Appeal Division at paragraphs 7 to 10, 12 to 13 and 18 to 19, this evidence has been given little weight.

[20] Further, both affidavits are in English, and while indicating that the affiants have limited use of the English language, the affidavits fail to accord with Rule 80(2.1) of the *Federal Courts Rules*. The affidavit evidence has been weighted accordingly in light of these procedural defects.

B. *The Interpretation*

[21] The Applicant alleges that she experienced difficulty with the interpretation during the Immigration Appeal Division hearing. Counsel for the Applicant requested an audit of the interpretation, but this was refused by the Panel and concerns with the interpretation were not addressed in the Panel's Decision.

[22] Where contemporaneous interpretation is required at a hearing, it must be adequate, but need not rise to a standard of perfection (*Jovinda v Canada (Citizenship and Immigration)*, 2016 FC 1297 at para 27 [*Jovinda*]). "[T]he interpretation provided to applicants before the Refugee Division must be continuous, precise, competent, impartial and contemporaneous" (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at para 4 [*Mohammadian*], citing *R v Tran*, [1994] 2 SCR 951). Any concerns with the interpretation must be raised by an applicant at the first opportunity (*Jovinda*, above at para 28; *Mohammadian*, above at para 13).

[23] The principles discussed in *Mohammadian* have been further summarized by this Court, as follows (*Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161 at para 3; *Owochei v Canada (Citizenship and Immigration)*, 2012 FC 140 at para 25):

> A. The interpretation must be precise, continuous, competent, impartial and contemporaneous.
>
> B. No proof of actual prejudice is required as a condition of obtaining relief.
>
> C. The right is to adequate translation not perfect translation. The fundamental value is linguistic understanding.
>
> D. Waiver of the right results if an objection to the quality of the translation is not raised by a claimant at the first opportunity in those cases where it is reasonable to expect that a complaint be made.
>
> E. It is a question of fact in each case whether it is reasonable to expect that a complaint be made about the inadequacy of interpretation.
>
> F. If the interpreter is having difficulty speaking an applicant's language and being understood by him is a matter which should be raised at the earliest opportunity.
>
> [Emphasis in original]

[24] These assertions of the Applicant and her mother as it relates to the quality of the interpretation are unsupported by the record. It is unclear how the interpreters erred and the Applicant's claims remain unspecified and unsupported. While the Applicant need not demonstrate actual prejudice, interpretation errors must be serious, non-trivial, affect the Applicant's ability to answer questions and be material to the decision maker's findings (*Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497 at para 14).

[25] There is further no breach of procedural fairness in the Panel's refusal of the request for an audit, nor in the lack of written reasons on this particular request, absent clear evidence of material errors in the interpretation (*Rutka v Canada (Citizenship and Immigration)*, 2013 FC 659 at paras 23, 24).

C. *Reasonableness of the Decision*

[26] The Applicant has failed to demonstrate that the Decision lacks the requisite degree of justification, transparency and intelligibility (*Vavilov*, above at para 86). The Applicant makes bald claims in this regard, which are unsupported by the record. The Applicant has not shown that the Panel ignored evidence or contradicted its findings as it relates to the best interests of the child, nor is there any unreasonable finding with respect to credibility as raised in oral argument by the Applicant's counsel. Moreover, any argument relating to country conditions raised in oral submissions is without merit as not being either timely or raised in accordance with applicable procedures.

[27] Notably, the Applicant's daughter currently resides in the Philippines and the Panel's finding that there is no reasonable explanation as to how the daughter would be brought to Canada remains unchallenged. Against this backdrop, the Panel appropriately assessed that it was in the best interests of the child for the Applicant to reside with her daughter in the Philippines.

[28] The Decision is reasonable.

VIII. Conclusion

[29] This Application is dismissed. There is no question for certification.

JUDGMENT in IMM-5783-19

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to reflect the correct spelling of the Applicant's name, Quenine Rosa Ma Caneo;

2. The Application is dismissed; and

3. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5783-19
STYLE OF CAUSE:	QUININE ROSA MA CANEO v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JULY 14, 2021
JUDGMENT AND REASONS:	MANSON J.
DATED:	JULY 16, 2021

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