Federal Court  Cour fédérale

Date: 20220601

Docket: IMM-4010-21

Citation: 2022 FC 798

Ottawa, Ontario, June 1, 2022

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

JACKIELYN GAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This judicial review is of an officer's [Officer] decision denying a humanitarian and compassionate [H&C] application.

II. Background

[2] The Applicant, a citizen of the Philippines, has two Canadian-born children (ages 5 and 6) and four other children born in the Philippines (ages 13, 21, 23 and 24). She had entered Canada on a work visa in 2011, which expired in 2015, and she then applied for H&C relief in 2020.

[3] The Applicant had resided in Canada for nine years and during four of them, she worked in the food service industry. She and her two Canadian-born children currently reside with the Applicant's grandmother, uncles, an aunt and cousins. The Applicant was previously in a common-law marriage with the father of her Canadian-born children, but he abandoned them shortly before the birth of the youngest child.

[4] The Officer acknowledged some positive weight for establishment but noted that much of it was gained by ignoring the Canadian immigration system which significantly decreased any positive weight.

[5] The Officer considered the Applicant's risk and the adverse country conditions in the Philippines. She had been unemployed and reliant on financial support from her family since September 2015. The Officer concluded that the financial support would continue whether the Applicant was in Canada or the Philippines.

[6] There was little information on general discrimination or loss of employment as a result of the Applicant's status as a single mother. While she would need to adjust upon return, the Officer considered her ability to adapt, her English language skills, and her hardworking and reliability qualities. As such, the Officer found insufficient evidence of financial hardship upon return and an ability to maintain her family connections in Canada.

[7] In considering "best interest of children" [BIOC], the Officer focused on the three children under 18. There was insufficient evidence of lack of access to viable education in the Philippines. The Officer considered the Canadian-born children's ability to return to Canada, and their ability to assimilate in the Philippines. The Officer considered the 13 year old Philippine-born child, how she currently resides with her grandmother and siblings and that these connections could stay consistent. The Officer noted the Applicant's return to the Philippines would allow for more connection between the 13 year old child, her mother, and her Canadian-born siblings.

As a result, the Officer held that she was unable to conclude that the BIOC would be compromised by the Applicant's departure from Canada.

III. Analysis

[8] The standard of review is clearly reasonableness as per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 – a deferential but robust review.

[9] The Applicant's contention is that the Officer conflated her establishment analysis with the Applicant's adaptability and any hardship, effectively using her positive qualities against the Applicant. The Applicant also attacks the BIOC analysis.

[10] There is no basis for the Applicant's conflation argument. The Officer addressed the points made by the Applicant. It was reasonable to acknowledge the Applicant's evidentiary gap on H&C consideration. The Officer is not to make up points or conclude or consider factors beyond those raised by an applicant.

[11] In this case, the Officer was generous in her establishment assessment given the paucity of evidence to support the Applicant's position.

[12] The Applicant's reliance on *Henson v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1218, is misplaced. There is no presumption that a person's qualities, intellect and positive personal attributes can only be used to support a claim of establishment or positively in respect of hardship to show hardship would occur even when it would not.

[13] Officers cannot ignore facts to create a situation more favourable to an applicant. If the evidence of positivity suggests that hardship will not occur or can be mitigated, an officer has a duty to make that assessment on the basis of relevant evidence. If a person is multi-talented, multi-bilingual, resourceful and clever, then those factors must be weighed in the relevant assessment. Facts matter.

[14] There was nothing unreasonable in applying the conclusions about this Applicant's personal qualities to the situation of her return to the Philippines. To ignore those qualities would be perverse.

A. *BIOC*

[15] On the matter of the BIOC, the Applicant provided virtually no evidence on the lives of her minor children in Canada and the Philippines. Given the lack of evidence, the Officer's conclusions were reasonable.

B. *Comment*

[16] This was another case where Respondent's counsel made no submissions. While brevity and succinctness are appreciated by the Court, silence is not always golden, particularly where an applicant's oral argument expands upon or supplements the written submissions. Counsel are present in Court (even a Zoom court) to represent a client and assist the Court. Our system depends on vigorous engaged debate and while the medium may be restricting full engagement, the Court welcomes the assistance of counsel.

IV. Conclusion

[17] For all these reasons, this application for judicial review is dismissed. There is no question for certification.

JUDGMENT in IMM-4010-21

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	JACKIELYN GAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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