Federal Court  Cour fédérale

Date: 20081114

Docket: IMM-1179-08

Citation: 2008 FC 1278

Ottawa, Ontario, November 14, 2008

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MARGARET SEONA STEPHENS

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Stephens, a citizen of Saint Vincent, was admitted to Canada as a visitor in 2001. She did not extend her status when it expired and has been without status since 2002.

[2] Her application for an exemption from the requirement to file her permanent residence application based on humanitarian and compassion considerations (HC application) from outside

Canada, in derogation to the general rule, was denied by an immigration officer. That decision is challenged by this judicial review application before this Court.

[3] Three points at issue were raised at the hearing:

- Ms. Stephens' degree of establishment in Canada;
- The availability of a place to live in Saint Vincent; and
- Ms. Stephens' fear for her well-being should she be required to return to Saint Vincent.

[4] As regards decisions on HC applications, one must weigh Ms. Stephens' degree of establishment in Canada against an assessment of the situation that she would face if she were to return to Saint Vincent. The issue of a sufficiently pronounced fear does not arise here, hence neither section 96 nor section 97 apply. Citizenship and Immigration Canada's IP 5 manual, entitled "Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds," discusses unusual hardship rather than unusual, undeserved or disproportionate hardship.

[5] It is clear that even before the Supreme Court's decision in *Dunsmuir v. New Brunswick* 2008 SCC 9, [2008] S.C.J. No. 9, the standard of review in HC applications was that of reasonableness (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817).

[6] The officer determined that Ms. Stephens is well established in Canada. She has a family here, including her mother and brother; she has improved herself and is devoted within her community.

> [TRANSLATION]
>
> I note that the applicant's establishment is that of a person wishing to live autonomously in Canada. It is normal to create social ties in one's circle. She can also pursue her involvement with the church and her community in her country. I therefore find that the applicant's establishment, while good, is not exceptional and does not in itself justify exempting her from the duty of applying for permanent residence from abroad.

[7] In this context, it is apparent that the officer is not questioning the fact that Ms. Stephens is well established in Canada. Certainly, it is not a question of exempting the officer's obligation to assess the situation that Ms. Stephens will face if she were removed to Saint Vincent.

[8] As Justice Teitelbaum discussed in *Mooker v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 779, 62 Imm. L.R. (3d) 311, at paragraph 15:

> . . . The Officer reasonably concluded that the applicants' level of establishment does not exceed what is reasonably expected after having resided in the country for a period of four and a half years. Moreover, the degree of establishment is only one factor to be considered in an H&C assessment and is not in itself determinative (*Klais v. Minister of Citizenship and Immigration*, 2004 FC 785 (CanLII), 2004 FC 785; *Irimie v. Minister of Citizenship and Immigration* (2000), 10 Imm. L.R. (3d) 206).

[9] Ms. Stephens has also alleged that she would no longer have a place to live if she were to return to Saint Vincent. While the record is far from clear as to whether she could return to the place where she lived before, since it is possible that the family property has been sold, no evidence was adduced suggesting that she would no longer have anywhere to live in Saint Vincent, whether it be with her siblings or not.

[10] Finally, it is possible that the general situation in Saint Vincent reveals a degree of poverty and criminal violence, but Ms. Stephens did not relate these factors to her personal situation. Fundamentally the argument is really that the officer should have assigned more weight to some factors and less to others. However, as noted by Justice Blais in *Lee v. Canada (Minister of Citizenship and Immigration)* 2005 FC 413, 45 Imm. L.R. (3rd) 129, at paragraph 13:

> Once again, I want to reiterate the fact that this Court cannot lightly interfere with the discretion given to immigration officers. The H & C decision was a fact driven analysis, requiring the weighing of many factors. I find that the immigration officer considered all of the relevant and appropriate factors from a humanitarian and compassionate perspective, and did not commit any errors which would justify this Court's interference.

[11] The issue for the officer to decide is the following: is the particular situation of Ms. Stephens such that the hardship that she would experience if she were required to apply for permanent residence from Saint Vincent would be unusual, undeserved or disproportionate? The officer's decision, that it would not be, was reasonable. Her reasoning is clearly stated and her decision does not warrant the intervention of this Court.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed. There is no question to certify.

"Sean Harrington"
Judge

Certified true translation
François Brunet, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1179-08
STYLE OF CAUSE:	Margaret Seona Stephens v. MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 12, 2008
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATE OF REASONS:	November 142008

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