Federal Court  Cour fédérale

Date: 20090924

Docket: IMM-333-09

Citation: 2009 FC 963

Ottawa, Ontario, September 24, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

PETRA RECORT MASON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Year after year, application after application, Ms. Mason lied about why she was afraid to return to Grenada. Now that the end is near she has decided to tell the real reason; or so she says. As this is a judicial review of a decision of an enforcement officer not to defer her removal for two years while her third application for permanent residence from within Canada on humanitarian and compassionate grounds is being processed, it does not fall upon me to determine whether her story is credible, uncredible or incredible.

[2] Ms. Mason came to Canada in 1995 and first brought herself to the attention of the authorities when she made an application to remain in Canada on humanitarian and compassionate grounds. Her application was rejected. In 2004 her application for refugee protection was dismissed. She said she feared the rise in the crime rate in Grenada due to economic downturn, and also feared her ex-boyfriend. This fear was only presented to the Panel at the time of her hearing. She had been attacked by him in 1990. This risk also served as one of the bases for her pre-removal risk application which was turned down. The Officer stated: "The applicant had an opportunity to submit new evidence that would persuade me to arrive at a different conclusion from the Refugee Protection Division. The risk identified by the applicant had been assessed at her refugee claim. She fears her ex-boyfriend upon her return to Grenada." Her third application for a permanent resident visa from within Canada was made in May of last year. In the normal course, another two years or so will pass before a decision is made.

[3] Once a negative decision was rendered on her PRRA, she was removal ready and was directed to report to Pearson Airport for removal to Grenada. Through counsel she asked the enforcement officer to defer the removal on a number of grounds including her Canadian-born son and her job. It was also alleged that there should be a deferral in light of new evidence disclosed in the pending H&C application. That application was attached, but the real "new evidence" was not identified.

[4] In the motion for a stay before Mr. Justice O'Keefe and before me she admitted that she lied in the past and pointed out that in her new H&C application "family, friends and I disclosed my fear

of my brother who suffers from psychiatric illness. I had been uncomfortable discussing this, and relied on advice that I could remain in Canada based on other factors". However, that is not what she told the enforcement officer.

[5] Counsel for Ms. Mason submits that since a stay was granted on the grounds of a serious risk of a physical danger, this judicial review should be granted as a matter of course. He also suggests that since a stay had been granted, her H&C application should have been put at the top of the list. It is not for the Court to dictate who should jump the queue and in what circumstances. This is not an application which has been pending for seven years.

[6] A stay does not dictate the outcome of a judicial review. It is based on the tripartite test set out in such cases as *Toth v. Canada (Minister of Citizenship and Immigration)* (1988), 86 N.R. 302 (F.C.A.) and *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, i.e. serious issue, irreparable harm and balance of convenience. A Motions Judge faced with an application for a stay is obliged to act quickly, often on an incomplete record and without a detailed analysis of the case. The issue is whether the *status quo* should be maintained to allow a more profound study in the fullness of time. However, a judicial review is decided on the balance of probabilities, a more stringent test.

[7] The Officer noted that this was Ms. Mason's third H&C application. He said that these applications are decided upon by competent, credible, CIC officials with experience in assessing such applications. He went on to say: "Insufficient evidence has been provided to provide that circumstances have changed enough to warrant a different decision on her third H&C application."

Ms. Mason's counsel leaps on the following sentence: "There were no submissions or evidence provided with the deferral request as evidence that new risks exists."

[8] In counsel's H&C submissions, and in Ms. Mason's 39-paragraph affidavit, it is stated that she lied when she said that she was not living with her common-law spouse in Canada while in fact she was. Both the covering letter from counsel, and Ms. Mason's affidavit, as well as other affidavits and statements, emphasize Ms. Mason's mentally-ill violent brother and that he was the real reason she left Grenada, but they do not say that this was the first time her brother was mentioned.

[9] The lie identified was that she was not living with her common-law spouse in Canada while in fact she was. Nowhere is it stated that the alleged reason she left Grenada, her fear of a mobbed-up ex-boyfriend, was a lie. Ms. Mason's brother's situation was not new. It is far too much to expect of an enforcement officer that he or she should not only read the previous decisions, which do not mention the brother, but also review each and every document in each and every file to see if the brother was mentioned in the applications, but not commented upon by the decision maker. Mr. Justice Létourneau's admonishment in *Remo Imports Ltd. v. Jaguar Cars Ltd.*, 2007 FCA 258, [2008] 2 F.C.R. 132 that an appellate tribunal is not a ferret is applicable.

[10] Ms. Mason relies upon *Wang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148, [2001] 3 F.C. 182, bolstered this year by *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, 79 Imm. L.R. (3d) 157 for the proposition that although an enforcement officer has little discretion, one factor to take into account is the risk of physical

danger. However, on the file before him the officer was entitled to assume that that risk had been assessed by those who were burdened with that responsibility. His decision was reasonable and is not to be set aside.

[11] Our system is such that if a new direction to report for removal is issued, Ms. Mason may again seek a deferral and, if unsuccessful, seek another stay.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-333-09
STYLE OF CAUSE:	*Petra Record Mason v. MCI et al.*
PLACE OF HEARING:	Toronto, Ontario
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