Federal Court  Cour fédérale

Date: 20110711

Docket: IMM-4448-10

Citation: 2011 FC 865

Ottawa, Ontario, July 11, 2011

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ZINAH AL JAMIL

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant challenges the legality of the decision of a Citizenship and Immigration Officer (the Officer), dated July 12, 2010, rejecting her application for permanent residence from within Canada made on humanitarian and compassionate grounds and based on subsection 25(1) of the *Immigration and Refugee Protection Act* (the Act), SC 2001, c 27 (the H&C application).

[2] The applicant, Ms. Zinah Al Jamil, is a single woman. She is a Syrian national of Lebanese residence. Her father is a Syrian Muslim and her mother is a Lebanese Christian. The applicant was born in Syria but lived the majority of her life in Lebanon. She first came under a temporary student visa to Canada in 2006 to attend Dalhousie University. She lives with her sister in Halifax. Her brother and a significant number of extended family members also live in Halifax.

[3] The applicant made a refugee claim in 2007, based on the constant discrimination, harassment, intimidation and fear for her security and life that she alleges to have experienced and would experience as a Syrian in Lebanon, as well as being the product of a mixed-religion marriage. The claim was rejected on April 20, 2009. Subsequently, the applicant applied for a PRRA, which is still pending. The applicant also made an H&C application, which focused on the close family ties and integration into Canadian society of the applicant, as well as the discrimination she would face in Lebanon as a single female Syrian Muslim.

[4] Essentially, the Officer decided that the applicant would not suffer unusual and underserved or disproportionate hardship. Before going further, it is useful to briefly outline some relevant principles and the standard of review according to which the legality of the impugned decision has to be evaluated.

[5] Immigration legislation does not clearly establish what constitutes humanitarian and compassionate grounds for an exemption under subsection 25(1) of the Act. This lack of an official test is part of the discretionary nature of any H&C decision (*Paz v Canada (Minister of Citizenship and Immigration)*, 2009 FC 412 at para 28). That being said, the IP 5 Immigrant Applications in

Canada made on Humanitarian or Compassionate Grounds Guidelines suggest that the officer must determine whether, on the basis of the proof submitted, a refusal to grant the request for an exemption would, more likely than not, result in unusual and undeserved or disproportionate hardship. Thus, the criterion of "unusual and undeserved or disproportionate hardship" is an appropriate test (*Singh v Canada (Citizenship and Immigration)*, 2009 FC 11 at para 2). The burden of proof is entirely on the applicant.

[6] The standard of review for H&C determinations by immigration officers has generally been found to be reasonableness (*Ahmad v Canada (Minister of Citizenship and Immigration)*, 2008 FC 646 at para 11). Reasonableness is concerned principally with the existence of justification, transparency and intelligibility in the decision-making process. It also relates to whether the decision falls within the range of acceptable outcomes that are defensible in fact and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). H&C decisions are discretionary in nature and therefore there is a wider scope of possible reasonable outcomes available (*Inneh v Canada (Citizenship and Immigration)*, 2009 FC 108 at para 13).

[7] Basically, the applicant submits that the Officer's reasons or lack of proper analysis do not permit the applicant, and by extension, this Court, to be satisfied that the Officer duly considered the personal circumstances of the applicant and made a global assessment of the H&C application in the context of the evidence and the objectives of the Act, notably paragraph 3(1)(d) of the Act. Having considered the respondent's response to applicant's arguments, the Court accepts these grounds of review and finds the impugned decision unreasonable.

[8] First, with respect to integration, the Officer's noted that the applicant had made friends through school and work, and was reasonably integrated into Canadian society, but that the integration was not out of the ordinary. This conclusion was open to the Officer, even though her lack of community involvement is certainly understandable (considering that the applicant was both studying and working during the four year period considered).

[9] In contrast, the Officer's conclusion regarding the applicant's family situation in Canada is not reasonable. The Officer dismissed the applicant's argument in two sentences, stating that all family members other than her siblings were cousins or spouses of cousins, and that her parents and other family members are in Lebanon. In doing so, the Officer revealed a complete lack of consideration for the enhanced importance that family plays in Middle Eastern culture, and ignored or otherwise dismissed without proper reasoning and explanations, relevant evidence.

[10] More particularly, the applicant's personal statement speaks eloquently to her close connection to her family in Canada. The applicant also explains that she is not close to her father's family, which is back in Lebanon, because they disapproved of her parents' marriage. Rather, she is very close to her mother's family, of which a large number of members are in Canada. The applicant also discusses the fact that her parents hope to immigrate to Canada, which would leave the applicant alone in Lebanon. The Officer's decision to reject this as a possible ground for H&C consideration is unreasonable, in light thereof.

[11] The Officer's discussion of the possible difficulties awaiting the applicant in Lebanon completely misses the point. The Officer only discusses the fact that the applicant knows the

language and the culture, and could live with her parents. The applicant does not deny that she knows the language and the culture, or that she could live with her parents in Lebanon (even though she did state that she is more comfortable in English than in Arabic, and that her parents eventually intend to immigrate to Canada). Regardless, the real problem with the Officer's reasons is that neither point was among the grounds that the applicant suggested to justify her H&C application.

[12] Again, the issue before the Officer was not whether the applicant had a place to live in Lebanon, or whether she was familiar with the culture and language, but rather, whether she would suffer discrimination based on her status as a single, female Syrian Muslim. The Officer's focus on the applicant's having somewhere to stay in Lebanon and the ability to communicate is misplaced. While accepting that the Officer is better placed to weigh the evidence, insufficient reasons have been provided to dismiss the claim that constant discrimination in Syria would constitute unusual and undeserved or disproportionate hardship in view of her personal situation.

[13] The Officer also seems to suggest that the applicant may not have been actually enrolled at Dalhousie University, for example. However, if a negative decision contains a finding of lack of credibility, this should at the very least be explicit. A simple casual statement that the applicant did not provide transcripts is not adequate. The Officer's failure to address the letter of commendation from the applicant's professor is also unacceptable, in light of the Officer's offhand comment.

[14] The Officer could also have chosen to disregard the importance of the family connection which the applicant enjoys in Canada. However, in light of the evidence submitted, which included her personal statement, statements made by her siblings and numerous photographs of family events

in Canada, the Officer had to at least address this argument in a clear and culturally sensitive manner. Thus, the Officer's blunt statement that "although it would be difficult to leave her family members and friends here in Canada, [she was] not convinced that this hardship alone [was] sufficient to justify an exemption under humanitarian and compassionate considerations" is highly questionable.

[15] In final analysis, considering the absence of adequate reasons and the accumulation of problems in the reasoning of the Officer, the Court finds the decision, as a whole, reviewable. This application for judicial review shall be accordingly granted. The decision shall be set aside and the matter returned for reconsideration by a different Officer. Counsel agrees that there is no serious question of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review be granted. The impugned decision is set aside and the matter returned for reconsideration by a different Officer. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4448-10
STYLE OF CAUSE:	**ZINAH AL JAMAL v MINISTER OF CITIZENSHIP, IMMIGRATION AND MULTICULTURALISM**
PLACE OF HEARING:	Halifax. Nova Scotia
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