Federal Court  Cour fédérale

Date: 20120621

Docket: IMM-8859-11

Citation: 2012 FC 795

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, June 21, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ANA CECILIA PINTO OLIVEROS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for leave and for judicial review of a decision, dated October 14, 2011, by which an immigration officer refused to grant the applicant an exemption, on humanitarian and compassionate grounds, from the requirement of applying for permanent residence from outside

Canada, submitted under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

II. Facts

[2] The applicant, Ana Cecilia Pinto Oliveros, was born on September 6, 1960, and is a citizen of Colombia.

[3] The applicant arrived in Canada on March 21, 2008, on which date she claimed refugee protection alleging, in particular, a fear of the Revolutionary Armed Forces of Colombia (FARC).

[4] That refugee claim was denied on July 30, 2010. The application for leave to commence an application for judicial review of that decision was dismissed by this Court on November 15, 2010.

[5] On April 18, 2011, the applicant submitted an application for a Pre-Removal Risk Assessment (PRRA), which was denied.

[6] The applicant lives with her daughter and son-in-law, who are Canadian citizens, and looks after their three children.

III. Decision under review

[7] With respect to the applicant's establishment and her family circumstances, the officer questioned why the applicant's daughter had not initiated family reunification procedures earlier.

[8] The officer further noted the lack of evidence with respect to the applicant's financial resources and her integration into Canada.

[9] The officer determined that the applicant's separation from her family in Canada would not cause her unusual and undeserved hardship.

[10] The officer stated that he had taken the best interests of the children into consideration. He nonetheless found that the applicant's separation from her grandchildren would not adversely affect their best interests. In this regard, the officer noted the lack of evidence supporting the applicant's claims. In addition, the officer gave little weight to this factor because he was of the view that the children's parents would help them overcome any hardship related to their grandmother's departure.

[11] The officer determined that the applicant, having spent most of her life in Colombia, would not suffer any unusual hardship from having to file an application for permanent residence from her country of origin.

[12] The officer also relied on the PRRA application as a basis for determining that the alleged risks had already been assessed.

IV. Issue

[13] Was the officer's decision refusing to grant the applicant an exemption, on humanitarian and compassionate grounds, from the requirement of applying for permanent residence from outside Canada reasonable?

V. Relevant statutory provisions

[14] The following provisions of the IRPA apply to this case:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25. (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25.** (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

VI. Positions of the parties

[15] The applicant is claiming that the officer did not pay sufficient attention to the evidence that was submitted showing the important role she played in the lives of her only daughter, her son-in-law and her grandchildren.

[16] The respondent maintains that the decision is reasonable. The importance of family ties was taken into consideration by the officer and was weighed along with other criteria.

VII. Analysis

[17] The discretion provided under section 25 of the IRPA calls for deference on the part of this Court (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3).

[18] In this regard, the Federal Court of Appeal explained that "[i]t is not the role of the courts to re-examine the weight given to the different factors by the officers" (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125, [2002] 4 FC 358 at para 11).

[19] The Court cannot agree with the applicant's main argument that family ties were not given sufficient consideration. On the one hand, this Court has recognized that the separation of the family, in and of itself, is insufficient to warrant a favourable decision (*Williams v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1474).

[20] On the other hand, upon reading the officer's decision it is clear the applicant's relationship with her family was fully taken into consideration. However, the officer determined that the family circumstances were insufficient having regard to the applicant's establishment and integration, as he was entitled to do.

[21] Similarly, the officer analyzed the potential hardship that would result from the applicant's departure. The record shows that she is a 53-year old woman with a university education who has spent most of her life in Colombia. In addition, the applicant's parents, brother and sister still live in Colombia.

[22] Furthermore, it is well established that the best interests of the child must be taken into consideration. However, in the circumstances, this cannot be determinative (*Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 FC 555).

[23] In this case, it appears from the officer's decision that he did not fail to apply the "best interests of the child" test:

> [TRANSLATION]
>
> I do not question the children's attachment to their grandmother, or the love she has shown towards them. It is only that there is no evidence to indicate the degree to which the emotional, social, cultural and physical wellbeing of these children would be affected by the applicant's potential departure. I have also taken into consideration their young age, and above all the fact that they are not dependent upon the applicant but rather, upon their own parents, who can remain in Canada. There is a strong likelihood that the departure of this important member of the family would create a void in the children's lives and cause them sadness, but I am confident that their parents will be there for them and will help them overcome such difficulties. Accordingly, I am not convinced that the best interests of these children would be compromised by their grandmother's departure, and for these reasons, I give little weight to this factor. [Emphasis added.]
>
> (Immigration officer's decision at p. 4.)

[24] It should be noted that section 25 of the IRPA provides for discretion to allow for an exception to the rule that permanent residence applications be made from outside Canada. It has not

been demonstrated that the officer erred in any way in the exercise of his discretion, which includes analyzing the evidence in its entirety (*Ahmed v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1303, 372 FTR 1).

[25] In the present case, as the officer pointed out, the applicant's daughter has begun the process of sponsoring her mother.

[26] The relationship between grandparents and their grandchildren is more than simply a matter of genealogy. It enriches the family and bridges generations; it is invaluable on a social/emotional level, both for the child and the grandparents. Although the Court is sensitive to the fact that the applicant's departure will cause some hardship to the family, it cannot, in this proceeding, substitute its own reasoning for that of the officer.

VIII. Conclusion

[27] For all the reasons set out above, the intervention of this Court is not warranted. The applicant's application for judicial review is therefore dismissed.

JUDGMENT

THE COURT ORDERS that the applicant's application for judicial review be dismissed.

There is no question of general importance to certify.

"Michel M.J. Shore"
Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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