Federal Court  Cour fédérale

Date: 20120730

Docket: IMM-8600-11

Citation: 2012 FC 939

Ottawa, Ontario, July 30, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

SUSAN MERLENE COUDOUGAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Susan Merlene Coudougan, seeks judicial review of a decision to deny her permanent residence status on humanitarian and compassionate (H&C) grounds under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). This hearing was held at the same time as that of her judicial review application related to a negative Pre-Removal Risk Assessment (PRRA) (Court File # IMM-8599-11).

I. Background

[2] The Applicant is a citizen of St. Vincent and the Grenadines (St. Vincent). She initially brought a claim for refugee protection in Canada in 2006 based on violence committed by her former partner and the father of her three eldest children, Gus Robertson. Her claim was denied, as was a subsequent PRRA. She was removed to St. Vincent in December 2009.

[3] The Applicant claims that on her return she was attacked by family members of Mr. Robertson. She arrived in Canada again on October 5, 2011. She applied for a PRRA to be considered along with her pending H&C application that was initially filed prior to her removal from Canada in 2008. Both applications were denied by the same Senior Immigration Officer (the Officer). The Applicant now asks this Court to review the H&C decision.

II. H&C Determination

[4] Considering the Applicant's establishment in Canada, the Officer noted emails from friends that she maintained contact with following her return to St. Vincent. The Officer nonetheless found that the Applicant provided "little information about the hardship experienced after leaving her Canadian employment and her Canadian friends in December 2009" and could give little consideration to her overall degree of establishment.

[5] As for the hardships of living in St. Vincent, the Officer noted that there is little information to suggest that high rent, lower incomes and certain living conditions facing the Applicant created hardship disproportionate to that faced by others in the country.

[6] The Officer also directed attention to the best interests of the Applicant's Canadian-born two year old son, Jallon, and his medical condition requiring surgery. The importance of the procedure was recognized by the Officer, but it was also noted there was "little information before me indicating that Jallon's medical condition will require long term follow-up which would require the applicant to remain in Canada long term." The Officer also gave little weight to Jallon's adverse skin reaction and the Applicant's lack of confidence in the medical system, since this would apply to all residents of St. Vincent. The lack of support from Jallon's father was given positive consideration. The Officer did, however, recognize the benefits of the Applicant living in St. Vincent with her three eldest children.

[7] The final factor considered by the Officer was the risk associated with her return to St. Vincent. The Officer referenced the findings on the PRRA and stated the Applicant "presents little information to demonstrate the hardship she will face from living in the same country as the family of her former common law husband and of her former common law husband once he returns to SVG." While there could be some hardship as the Applicant may run into her former common law partner or his family, this would subject her to psychological hardship and support services are available in St. Vincent. The hardship would not be disproportionate to that experienced by others in similar situations.

III. Issue

[8] This application is concerned with the reasonableness of the Officer's determination.

IV. Standard of Review

[9] As is evident, H&C determinations are deserving of deference and reviewed according to the reasonableness standard (see for example *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2009] FCJ no 713 at para 18). This Court will consider whether the determination demonstrates the existence of justification, transparency and intelligibility or, to put it another way, falls within the range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

[10] The Applicant takes issue with the Officer's consideration of risk factors due to reliance placed on PRRA findings that state protection would be available to her. She insists that the Officer failed to conduct an independent assessment of the physical hardship of availing herself of that protection in St. Vincent as required under the broader and lower threshold of an H&C application.

[11] I am not convinced that the Applicant's position reflects the decision as rendered by the Officer. Despite the reference to PRRA findings, attention was given to the overarching

consideration in H&C applications of disproportionate hardship to the Applicant. This is clear in the passages devoted to risk in the Officer's decision where it was noted:

> In the context of the PRRA application, I found that adequate state protection would be reasonably forthcoming to the applicant if she made reasonable efforts to avail herself of it. I found the applicant did not demonstrate a serious possibility of persecution as defined in section 96 of IRPA. In addition, the applicant did not satisfy me, on substantial grounds, that she faces risk of torture under 97(1)(a) or is personally at risk of cruel and unusual treatment or punishment, or at risk to life under 97(1)(b).
>
> As the risk presented by the applicant this on application is the same risk presented in her PRRA application, these findings are directly relevant and have bearing on the applicant's H&C application. I am cognisant that, while the H&C analysis involves similar facts to those considered in the PRRA, these facts must be examined in light of the lower threshold applicable to H&C decisions, of whether the risk factors amount to unusual, undeserved or disproportionate hardship.

[12] Not only was the Officer aware of the distinction between the two applications and the need to focus on the degree of hardship in the H&C context, but proceeded to conduct that specific analysis in subsequent paragraphs. The Officer continued:

> The applicant presents little information to demonstrate the hardship she will face from living in the same country as the family of her former common law husband and of her former common law husband once he returns to SVG.
>
> I acknowledge that some hardship may occur for the applicant by moving to Grenada [sic] where her former common law partner's family continues to reside as she may run into them in the course of her day to day activities. She may also occasionally run into her former common law partner when he returns to SVG. This may subject the applicant to psychological hardship. However, social and psychological support services are available in SVG as evidenced by the 2000 USDOS Human Rights report that was included with the applicant's H&C submissions. I find I do not have sufficient information before me to find the hardship faced by the applicant would be disproportionate to the hardship experienced by others in similar situations.

[13] The Officer's primary concern was the lack of specific evidence identifying the degree of hardship the Applicant would encounter under the circumstances. Reference was, however, still made to the issues of running into her former partner and family members as well as possible psychological hardship. Since the Officer considered state protection from the perspective of disproportionate hardship, the approach is justified, transparent and intelligible (for similar reasoning see *Youkhanna v Canada (Minister of Citizenship and Immigration)*, 2008 FC 187, [2008] FCJ no 239 at para 4).

[14] Regarding the Applicant's suggestion that particular pieces of evidence were ignored in the Officer's assessment of hardship, I note that much of that material was specifically addressed in the context of the PRRA. As the Respondent contends, it appears that essentially the same evidence of the risk of violence and concerns associated with police response were relied on for the H&C application as in the PRRA.

[15] The Officer devoted sufficient attention to the degree of hardship facing the Applicant when considering the risk factors, despite using the state protection findings from the PRRA as the initial starting point. I stress that the onus remains on the Applicant to demonstrate how the situation would impose particular hardships (see for example *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2008 FC 646, [2008] FCJ no 814 at para 37).

VI. Conclusion

[16] Accordingly, this application for judicial review is dismissed.

JUDGMENT

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

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	**SUSAN MERLENE COUDOUGAN v MCI**
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