Federal Court Cour fédérale

Date: 20140606

Docket: IMM-4109-13

Citation: 2014 FC 545

Ottawa, Ontario, June 6, 2014

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

LIJIN LI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a decision by an Immigration Officer denying the Applicant's H&C application. This Applicant is also the subject of a judicial review of a Refugee Protection Division [RPD] decision denying her refugee protection in Federal Court File No. IMM-2287-13.

[2] The circumstances of the Applicant's life are sad and the treatment of her by both the department and an independent quasi-judicial tribunal is unpalatable.

II. Background

[3] The Applicant is a 26 year old Chinese citizen. Her mother died in 2005 and the Applicant came to Canada on a student visa. She suffers from mental illness and has spent approximately two of the past eight years in shelters; she has also lived on the street and she has had continuing mental health issues – described by one psychiatrist as an illness now controlled but not cured.

[4] Upon arriving in Canada, the Applicant began practising Christianity. This should have been the central issue in her RPD decision.

[5] In respect of this H&C, the Applicant was admitted in December 2008 to the Toronto General Hospital in-patient psychiatric unit where she was diagnosed with having a major depressive episode with psychotic features. Her symptoms included hallucinations and delusions. She was prescribed medication and released.

[6] Between December 2008 and September 2010 the Applicant was admitted to psychiatric wards on five occasions with stays of between two weeks and one month.

[7] She subsequently enrolled in college and has been residing at the home of a senior official in the psychiatric department of a major Toronto hospital.

[8] In the Immigration Officer's decision refusing the H&C application, the Immigration Officer, in compliance with s 25 (1) and (1.3) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, disregarded the risk factors regarding her Christian faith. However, the Immigration Officer made three critical findings:

- that the Applicant's psychotic depression/lapse was the result of separation anxiety as a consequence of travelling alone to a new country and that it was reasonable that her psychosis will diminish "as she is back in her native culture and language and among family and friends";
- that China had sufficient medical resources reasonably available to the Applicant to treat her mental illness; and
- that in respect of establishment and hardship, the Applicant's separation from her ability to practise her religion was not hardship which the Immigration Officer could consider. Further separation from her Canadian social network would not be hardship.

An error on any one or more of these findings is fatal to the decision.

III. Analysis

[9] The only real issue in this matter is whether the Officer's findings are reasonable. These findings are reviewable on the standard of reasonableness (*Norbert v Canada (Minister of Citizenship and Immigration)*, 2014 FC 409).

[10] As this matter will be sent back for redetermination, the Court will not comment on matters beyond that which is necessary to dispose of this judicial review.

[11] The Immigration Officer made a fatal error in coming to his own conclusions on the source of the Applicant's psychiatric problems. It was a determination made in the absence of any evidence to support a finding that this source of the psychiatric problems was the "culture shock" of coming to Canada.

[12] There is no basis for amateur diagnosis. The Immigration Officer has no expertise in this field and there is no medical evidence to support this diagnosis. Culture shock, on the evidence, exacerbated the medical problems but was not found to be the root cause.

[13] Moreover, the conclusion that return to China would be tantamount to a cure is unsupported and bizarre.

[14] In addition, in considering the evidence of mental health treatment in China, the Immigration Officer focused exclusively on services in Shanghai and Beijing. While the evidence of the services there may not be totally reassuring, the analysis strayed from reasonableness in failing to link those few facilities identified with the Applicant's ability to access them from her home city.

[15] The Immigration Officer's review of evidence on this point was cursory. It may have been influenced by the Immigration Officer's unreasonable conclusions on the source of the mental illness and the likelihood of a cure by returning home.

[16] There is no need to say anything on the issue of establishment/hardship other than it lacked depth.

IV. Conclusion

[17] For all these reasons, this judicial review will be granted, the decision quashed and the matter remitted back for a new determination by a different official.

[18] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter is remitted back for a new determination by a different official.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4109-13
STYLE OF CAUSE:	LIJIN LI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 29, 2014
JUDGMENT AND REASONS:	PHELAN J.
DATED:	JUNE 6, 2014

APPEARANCES:

Elyse Korman	FOR THE APPLICANT
Margherita Braccio	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Otis & Korman Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT