Federal Court  Cour fédérale

Date: 20140708

Docket: IMM-7021-13

Citation: 2014 FC 665

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 8, 2014

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

LORENA MACATAGAY

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

Introduction

[1] The applicant, a Filipino citizen, arrived in Canada in 2007 and has now exhausted the means available to her under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) in order to be granted permanent residence in Canada. Her second application for permanent residence on humanitarian and compassionate grounds was refused on May 15, 2014, and as of

June 30, 2014, no application for judicial review had been filed before this Court. At one point, she was sponsored by a former spouse, but he is now seeking, before the Superior Court of Québec, annulment of his marriage to the applicant, after only seven months of living together. He argues, among other things, that the applicant allegedly married him for the sole purpose of obtaining status under the Act. In her defence and counterclaim, the applicant denies this fact and rather seeks a divorce and support payments of $500 per month. The hearing of this case is scheduled for September 2 and 3 at the Montréal courthouse.

[2] To allow her to attend the hearing of the application for annulment of the marriage and testify on her own behalf, the applicant sought a stay of her removal scheduled for November 14, 2013, which was denied. That decision is the subject of this application for judicial review.

[3] On November 12, 2013, Justice Shore allowed the applicant's application for a judicial stay of removal and the following day, the Canadian government declared a moratorium on removals to the Philippines post-Typhoon Haiyan, which devastated the country. During the hearing of the case, counsel for the respondent informed the Court that the moratorium was lifted on June 26, 2014.

[4] For the reasons set out below, this application for judicial review will be dismissed.

Impugned decision

[5] The removal officer's decision was rendered during the interview held on October 16, 2013, with the applicant and her counsel. The reasons for this decision are included in the

interview notes and it is indicated that the removal officer rejects counsel for the applicant's submission that the hearing scheduled before the Superior Court would grant the applicant an automatic stay of removal. The officer adds that this hearing is not imminent as it is still 11 months away and that, in any event, the applicant could be represented by counsel.

Issue and standard of review

[6] The sole issued raised by this application for judicial review concerns the legality of the removal officer's decision.

[7] The standard of reasonableness applies to decisions regarding regulatory or administrative stays rendered by an enforcement officer (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, at paragraph 25). It is trite to say that the officer's discretion to reschedule the removal of a foreign national is very limited (*Adviento v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1430).

Analysis

[8] The applicant makes no submissions in respect of the reasonableness of the impugned decision. She simply argues that paragraph 50(*a*) is applicable in that the judicial proceeding under way would be directly contravened by the enforcement of the removal order. Furthermore, she argues that her removal brings the administration of justice into disrepute and undermines public trust in the Canadian justice system. She says that she does not pose a danger to Canada

and that she has not committed any offences since her arrival. Finally, the stay requested is temporary.

[9] As for the respondent, he claims that the officer exercised his discretion within the Act's limits. The officer carefully assessed all the circumstances of the case and concluded that the stay could not be granted given the delay, the fact that the applicant has been without legal status in Canada for a significant period of time, and the fact that she could continue to be represented by counsel before the Superior Court.

[10] First, this Court has repeatedly confirmed that paragraph 50(*a*) of the Act does not apply to a proceeding pending before a superior court of a province and that such a proceeding would not result in the stay of enforceable removal proceedings (*Idahosa v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 418; *Phillips v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 1499; and *Lentino Garcia v Canada (Minister of Public Safety and Emergency Preparedness)*, IMM-3027-13 (April 27, 2013)).

[11] In her memorandum, the applicant argues that she would suffer irreparable harm if she were returned to the Philippines before she had an opportunity to testify in the litigation with her former spouse. During the hearing, counsel for the applicant however confirmed that, for her, it was more a matter of principle because their relationship is over and that she is aware that she will have to return to her country. Besides the support payments that may be awarded, whether the marriage is annulled or terminated by divorce does not have much practical effect.

[12] As for counsel for the respondent, she confirms that at this point, the respondent contests the application for judicial review on principle on the basis that, having regard to the summer holiday period, it is unlikely that the applicant's removal will be scheduled before September 4 and if it is, the applicant may again request an administrative stay of her removal, which will probably be granted given the very short period of time involved.

[13] In her submissions, counsel for the applicant asked me to consider that there are only less than two months left before the hearing of the applicant's application for annulment of marriage and that it would be unreasonable to send her back to the Philippines at this point.

[14] However, I must consider the removal officer's decision within its own context and it was reasonable to conclude, in all the circumstances of this case, that the delay prior to the hearing before the Superior Court was too long.

[15] Furthermore, this is not an application for a stay and I cannot usurp the discretion of the enforcement officer who may be called upon to arrange the applicant's departure and, in the rare event that said departure is scheduled before September 4, to deal with a new application for an administrative stay of removal by the applicant.

Conclusion

[16] Although the applicant's application for judicial review was highly theoretical at the time it was submitted, it is dismissed and no question of general importance is certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Jocelyne Gagné"
Judge

Certified true translation
Daniela Guglietta, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7021-13
STYLE OF CAUSE	LORENA MACATAGAY v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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