Federal Court  Cour fédérale

Date: 20140829

Docket: IMM-2856-13

Citation: 2014 FC 832

Ottawa, Ontario, August 29, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

JULIANA ANDREA CHUNZA GARCIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision dated April 15, 2013, of officer I. Fonkin [the officer] of Citizenship and Immigration Canada [CIC] refusing the applicant, Andrea Chunza Garcia's, application for permanent residence on humanitarian and compassionate grounds [H & C application].

[2] For the following reasons, the application is rejected.

II. Background

[3] The applicant is a 20-year old citizen of Colombia. In April 2005 she fled Colombia to the United States with her parents and sister where they sought asylum. Their claims were refused, and they traveled from the United States to Canada on June 26, 2009, where they filed refugee claims. The applicant was 16 years old at the time.

[4] The applicant's family's refugee claims were refused, and in June 2012, the applicant made an H & C application based on her establishment in Canada as a student and employee of the Royal Bank of Canada (RBC), her contributions to her community, as well as the hardship she would face as a young woman in Colombia returning after an absence of seven years to a country beset by violence.

[5] On January 8, 2013, the applicant and her parents returned to Colombia pursuant to directives from the Canada Border Services Agency [CBSA]. On February 6, 2013, the applicant's legal counsel requested that a decision not be made within 60 days so as to allow the applicant to provide additional submissions and evidence regarding the hardship that she faced in Colombia. The officer, in an apparent mix-up, refused the H & C application by decision rendered March 25, 2013 (the initial decision).

[6] In the initial decision, it was determined that the applicant had succeeded exceedingly well in her three and a half years in Canada. She was an exemplary student winning scholarships

and various awards. She had volunteered with a number of charitable organizations and assisted in fundraisers. She had been accepted at Ryerson University and York University in commerce programs, with a scholarship from York. She had participated in the school co-op program where she gained valuable skills and work experience with RBC, who thereafter hired her on a permanent basis. She had obtained several certifications in various fields including for Anti-Money Laundering and Anti-Terrorist Financing Awareness and Outstanding Leadership. She also had significant support from friends and family all stating that the applicant was an exceptional person, enthusiastic, optimistic, encouraging, honest, kind and that she should be allowed to remain in Canada.

[7] After reviewing all the evidence, the officer first concluded that the claim that the applicant would suffer undue hardship by the violence which occurs against women in Colombia was speculative. She also found that the applicant would not be directly affected by the general country conditions in Colombia on the basis of her living in Bogota and her profile as an educated and capable person. The officer concluded that there was insufficient evidence to demonstrate a serious possibility that the applicant would be the subject of discriminatory treatment based on her gender.

[8] The officer considered the applicant's establishment claim, finding residency in Canada of approximately 3.5 years to be a relatively short period of time. She also concluded that the applicant had not established herself significantly in her employment or that her skills were unique to Canada and would be lost or not useful upon her return to Colombia. The officer considered speculative the claim that the applicant would not have access to a level higher

education. Given the applicant's demonstrated ability to succeed as a high achiever, with her first language in Spanish and being fluent in English, she concluded that Ms. Garcia would more likely adapt well and be successful. Accordingly, the officer rejected the claim on the basis that the applicant would not suffer hardship which would amount to unusual and undeserved or disproportionate should she return to Colombia.

[9] That decision was the subject matter of an application for leave and judicial review under court file IMM-2857-13, which thereafter was refused on April 15, 2013.

[10] Further submissions and evidence were submitted by counsel. These submissions were dated April 8, 9, and 15, 2013, requesting a reconsideration of the decision.

[11] The applicant deposed that she been unsuccessful in finding a position in banking during the three-month period since her return to Colombia, noting that the country had the highest unemployment rate in South America. Included in the additional materials were letters of job offers from the RBC, one which offered a $10,000 bonus to assist the applicant complete her studies while working with the bank. The supplementary materials contained a further letter of support from 40 RBC employees in management and other staff describing her positive qualities and how her departure had left a void with clients and staff alike. The applicant renewed her concerns about her inability to continue her education in Colombia.

[12] On April 15, 2013, the officer determined that the refusal decision would stand despite the new evidence. The reconsideration decision is the object of the current judicial review.

III. Standard of review

[13] The standard of review for a decision on an H & C application is reasonableness (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360 at paras 18, 20). The standard of review as regards the officer's treatment of the evidence is also reasonableness (*Barrios Trigoso v Canada (Citizenship and Immigration)*, 2011 FC 991, 208 ACWS (3d) 164 at para 19).

IV. Issues

[14] The only issue which arises in this situation is whether the officer's treatment of the evidence was reasonable, such that it allows the Court to understand how his conclusions support his final decision.

V. Analysis

[15] The applicant submits that the officer erred in his consideration of the further submissions and documents by unreasonably giving very little weight to them.

[16] First, the applicant argues that the officer erred in attributing little weight to her lack of success in finding work because there was no corroborating evidence supporting her bare allegation to this effect in her affidavit. The applicant argued that *Westmore v Canada (Citizenship and Immigration)*, 2012 FC 1023, 417 FTR 88 [*Westmore*] should apply. In that H & C application, Justice Russell held that it was unreasonable to reject a statement in an affidavit

as insufficient where there is no contrary evidence. In my view, *Westmore* is distinguishable. The officer had rejected a statement for the failure to provide supporting information that the claimant had no friends and acquaintances in the United Kingdom - in effect, requiring the proving of a negative.

[17] Moreover, the requirement to attribute truthfulness to an applicant's sworn statement, as first enunciated in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, 31 NR 34 (FCA), reflects a policy that exigent circumstances facing fleeing refugees may compromise their ability to present corroborative documentation. Conversely, when a claimant has, or may readily obtain, corroborative evidence in situations where it normally would be filed with the adjudicative tribunal to bolster the weight of an otherwise bare allegation, it is expected that the party will adhere to the ordinary reliability requirements to introduce the best evidence in support of their case. If they fail to do so, less weight (or none at all) may be attributed to the statement. The situation is similar to the presumption that arises against the party not calling a witness who may provide relevant evidence on an issue.

[18] The applicant in this matter states that she has been "diligent in looking for a job in banking given my experience in that field, but it has simply been impossible to find a job." The officer is entitled to expect both particulars of efforts made to locate work, in addition to being provided with documents supporting this statement in the form of exhibits. Such documentation would obviously be in the possession of the applicant. The officer therefore acts within her discretionary mandate to attribute less or no weight to the applicant's statement for lack of objective corroborating documentation.

[19] Second, the applicant submitted that the officer failed unreasonably to consider further relevant evidence consisting of two letters from RBC offering the applicant employment were she to return to Canada. It was argued that the officer misapprehended the probative value of this evidence on the grounds that it related to events after the applicant's removal and therefore served no purpose to demonstrate establishment. I agree that little weight can be attributed to offers of employment after the claimant leaves the country. I think this so especially when the letters serve little purpose of differentiating the applicant's situation from that of her having been employed at RBC prior to her removal. I also think that it is of no significance that the officer appeared to consider only one job offer, apparently overlooking the second letter. Overall, it was reasonable for the officer to attribute little weight to these letters as additional support to an argument of establishment.

[20] Thirdly, I similarly reject any complaint of a misapprehension of evidence by the officer failing to consider the applicant's letters of acceptance from Ryerson and York when there was reference to these facts in the initial decision. I suspect that the applicant is of the impression that the reconsideration decision would be considered absent any reference to the initial decision, which is not the case, as common sense dictates that the two decisions must be considered together.

[21] Fourth, I find reasonable the officer's conclusion that three months is insufficient time to demonstrate an inability to find employment in Colombia. Besides the time normally required to find positions of the nature sought by the applicant, the officer was entitled to attribute less

weight to this evidence on the basis that the applicant was undergoing a period of adjustment during the time that she alleges that she was searching for a banking position in Colombia.

[22] In the same vein, the high level of high unemployment in Colombia is a generalized situation, which does not necessarily apply to the applicant. She exhibits special attributes that should make her attractive to financial institutions and similar organizations based upon the high praise of her colleagues at RBC and her other recognized accomplishments. It is not unreasonable for the officer to have concluded that she should be able to find suitable employment in Colombia. I also do not find an unemployment rate of 10.8 % to be significantly out of line with unemployment rates around the world to the point of being a relevant factor in the consideration of hardship.

[23] Sixth, I also reject any suggestion that RBC would incur hardship because of the unavailability of an excellent prospective employee. Large multinational institutions like RBC are not generally vulnerable to loss of personnel, particularly at the entry level of the employment hierarchy. There is no reasonable basis to conclude that during her short time with the bank (or in the foreseeable future if she had been hired) that she would have become a key member of RBC such that the failure to employ her would have had any impact on its operations.

[24] Seventh, the applicant submits that the Court should apply the comments from the cases of *Velazquez Sanchez v Canada (Citizenship and Immigration)*, 2012 FC 1009, 221 ACWS (3d) 964 at paragraphs 18-20 and *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565, 139 ACWS (3d) 164 at paragraphs 13-14 and 20-21. In those cases the court criticized

officers for resorting to a "commonplace" practice of dismissing a matter for lack of insufficient objective evidence, which the court described as being contrary to the purpose of reviewing, rather than obscuring the rationale for the decision. These criticisms do not apply to a situation where the officer has already provided comprehensive reasons in the initial decision, none of which appear to have been referenced by the applicant when challenging the reconsideration decision. On reconsideration, the officer is only required to respond to additional evidence provided. She can reject allegedly new evidence for not sufficiently distinguishing that initially presented to her. I conclude that this officer's reasons respond reasonably to any new evidence introduced, such as it was found in the further affidavit, and that the decision is reasonable and well justified, particularly in light of the officer's previous conclusions in her initial decision.

[25] In considering the reasonability of the decision on a more common sense level, although not referred to by the officer, I also find it difficult to accept that the general profile presented by the applicant would normally support a claim for permanent residency on humanitarian and compassionate grounds. The applicant is 20 years old with only 3.5 years of residency in Canada. This period of residency has provided her with invaluable employment experience to find work with banks and multinational banks that are world-wide, even though she had no basis to be in Canada in the first place. By all accounts, she possesses exceptional personal qualities, with no disabilities, dependencies, or other evident collateral attributes that might support a valid establishment claim.

[26] In my view, establishment in terms of causing hardship is much about the suffering caused by adjustment to a removal because of deep, permanent, and inflexible roots put down

into the Canadian milieu, often compounded by the restraints of others dependent upon the claimant who will suffer related undue hardship if the applicant is removed. Like most things in law it is highly contextual and there are always exceptions, including some of the cases referred to by the applicant. Generally, however, persons who are beginning their careers and have demonstrated an ability to quickly adapt to Canada and possess the fine qualities and skills attributed to the claimant by her colleagues at RBC should reasonably be able to respond to challenging country conditions or other circumstances that will naturally arise in Columbia or anywhere over a long life ahead. It is therefore, unlikely that a young person with the applicant's attributes would endure unusual and undeserved or disproportionate hardship upon return to her country of origin required to meet the exceptional circumstances of a successful H&C application.

[27] I also question the weight that should be attributed to economic factors generally, such as the applicant having found a position in Canada, or that she is encountering difficulty in finding work in her country of origin. There is no concept that I am aware of that failed refugee claimants can earn their way into becoming a permanent resident of Canada, particularly when there is no basis for the person to be in the country in the first place. Canada has a system in place for economic immigrants and the last thing that the immigration regime can permit is to allow refugee claimants to gain back door entry into the country as a means to circumvent the rules for entry as economic immigrants. Moreover, in terms of hardship, there can be no reasonable unmet expectation that a person whose basis for entry into the country is rejected will be able to remain here afterwards. In summary, I do not see where economic considerations such

as are advanced in this case can amount to exceptional circumstances of hardship to remain in Canada.

[28] I conclude that the officer's decision meets the required standards of reasonableness and is justified by intelligible and transparent reasons.

Certified Question

[29] The Applicant has requested that if the application is declined, I should certify a question on minimum period of residency for establishment. The respondent opposes such a request. My comments on residency and economic hardship were neither definitive nor determinative of the decision. They are also not of general importance. There is no basis to certify a question for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and

2. No question is certified.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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