Federal Court Cour fédérale

Date: 20140513

Docket: IMM-1003-13

Citation: 2014 FC 458

Toronto, Ontario, May 13, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

NINA KOSOLAPOVA
LYVDMILA SHIBANOVA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Reasons delivered orally at Toronto on May 12, 2014)

[1] The applicants seek judicial review of a decision refusing their application for leave to apply for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds.

[2] The applicants allege that they were treated unfairly in the H&C process as a result of the failure of a Senior Immigration Officer to provide them with a copy of her March 26, 2013 "Notes to File" reconsidering her January 11, 2013, H&C decision in light of further submissions received from the applicants.

[3] The applicants further submit that the Senior Immigration Officer's decision was unreasonable, as the Officer failed to address the additional hardship that had been created for the applicants by virtue of the moratorium on parental sponsorships that had been introduced in November of 2011.

[4] Dealing first with the moratorium issue, the applicant, Ms. Shibanova, is the aunt of the Canadian relative and not a parent. As a consequence, she was not affected by the 2011 moratorium. Consequentially, no error has been demonstrated in relation to her.

[5] Insofar, as Ms. Kosolapova is concerned, the law is clear. As the Federal Court of Appeal observed in *Owusu v. Canada (Minister of Citizenship and Immigration)* [2004] F.C.J. No. 158, 2004 FCA 38, H&C applicants bear the onus of establishing the facts on which their claim for an exemption rests. There is no right or legitimate expectation that they will be afforded a hearing with the result they omit pertinent information from their H&C applications at their peril.

[6] While the applicants did make the general claim that an H&C exemption may be the only way that they can stay in Canada, they did not specifically identify hardship resulting from the imposition of the 2011 moratorium as a hardship factor that they specifically wanted to have

considered. This may be contrasted with the situation that confronted Justice Manson in the *Mancheno* case relied upon by the applicants (*Mancheno v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 66, [2013] F.C.J. No. 48).

[7] In *Mancheno*, specific submissions were made to the Immigration Officer with respect to the impact of the moratorium on the applicants in that case. Justice Manson held that it was thus incumbent on the Immigration Officer to consider this hardship factor in light of the submissions that had been made. In absence of any submissions with respect to the impact of the moratorium, no such obligation arises in this case, and the applicants have not established that the Officer's decision refusing their request for an H&C exemption was unreasonable.

[8] Turning now to the applicants' procedural fairness argument, I note that the decision that is currently before the Court is the Immigration Officer's first decision: the January 11, 2013 refusal of the applicants' H&C application, and not the March 26, 2013 reconsideration decision. The jurisprudence is clear that these are two separate decisions, each of which may be challenged through an application for judicial review. No such application has been brought with respect to the reconsideration decision, and leave of this Court was only granted with respect to the January 11, 2013 decision.

[9] Any irregularity that may have occurred in connection with the reconsideration decision has no bearing on the reasonableness or the fairness of the original decision, which is the subject of this application, and no breach of procedural fairness has been demonstrated with respect to the January 11, 2013 decision.

[10] Having failed to establish that they were treated unfairly with connection with the January 11, 2013 decision or that the decision was unreasonable, it follows that the application for judicial review must be dismissed.

[11] I agree with the parties that this case does not raise a question that is appropriate for certification.

JUDGMENT

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

"Anne L. Mactavish"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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