Federal Court of Appeal | Cour d'appel fédérale

Date: 20211004

Docket: A-137-20

Citation: 2021 FCA 194

CORAM: **STRATAS J.A.**
RENNIE J.A.
LASKIN J.A.

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

ASHLEY NADINE LAING

Respondent

Heard at Toronto, Ontario, on October 4, 2021.
Judgment delivered from the Bench at Toronto, Ontario, on October 4, 2021.

REASONS FOR JUDGMENT OF THE COURT BY: LASKIN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 4, 2021).

LASKIN J.A.

[1] The Minister of Citizenship and Immigration appeals from the judgment of the Federal Court (2020 FC 377, Annis J.). In its judgment, the Federal Court granted the application of the respondent Ms. Laing for judicial review of a decision of a senior immigration officer rejecting

her application for permanent residence from within Canada, brought on humanitarian and compassionate grounds.

[2] The Federal Court also certified the following questions for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*, S.C. 27, c. 27:

> In the context of a request for humanitarian and compassionate considerations under subsection 25(1) of IRPA, must an officer consider evidence of past hardship of unconscionable mistreatment of an applicant and her children, not recurring or arising on removal, and not cited as a factor in the Guidelines [Canada. Citizenship and Immigration Canada. "IP 5: Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds", in *Inland Processing* (online: http://www.cic.gc.ca)], but that may accord with the principles in *Chirwa v. Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338, adopted in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, even if the issue has not been explicitly raised by the applicant as a relevant factor for consideration? If not, may the applications judge raise the question as a new issue in accordance with the principles of *R. v Mian*, 2014 SCC 54?

[3] Ms. Laing was born in and is a citizen of Jamaica. She grew up on the ministry campus where her adoptive mother worked. After completing her studies in 2006, she continued to live and work on the campus as a missionary and member of the mission's leadership team until 2016.

[4] While working at the ministry, Ms. Laing met her husband, a Canadian citizen. They married in 2007 and had three children between 2008 and 2013. The children are dual citizens of Jamaica and Canada.

[5] In 2016, Ms. Laing quit her job and, at her husband's urging, moved with her family to Israel. Shortly after they arrived, she learned that her husband was having an affair with a colleague from the mission. Her husband left her and their children in Israel and returned to Canada with the other woman. Ms. Laing eventually came to Canada with her children. She enrolled them in school and applied for permanent residency on humanitarian and compassionate grounds.

[6] The officer recognized the obligation, set out in *Kanthasamy*, to carry out a global and holistic assessment of the applicable humanitarian and compassionate considerations. She concluded that Ms. Laing had not demonstrated that the circumstances justified the granting of an exemption based on humanitarian and compassionate grounds.

[7] In coming to this conclusion, the officer did not refer to any past hardship or unconscionable mistreatment of Ms. Laing and her children resulting from her husband's abandonment of the family in Israel. Ms. Laing had referred to the abandonment in her application for permanent residence, but had not relied on it in setting out the humanitarian and compassionate grounds on which her application was based.

[8] The Federal Court found that the officer's treatment of the factors she considered was reasonable. However, it held that the officer should have considered the treatment of Ms. Laing and her children by her husband and the exceptional hardship that it inflicted as a significant consideration in determining whether special relief should be granted. It stated (at paragraph 92 of its reasons):

> that depending on the circumstances, an officer must consider all relevant facts based on their expertise in matters of humanitarian [and] compassionate relief, and certainly those that vividly jump off the page when considering this issue, whether or not found in the Guidelines, even if not relied upon by the Applicant.

[9] The Federal Court set aside the officer's decision and returned the matter to the officer with the direction to consider whether the past hardship was of an unconscionable nature so as to justify special relief. It also certified for appeal the question already set out.

[10] The Minister submits that the Federal Court erred in two main respects – first, in raising a new issue absent the rare and exceptional circumstances that would justify doing so, and second, in applying the correctness standard of review when the applicable standard was reasonableness.

[11] But this Court's entitlement to consider these issues depends on the existence of a properly certified question. To be properly certified, the question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance […]. "[A] question […] whose answer turns on the unique facts of the case [cannot] be properly certified (*Mudrak v. Canada (Citizenship and Immigration*), 2016 FCA 178, 485 N.R. 186 at paras. 15, 35)": *Lunyamila v. Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, [2018] 3 F.C.R. 674 at para. 46.

[12] In our view, the question certified here falls into the category of "a question … whose answer turns on the unique facts of the case." The Federal Court acknowledged as much when it stated, in the passage of its reasons that I have quoted, that whether an officer should consider

exceptional hardship depends on the circumstances, and that these circumstances include whether or not the relevant facts "vividly jump off the page."

[13] While this Court has a discretion to reformulate a non-compliant certified question, any reformulated question must also meet the criteria for a properly certified question: *Lunyamila* at para. 47. Even if we could reformulate a compliant question here, we would not exercise this discretion, when the appeal has also now become moot: the Minister has now granted Ms. Laing's humanitarian and compassionate grounds application. In accordance with the principles in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, we would not exercise our discretion to hear this moot appeal.

[14] In reaching these conclusions, we should not be taken to approve the reasons of the Federal Court.

[15] Therefore, we will dismiss this appeal.

"J.B. Laskin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-137-20

(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE ANNIS, DATED MARCH 13, 2020, DOCKET NO. IMM-6306-18)

STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. ASHLEY NADINE LAING
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 4, 2021
REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. RENNIE J.A. LASKIN J.A.
DELIVERED FROM THE BENCH BY:	LASKIN J.A.

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