Federal Court  Cour fédérale

Date: 20150304

Docket: IMM-3752-14

Citation: 2015 FC 278

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 4, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

ISLANDE JOLIBOIS JANVIER

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of the decision dated January 19, 2014 [the decision], of an immigration officer stationed at the Canadian Embassy in Santo Domingo in the Dominican Republic [the officer], refusing the applicant's application for a permanent resident

visa. The officer found that the applicant did not meet the requirements for a permanent resident visa in the Convention Refugee Abroad [CRA] class.

[2] For the reasons that follow, I am of the opinion that this application for judicial review should be dismissed.

II. Background

[3] The applicant is a citizen of Haiti. She lived in Port-au-Prince from 1988 to 2010, but was born in the Jérémie Commune (Haiti).

[4] The applicant alleges that men with ties to the Lavallas political party came to her home and tried to assault her and her daughter. The applicant also alleges that she was raped in 2009.

[5] While in Haiti, the applicant worked as a self-employed pastry chef. On September 10, 2010, she and her three adult children entered the Dominican Republic. The applicant has not worked since she arrived in the Dominican Republic. Members of the applicant's family residing in Canada sent her money to support her and her children.

[6] In August 2011, the applicant and her children applied for permanent residence in Canada. They were sponsored by the applicant's sister, Marguerite Janvier Jolibois, under the G5 program. The G5 program allows five permanent residents of Canada to sponsor a refugee living abroad.

[7] On December 19, 2013, the applicant and her children reported to the Canadian Embassy in Santo Domingo for an interview.

[8] During the interview, the officer asked the applicant and her children questions about the nature of the persecution that the applicant claimed to have experienced, the possibility of returning to Haiti, their activities in Santo Domingo, their education and their work experience. The parties gave conflicting descriptions of how the interview proceeded. The applicant maintains in her affidavit that the officer was condescending and made inappropriate remarks. The officer contends in his affidavit dated January 7, 2015, that he remained calm and friendly, but that his questions went unanswered and that the applicant and her children did not seem to understand his concerns about the CRA claim.

[9] The applicant and her children were notified of the decision in a letter dated January 9, 2014. In the letter, addressed to the applicant, the officer explained that he did not believe that she and her children are Convention Refugees or that the applicant and her children are in need of resettlement in Canada. In addition, the visa officer underscored the inability of the applicant and her children to clarify the nature of their problems in Haiti. The visa officer determined that the applicant had been the victim of a one-time act of crime, but that she was not a Convention refugee under section 96 of the IRPA. The officer also determined that the applicant and her children did not meet the criteria defined in subsection 139(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], although the RPD did not expressly mention this in its decision.

[10] The reasons given in the letter dated January 9, 2014, must be read together with the notes in the Global Case Management System [GCMS], which form part of the reasons for the decision (*Ansari v Canada (Citizenship and Immigration)*, 2013 FC 849 at para 3; *Kotanyan v Canada (Citizenship and Immigration)*, 2014 FC 507 at para 26). The content of the GCMS notes is presented below.

III. Issues

[11] There are two issues:

1. Did the officer breach the principles of procedural fairness and natural justice?
2. Did the officer err in finding that the applicant was ineligible for the CRA class?

IV. Analysis

A. *Principles of natural justice and procedural fairness*

[12] Correctness is the standard of review applicable to cases involving a breach of natural justice and procedural fairness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[13] The applicant contends that the visa officer breached the principles of natural justice and procedural fairness by failing to address the major items at issue in his reasons. However, as pointed out by the respondent, the applicant's memorandum fails to specify how the principles of natural justice and procedural fairness were breached.

[14] In her affidavit, the applicant contends that the officer [TRANSLATION] "insulted, belittled and showed no respect for them". The affidavit of Marguerite Janvier Jolibois (the applicant's primary sponsor and sister), the applicant's affidavit, and the affidavit of Daphney Jolibois (the applicant's daughter) state that the officer made inappropriate and harsh remarks to the applicant and her children. In particular, he allegedly told one of the applicant's daughters that the applicant and her children [TRANSLATION] "irritated him and made him angry" and that he was bothered by the fact that they had not worked during the years they spent in the Dominican Republic. Still by affidavit, the applicant and her children complained that the officer had said the following:

> [TRANSLATION]
>
> (1) You stayed here in Santo Domingo doing nothing, hoping that the bus would take you to Canada and things aren't easy.
>
> (2) What are you going to do in Canada considering that you're doing nothing in the Dominican Republic?
>
> (3) What fine words, that's flattery. Everyone wants to go to Canada as a favour to the country. Life in Canada is not free, you have to earn it, and it's not easy.
>
> (4) A lot of refugees in the country [don't have] papers yet they work, but all you do is wait until you get to Canada. Why not ask your sister to send what you need for kitchen work here, in Santo Domingo?

I do not consider it necessary to note here all of the comments reported in the affidavits. The above-mentioned statements adequately reflect the gist of the applicant's argument.

[15] In his affidavit, the officer denies that some of the allegations by the applicant and her children are true. He believes he can recall the [TRANSLATION] "bus metaphor", but states that it

was simply a way of illustrating his concerns over the fact that the applicant and her children did nothing but wait to obtain a Canadian visa during their time in the Dominican Republic. The officer denies using the terms [TRANSLATION] "fine words" or [TRANSLATION] "flattery" and contends that he did not claim to know [TRANSLATION] "a lot of refugees in the country with no papers yet they work". In essence, the officer stated that the applicant's allegations were inaccurate and that his remarks were taken out of context. He states that he remained calm and friendly throughout the interview. The officer explained that the interview [TRANSLATION] "had been difficult in the absence of any evidence to support the applicants' allegations".

[16] I agree with the respondent's argument that the affidavit from the applicant's sister comes from a third party, constitutes hearsay and therefore has less evidentiary merit (*Sribalaganeshamoorthy v Canada (Citizenship and Immigration)*, 2010 FC 11 at para 12). I also note that the other affidavits submitted by the applicant are based on notes taken by the applicant's son and were written several weeks after the hearing before the officer and the day after the decision was rendered. The affidavits include various passages taken verbatim from these notes.

[17] The GCMS notes indicate that the officer expressed surprise over the fact that the workers had not looked for work in the Dominican Republic, and I think that these remarks were justified in light of the assessment he had to perform under subsection 139(1) of the Regulations, which state as follows:

139. (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their	139. (1) Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de

accompanying family members, if following an examination it is established that	sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
. . .	[…]
(*g*) if the foreign national intends to reside in a province other than the Province of Quebec, the foreign national and their family members included in the application for protection will be able to become successfully established in Canada, taking into account the following factors:	g) dans le cas où l'étranger cherche à s'établir dans une province autre que la province de Québec, lui et les membres de sa famille visés par la demande de protection pourront réussir leur établissement au Canada, compte tenu des facteurs suivants :
(i) their resourcefulness and other similar qualities that assist in integration in a new society,	(i) leur ingéniosité et autres qualités semblables pouvant les aider à s'intégrer à une nouvelle société,
. . .	[…]
(iii) their potential for employment in Canada, given their education, work experience and skills, and,	(iii) leurs perspectives d'emploi au Canada vu leur niveau de scolarité, leurs antécédents professionnels et leurs compétences
[Emphasis added]	[Soulignements ajoutés]

Moreover, the officer's affidavit and notes mention that the applicant and her children refused to answer several of his questions.

[18] In light of the evidence, I believe that the statements reported by the applicant and her children are inaccurate and taken out of context. The officer seems to have been concerned by the failure of the applicant and her children to adapt to life in the Dominican Republic. The applicant and her children had to show, in the words of subsection 139(1) of the Regulations, "resourcefulness and other similar qualities that assist in integration in a new society." It seems

to me that the officer was trying to obtain explanations to adequately assess the case, and when a convincing answer was not forthcoming, he grew more insistent. In my view, the officer was justified in seeking an answer to his questions with some insistence.

[19] Finally, as the respondent points out, the applicant's son created a handwritten list of 15 questions put to the applicant. This document is attached to the affidavit of the applicant's sister. We read at the top of the list, [TRANSLATION] "Questions for my mother". None of these questions points to any breach of the principles of natural justice.

[20] Therefore, I am not satisfied that the officer violated the principles of procedural fairness and natural justice.

B. *Applicants' eligibility for the CRA class*

[21] The officer's conclusion that the applicants (the applicant and her children) do not belong in the CRA class raises questions of mixed fact and law and must be reviewed under the reasonableness standard (*Mohamed v Canada (Citizenship and Immigration)*, 2014 FC 192 at para 12). The Supreme Court clarifies the substance of the analysis involved in applying the reasonableness standard in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision

> falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[22] The applicant submits that the reasons for the officer's decision are incoherent. The applicant also contends that the officer erred by omitting to assess evidence that purportedly established an objective fear of persecution. However, the applicant did not specify which evidence was overlooked.

[23] However, based on my findings concerning the requirements of subsection 139(1) of the Regulations, I am not required to determine whether the application of section 96 of the IRPA was reasonable.

[24] Under subsection 139(1) of the Regulations, the burden of proof rests on the applicant to show that she had "no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada" (*Karimzada v Canada (Minister of Citizenship and Immigration)*, 2012 FC 152 at para 25). As mentioned above, the applicant indicated that she is unable to return to the city of Jérémie because it has no university. This response does not suffice to allow the applicant to discharge her burden of proof. Furthermore, based on the facts of this case, it seems that the applicant and her children made no effort to further their education while they were in the Dominican Republic, by taking online courses for example.

[25] Contrary to the applicant's claims, I believe that the reasons for the decision are intelligible. As mentioned earlier, the reasons specified in the letter dated January 9, 2014, must be read in parallel with the notes in the GCMS. Furthermore, as mentioned by Justice Abella in

Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para 12, citing Professor Dyzenhaus, courts of law must first seek to supplement the reasons given by administrative decision-makers before seeking to subvert them. After reading all of the reasons for the decision, I consider them to be intelligible.

[26] Under paragraph 139(1)(*g*) of the Regulations, the officer had to assess the resourcefulness of the applicants and their potential for employment in Canada in order to ensure they would be able to become successfully established in Canada. A review of the officer's reasons shows that the applicant and her children lived in the Dominican Republic for several years while awaiting their Canadian visa without taking steps to integrate into the country (through volunteer work, online studies, etc.). The officer determined that the applicants' potential to become established in Canada was [TRANSLATION] "very low". I am not prepared to find that this analysis was unreasonable.

[27] Finally, section 97 of the IRPA does not apply to this case since the applicant is not in Canada.

V. Conclusion

[28] In my opinion, this application for judicial review should be dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The present application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"George R. Locke"
Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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