Federal Court  Cour fédérale

Date: 20150511

Docket: IMM-2624-14

Citation: 2015 FC 620

Ottawa, Ontario, May 11, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SANOBARKHON OBIDOVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Obidova is a grandmother from Uzbekistan. Her only son, his wife and their son are permanent residents of Canada. She arrived in Canada in September 2012, on a visitor visa. Her in-Canada application for permanent resident status on humanitarian and compassionate grounds was refused. That is the decision under review.

[2] The officer considered the applicant's degree of establishment, her family relationships in Uzbekistan and Canada, best interests of the grandchild, and whether she would face hardship or discrimination in returning to Uzbekistan. The applicant submits that the officer's assessment was unreasonable and, in particular, was selective in assessing the country condition evidence regarding Uzbekistan for elderly single women with no family support.

[3] The applicant also notes that the officer failed to address her submission that there was a moratorium on parental sponsorships at the time the application was made – a fact contained in the submissions accompanying the application. That moratorium was lifted on January 2, 2014, almost three months before the decision under review was rendered. I agree with the respondent that in those circumstances there was no need for the officer to address the moratorium or even mention it in the decision.

[4] The applicant filed evidence that was not before the officer that within one month after the moratorium was lifted, the quota of parental applications was met and other evidence that the current processing times for such applications from Uzbekistan is 109 months. None of this evidence was before the officer and it was incumbent on the applicant, in my view, to file supplementary submissions after the moratorium was lifted if she wished to have these additional or new facts considered. The decision under review must be assessed based on the record before the officer.

[5] The only evidence the officer had regarding processing delays was a single sentence in the initial application was that "processing times for parental sponsorships were exceedingly

lengthy prior to implementation of the temporary pause." The officer's finding that the applicant had to potential to apply for status from Uzbekistan can hardly be said to be unreasonable based on what was before the officer.

[6] The applicant submits that the documentary evidence shows that "women in Uzbekistan are more at risk of poverty than men, particularly if women are divorced, widowed, unmarried mothers or have large families. The unemployment rate for women is higher than that of men (with women accounting for 63 percent of unemployed persons)." It is argued that the applicant meets that description and also she is a "Person without Citizenship" and this also makes her more vulnerable. She points out that the norm in Uzbekistan is that elderly women are cared for by their children – and most usually by their sons. Accordingly, she argues that the officer's conclusion that because she was "entitled to work and live legally in Uzbekistan" she would not face hardship if she were to return and apply for residency from there was unreasonable.

[7] I agree with the respondent's submission that the officer did not examine the hardship element only with that statement in mind. The officer examined her continuous employment history which only ended with her retirement after she obtained her visa to visit her son in Canada, the fact that she had family members (although not children) living in Uzbekistan, that she undoubtedly had acquaintances and a social network there, that there was no evidence that she required physical care, and that there was no evidence that country conditions had changed since she left. In my view, the country conditions analysis, while relatively short, was reasonable because it examined the applicant's personal circumstances as evidenced by her past

history there rather than look only at the general country condition evidence of similarly situated persons.

[8] The applicant further submits that the officer erred in the analysis of the best interests of the child. The officer acknowledged that the applicant cares for her grandson and that there is a strong bond between the two. The officer also recognizes the sadness the applicant's grandson will experience if his grandmother has to leave Canada. However, the officer concluded that they could continue their relationship over long-distance and the separation was not detrimental to the grandson's best interests. In addition to the possibility of the Canadian family visiting her, the officer considers that she "may" be able to visit Canada again. I agree with the respondent that although, as is submitted by the applicant such a visit is very unlikely, the officer did not raise the possibility higher than a possibility. The officer also noted electronic means of communication would permit all parties to remain in contact and for her to see her grandson grow up. The officer's conclusion that separation would not be detrimental to the child's best interests based on the record, is a reasonable conclusion.

[9] Lastly, the applicant argues that the officer considered each factor in isolation and not a global assessment. I disagree. The conclusion of the officer's decision clearly states that he reviewed all of the applicant's submissions before making a final conclusion, which is evidence that the officer did consider all of the relevant factors.

[10] The respondent correctly points out that permanent resident applications based on humanitarian and compassionate grounds are exceptional and are not to be used as an alternative

to the regular process for obtaining residency in Canada. Notwithstanding the able submissions of counsel for the applicant, the officer's finding that there was nothing exceptional in the applicant's circumstances is a reasonable conclusion based on the particular circumstances of the applicant.

[11] For these reasons, this application is dismissed.

[12] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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