Federal Court  Cour fédérale

Date: 20150909

Docket: IMM-6971-14

Citation: 2015 FC 1049

Fredericton, New Brunswick, September 9, 2015

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

MEDINA LURENA BRUCE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Defendant

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Applicant, Ms. Medina Bruce, applies for judicial review of an immigration officer's denial of her application for an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] from the requirement that she file her application for a permanent resident visa from outside Canada. She bases her claim for an exemption on humanitarian and compassionate (H&C) considerations.

II. Summary

[2] Ms. Bruce is a 39 year old citizen of St. Vincent and the Grenadines (St. Vincent). She came to Canada in May of 2000, and has not left the country since that time. During her stay in Canada she has worked unlawfully as a domestic employee. Complimentary reference letters from clients for whom she has worked form part of the record. In December 2009, Ms. Bruce met and later married Jeffery Billingy, who has been able to provide her with physical, emotional and financial support. The couple now have a young Canadian-born son, Joseph, who is two years old.

[3] Ms. Bruce and her husband employed an immigration consultant to assist them with their application for permanent residency from within Canada. The applications were rejected and removal orders were issued. Although her husband returned to St. Vincent, this Court stayed Ms. Bruce's removal order pending the conclusion of this judicial review application. For the reasons set out below, I would dismiss the application.

III. Issues

[4] Ms. Bruce raises the following issues for review:

1. Was the Officer's decision reasonable with respect to her establishment in Canada?
2. Was the Officer's decision reasonable with respect to hardship in the country of removal; hardship being largely based upon perceived lack of medical services and lack of employment opportunities?
3. Was the Officer's decision reasonable with respect to the best interests of the child?

IV. Immigration Officer's Decision

[5] The immigration officer (the Officer) denied Ms. Bruce's application on the basis of a lack of unusual and undeserved or disproportionate hardship. The reasons underlying this finding are based upon four premises.

[6] First, the Officer was not persuaded that Ms. Bruce's establishment in Canada met the requisite level of hardship. In his decision, the Officer refers to her consistent employment and self-sufficiency, pattern of sound financial management, and involvement in her church. However, the Officer finds her employment has been 'based on a wilful disregard of Canadian Immigration [sic] law', and her establishment in Canada was made with the full knowledge that she was here unlawfully and her removal 'could become an eventuality'. The Officer also observed that Ms. Bruce had produced no documentary evidence to validate her employment earnings.

[7] Second, the Officer found the country condition evidence insufficient to establish that Ms. Bruce would face undue hardship in terms of her ability to procure medical care or employment. The Officer notes that the evidence demonstrates that St. Vincent provides psychotropic drugs without charge to citizens who require them, although he acknowledges there are limited facilities and resources available to mental health patients. Further, the Officer notes that Ms. Bruce's evidence of employment conditions was merely demonstrative of a generalized problem, not one amounting to undue and undeserved or disproportionate hardship.

[8] The third weakness in Ms. Bruce's application, relates to her ties to family members in St. Vincent. The Officer notes Ms. Bruce's husband, father and two siblings live in St. Vincent. As a result, Ms. Bruce's experience on removal would amount to stress that is 'inherent', as opposed to 'unusual'.

[9] Finally, the Officer finds that it would be in Joseph's best interest to remain with his mother, regardless of where that may be. The Officer further notes that Joseph would benefit from being reunited with his father and other relatives in St. Vincent. Given his young age, the Officer opines that Joseph has not developed any ties to Canada that would cause hardship if he were to return to St. Vincent with his mother.

V. Relevant Provisions

Immigration and Refugee Protection Act, SC 2001, c 27

Humanitarian and compassionate considerations — request of foreign national	Séjour pour motif d'ordre humanitaire à la demande de l'étranger
25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant	25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il

the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

VI. Analysis

A. *Standard of Review & Legal Test on an H&C Application*

[10] The parties agree, as do I, that the standard of review applicable on judicial review of an immigration officer's discretionary decision regarding an H&C application made under section 25 of the IRPA is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51, [2008] 1 SCR 190 [*Dunsmuir*]; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18, [2009] FCJ No 713 [*Kisana*]; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at paras 37, 79, [2014] FCJ No 472 [*Kanthasamy*]; *Gonzalo v Canada (Minister of Citizenship and Immigration)*, 2015 FC 526 at para 11, [2015] FCJ No 573). It follows that the Court will not intervene if the decision "falls within a range of possible outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para 47). Given the discretionary nature of H&C decisions, the range of potential outcomes may be broad (*Kanthasamy*, at para 84).

[11] It is well-established that on an H&C application under subsection 25(1) of the IRPA, the Applicant must establish that he or she will "personally suffer unusual and undeserved, or

disproportionate hardship" (*Kanthasamy*, at para 41). Relevant factors include, but are not limited to, establishment, ties to Canada, best interests of any affected children, medical inadequacies in the foreign country, discrimination in the foreign country that does not amount to persecution, and other serious hazards in the foreign country (*Kanthasamy*, at para 42).

B. *Establishment in Canada*

[12] With respect to Ms. Bruce's establishment in Canada, the Officer considered her employment history, bank statements, involvement in her church, and letters of support. Although the Officer noted that Ms. Bruce provided no evidence of employment earnings, this does not seem to have played a significant role in the assessment given the recognition of her continuous employment history, strong work ethic and active engagement in her community. However, as previously noted, the Officer concluded Ms. Bruce knowingly obtained employment without valid work permits with the knowledge she could become the subject of a removal order at any time.

[13] Although the Officer did not specifically address the explanations Ms. Bruce gave for overstaying her visa – those being legal fees and fear of discrimination – I am not satisfied such a failure renders the decision unreasonable. A decision-maker is not required to address every argument advanced by a party, provided the reasons as a whole allow the reviewing court to understand why the decision was made. See, *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708. The Officer showed sensitivity to Ms. Bruce's medical condition, employment and ties to Canada, but concluded those ties, established in wilful disregard of immigration law requirements, were

insufficient to justify granting the application. This conclusion was open to the Officer on the evidence.

[14] The Applicant contends that more consideration should have been given to the fact that she has resided in Canada for over 14 years. However, a lengthy stay in Canada is not in and of itself grounds for an H&C exemption when the length of stay is within the Applicant's control. See, *Beladi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1150, 182 ACWS (3d) 994; *Mann v Canada (Minister of Citizenship and Immigration)*, 2009 FC 126, [2009] FCJ No 151; *Diaz v Canada (Minister of Citizenship and Immigration)*, 2015 FC 373, 252 ACWS (3d) 557. Ms. Bruce states that she was aware she was not legally entitled to be in Canada, and it is for that reason she had to secure 'unofficial employment'. The circumstances of her stay were clearly within her control. I would note the Officer considered Ms. Bruce's length of stay, but failed to give it as much weight as she (Ms. Bruce) would have liked. It is not the role of this Court to interfere with the Officer's conclusion of the weight to be given to any particular factor.

[15] I am of the view the Officer's decision with respect to establishment in Canada falls within the range of reasonableness.

C. *Adequacy of Medical Care*

[16] The Officer refers to the medical opinions from Ms. Bruce's family physician and her psychiatrist. He also refers to the country condition documents submitted by counsel. The Officer concludes Ms. Bruce's illness would be better dealt with in Canada and accepts that she will need continued medical care. However, after making appropriate references to the evidence,

the Officer finds that treatment for schizophrenia is available in St. Vincent. I would add, in the interests of a fulsome assessment of this issue, that Ms. Bruce is not treated with medication for her schizophrenia. Counsel advised at the hearing that her treatment, to date, has been limited to psychotherapy.

[17] Ms. Bruce further contends the Officer should have considered the hardship she would face in obtaining employment. She claims her medical condition constitutes a personalized risk. However, there was no evidence regarding discrimination faced by persons with mental illness. Furthermore, Ms. Bruce did not make this assertion in her submissions to the Officer. In the circumstances, the Officer reasonably concluded that Ms. Bruce did not face a personalized risk with respect to lack of employment opportunities in St. Vincent.

D. *Best Interests of the Child*

[18] Ms. Bruce contends her lack of access to adequate medical care in St. Vincent and her diminished employment prospects will negatively impact Joseph. The Officer considered these factors, along with the fact that Joseph's father, grandfather and other relatives currently reside there. There was some speculation at the hearing before the Officer that Joseph's father would be required to travel to Trinidad and Tobago for work. This factor was also considered by the Officer.

[19] Finally, even if there were sufficient evidence to find that it would be in Joseph's best interests to remain in Canada, this would not necessarily have resulted in a different conclusion. The assessment of H&C considerations is a holistic one. The best interests of a child must be

viewed in light of the application as a whole. (See, *Kisana* at para 24). The decision as a whole is one which falls within a range of possible outcomes which are defensible in respect of the facts and law.

VII. Conclusion

[20] For the above reasons, I would dismiss the application for judicial review without costs.

[21] Neither party has submitted a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

"B. Richard Bell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6971-14
STYLE OF CAUSE:	MEDINA LURENA BRUCE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 9, 2015
JUDGMENT AND REASONS:	BELL J.
DATED:	SEPTEMBER 9, 2015

APPEARANCES:

Alesha Green	FOR THE APPLICANT
Tamrat Gebeyehu	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Alesha A. Green Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANT