Federal Court Cour fédérale

Date: 20151126

Docket: IMM-1519-15

Citation: 2015 FC 1320

Toronto, Ontario, November 26, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

LAVERNE SAMUEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Laverne Samuel seeks judicial review of the decision of an Immigration Officer denying her application for permanent residence on humanitarian and compassionate grounds. Ms. Samuel asserts that the Officer's decision was unreasonable, particularly as it relates to the Officer's assessment of the best interests of Ms. Samuel's adult son, Orlando.

[2] For the reasons that follow, I have not been persuaded that the Officer's decision was unreasonable in light of the limited information that was provided to the officer with respect to Orlando's current situation. Consequently, the application for judicial review will be dismissed.

I. Preliminary Issue

[3] Ms. Samuel has provided her own affidavit, together with an affidavit from Orlando, in support of her application for judicial review. Both affidavits contain extensive evidence that was not before the Immigration Officer when he or she made the decision under review, and both discuss events that post-date the decision.

[4] Judicial review is ordinarily to be conducted on the basis of the record that was before the original decision-maker. Additional evidence may be admitted in limited circumstances where, for example, there is an issue of procedural fairness or jurisdiction: see *Ontario Assn. of Architects v Assn. of Architectural Technologists of Ontario*, 2002 FCA 218 at para. 30, [2003] 1 F.C. 331. Ms. Samuel has not, however, challenged the decision of the Immigration Officer on procedural fairness grounds, nor has she raised a question going to the Officer's jurisdiction. Consequently, her new evidence is not properly before the Court and will not be considered in deciding the application.

II. Analysis

[5] Insofar as the merits of Ms. Samuel's application are concerned, several of her arguments (such as that relating to the significance of her long stay in Canada) simply amount to an invitation to reweigh the evidence that was duly considered by the Immigration Officer. It is not,

however, the role of this Court, sitting in review of a discretionary decision of an immigration officer, to reweigh the factors cited in support of the application.

[6] Ms. Samuel's principle argument is, however, that the officer erred in failing to carry out a "best interests of the child" analysis with respect to the impact that her removal would have on Orlando. I acknowledge that the jurisprudence is divided as to whether a BIOC analysis needs to be carried out where the child in issue is over the age of 18. I do not, however, need to resolve this question in this case, as the submissions made with respect to Orlando's interests were extremely limited, and were adequately addressed by the Officer.

[7] While acknowledging that Orlando was over the age of 18 at the time of the H&C decision, Ms. Samuel asserts that the Immigration Officer should nevertheless have carried out a BIOC analysis in this case, as Orlando met the definition of a "dependent child" under section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. Section 2 of the Regulations provides that a "dependent child" is any child who is "19 years or over and has depended substantially on the financial support of the parent since before the age of 19 and is unable to be financially self-supporting due to a physical or mental condition".

[8] The problem with this submission is that Ms. Samuel did not provide the Officer with any submissions or evidence to show that Orlando was in fact financially dependent on her, either before or after he turned 19. Her written submissions are entirely silent on this question, and the only information in the record that could possibly have related to the issue of financial dependency was a 2013 letter to Ms. Samuel from the Canada Revenue Agency requesting additional information with respect to unidentified individuals that she had claimed as dependents for her 2012 taxation year. There was simply no information before the Officer to

show that Orlando had depended substantially on Ms. Samuel's financial support since before he turned 19, or that he was currently unable to support himself financially due to a physical or mental condition.

[9] Moreover, Ms. Samuel's submissions to the Officer made only a cryptic reference to Orlando suffering from unidentified "medical issues" that required his mother's assistance in order for him to be able to obtain medical treatment. No details were provided, and the only information in the record that was before the Officer with respect to Orlando's "medical issues" was a one-line reference to the fact that he had been diagnosed with a "mild intellectual disability" contained in an Individual Education Plan prepared by the Toronto District School Board for the 2009-2010 school year. This was part of a package of documents that were provided by Ms. Samuel in support of her 2014 H&C application.

[10] Ms. Samuel did not, however, provide the Officer with any information with respect to Orlando's current situation or needs, nor did she provide the Officer with any information as to how her removal would affect Orlando, beyond the bald assertion that it would be emotionally upsetting for Ms. Samuel's children if they were to be separated from their mother.

[11] As the Federal Court of Appeal observed in *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 F.C.R. 635, the onus is on applicants for permanent residence on humanitarian and compassionate grounds to put forward the facts that they wish the Immigration Officer to consider in conjunction with their application. It is not up to the Officer to seek out additional information from the applicant. Moreover, applicants for H&C relief have no right or legitimate expectation that they will be afforded a hearing in order to advance their

claims. As a consequence, they omit pertinent information from their applications at their peril: *Owusu*, above at para. 8.

[12] Having failed to adduce concrete evidence as to how Ms. Samuel's removal would affect Orlando, it follows that the Officer's brief analysis of Orlando's interests was all that was required in the circumstances. The Officer's finding that Ms. Samuel's circumstances did not justify granting the exceptional remedy of H&C relief was one that was reasonably open to the Officer on the limited record that Ms. Samuel had provided. As a consequence the application for judicial review will be dismissed.

III. Certification

[13] Ms. Samuel proposes the following question for certification:

> Given the definition of "dependent" as amended on August 1, 2014 under section 2 of the *IRPR*, upon finding that a child over the age of 19 years meets the definition of dependent, is an officer then obligated to conduct a best interests of the child analysis pursuant to section 25(1) of the *IRPA*?

[14] As noted earlier, Ms. Samuel failed to provide the Immigration Officer with evidence demonstrating that Orlando had in fact depended substantially on her financial support before he turned 19, or that he was currently unable to be financially self-supporting due to a physical or mental condition. Consequently, Ms. Samuel has not established the facts underlying her proposed question with the result that the answer would not be dispositive of the application. As a result, no question will be certified.

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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