Federal Court  Cour fédérale

Date: 20161108

Docket: IMM-1823-16

Citation: 2016 FC 1242

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 8, 2016

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MARIE SANDRA CADET

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, age 47, is of Haitian origin and is a single mother of three teenage boys who remained in Haiti.

[2] On May 20, 2015, the applicant filed an application for permanent residence in Canada on humanitarian and compassionate considerations [H & C application] under subsection 25(1)

of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the Act] on three grounds: (1) her high degree of establishment in Canada; (2) the risks and unfavourable conditions in Haiti; and (3) the best interests of her children. On April 13, 2016, a senior immigration officer [the officer] rejected her H & C application, resulting in this application for judicial review.

[3] Firstly, note that, with a temporary resident visa, the applicant arrived in Canada on May 21, 2014. The following month, she filed a claim for refugee protection, stating that if she had to return to Haiti, she would be the victim of discrimination because of her sex and could be extorted. In August 2014, the Refugee Protection Division [RPD] found that the applicant had an internal flight alternative in Haiti and that her personal situation was not comparable to that of vulnerable women living in Haiti, who, because of their specific circumstances, find themselves at risk of persecution because of their sex. In April 2015, the Refugee Appeal Division [RAD] upheld the RPD's decision, noting that the applicant voluntarily returned to Haiti after previous trips to Canada — thus demonstrating that she had no objective fear of persecution because she is a woman. That decision was not contested before the Federal Court.

[4] Firstly, the respondent is opposed to documents posterior to the decision under review or new evidence that the officer did not consider being produced in the Court record. The respondent's objection is allowed. The documents posterior to the decision and the additional evidence the applicant cites in her affidavit do not fall within one of the exceptions recognized by the case law, i.e., an affidavit: (1) that contains general information likely to assist the Court in understanding the issues relevant to the judicial review; (2) that brings attention to procedural defects that cannot be found in the certified record; and/or (3) that highlights the complete

absence of evidence before the administrative decision-maker when he made a particular finding (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, [2012] FCJ No. 93, at paragraph 20).

[5] When issues of procedural fairness are raised, the correctness standard of review applies (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 (SCC) at paragraph 20 [*Baker*]). Otherwise, if the impugned decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law, the Court will not intervene (*Dunsmuir v New Brunswick*, 2008 SCC 9 [2008] SCJ No. 9 at paragraph 47). It is not up to the Court to reassess the weight that should be given to the evidence, but rather to ensure that the administrative decision-maker took all of the relevant factors into account (*Baker* at paragraphs 54–56, 68, 73–75; *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3, 2002 SCC 1 at paragraphs 34–38; *Mpula v Canada (Minister of Citizenship and Immigration)*, 2007 FC 456, [2007] FCJ No. 618 at paragraph 26 [*Mpula*]).

[6] This application must be dismissed.

[7] Firstly, the applicant failed to convince me that the officer breached a principle of procedural fairness by failing to confirm with her current employer in Canada whether she held a permanent or temporary position. Nor did the officer commit a reviewable error by giving her [TRANSLATION] "the benefit of the doubt that she still has that position." In her factum, the applicant claims that the officer also breached procedural fairness by failing to give enough weight to her personal circumstances, whereas at the hearing, her counsel claimed that the officer

did not have an open mind. In this case, the statements or remarks found in the impugned decision do not raise any reasonable apprehension of bias. The fact that the officer did not arrive at the conclusion the applicant wanted does not mean that there was a breach of procedural fairness.

[8] Secondly, the impugned decision is clear and transparent. The reasons behind the refusal to grant relief for humanitarian and compassionate considerations are clearly articulated; they are neither irrational nor arbitrary. The officer's general approach is not subject to criticism as the applicant claims. On the contrary, the officer began her decision by reiterating that one of the cornerstones of the Act and its Regulations is that, prior to their arrival in Canada, people who wish to obtain permanent residence must submit an application outside of Canada's borders, in addition to being eligible for the various conditions of the Act. In fact, that is the general rule to which an exception applies for those who can establish the existence of humanitarian and compassionate considerations. It was in that context that the officer reviewed the applicant's personal situation, particularly in light of the Supreme Court of Canada's recent teachings in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] SCJ No. 61. I see no reason to intervene.

[9] Thirdly, the applicant claims that the officer erred by focusing solely on the duration of her stay in Canada, disregarding all of the subjective factors of her establishment. That reproach is unjustified here. The officer did consider the positive factors, including the applicant's integration into the workforce, the good references from her superiors, letters of support written by her peers describing her involvement in the community, and lastly her good civil record, free

from any charges or police intervention. The fact remains that after a stay of just under two years, the officer could reasonably question whether that was sufficient under the circumstances. The case law and the Act do not a priori establish specific rules on this subject. I do not think it is unreasonable to conclude that a stay of just under two years in Canada does not meet the vague notion of "establishment" within the meaning of the case law—particularly since the duration of the stay in Canada is not sufficient in itself to justify the remedy for humanitarian and compassionate considerations (*Mpula*, at paragraphs 30 and 31).

[10] Fourthly, with regard to the officer's analysis of the unfavourable conditions in Haiti, the applicant argues that the officer did not place enough importance on the various scourges afflicting the country, namely the lack of independence of the legal system, cholera, the economic and severe food crisis, the epidemic sanitary situation and lastly the discrimination and violence against women. Once again, I must reject the applicant's arguments. The officer did examine the unfavourable conditions that affected Haiti at the time, based on the documentary evidence and the applicant's personal situation. The officer concluded that the various problems resulting from the country's general instability invariably affect most of its population and are not personal to the applicant. Moreover, the evidence on file did not demonstrate in a satisfactory way that the applicant or her family members were affected by the deplorable sanitary conditions in the country or were likely to develop various illnesses such as cholera. Given her varied professional background and her postsecondary education, the applicant did not demonstrate that she would no longer be able to return to live in the same area, nor that she would be unable to reintegrate into the workforce. Even considering the situation of women—which is far from good

in Haiti—the officer could reasonably conclude that the evidence on file was insufficient to justify a remedy based on that humanitarian consideration.

[11] Fifthly, concerning the best interests of her children, the applicant argues that the officer did not give enough weight to the values of the immigration system and the principles of the Convention on the Rights of the Child, while the impugned decision causes irreparable harm to her plans for family reunification, because her eldest son just turned 18 and she will now be unable to sponsor him. I find that claim to be unfounded. There is no a priori magic formula an officer must use to assess the best interests of the child (*Hawthorne v Canada (Minister of Citizenship and Immigration)*, [2003] 2 FCR 555, 2002 FCA 475 at paragraph 7). The officer will examine the likelihood of harm being caused to the children by the removal of their parents and the benefit they could obtain if their parents were to remain in Canada. However, once again, the evidence submitted to support the H & C application must make it possible to make these determinations (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2009] FCJ No. 713 at paragraphs 34–35). In this case, the applicant's children remained in Haiti. The officer also noted the poor evidence the applicant submitted on her children's current situation, their dependence on her and the transfer of funds and the blatant lack of explanations as to who is caring for them in Haiti (or even the role and support of their father, who is an accountant and apparently lives in the United States). The officer concluded that although she was receptive, attentive and sensitive to the best interests of the applicant's three sons, and that this was an important factor to which she gave a certain weight, it was not enough in itself to grant the requested remedy. I also find that conclusion to be reasonable. Despite the general situation in Haiti, the evidence on file did not enable the officer to find that the children's

situation became particularly vulnerable when the applicant left, nor that their well-being would be compromised if she were to return.

[12] In short, the officer committed no reviewable error. The officer could reasonably conclude that the applicant had not produced enough evidence to demonstrate that her personal situation meets the humanitarian and compassionate criteria in the Act to enable her to make an exception to the general rule. There is no doubt that it will be difficult for the applicant to leave Canada and return to Haiti—especially now considering the devastating effects of Hurricane Matthew and the increased risk of contracting cholera. With regard to executing the removal order, which is now enforceable, it will be up to an enforcement officer to determine, if applicable, whether the new events that have occurred in Haiti since the decision under review justify granting the applicant a temporary suspension of removal. Nevertheless, the officer's refusal to grant a humanitarian and compassionate remedy does not remove the applicant's right to submit an application for landing from outside of Canada, in accordance with the usual requirement set out in Canadian immigration legislation.

[13] The applicant's application for judicial review is dismissed. No questions of general importance are raised in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed.

No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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