

Federal Court



Cour fédérale

**Date: 20161028**

**Docket: IMM-1430-16**

**Citation: 2016 FC 1203**

[ENGLISH TRANSLATION]

**Montréal, Quebec, October 28, 2016**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**ANNILA VILME**

**Applicant**

**And**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondents**

**JUDGMENT AND REASONS:**

I. Background

[1] Our Court has before it a Kafkaesque case. All the applicant's problems arise from her former counsel's negligence regarding her case when he did not send the applicant's application for a temporary resident permit (TRP). The undersigned notes that this representative's failure to send the required documents to Citizenship and Immigration Canada (CIC) marked the start of a

series of errors leading to this situation. Knowing that the simple filing of a new application for a study permit in June 2012 would have enabled the applicant to complete the internship required by her study program and then graduate, and that each immigration procedure undertaken by the applicant is a repercussion of her former representative's error, she cannot be blamed. Despite her good intentions, the applicant was unable to complete her plans.

[2] On June 6, 2012, the applicant filed a TRP application on her counsel's advice. It appears that the former counsel of record did not send the documents to CIC. According to CIC's file, this counsel had been convicted by the Conseil de discipline du Barreau du Québec in the past for having failed to send his clients' documents to the Court. There is no trace of the TRP application at CIC, therefore the officer concluded that in all likelihood, the documents had never been sent by counsel. The applicant was waiting in vain for a response from CIC regarding her TRP.

## II. Nature of the matter

[3] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) against the denial, on March 18, 2016, of an application for permanent residence on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the IRPA by a Citizenship and Immigration Canada (CIC) immigration officer.

## III. Facts

### A. *The applicant's immigration process*

[4] The applicant, age 34, is a Haitian citizen.

[5] The applicant entered Canada on March 8, 2011 with a study permit, enrolled in the accounting program at Collège supérieur de Montréal.

[6] When her study permit expired on December 15, 2011, the applicant obtained a new Certificat d'acceptation du Québec (CAQ) (Quebec Acceptance Certificate). However, she failed to obtain an extension for her study permit, having confused the CAQ and the permit. Noticing her error in May 2012, the applicant hired counsel.

[7] On June 6, 2012, the applicant filed a TRP application, on the advice of her counsel. It appears that the former counsel of record did not send the documents to CIC. According to CIC's file, this counsel had been convicted by the Conseil de discipline du Barreau du Québec in the past for having failed to send his clients' documents to the Court. There is no trace of the TRP application at CIC, therefore the officer concluded that in all likelihood, the documents had never been sent by counsel. The applicant was waiting in vain for a response from CIC regarding her TRP.

[8] A removal order was issued against the applicant on April 16, 2013.

[9] Not having received a response to her TRP application and wishing to regularize her status, the applicant filed a claim for refugee protection, following the advice of her former counsel, in April 2013. This claim for refugee protection was denied on July 12, 2013.

[10] On November 14, 2013, the applicant obtained a first work permit, which has since been renewed on a regular basis.

[11] On August 5, 2014, the applicant filed an application for permanent residence on humanitarian and compassionate grounds. The CIC officer rendered a negative decision on the application, which is the subject of this judicial review.

B. *The applicant's path and activities since her arrival in Canada*

[12] The applicant arrived in Canada on March 8, 2011 to complete a vocational diploma in accounting. She started the program in June 2011. Although she had completed the courses listed in the program, she was unable to graduate: on the one hand, she had to obtain a work permit in order to complete a mandatory internship as part of her course of study; on the other hand, she has to regularize her status in Canada before a diploma can be issued.

[13] Since she obtained a work permit on November 14, 2013, the applicant has held a few jobs and received social assistance. She is involved in her community, helping children with their homework and volunteering at a community centre and at her church.

IV. Decision

[14] On March 18, 2016, CIC denied the application for permanent residence on humanitarian and compassionate grounds, concluding that the factors submitted by the applicant were insufficient to warrant an exemption from the usual requirements of the IRPA.

[15] With respect to the best interests of the children affected by the application on humanitarian and compassionate grounds, they are the children of the applicant's sisters. As well, the applicant volunteers to help other children with their homework; they would also be affected. The officer noted that the applicant did not submit any evidence that these children would be negatively affected if her application were to be denied. He therefore did not give any weight to this factor.

[16] On the issue of the degree of establishment in Canada, the officer noted that the applicant alleged that she was very attached to her sisters and their children in Canada. However, he stressed that the applicant did not file any evidence to support her statements. He finds that the applicant has completed the courses in her study program and has held a few jobs, but that she has received social assistance and has not shown that she is financially independent. However, he believes that the applicant has shown that she was involved in her community and that she has submitted letters of support. The officer also believes that the applicant had strong ties outside of Canada: the applicant's father and one of her sisters still reside in Haiti. It was in Haiti that she completed all her schooling and her university studies. Her fiancé is Peruvian and lives in Peru. The officer therefore concluded that the applicant's degree of establishment was low, and he did not put much weight on that factor.

[17] The officer found that the applicant did not cite any specific adverse conditions in Haiti. He noted that she alleged that her family was in a precarious economic situation and that she feared the chaotic situation currently prevailing in Haiti. However, the officer stressed that the applicant did not submit any corroborating evidence. Consequently, he did not give any weight

to the conditions in the country of origin as a factor in the assessment of humanitarian and compassionate grounds.

[18] Finally, the officer found that the applicant's conduct with respect to her immigration history worked against her. The officer criticized the applicant for having failed to simply file a new application for a study permit when she discovered that she had to. The officer disapproved of the applicant's choice to attempt to obtain status in Canada in different ways and to remain illegally in Canada.

V. Issues

[19] This case raises the following issues:

1. Did the CIC officer base his decision to deny the application for permanent residence on humanitarian and compassionate grounds on erroneous findings of fact?

[20] The standard of review applicable to the officer's decision on whether or not to grant an exemption on humanitarian and compassionate grounds is that of reasonableness (*Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 [*Dunsmuir*]; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1992] SCR 817).

VI. Relevant provisions

[21] In this case, subsection 25(1) of the IRPA provides that an exemption from the requirements of the Act may be granted based on humanitarian and compassionate considerations:

Humanitarian and compassionate considerations —request of foreign national

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 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.

Séjour pour motif d'ordre humanitaire à la demande de l'étranger

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 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.

## VII. Submissions of the parties

### A. *Submissions of the applicant*

[22] The applicant believed that the findings on which the CIC officer based his decision were unreasonable. She inferred that the officer erred in his analysis of several items in the record.

[23] The applicant maintained that the officer did not consider the inherent impact of the applicant's departure on her sister's children, who would be deprived of her affection as a parental figure.

[24] The applicant maintained that the officer did not properly consider her employment history, failing to see that she wanted to find work and become financially independent.

[25] The applicant noted that the officer erred in considering that she had strong ties outside Canada, citing her fiancé living in Peru, and she pointed out that she would be sent back to Haiti.

[26] The applicant contested the officer's finding that her degree of establishment in Canada was rather weak. She reiterated her involvement as a volunteer within community organizations.

[27] Finally, the applicant maintained that the officer erred in his assessment of the financial resources at her disposal if she were to return to Haiti. He appeared to have relied on out of date evidence and speculated as to the savings of the applicant's father, failing to consider his advanced age.

B. *Submissions of the respondent*

[28] However, according to the respondent, the officer's decision was reasonable.



[29] The respondent maintained that the officer considered all the evidence submitted and noted that the assessment of the evidence and weighting of the H&C factors were at the officer's discretion. Similarly, the degree of establishment is an important but not decisive factor.

[30] According to the respondent, it was up to the officer to draw a negative inference from the applicant's negative immigration history. She did not follow legal procedures to regularize her status but rather chose to circumvent the Act by filing multiple applications of various kinds, the H&C application being her last resort. The respondent noted that the H&C application was not another immigration category and that the exemption must remain an exceptional measure.

[31] The respondent pointed out that the officer properly considered the best interests of the children affected. He noted that the applicant did not submit any evidence concerning the best interests of the children and that the applicant was responsible for filing an application with all the relevant evidence.

#### VIII. Analysis

[32] Our Court has before it a Kafkaesque case. All the applicant's problems arise from her former counsel's negligence regarding her case when she did not send the applicant's TRP application. The undersigned notes that this representative's failure to send the required documents to CIC marked the start of a series of errors leading to this situation. Knowing that the simple filing of a new application for a study permit in June 2012 would have enabled the applicant to complete the internship required by her course of study and then graduate, and that

each immigration procedure undertaken by the applicant is a repercussion of her former representative's error, she cannot be blamed. Despite her good intentions, the applicant was unable to complete her plans.

[33] The Court concluded that the officer erred in finding that there were insufficient factors to warrant an exemption from the requirements of the Act on humanitarian and compassionate grounds and that his decision was therefore unreasonable.

[34] In his analysis of the applicant's degree of establishment, the officer did not give weight to the applicant's volunteer efforts within the community, despite the evidence submitted. In a letter dated February 23, 2015, the reverend of Église Pentecôtiste Unie de Saint-Laurent testified as follows regarding the applicant's contribution within the community:

She is a participating member and her contribution to the church is greatly appreciated. She is a very dedicated and reliable woman who is very much appreciated by the whole congregation. We admire her greatly and she is a positive addition to the community.

Subsequently, the applicant submitted a letter of support from the Centre communautaire Place Benoit, dated February 24, 2015, which boasts about her honesty and engagement, and praises her professionalism:

Every day, she exercises professionalism, is readily available and is very generous with the participants. All these qualities are highly appreciated. Always motivated and very effective in her approach, Annila Vilme has also established a significant relationship with the participants based on values such as respect and sharing.

Finally, on March 9, 2015, the director of this community centre had this to say about the applicant:

[...] Annila Vilme is actively involved in organizing and facilitating community activities for families attending Centre Bon Courage. She has facilitated educational activities for children in the neighbourhood and community radio programs for Laurentian families. She is also very actively involved in the food bank, as well as organizing neighbourhood events such as Festi'santé or outdoor movies, for example.

The Court points out that the applicant's actions had a positive impact on her sister's children and children in the community, and greatly benefited her church and community.

[35] The Court also notes that the applicant made a positive impression at the educational institution she attended. A professor provided her with the following recommendation on May 25, 2012:

[...] Throughout her studies, Ms. Vilmé has demonstrated rigour, attention to detail, accuracy and a great concern for a job well done.

She is intelligent, discreet and calm. Always present, interested and constant, she learns with ease and is able to meet and appreciate challenges.

[36] As a result of the complications involved in regularizing her status, which were in fact attributable to her former counsel, the applicant had difficulty completing an internship, holding a stable job and becoming financially independent. Although the officer acknowledged that in all likelihood, the applicant's former counsel had acted negligently in his case, he nevertheless viewed the applicant's various attempts to obtain status in Canada in a negative light.

[37] Thus, the officer's decision is outside the range of possible acceptable outcomes (*Dunsmuir*, supra, at para. 47).

IX. Conclusions

[38] The application for judicial review is allowed, and the case is referred to a different immigration officer for a new decision.

[39] There is no question of general importance to be certified.

**JUDGMENT**

**THE COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed, and the case is referred to a different immigration officer for a new decision.
2. There is no question of general importance to be certified.

“Michel M.J. Shore”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1430-16

**STYLE OF CAUSE:** ANNILA VILME v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** OCTOBER 27, 2016

**REASONS FOR JUDGMENT:** SHORE J.

**DATED:** OCTOBER 28, 2016

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