

Federal Court



Cour fédérale

Date: 20170127

Docket: IMM-2443-16

Citation: 2017 FC 108

Ottawa, Ontario, January 27, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MA. THERESA MADERA

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Madera, the applicant, is a citizen of the Philippines who arrived in Canada in October 2010 under the Live-in Caregiver Program. Her work permit required that she work for the employer identified in the permit. She did not. She subsequently changed employers and, in 2012, she applied for a new work permit to reflect her current employer. The 2012 application was refused due to non-disclosure of criminal charges, information that was requested on the

application form. In May 2013, she again applied and at that time, was ordered to leave Canada. She did not leave as ordered. In May 2014, she submitted an application for permanent residence from within Canada on Humanitarian and Compassionate [H&C] grounds.

[2] Her H&C application was initially refused, but on agreement, the application was returned for redetermination. In May 2016, the H&C application was again refused. It is this second refusal decision that is the subject of the Application before me.

[3] Ms. Madera submits that the decision should be quashed and the matter again returned for redetermination. She argues that the Immigration Officer's [Officer] assessment of her degree of establishment in Canada was unreasonable and that the Officer failed to conduct an analysis of the best interests of her sister's daughter in the Philippines.

[4] The Application requires that I address the following issues:

- A. Was the analysis of establishment unreasonable?
- B. Were findings made directly contradictory to the evidence? and
- C. Was there a failure to consider the best interests of the child?

[5] Having considered the oral and written submissions of the parties, I am unable to find any basis upon which to intervene. I am of the opinion that the Officer's decision was reasonable.

The Application is dismissed for the reasons that follow.

II. Standard of Review

[6] An Officer's decision rendered under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] is reviewable on a standard of reasonableness (*Walker v Canada (Citizenship and Immigration)*, 2012 FC 447 at paras 31-32 and *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18). A reviewing court is to recognize that the decision is highly discretionary and is entitled to deference (*Ngyuen v Canada (Citizenship and Immigration)*, 2017 FC 27 at para 17).

III. Analysis

A. *Was the analysis of establishment unreasonable?*

[7] In considering Ms. Madera's establishment in Canada, the Officer recognized her employment and that she had declared income between 2010 and 2014. The Officer was empathetic to the fact that Ms. Madera may have been overwhelmed by administrative requirements on her arrival in Canada but noted that she had never worked legally in Canada. The Officer further noted that Ms. Madera had plead guilty to charges of theft, that she had not disclosed these charges in her 2012 work permit application, and she now claimed she was not guilty of theft but plead to the charges on the recommendation of her lawyer. The Officer further noted that Ms. Madera did not respect the 2013 order to leave Canada. The Officer recognized that she had some family members in Canada, had established friendships and was involved with church and community organizations. The Officer then concluded that Ms. Madera's establishment was undermined by her failure to comply with Canadian laws. The Officer found

that Ms. Madera acted in bad faith by failing to make the necessary efforts to regularize her status in a reasonable amount of time.

[8] The applicant argues that in reaching this conclusion, the Officer was preoccupied by her lack of legal status in Canada and unreasonably concluded that this fact negated the positive factors evidencing her establishment. She argues that the Officer did not consider her attempts to obtain a work permit but focussed on her delay in attempting to regularize her status in a reasonable time. She relies on *Fidel Baeza v Canada (Citizenship and Immigration)*, 2010 FC 362 [*Fidel Bazea*] at paras 16-18 to argue that working without authorization is a minor transgression that does not justify a total disregard of an H&C applicant's establishment. She submits that the Officer did not engage in an analysis to determine if her establishment was sufficient to warrant an H&C consideration. I am not convinced.

[9] Ms. Madera takes issue with the fact that the Officer drew negative inferences from her continuous lack of valid status in Canada. However, the jurisprudence has recognized that "... applicants cannot and should not be "rewarded" for accumulating time in Canada, when in fact, they have no legal right to do so. In a similar vein, self-sufficiency should be pursued legally, and an applicant should not be able to invoke his or her illegal actions to subsequently claim a benefit such as a Ministerial exemption." (*Tartchinska v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 373 (FC) at para 22).

[10] While an Officer may well act unreasonably where the question of legal status results in an Officer failing to consider the question of unusual or disproportionate hardship (*Klein v*

Canada (Citizenship and Immigration), 2015 FC 1004) this is not what happened here. The Officer's analysis did not cease with the determination that Ms. Madera had failed to regularize her legal status. Instead, in determining no unusual or disproportionate hardship warranting an H&C exemption, the Officer undertook an analysis of the economic situation in the Philippines, addressed Ms. Madera's claim that she was supporting her parents, sister and niece in the Philippines and considered her employment opportunities in the Philippines.

[11] The Officer's establishment analysis was influenced by a number of factors including Ms. Madera's denial of responsibility for previously acknowledged criminal conduct and her prior failure to disclose that conduct to immigration officials. This case differs from the circumstances in *Fidel Bazea* where the Court found that the Officer's findings were unsupported by the evidence and a minor discrepancy related to work history reflected a clerical error, not an attempt to mislead. It was in this context that the Court held that working for periods without a work permit was a "relatively minor transgression".

[12] In this case, I am not convinced that the Officer misconstrued the evidence or reached findings unsupported by the evidence. Instead, the Officer allowed for "... some flexibility regarding the applicant's legal deviations ..." but found that the absence of good faith was determinative in all the circumstances. The conclusion was not unreasonable and the reasons provided reflect the requirements of justifiability, transparency and intelligibility.

B. *Did the Officer reach findings directly contradictory to the evidence?*

[13] Ms. Madera argues that the Officer ignored evidence of post removal hardship on the basis that she had failed to establish continued support of her family. She submits that this conclusion is contrary to her sworn evidence and letters from her parents and sister. I disagree.

[14] The Officer noted Ms. Madera's evidence that she "...currently supports the needs of her parents and her sister's children." In assessing this evidence, the Officer also noted that she had provided evidence in the form of money transfers from 2011 and 2012 but had furnished no additional evidence to establish that this support continued after 2012.

[15] Ms. Madera takes issue with the Officer's failure to reference the June 2013 and July 2013 letters of her parents and sister indicating that financial support had been provided. While the letters do make reference to financial support they provide no detail of that support and do not contradict the Officers conclusion that the applicant had not established continued support after 2012. While I may have preferred that the Officer had expressly addressed this evidence, the general statements of support are not directly contradictory of the Officer's conclusion. It is trite to note that a decision-maker is not obligated to address all the evidence and arguments advanced by an applicant (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[16] The Officer's conclusion was that Ms. Madera had failed to place sufficient evidence on the record to establish ongoing financial support to family members in the Philippines. This conclusion was not directly contradictory of the evidence before the Officer and was reasonably available to him/her.

C. *Was there a failure to consider the best interests of the child?*

[17] Ms. Madera argues that the Officer failed to address the best interests of her niece to whom she claimed to be providing financial support to allow her to continue her studies in the Philippines. I disagree.

[18] Ms. Madera provided sparse evidence of the impact of her return to the Philippines on her niece. The evidence advanced spoke to financial support to attend school but was inconsistent in respect of the number of nieces and the degree, if any, of the support being provided to those nieces. The evidence also failed to establish the provision of any financial support after 2012. The Officer's consideration of the best interests of the child was reasonable in the circumstances of this case.

IV. Conclusion

[19] I find that the Officer's conclusions were reasonable and that there is no basis upon which to intervene with the finding that the H&C considerations presented by Ms. Madera failed to justify an exemption under subsection 25(1) of the IRPA.

[20] The parties have not identified a question of general importance, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2443-16

STYLE OF CAUSE: MA. THERESA MADERA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 12, 2017

JUDGMENT AND REASONS: GLEESON J.

DATED: JANUARY 27, 2017

APPEARANCES:

Jean Marie Vecina FOR THE APPLICANT

Margherita Braccio FOR THE RESPONDENT

SOLICITORS OF RECORD:

Vecina & Sekhar FOR THE APPLICANT
Barristers & Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario