Federal Court  Cour fédérale

Date: 20170224

Docket: IMM-2398-16

Citation: 2017 FC 231

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 24, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

CHARLOTTE NTSAMA TINE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is seeking judicial review of a decision made on May 12, 2016, by an immigration officer (the officer), dismissing her application for permanent residence on humanitarian and compassionate grounds (HC application) submitted to Citizenship and Immigration Canada (CIC) on January 22, 2014, under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (the Act).

[2] The applicant is a citizen of Cameroon who arrived in Canada on January 30, 2013. For the time being, there is no need to elaborate on the facts surrounding the previous rejection of her refugee claim and application for a pre-removal risk assessment. Note simply that the HC application was initially denied in June 2015 and that, following the judicial review of that first decision, her HC application was referred back to a different officer for redetermination on January 13, 2016, with the parties' consent (Court File IMM-3470-15).

[3] The applicant's state of health and access to appropriate treatment in her country of origin are key issues. The applicant has a number of infections and illnesses that may result in serious complications, including death, if they are not properly treated: HIV (AIDS), hepatitis C and tuberculosis (latent). In this case, the officer was not satisfied [TRANSLATION] "that [the applicant's] life would be in danger, since the treatments [for HIV] are available in Cameroon," even though the applicant [TRANSLATION] "may experience ARV shortages in Cameroon, which may cause her difficulties."

[4] The applicant is claiming that the officer committed a reviewable error in arbitrarily ignoring relevant evidence and/or failing to give her the opportunity to respond to his concerns. When the principles of procedural fairness are directly at issue, the applicable standard of review is correctness. Otherwise, the reasonableness standard applies (*Trach v. Canada (Citizenship and Immigration)*, 2015 FC 282, [2015] FCJ No. 241 at para. 22; *Bechaalani v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 356, [2016] FCJ No. 319 at para. 11).

[5] I consider this application for judicial review to have merit.

[6] I will begin with a brief overview of the evidence the applicant submitted to the officer. First, there is the letter from her attending physician, Dr. Patrick Haraoui, issued January 6, 2014, which describes the various medical and clinical details of the evolution of the applicant's condition, progress made, risks and the serious consequences of stopping treatment. To support her HC application, the applicant also submitted a statement dated December 2, 2013, from Dr. Gonsu Hortense, Laboratory Physician and Head of the Microbiology Laboratory, Yaoundé University Hospital Centre in Cameroon. Dr. Hortense explains that Cameroon faces regular shortages of antiretroviral (ARV) medication, jeopardizing the health and even the lives of those with HIV/AIDS. In addition, over ten thousand (10,000) people die each year of hepatitis C in Cameroon, and the cost of treatment—with supporting numbers—is exorbitant. Lastly, the applicant submitted various pieces of documentary evidence corroborating Dr. Hortense's statement on the harmful effects of ARV shortages, including several news articles and a letter from the Women in Alternative Action Association (the Association) indicating that women with HIV face discrimination and poverty and often abandon treatment.

[7] In terms of prognosis, Dr. Haraoui stated in his report that the HIV should remain under control as long as the applicant continues antiretroviral (ARV) therapy. However, if treatment were stopped, her level of CD4 cells would drop, which would increase the patient's risk of developing other opportunistic illnesses, such as tuberculosis or pneumonia, or opportunistic infections like malaria. Although ARV treatment is available in Cameroon, on the basis of Dr. Hortense's statement, Dr. Haraoui highlighted the frequent ARV shortages, which represents a major risk factor. All of these objective elements led Dr. Haraoui to conclude that [TRANSLATION] "the life expectancy of his patient would be greatly reduced" if she were to face

such conditions. With regard to the applicant's hepatitis C, her condition appears to have stabilized. As Dr. Haraoui specifies, that does not mean that stopping treatment would not have serious health consequences for the applicant, such as the risk of developing liver cancer or cirrhosis of the liver. In this regard, Dr. Haraoui referenced a letter from Dr. Hortense to say that the cost of appropriate treatment to cure the applicant's hepatitis C would be approximately $18,000. With regard to the applicant's (latent) tuberculosis, Dr. Haraoui considers the treatment to have been successful.

[8] The respondent does not dispute the fact that Dr. Haraoui used Dr. Hortense's statement as a basis for his remarks on the risks associated with an ARV shortage in Cameroon, but argues that the officer was completely justified in rejecting Dr. Hortense's letter, and thus Dr. Haraoui's conclusions, on the risks in Cameroon. As for the Association's letter, the officer did not completely overlook the information about ARV shortages or that this situation could have a significant effect on the applicant's health. However, the respondent claims that the health risks cited by various interveners are speculative.

[9] I do not agree with the respondent.

[10] The main problem here is that the officer gave no weight to Dr. Haraoui's conclusions from the information Dr. Hortense reported. He found the authenticity of Dr. Hortense's letter to be very suspect. In fact, the officer found a spelling mistake in Dr. Hortense's official seal. He highly doubts that the official seal of the head of the microbiology laboratory at Yaoundé UHC would contain a mistake in his title. The officer also noted that, although it was apparently sent

from Cameroon, the letter was not folded and showed no proof of service. For all of these reasons, the officer does not consider it an authentic document. Moreover, the officer gave little weight to several of the articles discussing the high costs of hepatitis C treatments because he was unable to identify their source or publication date. The officer also examined the letter from the Association—a civil society organization that specializes in women's rights—and described it as [TRANSLATION] "self-serving" evidence. Consequently, the officer says he gave this letter less weight than the news articles from Cameroon describing the ARV shortages. In other words, he gave little weight to much of the evidence the applicant submitted. Lastly, the officer noted that, although the applicant did not mention this, ARV treatments have been free in Cameroon for several years. Nevertheless, according to the Association's letter, this does not include the cost of tests to monitor the viral load and CD4.

[11] The burden was undeniably on the applicant to ensure that her HC application and all supporting documents were complete, convincing and unambiguous. With regard to HC applications, the case law establishes that officers are not obligated to give applicants the opportunity to respond to their concerns when they arise directly from the requirements of the Act or related regulations (*Nicayenzi v. Canada (Citizenship and Immigration)*, 2014 FC 595, [2014] FCJ No. 626 at para. 17). However, the situation is very different when it comes to a negative decision based on the officer's rejection of evidence where the credibility, accuracy or genuine nature is directly in question, as is the case here (*Patel v. Canada (Citizenship and Immigration)*, 2011 FC 571, [2011] FCJ No. 714 at paras. 22 and 26; *Rukmangathan v. Canada (Citizenship and Immigration)*, 2004 FC 284, [2004] FCJ No. 317 at paras. 22–23 [*Rukmangathan*]; *Hassani v. Canada (Citizenship and Immigration)*, 2006 FC 1283, [2006] FCJ

No. 1597 at para. 24 [*Hassani*]). As Justice Kane noted in *Ansari v. Canada (Citizenship and Immigration)*, 2013 FC 849, [2013] FCJ No. 892 at paragraph 14, distinguishing between concerns about sufficiency of evidence and credibility is not a simple task as both issues may be related.

[12] With regard to Dr. Hortense's letter, in examining the officer's reasons more closely, it cannot really be said, as the respondent asserts, that this is essentially a question of the evidence being sufficient, since the officer clearly stated that [TRANSLATION] "it is not an authentic letter from a physician at Yaoundé UHC." This directly calls into question the applicant's good faith and integrity, as with anyone involved in such a presumed fraud. Rejecting Dr. Hortense's letter had a decisive impact on the officer's findings as to the speculative nature of the risk of HIV and hepatitis C complications. Since the officer made his decision without giving the applicant a chance to address his concerns about the authenticity of this evidence, he clearly breached his duty to act fairly, which is sufficient to justify a re-examination of the HC application.

[13] Furthermore, the applicant also claimed that the officer made a reviewable error by deeming the letter from the Association to be [TRANSLATION] "self-serving evidence," which enabled him to reject a written testimony or document due to a lack of credibility. I agree with the applicant's arguments that the officer failed to explain what constitutes "self-serving" evidence and why the letter from the Association could be considered as such. In light of the case law, "self-serving" evidence is a document prepared at the applicant's request for the purposes of his or her refugee claim or HC application. Thus, the courts give little to no probative value to this type of evidence (*Arabalidoosti v. Canada (Minister of Citizenship and Immigration)*, 2006

FC 440, [2006] FCJ No. 552 at para. 21; *Tahiru v. Canada (Citizenship and Immigration)*, 2009 FC 437, [2009] FCJ No. 514 at para. 47). However, a connection must be established between the beneficiary and the author of the document. In this case, there is nothing leading the Court to find any connection or interest between the applicant and the Association. The least we can say is that the officer's conclusions are not very clear on this matter, which is an additional reason to doubt his decision-making process in general in this case, not to mention that his failure to give the applicant an opportunity to respond to his concerns about her "self-serving" evidence can amount to a breach of the duty of fairness (*Wen v. Canada (Citizenship and Immigration)*, 2013 FC 1159, [2013] FCJ No. 1245 at para. 4; *Zmari v. Canada (Citizenship and Immigration)*, 2016 FC 132, [2016] FCJ No. 106 at para. 21).

[14] In light of all the above, the application for judicial review is allowed. The officer's decision is set aside, and the HC application is again referred back for redetermination by a different immigration officer. The parties did not raise any questions of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed. The officer's decision is set aside, and the application for permanent residence on humanitarian and compassionate grounds is referred back for redetermination by a different immigration officer. No question is certified.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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