Federal Court  Cour fédérale

Date: 20170602

Docket: IMM-4326-16

Citation: 2017 FC 540

Ottawa, Ontario, June 2, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

LEIZL REGALADO

Applicant

and

MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant challenges a negative decision [the Decision] of a Senior Immigration Officer [the Officer], refusing an application for permanent residence based on humanitarian and compassionate [H&C] grounds under section 25 of *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act or IRPA].

[2] The Applicant, a citizen of the Philippines, came to Canada on September 14, 2012 on a work permit. She has since had three jobs, the last of which ended in March 2016. The Applicant says there is a pending civil action against her last employer in Superior Court for abusive conduct. Later in March 2016, the Applicant submitted a permanent residence application based on H&C grounds, which was refused on September 29, 2016.

[3] In the Decision, the Officer noted that while the Applicant had demonstrated a certain degree of establishment (living in Canada for 4 years, ties to the community and friends), a section 25 exception was not justified based on the evidence. The Officer noted that she arrived in Canada on a temporary basis and indeed there was no guarantee that she would be able to stay "beyond the time she was authorized to work."

[4] The Officer also considered the best interests of the children [BIOC], the Applicant's minor brother and niece, whom the Applicant says depend on her for financial support. The Officer noted that there was insufficient evidence that the children's access to education and fundamental rights would be offended if the Applicant was to return to the Philippines, given her skills and background. The Officer further noted that there was insufficient evidence to establish that the children's parents, grandparents, aunts and uncles residing in the Philippines would be unable to assist in ensuring the children's wellbeing.

II. Issues and Analysis

[5] The Applicant challenges the Officer's findings on (i) establishment and (ii) BIOC. The parties agree that the applicable standard of review for the issues raised is reasonableness per *Kanthasamy v Canada (Citizenship and Immigration*), 2015 SCC 61 at para 44.

A. *Establishment*

[6] With respect to establishment, the Applicant says the Officer (a) minimized her establishment and (b) ignored evidence.

a. Minimizing establishment

[7] The Applicant argues that it was unreasonable for the Officer not to explain what "level of establishment he requires to warrant the exercise of the discretion provided under section 25 of IRPA," because the Officer noted that her degree of establishment is what "one would expect to accomplish in her circumstances."

[8] This argument is misguided; the Officer cannot be expected to arbitrarily set the degree of establishment required under section 25, as that analysis will necessarily vary depending on the facts of each case. Likewise, it is not the role of an officer to speculate as to what additional facts or circumstances would have triggered a section 25 exception. Rather, it is the Applicant's role to demonstrate exceptional circumstances, including establishment, rather than simply

expected (*Baquero Rincon v Canada (Minister of Citizenship and Immigration*), 2014 FC 194 at para 1).

[9] The Applicant further argues that the Officer should have considered her establishment against the "abusive arrangements she had and falling victim of an exploitative recruitment agency". With this in mind, the Applicant says that her claim was viewed with "less significance […] simply because she […] overstayed in Canada" because the Officer notes that there "was no guarantee that the Applicant would be allowed to remain in Canada beyond the time she was authorized to work." The Applicant relies on this Court's decision in *Klein v Canada (Citizenship and Immigration)*, 2015 FC 1004 at paras 4-5 [*Klein*], to say that an individual's establishment cannot be minimized or "viewed with less significance" simply because the individual has overstayed in Canada.

[10] It is often that H&C cases invariably turn on their facts, and this case is no exception. *Klein* is entirely distinguishable on that basis alone. There, Justice Mactavish held that the officer's repeated reliance on Mr. Klein's decision to stay in Canada was misguided, because the relevant inquiry was rather whether forcing him to apply for permanent residence status outside Canada would cause unusual or disproportionate hardship.

[11] Here, however, the Officer's comments were made within the confines of an establishment analysis. Unlike in *Klein*, the Officer's comments were made in passing, they were not repeatedly made, and were not at the heart of the Decision. Rather, they were one of various factors properly considered by the Officer in reasonably concluding that establishment was

ordinary under the circumstances. In short, the Officer's conclusion on this particular aspect of the Decision was reasonable.

b. Ignoring evidence

[12] The Applicant says that the Officer ignored key evidence, namely documentary evidence on unemployment in the Philippines, including heightened unemployment and underemployment of women and graduates in the hotel and service sectors, in addition to affidavit evidence from the Applicant's family concerning both costs of private school for the niece and niece, and her father's medical condition. The Applicant also says that the Officer, in ignoring this documentary evidence, drew conclusions based on speculations.

[13] First, it is well established that there exists a presumption that the decision-maker has reviewed the entire record. Here, that presumption is corroborated by the Officer's references in Section 6 of the Decision to the "application and submissions" in addition to the US Department of State Report. Furthermore, in section 5 of the Decision, the Officer referred to various aspects of the points raised by the Applicant, including experience in her field in Canada, her certificate in Hotel and Restaurant management, and the cost of schooling.

[14] Second, it is not the role of this Court to intervene if upon reading the record, the Court is able to understand the reasonableness of the conclusion made by the decision-maker (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15). In this case, the Court's intervention would be inappropriate because the Officer clearly considered the Applicant's argument that she would struggle to find

employment if she returned to the Philippines, and be unable to provide the requisite financial support. Simply put, I am satisfied that the finding there was insufficient evidence to trigger a section 25 H&C exception was justified, given the Applicant's education, transferable skills, family ties, acquaintances, and knowledge of the country.

[15] With respect to the Applicant's argument that the Officer made speculative findings, that argument is also unconvincing, as there is no evidence of speculation in the Decision. Rather, as pointed out above, the reasons are purely based on insufficiency of evidence to overcome the Applicant's personal circumstances within the discretion of a section 25 H&C exemption, which is "highly discretionary" and merits deference (*Singh v Canada (Citizenship and Immigration)*, 2016 FC 240 at para 13).

B. *BIOC*

[16] The Applicant challenges the Officer's Decision, arguing that s/he applied the incorrect legal test: relying on *Williams v Canada (Citzenship and Immigration)*, 2012 FC 166 at para 64, the Officer erred in stating: "although children residing in Canada may enjoy better social and economic opportunities than they would in the Philippines, there is little evidence before me to suggest these children's fundamental rights are denied in the Philippines".

[17] I agree with the Applicant that viewed in isolation, this statement could be problematic. However, the Officer's BIOC analysis is not limited to this one passage. Instead, the Officer also noted the Applicant's employment possibilities in the Philippines (which I have above already found to be reasonable based on the evidence), and the insufficiency of evidence that the

parents/uncles/aunts/other family members could not assist in financially maintaining the children's education. It was within this context that the BIOC analysis was conducted. This, rather than conducting a "bare amenities" approach, as the Applicant argues, the Officer, in light of the other conclusions, found that that the BIOC would reasonably be met. This approach, in my view, was consistent with the approach taken in *Kanthasamy* at paras 33 and 45. Underpinning the BIOC conclusions was a unique factual matrix that justified the Officer's Decision, including that:

(1) the children, for whom the BIOC arguments are made, are Filipino nationals, who have always lived in the Philippines, and who have no status in – or evidence of visits to – Canada;
(2) their family and other bonds were therefore to the Philippines, family members who until this point of time, had cared for the children;
(3) part of the BIOC was found to be the future benefit of a physical presence of the Applicant with these children;
(4) the Applicant, at the time of the H&C Application, was not herself supporting their private school education, because she was unemployed here in Canada; the Applicant's support was rather predicated on the interim measure of having the family take out loans in the Philippines, as well as sending support from other friends in Canada, all in the hope of finding future employment in Canada; and
(5) evidence that public schooling, although inferior, is an option.

[18] These facts, while not necessarily articulated in this manner by the Officer, all formed a backdrop to the Officer's conclusion on BIOC. I find that conclusion to be entirely reasonable in light of the circumstances of this case.

III. Conclusion

[19] Upon reviewing the record, I am of the view that the Officer's findings were reasonable. While they may not be what another decision-maker would have found, they are nonetheless

within the ambit of possible and acceptable outcomes. In light of the reasons provided above, this application for judicial review is dismissed.

JUDGMENT in IMM-4326-16

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There are no questions for certification, and none arise.

3. No costs will be ordered.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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