

Federal Court



Cour fédérale

Date: 20171122

Docket: IMM-1884-17

Citation: 2017 FC 1059

Ottawa, Ontario, November 22, 2017

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

ROUNAK ABDULLAH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Rounak Abdullah [the Applicant] seeks judicial review of the decision of a Senior Immigration Officer [the Officer], dated February 16, 2017, rejecting the Applicant's in-land application for permanent residency on humanitarian and compassionate [H&C] grounds [the Decision].

[2] The Applicant, a 29-year-old woman, asserts that the Officer committed a reviewable error by failing to consider and discuss evidence that she alleges was before the Officer with respect to her marriage, its importance, and how much weight it should have been given in the H&C analysis.

[3] The Respondent submits the Officer's decision, that H&C relief was not warranted, is reasonable given the Officer's conclusion that there was insufficient evidence before them to indicate that the Applicant and her husband have an integrated and interdependent life together.

II. **Background**

[4] The Applicant was born in Iraq but she and her family fled to the United States when she was a minor. They were accepted as Convention Refugees and she subsequently obtained United States citizenship.

[5] At the age of 19 the Applicant was on a visit with her family to Iraq at which time she entered into an arranged marriage with a husband who later turned out to be physically, sexually and verbally abusive to her. She eventually divorced him in the United States after learning that he was using the marriage to obtain permanent resident status in the United States. She also cancelled her immigration sponsorship of him.

[6] The Applicant on leaving her husband resided with her parents in California who continually pressured her to resume the relationship with her husband. She submits that her family will try to make another arranged marriage for her as they are culturally traditional.

[7] The Applicant first came to Canada in April 2011 on a six month visitor visa. In March 2012, the Applicant met Mr. Nasir Ahmaddy, a Canadian citizen, and began a romantic

relationship with him. Apparently she did not renew her visitor visa because she was told that the only way to renew it was through a lawyer and she did not have sufficient funds to do so. In her counsel's written submissions to the Officer it is said that the Applicant spent the ensuing months inquiring with various immigration lawyers on how to apply for permanent residence in Canada. The only solution she was given was to marry a Canadian citizen or permanent resident but she did not want to marry. In the written submissions before this Court the Applicant submits that the abuse suffered in her prior marriage has "caused the Applicant to be cautious integrating and becoming interdependent with [Mr. Ahmaddy]".

[8] The Applicant overstayed her visitor visa until February 2013 when she returned to the United States because her mother was ill. In June 2013 the Applicant returned to Canada telling her parents that she had a job offer which required her to live in Canada. On this second trip to Canada the Applicant held a visitor visa for which she applied and received an extension to permit her to stay until November 10, 2013. After this she did not attempt to further extend the visitor visa and again overstayed.

[9] On May 2, 2015, the Applicant and Mr. Ahmaddy married. Submissions made to the Officer stated that they have been living together since November 1, 2015. Mr. Ahmaddy is ineligible to sponsor his wife to Canada and is himself inadmissible to the United States as a result of past criminal convictions in Canada. As of the date of the H&C application he also had a pending trial for trafficking in cocaine.

[10] The Officer found there was insufficient objective evidence before them that the Applicant and her husband had an integrated and interdependent life together.

III. **The standard of review**

[11] The standard of review for the Officer's decision on an H&C Application is reasonableness (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18, [2010] FCR 360 [*Kisana*]).

[12] In conducting a reasonableness review the Court is to concern itself with whether the decision was justified, transparent, intelligible and within the range of possible acceptable outcomes defensible on the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

IV. **Analysis**

[13] The Applicant alleges that the Officer failed to consider a support letter provided by her husband as well as five letters from her friends indicating her personal characteristics and the loss they would feel if she is not allowed to remain in Canada.

[14] The problem with the Applicant's submission is that none of these support letters can be found in the Certified Tribunal Record [CTR]. The Officer cannot consider what is not received.

[15] On June 24, 2016 the immigration consultant retained by the Applicant itemized and submitted various documents in support of the application. He noted that within thirty days he would provide a detailed submission together with any additional documents. The documents initially submitted included the usual application forms as well as copies of the following number of documents: her U.S. passport and visa records, a Record of Solemnization of Marriage Certificate to her current husband, a Marriage Dissolution Statement for the abusive ex-husband, bank statements, hydro bills, gas bills, internet and telephone documents, a

residential lease agreement, a residential tenancy agreement, renters insurance documents, and a variety of photographs.

[16] The Officer correctly noted that of all the documents submitted on June 24, 2016 only the renters insurance document contained the husband's name. The residential tenancy agreement was entered into on May 1, 2015, one day before the Applicant's marriage to Mr. Ahmaddy. It was to run until April 2016 and was in the joint names of the Applicant and another woman, not her husband. His name does not appear on any of the other objective documents submitted.

[17] The CTR contains a letter dated September 22, 2016 from the consultant with the promised written submissions. In those submissions reference is made to statements by friends attesting to the Applicant's ties to Canada. It was submitted that the Applicant had made many friends in Canada who have become like family. The submissions set out various brief statements attributed to different friends. While the letters are contained in the Applicant's Record filed with the Court in this application, there is no indication they were actually submitted to the Officer; there is also no list of documents to indicate that any documents were accompanying the letter from counsel unlike the list with the June 24, 2016 submission.

[18] The Applicant did not submit a fax cover page indicating the number of pages that were sent to the Officer. The only reasonable conclusion that can be drawn from the evidence as presented to this Court is that the consultant did not attach any of the supporting documentation with the September 22, 2016 written submissions.

[19] Without the supporting evidence, the submissions are simply bald statements by the consultant. It was reasonable for the Officer to find the evidence overall was insufficient to

support the H&C Application. It may well be that had the support letters been submitted, the Officer would have assigned them little weight. The letters in the Applicant's Record are simply typed on plain paper, three are undated, all are unsigned and all appear to be typed in the same font.

[20] Similarly, the support letter from her husband, which is found only in the Applicant's Record, is in the form of a brief email from him to her which was then forwarded to the offices of the consultant. While he professes his love for his wife and speaks of her horrible past with her ex-husband it contains little detail of their life together other than when they met. He says that she is a kind hearted and caring person and that he would be devastated if she left him. His support for her application was that "I highly recommend that her application gets taken seriously because I know she deserves to have the life that she has always wanted".

[21] The CTR contains a typed, undated and unsigned three-page letter from the Applicant which is stamped November 3, 2016 with a stamp of the Respondent. It recites at some length her fear of her ex-husband and the reasons therefore. It mentions in detail that she left her family because if she returns to them they will want to arrange a marriage for her again. She states she does not feel like part of her family and is happier without them. With respect to her husband, there is one sentence "in Toronto I have been very happy I have met the man of my dreams my true love who is the best husband I can ever ask for." She states that the purpose of her letter is to show that she deserves to have a good happy life just like everyone else and she is a good person who should be able to live like everyone else without fear of harm or being separated from loved ones. She adds that she "need[s] a good life [and] need[s] to move on and be happy ... and the only place [she] find[s] happiness is here in Toronto".

[22] The onus in an H&C application is on the Applicant to submit all relevant evidence in support of their application with the Officer having no requirement to seek additional evidence (*Kisana* at paras 45, 61; *Begum v Canada (Citizenship and Immigration)*, 2013 FC 265 at para 46, 429 FTR 117). The way the submissions of September 22, 2016 were written the Officer would not be led to believe that there were any enclosures. The only reference to an enclosure is found in what is said to be an excerpt from “a letter”. The excerpt is set out separately, italicized and indented as part of the submissions. Part of the excerpt, at the end, says “letter enclosed” in brackets. The letter in question was submitted in the Applicant’s record. Counsel confirmed at the hearing that there is no evidence that it was submitted to the Officer. On that basis it is not unreasonable that the Officer did not reference, in the decision, that the letter was not provided.

[23] The Applicant also alleges that the Officer did not fully appreciate her hardship, the degree of control her parents exerted, the pain that would result from her being separated from her husband and that the Officer undervalued her establishment in Canada where she was continuously employed for five years and has no criminal record. These submissions amount to a request to reweigh the evidence which is not the role of this Court as affirmed recently by Justice Manson (*Kaur v Canada (Citizenship and Immigration)*, 2017 FC 782 at para 20, 283 ACWS (3d) 393). The Officer provided fulsome reasons in the Decision that enable the Applicant, and this Court, to understand the reasoning process and why the determination was made that the evidence which was submitted was insufficient to support the granting of her application.

[24] As counsel for the Minister points out, the Applicant may make another H&C application, from abroad, and submit more fulsome evidence at that time.

[25] Given the state of the record which was before the Officer, I am unable to find any error in the reasoning or the Decision. The reasons of the Officer enable the Applicant to understand the decision-making process and why the Officer arrived at the outcome. In my view the outcome falls within the range of possible, acceptable outcomes based on the facts and law. The result is that the Decision is reasonable.

[26] The application is dismissed for the foregoing reasons.

[27] Neither party submitted a serious question of general importance for certification, nor does one arise on these facts.

JUDGMENT IN IMM-1884-117

THIS COURT'S JUDGMENT is that the application is dismissed. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1884-17

STYLE OF CAUSE: ROUNAK ABDULLAH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 16, 2017

JUDGMENT AND REASONS: ELLIOTT J.

DATED: NOVEMBER 22, 2017

APPEARANCES:

Cemone Morlese

FOR THE APPLICANT

John Loncar

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cemone Morlese
Globe Immigration
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT