

Federal Court



Cour fédérale

**Date: 20180214**

**Docket: IMM-457-17**

**Citation: 2018 FC 172**

**Toronto, Ontario, February 14, 2018**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**SANDRINA KERBY MATHURIN**

**Applicant**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2008, Ms Sandrina Mathurin arrived in Canada from St Lucia as a visitor. Her visa expired in 2009, but she remained in Canada and had two children here (she also has two children in St Lucia). In 2014, Ms Mathurin applied unsuccessfully for permanent residence on humanitarian and compassionate grounds (H&C). She also applied for refugee status but was found not to be credible.

[2] Ms Mathurin made a second H&C application in 2016 based primarily on the best interests of her Canadian-born children. An immigration officer denied the application notwithstanding the special situation of Ms Mathurin's son, Jayden, who has been diagnosed with Autism Spectrum Disorder (ASD). The officer considered Jayden's diagnosis but found that Ms Mathurin had not demonstrated that appropriate services for autistic children were unavailable in St Lucia.

[3] Ms Mathurin argues that the officer's decision was unreasonable because it overlooked important evidence supporting her application. She also maintains that the officer's reasons give rise to a reasonable apprehension of bias, in particular, the officer's observation that Ms Mathurin had chosen to have two children in Canada while having no immigration status here. She asks me to quash the decision and order another officer to reconsider her application.

[4] I can find no basis for overturning the officer's decision. The officer responded reasonably to the evidence Ms Mathurin put forward in support of her application. In addition, read in context, the officer's reference to Ms Mathurin's lack of status simply characterized the predicament in which she found herself. Therefore, I must dismiss this application for judicial review.

[5] There are two issues:

1. Was the officer's decision unreasonable?
2. Do the officer's reasons give rise to a reasonable apprehension of bias?

II. The Officer's Decision

[6] The officer analyzed the circumstances of Ms Mathurin's children in considerable detail. He reviewed Jayden's diagnosis and the challenges Jayden will likely face in the future. The officer also contemplated the impact on the Canadian-born children if they were taken to St Lucia (or to St Vincent where their father lives), as well as the effect on Ms Mathurin's children in St Lucia.

[7] The officer found that Ms Mathurin had failed to provide evidence on certain key issues, such as Jayden's prognosis, the support she might have available to her in Canada, and her involvement in the lives of her children living in St Lucia.

[8] The officer reviewed information about the services available to autistic children in St Lucia and St Vincent from US Department of State reports and from documentary evidence provided by Ms Mathurin. The officer concluded that Ms Mathurin had failed to demonstrate that there was a lack of appropriate resources for autistic children in those jurisdictions.

[9] In conclusion, the officer found that the Canadian children's best interests would be served by their remaining in Canada. This was an important positive factor favouring Ms Mathurin's application, but it was not determinative. The officer noted that Ms Mathurin and her partner had chosen to remain in Canada without status and to have two children here. Their decision to flout Canadian laws, according to the officer, should not be rewarded with permanent residence (citing *Joseph v Canada (Minister of Citizenship and Immigration)* 2015 FC 904).

III. Was the officer's decision unreasonable?

[10] Ms Mathurin maintains that the officer failed to realize that Jayden actually had two separate medical issues requiring different forms of treatment. In addition to ASD, Jayden also requires the assistance of a speech language pathologist, to which he would not have access in St Lucia or St Vincent, according to Ms Mathurin.

[11] Ms Mathurin points to a number of medical documents in her file supporting this aspect of her application. Each of them refers directly or indirectly to Jayden's need for speech therapy. Accordingly, says Ms Mathurin, the officer erred by focussing on the availability of treatment for autism in St Lucia and St Vincent and virtually ignoring the lack of access to speech therapy. Further, in Ms Mathurin's view, the officer failed to give adequate attention to Jayden's overall health needs and the negative effect that his removal from Canada would cause him.

[12] I disagree with Ms Mathurin's characterization of the officer's decision.

[13] The officer thoroughly reviewed the evidence relating to Jayden's health and medical needs, including experts' reports and assessments. The officer discussed Jayden's ASD diagnosis, as well as his speech impediments. In her submissions to the officer, Ms Mathurin did not suggest that these issues require distinct analysis; nor do the reports on which Ms Mathurin relies. In any case, however, the officer did consider the availability of speech therapy in St Lucia and St Vincent and found no evidence that the services provided there would not meet

Jayden's needs. In fact, at the time, Jayden had only just been referred for a preliminary consultation with a speech language pathologist in Canada.

[14] Accordingly, I cannot conclude that the officer's treatment of the evidence was unreasonable.

IV. Do the officer's reasons give rise to a reasonable apprehension of bias?

[15] Ms Mathurin objects to the officer's observation that she and her partner chose to have two children in Canada while having no status here. She claims that the officer's statement, which appears twice in the reasons, is indicative of bias.

[16] I cannot find that the officer's statement displays bias. Reading the officer's decision as a whole, I find that the officer, in his first statement, merely noted the amount of time Ms Mathurin had spent in Canada illegally and pointed out that she had two children here during that period of time. The second statement appears in the officer's summary of the circumstances in which Ms Mathurin and her children have found themselves. A fair reading of the officer's statements does not support a reasonable apprehension of bias. Rather, the officer's overall analysis reflects a genuine concern for the family and empathy for the choices they now face.

V. Conclusion and Disposition

The officer reasonably addressed the evidence supporting Ms Mathurin's H&C application, including the information relating to her son, Jayden. Further, the officer's reasons do not give

rise to a reasonable apprehension of bias. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-457-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed,  
and no question of general importance is certified.

"James W. O'Reilly"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-457-17

**STYLE OF CAUSE:** SANDRINA KERBY MATHURIN v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** AUGUST 31, 2017

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** FEBRUARY 14, 2018

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