Federal Court  Cour fédérale

Date: 20181128

Docket: T-953-18

Citation: 2018 FC 1196

Ottawa, Ontario, November 28, 2018

PRESENT: Mr. Justice Grammond

BETWEEN:

BUSHRA JABEEN HALEPOTA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Halepota, a citizen of Pakistan and a permanent resident of Canada, applied for an extraordinary grant of Canadian citizenship on the basis of undue hardship and service of exceptional value to Canada. That service was her long-standing work for the United Nations High Commissioner for Refugees [UNHCR]. Her application was denied. I am allowing her application for judicial review, because the decision to deny her application for citizenship was based on a wrong appreciation of what could constitute service of exceptional value to Canada.

I. Background

[2] Ms. Halepota has been employed by UNHCR since 1994. She obtained permanent residence in Canada in 2005. At that time, she was working in New York. She remained employed there for about two years, and was then posted to Armenia, Pakistan and Iraq, and now in Nepal. She has held senior positions with UNHCR, including postings in regions plagued by conflict and war.

[3] Several members of Ms. Halepota's family, including her children and sisters, are Canadian citizens and live in Canada.

[4] In 2009, Ms. Halepota applied for Canadian citizenship. A citizenship judge rejected her application on June 6, 2017, because she had not been physically present in Canada for the required period. She then asked for special consideration under section 5(4) of the *Citizenship Act*, RSC 1985 c C-29 [the Act], which reads as follows:

5. […]	**5.** […]
(4) Despite any other provision of this Act, the Minister may, in his or her discretion, grant citizenship to any person to alleviate cases of statelessness or of special and unusual hardship or to reward services of an exceptional value to Canada.	(4) Malgré les autres dispositions de la présente loi, le ministre a le pouvoir discrétionnaire d'attribuer la citoyenneté à toute personne afin de remédier à une situation d'apatridie ou à une situation particulière et inhabituelle de détresse ou de récompenser des services exceptionnels rendus au Canada.

[5] On March 16, 2018, a senior decision-maker acting on behalf of the Minister denied Ms. Halepota's application. The decision-maker first rejected Ms. Halepota's claims based on special and unusual hardship. She asserted that many permanent residents choose to work abroad and this does not constitute hardship within the meaning of subsection 5(4). In addition, she noted that Ms. Halepota, as a permanent resident, "is able to live and work in Canada subject to the requirements of the *Immigration and Refugee Protection Act.*" Thus, refusing Canadian citizenship to her would not have the effect to force her to return to Pakistan, away from her family.

[6] The decision-maker also refused to recognize that Ms. Halepota had rendered "services of an exceptional value to Canada." She stated that Ms. Halepota's work was "commendable" and "noble." She found, however, that "work for organizations that advance a humanitarian agenda […] does not constitute services of an exceptional value to Canada."

[7] Ms. Halepota asked for reconsideration of the decision. On April 25, 2018, the same decision-maker refused to do so, because there was no breach of procedural fairness, no clerical error and no new evidence. Ms. Halepota then brought the present application for judicial review.

[8] From a technical standpoint, Ms. Halepota's application is directed at the reconsideration decision only. However, I am prepared to assume that it also challenges the initial decision made on March 16, 2018. I would not fault Ms. Halepota for asking the officer to reconsider her decision before launching an application for judicial review in this Court. She proceeded quickly

and had a continuing intention to challenge the initial decision. In any event, I do not see how the Minister is prejudiced by proceeding in this fashion. No undue delay results from this situation.

II. Analysis

[9] Decisions made under section 5(4) of the Act are discretionary. This Court reviews them on a standard of reasonableness (see, by way of analogy, *Agraira v Canada (Public Safety and Emergency Preparedness*, 2013 SCC 36 at paras 48-50, [2013] 2 SCR 559).

[10] Ms. Halepota invoked two separate grounds in support of her application for citizenship, her services of exceptional value to Canada and the hardship she would suffer should her application be denied. The decision-maker rejected her application on both grounds.

A. *Services of exceptional value to Canada*

[11] I turn first to the issue of whether Ms. Halepota's work constituted "services of exceptional value to Canada." Assessing the reasonableness of this aspect of the decision is somewhat difficult because the decision-maker did not explain clearly the basis of her decision. While she was not required to articulate a "test" beyond the language of subsection 5(4), she had to explain what features of Ms. Halepota's work disentitled her from consideration under that provision.

[12] After summarizing Ms. Halepota's submissions, the decision-maker explained her negative decision in the following three sentences:

> While I find that the Applicant's work with the UNHCR is commendable as it has provided valuable services to vulnerable population groups in under privileged countries and that her work with the UNHCR aligns with Canada's humanitarian assistance mandate, I am not satisfied that this work constitutes exceptional service to Canada for the purposes of granting Canadian citizenship. Many Canadian citizens and non-Canadian citizens choose to work for organizations that advance a humanitarian agenda and, while this work is noble, it does not constitute services of an exceptional value to Canada which warrants awarding the individual with Canadian citizenship. To suggest otherwise would infer that Canadian citizenship should be awarded on the basis of exceptional service to Canada to any individual that is employed with an international humanitarian organization, where the organization's objectives align with Canada's humanitarian assistance mandate.

[13] Thus, instead of focusing on Ms. Halepota's personal situation, the decision-maker characterized her work as "humanitarian," and her employer as a "humanitarian organization," and concluded that work of such a description could never be the basis of a grant of citizenship under subsection 5(4).

[14] If these three sentences convey the entirety of the decision-maker's reasoning, I must conclude that she unreasonably fettered her discretion. Decision-makers entrusted with discretionary powers must exercise them having regard to the circumstances of each case. While they may adopt general guidelines to ensure a degree of consistency, these guidelines cannot operate as a complete bar to certain categories of cases (*Maple Lodge Farms v Government of Canada*, [1982] 2 SCR 2 at 5-6; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 32, [2015] 3 SCR 909; *Delta Air Lines Inc. v Lukács*, 2018 SCC 2 at para 18 [*Delta Air Lines*]). Here, Ms. Halepota's claim was not decided on its merits. Rather, her situation was lumped with every employee of every "humanitarian organization" and her

application was dismissed because Canadian citizenship could not be granted to such a wide category of persons.

[15] But that is not the end of the matter. On judicial review, courts must look to the record to supplement reasons that might appear inadequate on a first reading (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15, [2011] 3 SCR 708).

[16] The Minister suggested various reasons why the decision could be considered reasonable. A first attempt involved characterizing UNHCR as a non-Canadian entity. In his memorandum of argument, the Minister stated that Ms. Halepota's work has "no nexus to Canada" and described the United Nations as "an international organization based in the United States that does work abroad."

[17] That, however, is a parochial view of the kind of services that may lead to a grant of citizenship under subsection 5(4). Adopting this view would be unreasonable. It is not supported by the wording of the provision. There is no requirement that the services be provided to the Canadian government or to a Canadian entity. The requirement is simply that the services have "value to Canada."

[18] In this regard, we must not forget that UNHCR is not merely a "humanitarian organization." It is an agency of the United Nations. The United Nations is the world's most prominent international governmental organization. Canada, along with most other states, is a

member of the United Nations. Canada is strongly committed to the goals of the United Nations, which include the maintenance of international peace and security, the development of friendly relations among member states and the achievement of international cooperation, in particular with respect to human rights (*Charter of the United Nations*, Can TS 1945 No 7, art 1). Canada is also strongly committed to the United Nations as an organization that is well-placed to achieve those goals on the international stage. Canada values multilateral action through the United Nations. Hence, services rendered to the United Nations must be considered as having value to Canada.

[19] Cases dealing with subsection 5(4) rarely reach this Court. One such case, *Mitha (Re)*, 1979 CarswellNat 1041 (FC), dealt with the situation of a UNHCR employee. While the case was decided on the basis of hardship, Justice Cattanach accepted that outstanding work for the UNHCR might be the basis of a grant of citizenship under subsection 5(4) (at 26). It is unreasonable to argue otherwise in the context of the present case.

[20] At the hearing, the Minister conceded that service to the United Nations could, in some circumstances, be of value to Canada. Such a determination, however, could only be made with regard to the actual work done by the individual concerned, not the work done by the United Nations in general. Thus, the Minister argues that the decision-maker reasonably concluded that Ms. Halepota's work was not of value to Canada, as it was performed abroad.

[21] There are two problems with this argument. First, this is simply not what the decision says. While her reasons are brief, the decision-maker noted that Ms. Halepota's work "aligns

with Canada's humanitarian assistance mandate." This appears to be contrary to the Minister's reading of her decision. In truth, trying to sustain a decision on grounds other than those given by the decision-maker is often problematic. Here, it is far from obvious that the decision-maker would have made the finding suggested by the Minister, had she turned her mind to the appropriate question. While the Supreme Court of Canada invited courts to supplement the reasons of administrative decision-makers by looking to the record, it cautioned that this does not mean that courts can provide new reasons to uphold a decision where the reasons actually given are inadequate (*Delta Air Lines* at para 24).

[22] The second problem is that the Minister is once again attempting to justify the decision by the faulty assumption that work performed outside of Canada cannot be of value to Canada. Most people working for the United Nations will be working outside Canada. And the argument that Ms. Halepota's work benefited vulnerable people in other countries instead of people in Canada overlooks the fact that migration involves source countries and destination countries, as well as "Canada's commitment to international efforts to provide assistance to those in need of resettlement" (*Immigration and Refugee Protection Act*, SC 2001, c 27, s 3(2)(b) [IRPA]). Thus, even if one tries to give the decision a new footing along the lines suggested by the Minister, it is far from certain that this would render it reasonable.

[23] The Minister's attempts to save the decision were based on the argument that Ms. Halepota's work did not have value *to Canada*. They did not challenge the exceptional value of Ms. Halepota's work. At the hearing, the Minister conceded as much and recognized that it would have been reasonable for the decision-maker to find that Ms. Halepota's work was of

exceptional value. Indeed, even though she did not reach a firm conclusion on this issue, the decision-maker emphasized that Ms. Halepota's work was "commendable as it has provided valuable services to vulnerable population groups in under privileged countries."

[24] Thus, the only manner of sustaining the decision is to argue that Ms. Halepota's work is not of value to Canada. As I noted above, however, this would be unreasonable. As a result, the decision as a whole is unreasonable and must be struck down.

B. *Special and Unusual Hardship*

[25] As I found that the decision is unreasonable on the first ground alleged by Ms. Halepota, it is unnecessary for me to address the second ground, namely the issue of special and unusual hardship.

[26] The application for judicial review will be allowed and the matter will be sent back to another decision-maker for reconsideration.

JUDGMENT in T-953-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed;

2. The matter is sent back for reconsideration by a different decision-maker;

3. No question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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