Federal Court  Cour fédérale

**Date: 20190218**

**Docket: IMM-1962-18**

**Citation: 2019 FC 199**

**Ottawa, Ontario, February 18, 2019**

**PRESENT: THE ASSOCIATE CHIEF JUSTICE**

**BETWEEN:**

**MARGARET ELLEN (PEGGY) SAKOW**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Nature of the Matter

[1] Margaret Ellen Sakow is a 71-year-old citizen of the United States of America [USA]. In February 2017, she applied for permanent residence from within Canada on humanitarian and compassionate [H&C] considerations based on her personal circumstances, family ties and ties to the community. She disagrees with the determination of an Immigration Officer rejecting her application on the grounds that she has not shown sufficient H&C grounds to justify an

exemption from the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

## II. Facts

[2] Now as a widow, the Applicant's only living close relatives are her mother, her sister, and her brother-in-law, who are all Canadian citizens.

[3] Although she has lived most of her life in the USA, she purchased a home in Westmount, Quebec in 1980, close to her mother's and sister's home, and has been travelling there frequently to visit her family and spend time with them. In 1988, she was issued a study permit, which was renewed until the completion of her studies. In 1990, she obtained a Master's degree in Education from McGill University.

[4] In February 2017, the Applicant applied for permanent residence on H&C grounds. At that time, her date of last entry into Canada was December 14, 2016.

[5] In her application, she alleged that her aging mother's health was deteriorating, as she had been diagnosed with a spinal cord infection in 2014, and that her mother needed the Applicant's spiritual support and assistance with everyday tasks. The Applicant also has multiple charitable and community engagements in Canada.

[6] On September 18, 2017, her application was initially refused because an immigration officer was not satisfied that there were sufficient H&C considerations to justify an exemption under the IRPA.

[7] The Applicant filed an application for leave and judicial review; however, in January 2018, she filed a notice of discontinuance after the Deputy Attorney General of Canada offered to settle her application and to ask another immigration officer to conduct a new evaluation of her application. She was also given the opportunity to provide updated documentation.

[8] In a letter dated March 7, 2018, she explained that her presence was irreplaceable to her mother and described the effort needed to take care of her. She adds that she also wants to give her sister and brother-in-law the opportunity to travel and enjoy their retirement while she cares for her mother and pursues her community engagements.

[9] In a decision dated April 17, 2018, the Immigration Officer in charge of conducting the new evaluation determined that the Applicant had not shown sufficient H&C grounds to justify an exemption from the requirements of the IRPA.

[10] As of the time of the hearing before this Court, the Applicant held a visitor status valid to December 31, 2018.

## III. Impugned Decision

[11] In rendering her decision, the Immigration Officer considered the Applicant's establishment in Canada, her personal circumstances, her ties to her family, her ties to the community and the hardship she would face if she were to return to the USA.

[12] The Immigration Officer found that the Applicant's circumstances were similar to those of many children living apart from their parents. While she recognizes that the Applicant wants to care for her mother, there is no evidence that she cannot continue to do so as a citizen of the USA. The Applicant can visit Canada without a visa and can apply to extend her stay to remain for a longer period of time, as she has done in the past. While the Immigration Officer recognized that the Applicant herself is 71 years old, she has provided no medical evidence that travel between Canada and the USA is difficult.

[13] Furthermore, the Applicant's sister and brother-in-law have so far been able to take care of the Applicant's mother. If needed, they could hire professional help to assist the Applicant's mother or place her in a retirement home with independent living for seniors.

[14] There is no evidence that the Applicant's presence in Canada is essential. The Applicant can stay in contact with her family by visiting frequently, or by maintaining contact through modern tools of communication.

[15] The Immigration Officer found the Applicant had made important connections in the country, having studied at McGill University and having joined the Temple Emanu-El-Beth Sholom where she taught English to Jewish newcomers to Canada. The Applicant also co-founded The Temple Committee Against Human Trafficking which cooperated with other faith-based anti-trafficking organizations and the Royal Canadian Mounted Police, among others. The Applicant provided an outlet for young singers to perform and also co-organized fundraisers for Breast Cancer Action Montreal.

[16] However, the Immigration Officer found that this was not sufficient to justify the exercise of the Minister's discretion. The Applicant was involved in the Canadian community as a citizen of the USA and there is no evidence that she could not continue to do so in that capacity. The H&C analysis is not based on whether the Applicant would be a welcome addition to the community; it is an exceptional measure and not an alternate means of applying for permanent residence.

[17] If the Applicant were to return to the USA, she would be familiar with the language and the culture, having resided there for an extended period of time. It is where she and her husband owned a home and where they ran their business.

[18] Lastly, the Immigration Officer found that the Applicant's clean criminal record was commendable, although she afforded little weight to that fact, since residents of any country have a duty to comply with laws of general application.

## IV. Issues and Standard of Review

[19] This application for judicial review raises a single issue:

> *Did the Immigration Officer err in finding insufficient H&C factors to grant the Applicant an exemption from the requirements of the IRPA?*

[20] Denial of H&C relief is reviewed on the standard of reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 44-45). Granting H&C relief is a discretionary decision which aims to mitigate the rigidity of the law. Significant deference is owed to the decision-maker (*Brambilla v Canada (Citizenship and Immigration)*, 2018 FC 1137 at para 8).

## V. Analysis

[21] Subsection 25(1) of the IRPA sets out the conditions allowing a foreign national to obtain permanent resident status on humanitarian and compassionate grounds:

| **Humanitarian and compassionate considerations — request of foreign national** | **Séjour pour motif d'ordre humanitaire à la demande de l'étranger** |
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| **25 (1)** Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — | **25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur |

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| other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected. | demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché. |

[22] In this case, the Applicant stated at question 8 of her *Supplementary Information Humanitarian and Compassionate Considerations* form that she was also seeking an exemption from the requirement to apply from outside Canada. Subsection 11(1) of the IRPA sets out this requirement:

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| **Application before entering Canada** | **Visa et documents** |
| **11 (1)** A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act. | **11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi. |

[23] In that respect, I note that as the Applicant submits and the record shows, she has travelled frequently between the USA and Canada, including at least once after she submitted her application for permanent residence from within Canada on H&C grounds. As there is no indication that she could not have applied from outside Canada, this weakens any argument that she needs this particular special relief from the rigidity of the law.

[24] Moreover, the Applicant had the onus to convince the Immigration Officer that granting her permanent residence was justified on sufficient H&C grounds. After considering her personal circumstances, including her family ties and her ties to the community, the Immigration Officer concluded that the Applicant had not met that burden.

[25] While the Immigration Officer understands the Applicant's concerns with living apart from her mother, the Applicant benefits from freedom of movement between the USA and Canada and continues to be able to share the responsibility of caring for her mother with her sister and her brother-in-law. It was reasonable to find that the Applicant is already able to spend a significant portion of every year in Canada, with a possibility to periodically extend her stay through a temporary status. The Applicant would also be able to stay in touch with her mother, sister and brother-in-law through modern tools of communication while she is away.

[26] Furthermore, it was reasonable for the Immigration Officer to acknowledge the Applicant's age, but to find that it did not prevent the Applicant from travelling between the USA and Canada, especially given that the Applicant provided no evidence she suffered from

any health conditions and that she stated that she wished to be granted permanent residence in part to give her older sister an opportunity to travel.

[27] While the Applicant relies on a letter from her mother's doctor stating that she requires the help of her two daughters, it does not explain why the Applicant's mother would require the help of two persons, and does not make any mention of the Applicant's brother-in-law. Besides, while the Applicant suggests that she needs her sister's help for various activities with her mother, she also submits that being granted permanent residence would allow her to take care of her mother alone while her sister and her brother-in-law travel. As such, it was reasonable for the Immigration Officer to find that these circumstances were not sufficient grounds to grant permanent residence to the Applicant.

[28] The Applicant's mother chooses to live alone and does not wish to hire professional help or move to a retirement home. While the Applicant's mother is entitled to make these lifestyle choices, her preference does not entitle the Applicant to be granted permanent residence.

[29] The possibility that the Applicant and her mother would be faced, through their own choices, with a situation they believe is less than ideal is not sufficient grounds to justify an exemption from the requirements of the IRPA and to grant permanent residence to the Applicant.

[30] In the circumstances, the Applicant has failed to demonstrate that the Immigration Officer unreasonably concluded that her presence in Canada was sufficiently essential to her family, such that it would justify granting her permanent residence without regards to the

requirements set out in the IRPA. While one of the IRPA's objectives is indeed to see that families are reunited in Canada, the IRPA also contains mechanisms other than permanent residence to achieve this goal. Furthermore, as noted by the Immigration Officer, invoking H&C grounds is not simply an alternate means of applying for permanent residence status in Canada (*Kanthasamy*, above at para 23).

[31] Although the Immigration Officer commended the Applicant's strong sense of community and contributions to Canadian society, she found that they were not sufficient to justify granting permanent residence to the Applicant. This conclusion is reasonable, as the Applicant does not need permanent residence in order to pursue these engagements. The Applicant has not shown that they require an ongoing commitment, or that her presence in Canada is necessary to maintain those commitments.

[32] The Applicant would not face any particular difficulty if she were to return to the USA; she has, in fact, gone back and forth several times in the past.

[33] Lastly, I find there is no basis to conclude that the Immigration Officer applied a "hardship" test instead of a "compassionate" test. The Immigration Officer was alive to the effect of her decision on the Applicant and her family. For instance, she was sensitive to the Applicant's age, her concerns about her mother's health and generally, her family's preferences and lifestyle choices, but concluded that they were not sufficient to justify granting permanent residence. This also demonstrates that the Immigration Officer took the time to assess the entirety of the evidence in reaching her conclusion.

## VI. Conclusion

[34] While I have much sympathy for the Applicant's situation and her desire to be close to her family, I cannot conclude that the Immigration Officer committed a reviewable error by failing to exercise her discretion reasonably. The Immigration Officer properly considered the evidence and her reasons are justified, transparent, and intelligible: they allow this Court to understand her conclusions. It was reasonable to find the H&C mechanism is not an alternate immigration scheme and to accordingly reject the application.

[35] This application for judicial review is therefore dismissed. The parties have proposed no question of general importance for certification and none arises from the facts of this case.

[36] Finally, and although it was not raised by the parties, the style of cause should be amended to properly identify the Respondent as the Minister of Citizenship and Immigration, instead of the Minister of Immigration, Refugees and Citizenship (subsection 4(1) of the IRPA).

**JUDGMENT in IMM-1962-18**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed;

2. No question of general importance is certified;

3. The style of cause is amended to replace the "Minister of Immigration, Refugees and Citizenship" with the "Minister of Citizenship and Immigration".

"Jocelyne Gagné"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1962-18 |
| **STYLE OF CAUSE:** | MARGARET ELLEN (PEGGY) SAKOW v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | DECEMBER 20, 2018 |
| **JUDGMENT AND REASONS:** | GAGNÉ A.C.J. |
| **DATED:** | FEBRUARY 18, 2019 |

**APPEARANCES:**

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| David Berger | FOR THE APPLICANT |
| Anne-Renée Touchette | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |