

Federal Court



Cour fédérale

Date: 20190228

Docket: IMM-3011-18

Citation: 2019 FC 247

Ottawa, Ontario, February 28, 2019

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

REEM SABAH ABDULAMEER SHABAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. **Introduction**

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA] of a decision of an Officer at the Canadian Embassy in Romania refusing the application of Ms. Reem Sabah Abdulameer Shaban [the Applicant] for permanent residence on humanitarian and compassionate grounds [H&C], dated May 3, 2018 [the Decision]. Previously, the Applicant was found to be excluded from the Family

Class under paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the IRPR].

[2] The Officer refused the application on the grounds that the H&C considerations raised were insufficient to warrant granting an exemption from the Applicant's exclusion as a member of the Family Class. Namely, the Officer concluded that the Applicant would not suffer undue hardship in continuing to live in Iraq.

II. Background

[3] The Applicant was born in 1995, is a citizen of Iraq, and she resides in the city of Baghdad where she also grew up.

[4] The Applicant and her spouse Alhareth Sabah Al-Dujaili [Mr. Al-Dujaili] began their romantic relationship in early 2013 and entered into an Islamic customary marriage contract in August 2014. The Applicant claims that at that point, she and her husband did not yet consider themselves to be officially married because they had not yet completed the third step of the Islamic marriage process (a wedding ceremony and reception followed by consummation of the marriage).

[5] Mr. Al-Dujaili is also a citizen of Iraq and became a permanent resident of Canada in September 2014 as a dependent of his mother, shortly after he and the Applicant had concluded their marriage contract.

[6] Before completing the third step of their marriage, Mr. Al-Dujaili applied to sponsor the Applicant as his spouse in April 2015. He claims that in November 2014, his immigration consultant told him that the marriage contract would suffice for him to qualify as the Applicant's sponsor.

[7] On October 13, 2015, Mr. Al-Dujaili received a letter stating that the Applicant was excluded from the Family Class under paragraph 117(9)(d) of the IRPR because he had not declared the Applicant as his spouse in his application for permanent residence.

[8] Ultimately, in August 2016, Mr. Al-Dujaili was granted an exemption permitting him to retain his permanent resident status for H&C grounds despite failing to declare the Applicant as his spouse.

[9] In September 2016, the Applicant and Mr. Al-Dujaili celebrated their marriage in Iraq.

[10] In February 2017, the Applicant submitted an application to be granted an exemption from her inadmissibility on H&C grounds under subsection 25(1) of the IRPA.

[11] The principal grounds raised for requesting H&C relief were family reunification, establishment (of Mr. Al-Dujaili) in Canada, the Applicant's ties to Canada, and country conditions in Iraq. The Applicant also made submissions to explain that Mr. Al-Dujaili did not believe they were married when he applied for permanent residence and included his statutory declaration to that effect.

[12] On May 3, 2018, the H&C application was denied on the basis that the Applicant did not establish undue hardship, or other H&C grounds, justifying an exemption from the Applicant's inadmissibility under subsection 25(1) of the IRPA.

[13] The Applicant now seeks judicial review of this decision.

III. Impugned decision

[14] In the decision letter dated May 3, 2018, the Officer held that the Applicant does not meet the requirements for immigration to Canada. The Officer first noted that the Applicant is excluded from the Family Class under subsection 12(1) of the IRPA and paragraph 117(9)(d) of the IRPR because Mr. Al-Dujaili did not declare her in his application for permanent residence even though they were married. The Officer further held that it assessed the request for an exemption on H&C grounds and concluded as follows:

After consideration of your application and the supporting information provided, there was no undue hardship identified for you and your sponsor to live in your country. I have concluded that humanitarian and compassionate considerations do not justify granting you an exemption from any applicable criteria or obligation of the Act.

[15] In addition to the decision letter, the Global Case Management Notes [GCMS Notes] provide further reasons for the decision under review drafted by two separate Officers [collectively the Officer] (*Wang v. Canada (Citizenship and Immigration)*, 2018 FC 368 at para 9).

[16] In an entry recorded in the GCMS notes on November 13, 2017, the First Officer made a number of observations regarding the exclusion under paragraph 117(9)(d) of the IRPR, namely that the Applicant's explanation that she and Mr. Al-Dujaili did not consider themselves married when he applied for permanent residence is not acceptable. The Officer further held that:

Applicant seems to be no different from the rest of 6.6 million people living in Baghdad - which is a relatively stable area in Iraq. While I understand that separation from spouse is not convenient to either, I note that it was sponsor's choice to misrepresent marital status and to proceed with his landing, although given his new marital status he was no longer eligible as mother's dependent.

[17] Ultimately, the Officer concluded that there are insufficient H&C factors to overcome the eligibility requirement and that there is no undue hardship preventing the Applicant and Mr. Al-Dujaili from living in Iraq. At the end of this entry, the Officer stated "File to IPM for H&C review."

[18] A second entry in the GCMS Notes, drafted by a Second Officer and dated March 13, 2018, provides further reasons for dismissing the H&C application. The Officer first stated: "Case reviewed for H&C consideration. The main point here is the interpretation of marriage [sic] by PA and sponsor," and rejected the Applicant's explanation that Mr. Al-Dujaili unintentionally omitted her from his application for permanent residence.

[19] The Officer then stated as follows with respect to the H&C grounds raised in the application in a paragraph entitled "Hardship":

Recognising that Iraq is not the safest country in the world, I do not believe that is sufficient to justify H&C grounds. [The Applicant] states that as a woman, it is harder for her, however, nothing prevents the sponsor from visiting or ever moving back to

Iraq. Sponsor being close to his family in Canada is not a point sufficiently solid to justify H&C. They appear to have extended family network in both countries. Sponsor has been visiting on a regular basis and there is no indication that their situation in Iraq could constitute undue hardship. H&C grounds are insufficient to justify an exemption. [The Applicant] and spouse were married prior to landing, this is a fact, not a customary [*sic*] practices predating an official marriage. Request for H&C declined.

IV. Issues

[20] The Applicant raises three issues in this application:

- a) Did the Officer fail to consider evidence and submissions raised by the Applicant contradicting the Officer's findings regarding hardship?
- b) Did the Officer fetter its discretion by placing undue weight on the fact that the Applicant is excluded under paragraph 117(9)(d) of the IRPR?
- c) Did the Officer breach the Applicant's right to procedural fairness by failing to provide her with an opportunity to respond to its concerns?

[21] Ultimately, I find that this matter raises a single material issue: was the Officer's assessment of the Applicant's evidence and submissions produced in support of her H&C application, notably with respect to hardship, reasonable?

V. Standard of review

[22] The Officer's exercise of discretion in assessing H&C considerations entails an analysis of questions of mixed fact and law and shall be reviewed on a reasonableness standard (*Kaur v Canada (Citizenship and Immigration)*, 2017 FC 757 at paras 54-55; *Kanthisamy v. Canada (Citizenship and Immigration)*, [2015] 3 SCR 909).

VI. Analysis

A. *Insufficiency of evidence demonstrating hardship*

[23] The Applicant argues that the Officer ignored evidence that contradicted his findings with respect to hardship, namely, country condition documents demonstrating that Baghdad is a dangerous place to live.

[24] She also submits that the Officer fettered its discretion by placing undue weight on the fact that the Applicant is excluded under paragraph 117 (9)(d) of the IRPR. In this regard the Applicant cites jurisprudence, such as *Sultana v. Canada*, 2009 FC 533, to the effect that the overriding consideration in this H&C application should not be the basis for the Applicant's inadmissibility, and that the Officer therefore failed to properly consider the humanitarian and compassionate considerations raised in the application.

[25] The Applicant further argues that the first Officer violated her right to procedural fairness by suggesting that she and Mr. Al-Dujaili lacked credibility in assessing her evidence, notably statutory declarations explaining the confusion resulting in the marital status misrepresentation.

[26] The Officer's reasons rejecting the H&C application were short, and normally would be criticized for their brevity. However, in this instance the brevity of the reasons reflected the lack of information provided by the Applicant to support her claim for relief, notably with respect to the hardship that she will suffer if she is to remain in Iraq. In essence, the Officer concluded that there was insufficient evidence provided to support the Applicant's H&C claim. I find this to be reasonable given the lack of evidence filed in support of the application.

[27] Their evidence of hardship is as follows, with that of the Applicant being paragraph 25, and that of Mr. Al-Dujaili, paragraphs 27 to 31 as follows:

25. It would also cause severe hardship if Alhareth returned to live in Baghdad to be with me. Alhareth has now been living in Canada for two and a half years. He is established there. He is close to his family members in Canada, including his immediate family as well as extended members of his family. He also has made many friends in Canada. He has a good job with a good salary. In addition, Iraq is an extremely dangerous country. It is for this reason that I chose to spend many nights staying with my relatives who live closer to my school. I avoid being outside in the streets of Baghdad as much as possible. Also, as a woman in Iraq, I will face difficulty with education and other opportunities. Furthermore, we want our children to be raised in Canada with all the opportunities offered in that country. I have heard nothing but positive things about Canada and wish to join my family members there and make it my home.

[...]

27. Reem and I have many family members in Canada who we are very tied to. My mother, step-father and step-brother are here, as are other relatives such as uncles, aunts and cousins. My step-brother is married to Reem's sister, who also lives in Canada.

28. Reem and I are very much in love. The first few months of our marriage, when we could be together, were incredible. Any separation between Reem and I would result in severe hardship. I cannot imagine being separated from her during our marriage.

29. I am very established in Canada. My family is here and I spend a lot of time with my mother, my step—father and my sister, as well as more distant relatives in the Toronto area. I have a good job in Canada and am easily able to support myself here. I would like to improve my education and skills. Eventually, I would like to work for a business to get experience and then my dream is to start a business of my own one day.

30. Reem and I would like to start a family. We want to buy a house in Canada and raise our children here. Reem and I both speak English, have good educations, are ambitious individuals with strong family and community support and have bright futures here in Canada. Canada's Muslim community is thriving and we want to contribute to it during our time in Canada.

31. It would also cause severe hardship for Reem and I to be together in Iraq. Not only is the country extremely dangerous, there are not the same opportunities for us professionally. As a woman, Reem will face difficulty with education and other opportunities. Furthermore, we want our children to be raised in Canada with all the opportunities offered in this great country.

[28] Comments with respect to hardship concerning the couple's safety were raised "in addition" to other issues. They were limited to general statements that Iraq is an extremely dangerous country. The effects of these country conditions on the Applicant concentrated on the limited fact that she was required to stay with a relative close to her technical college many nights and that she would avoid being outside on the streets of Baghdad as much as possible.

[29] The Applicant also stated that "as a woman in Iraq, I will face difficulty with education and other opportunities." This statement however, was advanced on a comparative basis with opportunities in Canada. The evidence regarding limitations on education appears to be contradicted somewhat by the fact that she continues to attend the technical College, but does so with the inconvenience of living with a relative closer to the institution.

[30] Similarly, Mr. Al-Dujaili's evidence primarily emphasized lost opportunities and separation from family members and friends in Canada, rather than any hardship he would face in returning to Iraq. As the Officer noted, Mr. Al-Dujaili traveled freely back and forth from Canada to Iraq on a number of occasions to stay with the Applicant, without any apparent difficulty.

[31] Overwhelmingly, the hardship complained of is about lost opportunities living in Canada, separation from Canadian relatives, with a mention that Iraq is extremely dangerous and that the Applicant faces discrimination which will affect her education and other opportunities.

[32] In a nutshell, the Applicant argues that the Officer should have given more weight to the country condition documentation demonstrating that Baghdad is a very dangerous place to live in. These submissions notably point to the first Officer's statement that the "Applicant seems to be no different from the rest of the 6.6 million people living in Baghdad — which is a relatively stable area in Iraq."

[33] The Applicant took exception to the comparative security situation in Baghdad. Security conditions, although dangerous did not appear to have had much impact on the Applicant based on her evidence. Whatever the discrimination against women in Baghdad, there was no mention of this affecting the Applicant except in comparison to the better conditions and opportunities available to women living in Canada. It is also worth noting that the Applicant has been living in Baghdad her entire life and would presumably have concrete evidence of hardship at her disposal beyond the generalized statements presented in support of her application.

[34] I agree with the Respondent that there is insufficient evidence demonstrating hardship and that the Officer addressed the limited materials before it. Reference to country condition documentation or generalized hardships in the country, or in Baghdad specifically, cannot make up for the absence of any concrete evidence establishing the impact of these country conditions on the Applicant.

[35] I come to this conclusion particularly, because the evidence of the Applicant and Mr. Al-Dujaili demonstrates that their hardship and security concerns are secondary to the loss of education and work opportunities in Canada that would be caused by their not being able to live in Canada.

[36] This being my conclusion, I also reject the Applicant's submission that the Officer's overriding concern related to her inadmissibility issues, to the detriment of any consideration of hardship. The Officer was entitled to consider the misrepresentation resulting in the Applicant's inadmissibility giving rise to the application for H&C relief, in addition to the other factors raised (*Sibanda v. Canada (Citizenship and Immigration)*, 2018 FC 806 at paras 26-27; *Sekinatu v. Canada (Citizenship and Immigration)*, 2015 FC 728 at paras 14-24; *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 27). The Officer's analysis in this respect was reasonable and did not amount to a fettering of its discretion.

[37] I similarly do not find that the evidence supports a conclusion that unfair credibility findings were made against the Applicant or Mr. Al-Dujaili. In any event, even if this were the case, such findings would not be relevant given the absence of evidence supporting the Applicant's claim for H&C relief based on the hardship of continuing to live in Iraq.

VII. Conclusion

[38] For the foregoing reasons, I conclude that the Officers' decision was reasonable and did not breach the Applicant's right to procedural fairness. Accordingly, the application must be dismissed. There are no questions for certification.

JUDGMENT in IMM-3011-18

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to reflect the correct Respondent, the Minister of Citizenship and Immigration;
2. the application for judicial review is dismissed; and
3. no questions are certified.

“Peter Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3011-18

STYLE OF CAUSE: REEM SABAH ABDULAMEER SHABAN V MCI

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