Federal Court  Cour fédérale

Date: 20190308

Docket: IMM-3703-18

Citation: 2019 FC 287

Ottawa, Ontario, March 8, 2019

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

DOLORES PADDAYUMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the decision of an immigration officer at Citizenship and Immigration Canada dated July 20, 2018, wherein the officer determined that the Applicant had not complied with a request for documentation under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA], and therefore dismissed her application for permanent residence.

II. Background

[2] The Applicant, Dolores Paddayuman, is a citizen of the Philippines born May 8, 1970.

[3] In October 2014, the Applicant applied for a permanent resident visa under the live-in caregiver program [the Application]. The Applicant's husband, Noel Paddayuman, and two daughters were included in the Application.

[4] By way of a letter dated July 16, 2015, the Applicant was asked to provide a number of documents relating to Mr. Paddayuman and her daughters.

[5] In a letter dated April 5, 2016, the Application was refused by an immigration officer on the basis that the Applicant had not provided the requested documents. It was not stated in this letter which particular documents were outstanding.

[6] The Applicant filed an application for leave and judicial review on May 4, 2016 (IMM-1858-16). A notice of discontinuance was filed on July 13, 2016, and the matter was returned for reconsideration.

[7] The Application was then forwarded to a visa office in Manila, the Philippines [the Manila Visa Office], to assess the admissibility of Mr. Paddayuman, as he has two criminal charges from 1986 and 1993. The 1986 charge relates to "attempted homicide", and the 1993 charge relates to "slight physical injuries".

[8] Almost two years later, in a letter dated May 17, 2018, the Manila Visa Office requested that the following information related to Mr. Paddayuman be submitted within 30 days:

i. A newly completed Schedule A Background Declaration form with updated information;
ii. A new National Bureau of Investigation [NBI] clearance certificate;
iii. NBI certification outlining all criminal charges, including a description of the charges, date when the charges were filed, and the disposition of the charge;
iv. Mr. Paddayuman's written account of the circumstances surrounding each incident that led to the cases filed against him, with information from the time the incident started to happen until it was reported to the police.
v. All pertinent police reports, testimonies, affidavits, written evidence, court orders, decisions, and documents related to the cases listed; and
vi. If case had been dismissed: out of court settlement documents, affidavits of admission, or any other documents related to the dismissal of the case.

[9] The Applicant responded by submitting the following documents:

i. A newly completed Schedule A Background Declaration form;
ii. A new NBI clearance certificate indicating that Mr. Paddayuman has no criminal record;
iii. Two written statements and two sworn affidavits by Mr. Paddayuman (one relating to each charge) outlining the events that took place in relation to each charge; and
iv. A clearance certificate from the Second Municipal Circuit Trial Court in Cabagan, Isabela, the Philippines, indicating that each case against Mr. Paddayuman had been dismissed and that there are no cases filed, pending, or decided against Mr. Paddayuman.

III. Decision Under Review

[10] In a Global Case Management System [GCMS] entry dated June 27, 2018, written by an immigration officer from the Manila Visa Office, the officer noted that he or she could not assess Mr. Paddayuman's admissibility because insufficient information had been provided [the GCMS Notes]. Specifically, the officer noted that the certification from the Second Municipal Circuit Trial Court was not sufficient:

> … The written explanation itself lacked the details that we specified and asked for in our letter dated 17 May 2018 which was to provide "All pertinent police reports, testimonies/affidavits/written evidence, court orders/decision/documents relation to the cases(s) listed." While the charge was dismissed on 05 Oct 1993, Noel did not provide these documents such as police reports, testimonies, affidavits and counter-affidavits that pertain to the case and would outline the elements that gave rise to the dismissal based on his explanation. The abovementioned documents are necessary to make a proper and informed assessment of Noel's admissibility on criminal grounds. Noel was made aware of the requirement to provide the above in the same letter we sent to him on 17 May 2018. Further, our letter instructed that if the case has been dismissed, Noel was to provide copies of documents that relate to the dismissal of the case such as the court order, out of court settlement documents, affidavit of admission, etc. Noel has not provided any of this. He has only provided a certification from the 2nd Municipal Trial Court of Cabagan, Sto-Tomas, Isabela stating that the two cases filed against him had been dismissed. In the absence of documents that would allow me to make a complete assessment of Noel's admissibility on criminality grounds, I am not satisfied that Noel is not criminally inadmissible to Canada. Peer verification complete.
>
> [Emphasis added]

[11] As a result, the officer from the Manila Visa Office concluded that he or she was not satisfied that Mr. Paddayuman is not criminally inadmissible to Canada.

[12] By way of a letter dated July 20, 2018, immigration officer JT-P at Citizenship and Immigration Canada in Vegreville, Alberta [the Officer] refused the Application on the basis that the Applicant had failed to produce the requested documentation, and therefore the Officer was not satisfied that Mr. Paddayuman was not inadmissible to Canada on grounds of criminality [the Decision].

[13] While the reasons in the Decision are brief, the GCMS Notes constitute part of the Officer's reasons and will be treated as such.

[14] The Applicant requested reconsideration of the refusal, on the basis that all available documents relating to the charges against Mr. Paddayuman had been provided. On August 13, 2018, immigration officer KH refused to reconsider the Decision on the basis that the documentation provided had been considered.

IV. Issue

[15] The issue is whether the Officer was reasonable in determining that the Applicant had provided insufficient documentation.

[16] The Applicant also raises a procedural fairness argument, arguing that immigration officer KH failed to properly address her request for reconsideration, and that this failure denied the Applicant procedural fairness. However, the Applicant's request for reconsideration was considered and refused, and there was no denial of procedural fairness.

V. Standard of Review

[17] The standard of review is reasonableness.

VI. Relevant provisions

[18] Subsection 16(1) of the IRPA states that a person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce all relevant evidence and documents that the officer reasonably requires.

[19] Paragraph 36(1)(c) of the IRPA states that a foreign national is inadmissible on the grounds of serious criminality for committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

[20] Paragraph 36(2)(c) of the IRPA states that a foreign national is inadmissible on the grounds of criminality for committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.

[21] Paragraph 18(2)(c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], states that persons who have committed no more than one act outside of Canada that that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, are deemed to have

been rehabilitated if a number of conditions are satisfied, including that at least 10 years have elapsed since the commission of the offence.

VII. Analysis

A. *Was the Officer reasonable in determining that the Applicant provided insufficient documentation?*

[22] There is no suggestion by the Applicant that the request for documentation, by way of the May 17, 2018 letter from the Manila Visa Office, was unreasonable. The documents requested were reasonably tied to the Officer's need to assess whether Mr. Paddayuman was criminally inadmissible.

[23] Rather, the dispute between the parties centers around whether the Officer was reasonable to conclude that the documents provided by the Applicant did not satisfy the requests listed at bullets five and six of the May 17, 2018 letter, which asked Mr. Paddayuman to provide:

> (v) All pertinent police reports, testimonies, affidavits, written evidence, court orders, decisions, and documents related to the cases listed; and
>
> (vi) If case had been dismissed: out of court settlement documents, affidavits of admission, or any other documents related to the dismissal of the case.

[24] The Applicant's direct response to these requests consisted of a clearance certificate issued by a court clerk from the Second Municipal Circuit Trial Court in Cabagan, Isabela, Philippines, dated May 29, 2018, indicating that each case against Mr. Paddayuman had been

dismissed and that there were no cases filed, pending, or decided against Mr. Paddayuman [the 2018 Clearance Certificate].

[25] I note that the Applicant also provided an NBI clearance certificate indicating that Mr. Paddayuman had no criminal record. Additionally, in 2016, the Applicant had provided two clearance certificates, with effectively the same information as the 2018 Clearance Certificate, which are included in the Certified Tribunal Record and were before the Officer.

[26] The Applicant argues that the Officer erred in refusing the Application on the basis that the Applicant had failed to produce relevant evidence, for the following reasons:

i. The Officer either ignored the evidence provided by the Applicant or unreasonably failed to assess the evidence;
ii. As both charges occurred more than 25 years ago, it is unreasonable to expect the Applicant to produce police reports;
iii. As neither charge went to trial, it is unreasonable to expect the Applicant to produce the requested court documents, witness testimonies, transcripts or other such documents.

[27] The Respondent argues that the Officer was reasonable in refusing the Application, because:

i. Nowhere on the 2018 Clearance Certificate does it indicate why the charges were dismissed. This was specifically considered by the Officer in the GCMS Notes;

ii. The Applicant failed to provide the court orders dismissing each charge, despite the fact that the 2018 Clearance Certificate indicates that each charge was dismissed pursuant to a court order;

iii. The Applicant failed to show that additional documentation could not be obtained;

iv. The Officer did not ignore the written account provided by Mr. Paddayuman, and in fact mentioned it in the GCMS Notes.

[28] The Officer erred by refusing the Application on the basis that the Applicant had failed to produce relevant evidence. While the Officer was reasonable to request the documents listed at bullet points five and six of the May 17, 2018 letter, upon receipt of the Applicant's evidence, the Officer unreasonably failed to proceed and assess the Application on the basis of the evidence submitted. There is a failure here to reasonably consider the evidence provided in a contextual manner.

[29] First, it is unreasonable to require "testimonies", affidavits, and out of court settlement documents, for charges which were dropped. The Officer cannot reasonably require documents that do not exist. Second, the charges at issue occurred in 1986 and 1993, both at least 25 years prior to the Officer's Decision. The passage of such a significant amount of time, while not determinative, does suggest that the stringency of document requirements should be viewed with a purposive lens. This is particularly so in cases where the charges were relatively minor and were dropped prior to trial, and there is no suggestion of any lack of *bona fides* of the evidence submitted by the Applicant.

[30] The evidence submitted by the Applicant suggested:

i. Mr. Paddayuman was involved in two minor altercations, in 1986 and 1993;

ii. Charges related to both altercations were dropped; and

iii. Mr. Paddayuman has no criminal record.

[31] While the Applicant failed to produce the court orders dismissing each charge, as was requested by the Officer, the Applicant did produce the 2018 Clearance Certificate, as well as the two earlier clearance certificates, which list the date of the court orders, the judge who made each order, and an excerpt of text from the dispositive section of the 1993 court order.

[32] The Officer did not question the authenticity of the documents submitted by the Applicant. If the Officer accepted Mr. Paddayuman's evidence as he or she appears to have done, there is only one reasonable conclusion – that Mr. Paddayuman did not commit actions that would render him inadmissible from Canada on grounds of criminality within the meaning of paragraphs 36(1)(c) and 36(2)(c) of the IRPA.

VIII. Conclusion

[33] As a result, this application for judicial review is allowed.

[34] The Applicant argued that costs of $5000.00 should be awarded.

[35] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, states that no costs shall be awarded to or payable by any party in respect of an application for judicial review unless the Court, for special reasons, so orders.

[36] I find that such special reasons exist in this proceeding. The Applicant's matter is now being returned for a third analysis by an immigration officer. There has been a delay of almost five years since the Application was filed in October 2014, and the matter is still not finally resolved. Much, if not the entirety, of the responsibility for the delay lies with the Respondent. The effect of this delay has been to separate a family for a considerable period of time.

[37] As a result, I exercise my discretion to award $1500.00 in costs to the Applicant. Given the considerable delays that have occurred, the redetermination of this matter should be conducted as expeditiously as possible.

JUDGMENT in IMM-3703-18

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is sent back for redetermination by a different officer;

2. Costs to the Applicant in the amount of $1500.00.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3703-18
STYLE OF CAUSE:	DOLORES PADDAYUMAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	MARCH 7, 2019
JUDGMENT AND REASONS:	MANSON J.
DATED:	MARCH 8, 2019

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