Federal Court  Cour fédérale

Date: 20190524

Docket: IMM-5818-18

Citation: 2019 FC 739

Ottawa, Ontario, May 24, 2019

PRESENT: Madam Justice Roussel

BETWEEN:

AISHA THORNTON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Aisha Thornton, seeks judicial review of a decision dated November 6, 2018 by an Immigration Officer [Officer], refusing her application for permanent residence presented under the spouse or common-law partner in Canada class based on humanitarian and compassionate [H&C] grounds.

[2] The Applicant is a citizen of Pakistan who became a permanent resident of Canada in 2006 after being sponsored by her first husband with whom she has a Canadian-born child.

[3] In November 2008, the Applicant was charged with assault causing bodily harm against her son pursuant to subsection 267(b) of the *Criminal Code*, RSC 1985, c C-46. The Applicant pled guilty to the offence and was sentenced on March 30, 2010 to fifteen (15) months to be served in the community. After her conviction, the Applicant's son went to live with the Applicant's mother and brother in Pakistan.

[4] On May 4, 2015, the Applicant was found to be inadmissible as per paragraph 36(1)*(a)* of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and a deportation order was issued against her on January 6, 2016.

[5] Under removal order, the Applicant filed a pre-removal risk assessment [PRRA] application which was denied on June 28, 2018. An application for judicial review of that decision was heard on March 13, 2019 and is still pending a determination.

[6] In addition to filing the PRRA application, the Applicant also filed an application for permanent residence under the spouse or common-law partner in Canada class pursuant to section 123 and ff. of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] requesting an exemption from her criminal inadmissibility based on H&C considerations. Her current Canadian husband is the sponsor.

[7] On November 6, 2018, the application was denied.

[8] I agree with the Applicant that the Officer's decision must be set aside on the basis that it is unreasonable as it does not satisfy the criteria of "justification, transparency and intelligibility" set out by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

[9] In his letter to the Applicant on November 6, 2018, the Officer indicates that he is dismissing the Applicant's permanent residence application on the grounds that, as per subparagraph 72(1)(e)(i) of the IRPR, he had reasonable grounds to believe that the Applicant was inadmissible under paragraph 36(1)(a) of the IRPA. However, the decision letter makes no mention of any H&C considerations, other than stating that the Officer had conducted a "careful and sympathetic" review of the "application – which including (sic) all the submissions under Act 25(1) for humanitarian and compassionate grounds".

[10] A review of the Officer's reasons does not provide any more insight into the Officer's reasoning process for denying the application. The reasons consist mainly of a recital of the case history and of the Applicant's written submissions, procedural fairness letters and responses to the procedural fairness letter. While the Officer often uses titles suggesting that the section that follows will contain an analysis, the section is devoid of any analysis. Instead of analyzing the evidence, the Officer frequently asks open-ended questions which he then leaves unanswered, forcing the reader to speculate what his reasoning process might have been on any given issue. There is also no indication that the Officer considered all of the H&C grounds advanced by the Applicant or of the weight he gave to each factor.

[11] I agree with the Respondent that the reasons must be read in the context of the entire record and acknowledge that a decision maker is not required to refer to all the arguments or other details that the reviewing judge would have liked to have read, or to make an explicit finding on each constituent element of his or her reasoning that led to his or her final conclusion (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Newfoundland Nurses*]). In addition, I recognize that I must be deferential to the Officer's decision. However, this deference does not allow me to guess or speculate on the Officer's reasoning process if his reasons are not intelligible and do not allow me to understand the basis for his conclusion. As such, I cannot determine whether this conclusion falls within the range of possible and acceptable outcomes (*Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 para 11; *Newfoundland Nurses* at para 16).

[12] On the basis of the foregoing, I find the decision to be unreasonable. No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-5818-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The decision is set aside and the matter is remitted back to a different Immigration Officer for redetermination;
3. The style of cause is amended to replace the "Minister of Immigration, Refugees and Citizenship" with the "Minister of Citizenship and Immigration";
4. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5818-18
STYLE OF CAUSE:	AISHA THORNTON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MAY 22, 2019
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	MAY 24, 2019

APPEARANCES:

Kate Forrest	FOR THE APPLICANT
Lynne Lazaroff Philippe Proulx (Articling Student)	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kate Forrest Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT