Federal Court  Cour fédérale

Date: 20190815

Docket: IMM-6267-18

Citation: 2019 FC 1078

[CERTIFIED ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Montréal, Quebec, August 15, 2019

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MARCHELLE QUENNIE FLAMBERT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS
(Delivered from the bench at Montréal, Quebec, on August 15, 2019)

[1] Ms. Flambert is seeking judicial review of the dismissal of her application for permanent residence on humanitarian and compassionate [H&C] grounds.

[2] Ms. Flambert was born in Haiti in 1993. She left her homeland when she was 9 years old. She arrived in Canada in 2008 and claimed refugee protection. Her claim was rejected in October 2011.

[3] In 2011, when she was 17, Ms. Flambert gave birth to a son. She left home to stay with the child's father's family. She also had to stop studying. In 2015, after experiencing domestic violence, Ms. Flambert left her child's father. She then submitted an H&C application, which was denied in 2018.

[4] Before analyzing the errors raised by Ms. Flambert, I must consider the evidence presented in support of her application. It is well established that an H&C applicant must provide the officer with all the evidence necessary to support their application. Some of the officer's criticisms of Ms. Flambert as to the insufficiency of the evidence are justified. However, the officer could not therefore systematically reject Ms. Flambert's allegations that were not supported by independent documentary evidence. The officer should have taken into account the specific situation of Ms. Flambert, who became a mother to a child with health problems when she was 17 years old, who did not finish school and who obviously has limited resources. Moreover, the officer had to accept Ms. Flambert's assertions as true, unless the officer could provide a reason to question their credibility.

[5] For example, the officer gave no weight to Ms. Flambert's statements about her son's asthma. In this regard, Ms. Flambert said that in 2013, while in Ottawa, she had to take her son to the emergency room because of an asthma attack. Can we reasonably blame Ms. Flambert for

not having kept documentary evidence of this event? I do not believe so. In any event, Ms. Flambert's H&C application refers to her son's medical record, which, for some unknown reason, was not part of the officer's record.

[6] I turn now to the officer's analysis of the different factors that are relevant to an H&C application.

[7] The H&C officer found that Ms. Flambert had not demonstrated her establishment in Canada and that this was a negative factor. The officer appears to have based his finding on Ms. Flambert's failure to obtain a work permit for extended periods of time and on the lack of evidence of her ability to support herself. Yet the officer did not seem to give any weight to the fact that Ms. Flambert has lived almost half of her life in Canada. Being present in Canada for such a long time cannot reasonably be ignored: *Sivalingam v Canada (Citizenship and Immigration)*, 2017 FC 1185 at paragraphs 13–15. In addition, the officer's finding that establishment was a negative factor does not appear to genuinely take into consideration all of the challenges Ms. Flambert has faced. This way of segmenting the analysis is contrary to the teachings of *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909, in which the Supreme Court states that the officer must consider all the relevant factors.

[8] As for the situation in the country of origin, the officer seemed to recognize that the living conditions in Haiti are deplorable. However, he gave little weight to this factor because he disbelieved Ms. Flambert's statements while relying on unproven assumptions that he held to be true. For example, the officer did not believe Ms. Flambert's statement that she had no family in

Haiti other than her grandmother. It is difficult to imagine, however, what Ms. Flambert could have done to prove the absence of family members. The officer then assumed that Ms. Flambert's grandmother enjoys a good standard of living. The officer also speculated about possible trips that Ms. Flambert could have made to Haiti after she left for the United States when she was nine years old. It is difficult to reconcile this type of reasoning with the officer's statement on the following page that [TRANSLATION] "my role is not to make assumptions". Such forms of reasoning do not meet the standard of justification, transparency and intelligibility established by the Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190.

[9] Finally, the officer rejected the arguments based on the best interests of Ms. Flambert's child, mainly because of the lack of evidence. The officer characterized the issue of the child's best interests as a [TRANSLATION] "hypothetical exercise" and even went so far as to say that [TRANSLATION] "the only proven thing is that the applicant has a child born in Canada in 2011 and that the applicant loves her child". In doing so, the officer brushed off everything that Ms. Flambert wrote regarding her child's best interests.

[10] Whatever the shortcomings of the evidence presented by Ms. Flambert in this regard, the fact remains that her removal to Haiti will certainly confront the child with a dilemma: either he stays with his father, whom Ms. Flambert described as violent and unable to properly deal with her son's health problems, or he accompanies his mother to Haiti, a country with deplorable living conditions and where he does not speak the main language, Creole. As to the possibility that the child may return to Canada, the officer made an error similar to found by the Federal

Court of Appeal in *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paragraph 90, [2018] 2 FCR 229: “the assumption that the child could return to Canada is pure speculation and therefore unreasonable”.

[11] For these reasons, the application for judicial review is allowed, the decision of the H&C officer is set aside and the matter is referred back for redetermination by a different officer.

JUDGMENT in IMM-6267-18

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed;

2. The matter is referred back to another officer for redetermination.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6267-18
STYLE OF CAUSE:	MARCHELLE QUENNIE FLAMBERT v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	AUGUST 15, 2019
JUDGMENT AND REASONS:	GRAMMOND J.
DATED:	AUGUST 15, 2019

APPEARANCES:

Walid Ayadi	FOR THE APPLICANT
Michel Pépin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Walid Ayadi Lawyer Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT