

Federal Court



Cour fédérale

Date: 20200117

Docket: IMM-2877-19

Citation: 2020 FC 60

Toronto, Ontario, January 17, 2020

PRESENT: Madam Justice Simpson

BETWEEN:

BIBIANA PETER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on January 16, 2020)

I. PROCEEDING

[1] This application is for judicial review of a decision of a Senior Immigration Officer [the Officer] of Citizenship and Immigration Canada dated April 11, 2019 [the Decision], in which the Officer denied the Applicant's application for permanent residence on humanitarian and

compassionate [H&C] grounds. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. BACKGROUND

[2] The Applicant is a 57-year-old citizen of St. Lucia. She is single. She has two adult sons and two sisters who live in St. Lucia. She also has an adult son who is a Canadian permanent resident [the Canadian Son]. He lives here with his wife and stepdaughter.

[3] The Applicant arrived in Canada in 2004. She overstayed her visa and has lived here without status since that time. She has worked as a caregiver for the elderly as she had previously done in St. Lucia. However, she did not have a work permit and did not demonstrate that she had paid taxes on her income in Canada.

[4] In 2015, the Applicant was diagnosed with breast cancer. She is now in remission but takes Tamoxifen daily and needs to have her eyes checked every six months to monitor for problems that Tamoxifen may cause.

[5] Currently, the Applicant's Canadian Son and his wife provide her with financial and emotional support. They also help her with her doctor appointments.

[6] The Applicant believes that if she is returned to St. Lucia, she will face financial and medical hardship. She believes she will be unable to find employment due to her age and lack of

formal education. She also believes that she will not be able to pay for the medical care she needs. She does not allege that this care is unavailable. Her concern is the cost.

[7] The Applicant's two sons in St. Lucia are not able to help pay for her medical treatments. However, the Applicant's Canadian Son has expressed a willingness to support her financially.

III. THE DECISION

[8] Regarding establishment, the Officer found that establishment was not a strong positive factor because the Applicant has not respected Canadian immigration law.

[9] Regarding medical care, the Officer found that he had no information about the cost of Tamoxifen and eye exams and no corroboration of her inability to pay. This was significant in view of the Canadian Son's willingness to provide financial support.

[10] In conclusion, the Officer did not find the Applicant's case compelling and found that it did not justify a positive decision.

IV. THE ISSUES

1. Is the Decision unreasonable because the Officer conducted a hardship-centric analysis?
2. Is the Decision unreasonable because the Officer required the Applicant to corroborate her inability to pay for her medical treatment?
3. Is the Decision unreasonable because the Officer discounted the Applicant's establishment?

V. ISSUE 1 – HARDSHIP-CENTRIC

[11] In my view, the Decision cannot fairly be described as “hardship centric”. The Applicant is healthy, although in need of twice yearly eye exams and Tamoxifen, has an established career as a caregiver for the elderly, has job prospects in St. Lucia, has family there and has the financial support of her Canadian Son.

[12] Certainly hardships were considered because the Applicant framed her concerns about returning to St. Lucia as hardships. There was nothing unreasonable about this approach as part of a broad comprehensive analysis which included consideration of other factors such as her Canadian Son, her friends in Canada, her Canadian church and her establishment. The positive factors were not discounted by reason of her improper stay in Canada. Rather, all factors were balanced and the positive factors were ultimately outweighed.

VI. ISSUE 2 – MEDICAL ISSUES

[13] The concern the Applicant expressed in her evidence was whether medical treatment in St. Lucia would be available to her given its cost and her alleged inability to pay.

[14] In my view, in the absence of any information about the actual costs and given the Canadian Son’s offer of help, it was reasonable of the Officer to expect the Applicant to substantiate her claim that she could not afford treatment.

VII. ISSUE 3 - ESTABLISHMENT

[15] The Federal Court of Appeal in *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 has made clear that an Officer is entitled to consider an applicant's time in Canada without authorisation as a negative factor. In this case, the Officer indicated that the Applicant had not demonstrated "strong" establishment due to her breach of Canadian immigration laws. In my view, the Officer treated establishment as a neutral to negative factor and this was reasonable.

VIII. CONCLUSION

[16] For all these reasons the application will be dismissed.

IX. CERTIFICATION

[17] No question was posed for certification for appeal.

JUDGMENT in IMM-2877-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2877-19

STYLE OF CAUSE: BIBIANA PETER v THE
MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 16, 2020

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