Date: 20061005

Docket: IMM-1630-06

Citation: 2006 FC 1186

Ottawa, Ontario, October 5, 2006

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

AMINATA KEITA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Born on August 2, 1980, in Ottawa, Canada, Aminata Keita always thought she was a Canadian citizen. Two years after she was born, she had to leave the country with her parents for financial reasons. Her father still had a position with the Guinean Embassy, but he was reassigned to Mali. Four years later, the Keita family returned to its country of origin, Guinea. In 2001, when the applicant was 21 years old, she received a Canadian passport from the Canadian Embassy in Guinea. She then came to live in Montréal to study. After her arrival, she applied for a Canadian certificate of citizenship, which she received in 2003.

[2] As a result of the applicant's dealings with Citizenship and Immigration Canada, the Canadian authorities found that, in spite of the fact that Ms. Keita's place of birth was Canada, her parents had Guinean diplomatic status when she was born in 1980. Although according to the general rule, set out in paragraph 3(1)(*a*) of the *Citizenship Act*, R.S.C. 1985, c. C-29, that a person born in Canada after February 14, 1977, is entitled to obtain Canadian citizenship, there is a statutory exception that limits the scope of its application. According to paragraph 3(2)(*a*) of the same Act, this exception applies when, as in this case, the child is born in Canada, ". . . either of his parents was a citizen or lawfully admitted to Canada for permanent residence and either of his parents was (*a*) a diplomatic or consular officer or other representative or employee in Canada of a foreign government . . .".

[3] The applicant does not challenge the law as it stands and concedes that she cannot be granted Canadian citizenship because of her family situation. However, in order to have a legal status in the country, she was given an opportunity to make an in-Canada application for permanent residence, since she had come to live here in 2001. She submitted the application to the Canadian authorities in summer 2004.

[4] When it enacted section 11 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), Parliament established that an application for permanent residence made by a foreign national interested in settling in Canada must usually be made to the Canadian Embassy in the applicant's country of nationality or in the country where the applicant has been residing for at least one year, as stated in subsection 11(1) of the *Immigration and Refugee Protection Regulations*,

SOR/2002-227. In spite of this, there is an exception to the rule in Canada, as provided in subsection 25(1) of the IRPA, which the applicant relied on when she submitted her application in 2004. Basically, this exception enables the Minister, upon request of a foreign national who is inadmissible in Canada or who does not meet the requirements of the IRPA, to examine an application for permanent resident status made in Canada when it is justified by humanitarian and compassionate considerations.

[5] In the case at bar, on February 28, 2006, the immigration officer rejected the application for permanent residence on humanitarian and compassionate grounds made by Ms. Keita. This is the decision that is now being judicially reviewed before this Court.

ISSUES

[6] The following issues arise in this case:

A. The applicable standard of review

B. Ms. Keita's good faith

C. Is the immigration officer's decision reasonable?

BACKGROUND

[7] It bears mentioning that Ms. Keita applied to the Canadian Embassy in Guinea for a passport before coming to live in Canada to study. It should be specified that the Canadian passport application form does not ask any questions about the diplomatic status of a parent at the time of the

applicant's birth. Consequently, following her application, Ms. Keita had a duly obtained Canadian passport when she entered the country.

[8] Some time after she arrived, the applicant was issued a new Canadian passport, as her old one had been stolen. In 2003, she received a certificate of citizenship, which was issued in spite of the fact that, on the application form, the applicant surprisingly did not indicate whether one of her parents had diplomatic status. In fact, the applicant did not personally complete the written form to obtain the certificate. She claims that, instead, it was a friend who did it for her and that she signed it without even reading it beforehand. Although this is inexcusable in any case, this omission did not lead the immigration officer to conclude that the applicant had acted in bad faith.

[9] Nevertheless, after Ms. Keita's certificate of citizenship was issued, her actual family situation with respect to her parents' diplomatic status came to light, which is when the Canadian authorities confiscated her Canadian passport and certificate of citizenship. There seems to be an agreement between Canada and Guinea that Guinea is to inform the Canadian authorities of the presence of its diplomats and if they give birth to children in the country. This information was not available when the applicant's first Canadian passport was issued. The issue here is not to determine which government is to blame for the omission. Consequently, Ms. Keita cannot be said to have acted in bad faith.

STANDARD OF REVIEW

[10] As established in the case law in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the standard of review applicable to a decision on an application for permanent residence on humanitarian and compassionate grounds is reasonableness *simpliciter*.

ANALYSIS

[11] First of all, it is important to remember the immigration officer's role when reviewing an application for permanent residence on humanitarian and compassionate grounds, and that is what Layden-Stevenson J. succeeded very well in doing at paragraph 8 in *Agot v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 436, [2003] F.C.J. No. 607 (QL):

> It is useful to review some of the established principles regarding H & C applications. The decision of the ministerial delegate with respect to an H & C application is a discretionary one: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (*Baker*). The standard of review applicable to such decisions is that of reasonableness *simpliciter*: *Baker*. The onus, on an application for an H & C exemption, is on the applicant: *Owusu v. Canada (Minister of Citizenship and Immigration*), 2003 FCT 94, [2003] F.C.J. No. 139 per Gibson J. citing *Prasad v. Canada (Minister of Citizenship and Immigration)* (1996), 34 Imm.L.R. (2d) 91 (F.C.T.D.) and *Patel v. Canada (Minister of Citizenship and Immigration)* (1997), 36 Imm.L.R. (2d) 175 (F.C.T.D.). The weighing of relevant factors is not the function of a court reviewing the exercise of ministerial discretion: *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 (*Suresh*); *Legault v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 358 (C.A.) (*Legault*). The ministerial guidelines are not law and the Minister and her agents are not bound by them, but they are accessible to the public and the Supreme Court has qualified them as being of great assistance to the court: *Legault*. An H & C decision must be supported by reasons: *Baker*. It is inappropriate to require administrative officers to give as detailed reasons for their decisions

> as may be expected of an administrative tribunal that renders its decisions after an adjudicative hearing: *Ozdemir v. Canada (Minister of Citizenship and Immigration)* (2001), 282 N.R. 394 (F.C.A.)

[12] In addition, it is important to emphasize that an application on humanitarian and compassionate grounds is an exception to the general rule in Canada to the effect that an application for permanent residence is to be made abroad. In this regard, Rouleau J. stated the following at paragraph 15 in *Nazim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 125, [2005] F.C.J. No. 159 (QL):

> The humanitarian and compassionate process is designed to provide relief from unusual, undeserved or disproportionate hardship. The test is not whether the applicant would be, or is, a welcome addition to the Canadian community. In determining whether humanitarian and compassionate circumstances exist, immigration officers must examine whether there exists a special situation in the person's home country and whether undue hardship would likely result from removal. The onus is on the applicant to satisfy the officer about a particular situation that exists in their country and that their personal circumstances in relation to that situation make them worthy of positive discretion.

[13] Ms. Keita alleges the following with respect to the exceptional hardship she would suffer if she had to submit her application at a visa office in Guinea, as required by the legislation:

> [TRANSLATION]
> If I return to Guinea without completing my university studies in Montréal, I will have to give up my international career plans. In Guinea, women are not encouraged to get a university education, but rather to get married to an old man who is most probably illiterate and already has one or two wives and wants me to give birth to his children. This completely goes against my actual ambitions and plans.

The immigration officer correctly concluded that the applicant’s reasons were simply baseless assumptions.

[14] Moreover, in light of the circumstances in this case, Ms. Keita's ties to Canada are comparable with those of foreign nationals who have a student visa and come to the country to study. Everything seems to indicate that the immigration officer was sensitive to the applicant's situation, as her stay in the country was extended until April 2006, when, according to Ms. Keita, she was to finish her studies. The immigration officer stated the following in this connection:

> [TRANSLATION]
> I gave the applicant extensions on a number of occasions to enable her to prove to me that she would obtain her degree in April 2006 and to finish her studies before leaving. To date, I have received as documented evidence the results of only eight university courses taken since her return to Canada in 2001. The applicant will therefore not be granted any further extensions to stay longer in the country.

[15] As for the issue of the IP5 guidelines entitled *Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds*, published by Citizenship and Immigration Canada, it does not appear, upon reading the record in this case, that the immigration officer failed to comply with them.

[16] During the submissions by the parties before the Court, I learned that Ms. Keita currently has a pending refugee claim in the country. The Court will not comment on the matter, since its duty today is only to rule on an application for judicial review. The Court rules in favour of dismissing the application.

ORDER

THE COURT ORDERS that the application be dismissed.

No question is certified.

"Sean Harrington"

Judge

Certified true translation
Jason Oettel

FEDERAL COURT

SOLICITORS OF RECORD

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