Date: 20070720

Docket: IMM-2217-06

Citation: 2007 FC 755

Ottawa, Ontario, July 20, 2007

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

LATANYA AUSTINI

Applicant

and

THE SOLICITOR GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Latanya Austini, a failed refugee claimant, seeks judicial review of the April 4, 2006 decision of an expulsion officer not to defer her removal to St. Lucia.

1. Facts

[2] The Applicant is a 19 year-old citizen of St. Lucia and has been in Canada without status since 1998. The Applicant received a negative pre-removal risk assessment (PRRA) and was granted a stay of removal on April 28, 2006, pending the outcome of this application.

[3] The Applicant entered Canada in 1997 when she was eleven years of age and has been here ever since. Apart from her grandparents who live there, the Applicant claims to have little connection to St. Lucia.

[4] The Applicant's mother entered Canada on July 17, 1993, and made a refugee claim in 1997, which was refused in 1998. The Applicant is a named dependent in her mother's H&C application which was submitted on December 21, 2005. A determination on the application is pending. The Applicant's PRRA application was submitted on December 22, 2005, and she was informed of the negative result on April 4, 2006.

[5] The Applicant had successfully completed high school. She applied for a student visa which was denied because she had not yet been accepted at an educational institution in Canada. Subsequently, by an e-mail sent on April 3, 2006, the Applicant was informed of her acceptance to the Ontario College of Art & Design in Toronto.

[6] In her affidavit the Applicant attests that she was informed by the Expulsion Officer that she could return to Canada on a student visa within 2 weeks after returning to St. Lucia. The Applicant states that based on this representation she was anxious to return to her country so that

she could obtain a student visa and return to Canada. She consequently refused an offer of extra time to prepare for her removal. After being informed by her lawyer that it was unlikely, in her circumstances, that she could obtain a student visa and be permitted to return to Canada she did not leave.

[7] The Officer's notes, which were made on the same day of the interview, conflict with the Applicant's evidence. The notes acknowledge the Applicant's intention to return to Canada on a study permit and show that the Officer advised the Applicant's mother that she may approach the Canadian Embassy and apply for a study permit in order to return. The notes also record that the Officer informed the Applicant's mother that unfortunately the removal must be executed. The Officer did not believe that a deferral of removal was appropriate in this case.

2. Issue

[8] Did the Enforcement Officer commit a reviewable error in the exercise of her discretion in refusing to defer the removal in circumstances?

3. Standard of Review

[9] The standard of review applicable to a decision of an Expulsion Officer was considered in *Zenunaj v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1715 at paras. 19-22. In that case Justice Mosley held that if the question is essentially one of fact, the applicable standard of review is patent unreasonableness. I agree with my colleague's assessment of the applicable standard of review for decisions of expulsion officers. Since the issue here is a question of fact, I will review the Officer's decision on the patent unreasonable standard.

3. Analysis

[10] The Applicant argues that the Officer failed to properly consider the request to defer her removal. She contends that the Officer focused on the Applicant's student status and the issue of her student visa and did not turn her mind to other important factors such as the Applicant's age, the fact that she would be returning to a country she did not know and that she left when she was 11 years old. The Officer also failed to consider the circumstances of her pending H&C application and the fact that she would be returning without her mother. The Applicant contends that the Officer's decision was made without regard to the evidence. Further, the Applicant argues that she was misled by the Officer as to the likelihood of her obtaining a student visa upon her return to St. Lucia.

[11] In her written submissions the Applicant contends that she has a legal right to apply from within Canada as she does not have any criminal inadmissibility issues and her H&C application for permanent residence has been in process for 7 months and a decision should issue in the near future.

[12] The record indicates that the Officer did mention the outstanding H&C application in her notes to file. This factor was considered by the Officer. It is well accepted that a removal officers cannot be expected to undertake a full substantive review of the humanitarian circumstances that are to be considered as part of an H&C assessment. They have no jurisdiction or delegated authority to determine such applications and are not trained to do so. It is also well accepted that a pending H&C application is not sufficient to defer a removal.

[13] The Officer's evidence is that she "…informed the Applicant that removal had to be executed, but that [the Applicant] could apply for a study permit from St. Lucia at the Canadian Embassy". There is nothing on the record to cause me to doubt the Officer's evidence, which I prefer over the Applicant's evidence since the Officer, unlike the Applicant, has no vested interest in the outcome. I find, in the circumstances, that the Officer's information was not misleading. In any event, the impugned representations allegedly made by the Officer are of no consequence since, in the end the Applicant did not act on them. She did not leave the country.

[14] Given the limited jurisdiction of an expulsion officer, I am satisfied that the Officer's decision was made with regard to the evidence and that the Officer did not fetter her discretion in deciding as she did. In the circumstances, the Officer's decision is not patently unreasonable. Consequently, the application for judicial review will be dismissed.

[15] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(*d*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review of the April 4, 2006 decision is dismissed.

2. No serious question if general importance is certified.

"Edmond P. Blanchard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2217-06
STYLE OF CAUSE:	Latanya Austini v. The Solicitor General of Canada
PLACE OF HEARING:	Toronto, Ontario
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