

**Date: 20071126**

**Docket: IMM-261-07**

**Citation: 2007 FC 1238**

**Ottawa, Ontario, November 26, 2007**

**PRESENT: The Honourable Madam Justice Dawson**

**BETWEEN:**

**JELENA ZDANOVIC**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Jelena Zdanovic is a citizen of Lithuania. She came to Canada on a visitor visa in 2003 in order to visit her grown son, Sergey. Sadly, Sergey was murdered while she was visiting. Since then, Ms. Zdanovic has suffered from a major depression. For the last few years, she has assisted in the care of a young, Russian-speaking Canadian child named Leo. Leo suffers from autism. Ms. Zdanovic wishes to remain in Canada so that she can continue to visit Sergey's grave and care for Leo. She also hopes that, if she remains in Canada, she will be able to establish a relationship with Sergey's son and daughter who live in Canada.

[2] Accordingly, in February of 2006, Ms. Zdanovic applied on humanitarian and compassionate (H & C) grounds for an exemption that would permit her to submit from within Canada an application for permanent residence. This application for judicial review is brought in respect of an officer's decision that insufficient H & C grounds existed to warrant approval of the requested exemption.

[3] Ms. Zdanovic argues that the officer erred in the following respects when dismissing her H & C application:

1. The officer applied the wrong test when assessing the hardship that Ms. Zdanovic would suffer if forced to apply for permanent resident status in the usual manner.
2. The officer drew a series of illogical, negative inferences and considered irrelevant matters when assessing the medical evidence submitted by Ms. Zdanovic.
3. The officer failed to consider Leo's best interests.

[4] The application for judicial review is dismissed because I have not been persuaded that the officer applied the wrong test to assess hardship, or that the officer erred in considering either the medical evidence or Leo's best interests.

### **The test for hardship**

[5] At the beginning of the officer's reasons, he noted that Ms. Zdanovic bore the onus of establishing that the hardship of having to obtain a permanent resident visa from outside of Canada would be unusual and undeserved or disproportionate. This is the correct test. The officer reiterated this test when considering each component of Ms. Zdanovic's claim and again at the conclusion of his reasons.

[6] On one occasion, the officer did note that there was "insufficient evidence to suggest that [Ms. Zdanovic] would suffer irreparable harm if she were required to depart Canada and apply for permanent residence in the normal manner". The officer went on to say that "there is insufficient evidence before me that her mental health depends on her proximity to her son's grave or her ability to visit it". Ms. Zdanovic relies upon those comments to argue that the officer applied the wrong test at law to establish hardship.

[7] The officer's use of the phrase "irreparable harm" was incorrect and unfortunate. However, the phrase must be read in context. The reference follows the officer's conclusion that the evidence about Ms. Zdanovic's psychological condition was vague and precedes the officer's conclusion that he was not satisfied that the associated hardships were unusual and undeserved or disproportionate. Because of that, and the officer's frequent recital of the correct test, I am not satisfied that the officer applied the wrong test at law in order to determine the existence of hardship. Further, I do not take from the second passage relied upon by Ms. Zdanovic that the officer applied the wrong test. The officer was pointing to the absence of evidence to support an H & C claim on this basis.

### **Consideration of the medical evidence**

[8] Ms. Zdanovic provided information from three doctors: Doctors Pliamm, Yaroshevsky, and Brodsky. Dr. Pliamm provided an undated note, which referred Ms. Zdanovic to Dr. Yaroshevsky and made reference to depression. Dr. Yaroshevsky provided a note dated November 25, 2003, to the effect that Ms. Zdanovic was attending regular psychotherapy sessions on an unspecified basis. He wrote that it “would be appreciated if you could adjust her school attendance according to her emotional state”. The most detailed note was from Dr. Brodsky dated February 13, 2006. It contained a diagnosis of “severe exacerbation of major depression, situational” and said that she would, for an indefinite period of time, be “unable to attend any kind of gathering”.

[9] The officer noted that Dr. Yaroshevsky did not state the frequency of the psychotherapy sessions, whether Ms. Zdanovic required medication, or how severe her depression was. There was no evidence as to whether Ms. Zdanovic continued to receive psychotherapy. With respect to Dr. Brodsky’s note, the officer observed that there was no evidence that Dr. Brodsky specialized in psychology. The officer considered that there was no evidence as to how long Dr. Brodsky had treated Ms. Zdanovic and no indication about the particulars of her condition, what her prognosis was, or what was causing the exacerbation of her depression.

[10] I agree that the officer’s reference to Dr. Brodsky’s status as a general practitioner and not a specialist was of questionable relevance. However, when the officer’s reasons are read fairly and as a whole, I am satisfied that the officer was expressing his conclusion that the medical evidence fell short of establishing an unusual and undeserved or disproportionate hardship. On the evidence before the officer, this was not an unreasonable conclusion.

[11] I have considered Ms. Zdanovic's submission that the officer was under a duty to inform her of his concerns; however, an applicant for H & C relief bears the onus of establishing the facts that their claim rests upon. An officer is not responsible for notifying a claimant that the information they provided is insufficient. On the facts before me, the officer was not obliged to notify Ms. Zdanovic that the medical evidence she submitted was too vague to support her claim.

### **Leo's best interests**

[12] As a matter of law, the officer was obliged to be alert, alive and sensitive to Leo's best interests and the officer was required not to minimize those interests.

[13] In this case, the officer considered the following:

- Leo was fond of Ms. Zdanovic, who assisted his mother in caring for him.
- Insufficient evidence had been provided to show that Ms. Zdanovic's departure would be detrimental to Leo's welfare. His mother had stated that it would cause him great stress but there was no corroborative evidence of potential hardship, such as from a doctor or professional care provider.
- Autistic children require specialized care, and there was no evidence that Ms. Zdanovic was qualified to provide the specialized care Leo needed.

[14] Having regard to the relatively meagre information put before the officer, I find that the officer considered all of the matters urged upon him. His reasons were commensurate with the evidence and submissions provided to him. In the context of that evidence and those submissions, the officer was alert, alive and sensitive to Leo's best interests. It was not unreasonable for the officer to find that Ms. Zdanovic provided insufficient evidence to establish unusual and undeserved or disproportionate hardship on this ground.

[15] For these reasons, the application for judicial review is dismissed. Counsel posed no question for certification, and I am satisfied that no question arises on this record.

### **JUDGMENT**

#### **THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-261-07

**STYLE OF CAUSE:** JELENA ZDANOVIC, Applicant

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION, Respondent

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 14, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** DAWSON, J.

**DATED:** NOVEMBER 26, 2007

**APPEARANCES:**

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