Date: 20080317

Docket: IMM-2643-07

Citation: 2008 FC 350

Ottawa, Ontario, March 17, 2008

PRESENT: The Honourable Mr. Orville Frenette

BETWEEN:

ENRIQUETA RAMOS TARAYAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Enriqueta Ramos Tarayao (the Applicant) seeks Judicial Review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2002, c. 27 (the Act) of a decision made June 20, 2007 by an Immigration Officer (Immigration Officer) which denied the Applicant's application for permanent residence from within Canada on humanitarian and compassionate grounds (H&C Application) under subsection 25(1) of the Act (the Decision).

I. Background

[2] The Applicant is a citizen of Philippines who came to Canada in October 2001 under the Live in Caregiver program, a prescribed class. However, because she did not work for the minimum two years as a Live in Caregiver during the three-year term of her visa, she did not qualify for a permanent residency visa under paragraph 113(1)(d) of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 (the Regulations). She then made a refugee claim which was denied. In December 2006 she made her H&C Application which is the basis for this Judicial Review.

[3] The Applicant has three children. Her oldest child, a boy, is a citizen of the Philippines and resides there with his grandparents although the Applicant provides financial support. The Applicant also has two children, both girls, born in Canada and hence are Canadian citizens. The older of these two children was born in September 2003 and the younger was born in November 2005. The Applicant is the sole caregiver and provider for these two children.

[4] The Applicant had been in a common-law relationship in Canada. However, her partner abused her verbally, physically and mentally. Initially, the Applicant was afraid to leave her partner or complain as she feared she would be deported if the police became involved. After she finally told the police on March 23, 2005, her partner was charged and subsequently pleaded guilty to two counts of assault. He was sentenced to one day imprisonment and one year probation. He was also forbidden to communicate with the Applicant or to be near her. He has not had provided any

support to the Applicant's children and has refused to recognize the two younger children as his own.

[5] The Applicant has been employed as a building administrator since May 2006. From this income, she provides for herself and her Canadian-born children as well as sending money to support her son in Philippines. The Applicant claims that if she is sent back to the Philippines she will be unable to earn enough money to support her family. She says that her relatives there are not able to support her and that single mothers in the Philippines are particularly vulnerable due to human rights abuses, high crime and limited employment opportunities.

[6] On June 20, 2007, the Immigration Officer made the Decision which denied the Applicant's H&C Application. In the reasons supporting the Decision, the Immigration Officer noted that the Applicant had no family ties in Canada other than her two daughters and that her degree of establishment in Canada is nothing beyond the normal establishment that one would expect under the circumstances.

[7] The Immigration Officer also considered the best interest of the children:

> [The Applicant] has one son in the Philippines and 2 children born in Canada. Counsel has made arguments stating the best interest of the Canadian born children would be met if the mother was to remain in Canada. Counsel has noted separation between the children and their mother should she decides to leave them in Canada and the resulting hardship it would be for the family. I note the children will retain their Canadian citizenship regardless of where they reside. I note the children are 3 ½ and 1 ½ young enough that the hardships associated with relocation to another country will be minimal. With respect to separation between the mother and children, I find this is a decision

> left to the applicant should she decide to leave her children in Canada. Although children residing in Canada may enjoy better social and economic opportunities than they would in the Philippines, there is little evidence before me to suggest these children cannot attend school or be allowed legal entry in the Philippines.

[8] Furthermore, the Immigration Officer discussed the Applicant's prospects if she was returned:

> I also noted the applicant's extended family members particularly father, mother live in the Philippines. [The Applicant] worked in her country as an insurance coordinator for a number of years. It would be reasonable to expect that with the skills acquired in Canada she can find similar type of employment in the Philippines.
>
> I now turn to the economic situation in the Philippines. I recognize that social and economic conditions in the Philippines may not be favorable, but they are a common factor that affects the general population as a whole.

II. Issues and standard of review

[9] The Applicant submits that the Immigration Officer erred by failing to properly assess the best interest of the Applicant's children. The Applicant also argues that the Immigration Officer erred in her assessment of the Applicant's establishment and integration into Canadian society. The Supreme Court of Canada determined in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 that the standard of review for H&C decisions is reasonableness *simpliciter*.

III. Analysis

A. Best interests of the child

[10] The Applicant submits that the Immigration Officer was not alive, alert and sensitive to the children's best interests. I disagree. The Immigration Officer accepted without challenge the hardship of separation if the children stayed in Canada and then went on to consider the hardship of accompanying their mother to Philippines. The Immigration Officer did not need to discuss at length the hardship of separation especially given the limited evidence provided by the Applicant. The Immigration Officer "may be presumed to know that living in Canada can offer a child many opportunities and that, as a general rule, a child living in Canada with her parent is better off than a child living in Canada without her parent" (*Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at para. 5).

[11] The Immigration Officer did focus on the hardships the children would suffer if they accompanied their mother to the Philippines. In my view, the Immigration Officer could reasonably rely on the young age of the children and conclude that pre-school children could adapt without great difficulty. The Applicant did not submit any evidence that would contradict this finding, including evidence that the children would not be admitted to the Philippines or be able to attend school there.

[12] The Immigration Officer rightly accepted that the family, including the children, would face social and economic hardships in the Philippines. However, the Applicant's own evidence was that

she had worked as an insurance coordinator in the Philippines and so it was reasonable to conclude that she would be able to find work there. In addition, the Immigration Officer reasonably took note of the fact that the Applicant's extended family (including her parents who were already caring for her son) were in the Philippines.

[13] There is no issue that the Immigration Officer accepted there would be hardship. The question was whether the hardship was sufficient to justify an exemption under humanitarian and compassionate considerations. This is a weighing of evidence best left to the Immigration Officer and I see no reason to overturn the Decision on that basis.

B. Applicant's Establishment and Integration in Canada

[14] The Immigration Officer concluded that "the degree of establishment is nothing beyond the normal establishment that one would expect the applicant to have accomplished in the circumstances" and that there is nothing to suggest that she would suffer unusual, undeserved or disproportionate hardship if those ties were severed.

[15] The Applicant argues that the Immigration officer did not consider the appropriate factors to determine the degree of establishment, as proposed by Justice Pierre Blais in *Jamrich v. Canada (Minister of Citizenship and Immigration) (2003),* 29 Imm. L.R. (3d) 253, 2003 FCT 804, (see also *Raudales v. Canada (Minister of Citizenship and Immigration),* 2003 FCT 385. The Respondent submits that the usual criteria were applied here.

[16] In my view, there is no error in the Immigration offcier's conclusions. As noted in relatively recent decisions such as *Ruiz v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 465 and *Lee v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 413, the fact that there is some degree of establishment is not sufficient. The Immigration Officer considered the evidence the Applicant put forward and weighed it. Whether or not I agree with the Decision, it is reasonable and thus should stand.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Orville Frenette"
Deputy Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

Ms. Krassina Kostadinov	FOR APPLICANT
Ms. Amina Riaz	FOR RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Barrister & Solicitor Toronto, Ontario	FOR APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR RESPONDENT