

Federal Court



Cour fédérale

Date: 20100211

Docket: IMM-795-09

Citation: 2010 FC 128

Ottawa, Ontario, February 11, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

DIANA SHERYL JN CHARLES

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Diana Jn Charles failed in her efforts to gain refugee protection in Canada after she fled St. Lucia in 1997. She claims to have been sexually assaulted and threatened there. A panel of the Immigration and Refugee Board denied her claim. She then made an application for humanitarian and compassionate relief and it, too, was denied.

[2] Ms. Jn Charles argues that the officer who evaluated her humanitarian and compassionate application (H&C) erred in numerous ways, including failing to take adequate account of the best interests of her Canadian-born child, Arshell, who is now 11 years old. She asks me to order a re-evaluation of her application by a different officer.

[3] I agree with Ms. Jn Charles that the officer erred in his analysis of the best interests of her daughter and will grant this application for judicial review on that basis. It is unnecessary, therefore, to address the other issues she raised.

II. Analysis

1. The Officer's Decision

[4] The Officer analyzed a variety of factors relevant to Ms. Jn Charles' application – her alleged risk on return to St. Lucia; the degree of her establishment in Canada; and the best interests of Arshell. Relevant to Arshell's best interests is the fact that she is the only child of a single parent. She visited St. Lucia once when she was little. She has a learning disability and requires special educational resources, which are available to her in Canada. The officer considered educational opportunities for Arshell in St. Lucia, particularly the International School, which is accredited in Canada. The officer concluded that Arshell's best interests would not be jeopardized if she went to St. Lucia with her mother.

2. Did the Officer Err?

[5] I can overturn the officer's decision only if I find that it was unreasonable.

[6] In my view, under the circumstances, the officer was obliged to consider whether Arshell would have access to appropriate educational opportunities in St. Lucia. The officer accepted that Arshell had special education needs but did not consider the impact that removing her from the support she receives in Canada would have on her. As mentioned, the officer did explore the possibility of Arshell attending the International School where she could maintain equivalency with the Canadian education system. The officer retrieved that information from the internet and did not provide Ms. Jn Charles a copy of it. Accordingly, Ms. Jn Charles did not have a chance to comment on whether the International School might offer the kinds of programming that Arshell requires. Nor did she have the opportunity to point out to the officer that the International School is a private institution, both with strict admissibility requirements and tuition fees exceeding \$5,000 per year, which she could not afford.

[7] Further, the officer had a duty to consider the other potential effects that removal from Canada might have on Arshell, such as the social, emotional and developmental upheaval that would accompany her separation from the safe and nourishing environment in which she lives in Canada.

III. Conclusion and Disposition

[8] Overall, I find that the officer failed to be sufficiently alert, alive and sensitive to Arshell's best interests and, as a result, rendered an unreasonable decision on Ms. Jn Charles's H&C

application. Accordingly, I must allow this application for judicial review and order a re-evaluation of her application by another officer. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed;
2. A re-evaluation of her application by another officer is ordered;
3. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-795-09

STYLE OF CAUSE: DIANA SHERYL JN CHARLES v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: September 21, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: February 11, 2010

APPEARANCES:

Aviva Basman

FOR THE APPLICANT

David Joseph

FOR THE RESPONDENT

SOLICITORS OF RECORD:

AVIVA BASMAN
REFUGEE LAW OFFICE
Toronto, ON.

FOR THE APPLICANT

JOHN H. SIMS, Q.C.
Deputy Attorney General of Canada
Toronto, ON.

FOR THE RESPONDENT