Federal Court  Cour fédérale

Date: 20110127

Docket: IMM-2663-10

Citation: 2011 FC 97

Toronto, Ontario, January 27, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

PETRA MARIA DAVIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Petra Davis based her application for permanent residence on humanitarian and compassionate grounds on several factors. One of these was the hardship that she would face if returned to St. Vincent because of her psychological state. Ms. Davis also asserted that her psychological problems would be exacerbated if she were separated from her father in Canada, and that she would be unable to access proper care for her mental health issues in St. Vincent.

[2] Ms. Davis' application was rejected by a PRRA Officer, who found that she had not established that she would face unusual, undeserved or disproportionate hardship if she were required to return to St. Vincent in order to apply for permanent residence.

[3] For the reasons that follow, I am of the view that this decision was unreasonable. Consequently, the application for judicial review will be granted.

Analysis

[4] Ms. Davis is a failed refugee claimant. Although aspects of her refugee claim were found not to be credible, the Refugee Protection Division did not appear to take issue with her claim that she had suffered significant physical and sexual abuse as a young child. In support of her PRRA application, Ms. Davis provided the Officer with psychological evidence documenting the negative impact of this abuse on her mental health.

[5] This is the second time that Ms. Davis' H&C application has been before this Court. The first decision made with respect to her application was set aside: see *Davis v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1223, [2009] F.C.J. No. 1510. Justice Boivin found that Ms. Davis had been denied procedural fairness when the PRRA Officer relied upon a document from the World Health Organization dealing with the availability of mental health care in St. Vincent, without first disclosing the document to her.

[6] According to Justice Boivin, the WHO document was not commonly referred to, and was "more technical" than human rights reports. As a consequence, he was of the view that Ms. Davis

should have been afforded the opportunity to respond to the document. Justice Boivin also found that the Officer erred in finding that the WHO document supported the proposition that there is adequate level of mental health in St. Vincent. He observed that the data contained in the WHO document showed that the mental health resources available to citizens in St. Vincent "can be below average": at para. 25.

[7] After Justice Boivin's decision, Ms. Davis' H&C application was referred to a different PRRA Officer for reassessment. This Officer provided Ms. Davis with a copy of the WHO document, and afforded her an opportunity to respond to it.

[8] The second PRRA Officer came to the same conclusion as the first with respect to the availability of mental health care in St. Vincent. In coming to this conclusion, the second Officer did not, however, simply rely on the World Health Organization study that had been disclosed to Ms. Davis. The Officer also chose to rely on a second study – this one from the Pan American Health Organization. This document was similar in type to the WHO study, but contained more comprehensive information with respect to the availability of mental health care in St. Vincent. It was never disclosed to Ms. Davis.

[9] In other words, the second Officer committed precisely the same error as the first Officer.

[10] The second error committed by the PRRA Officer relates to the treatment of the evidence contained in the Pan American Health Organization document. Based upon this document, the

Officer concluded that “Mental health services are being integrated in primary care, and ten acute care beds are available the main referral centre for treatment of the acutely ill psychiatric patient”.

[11] However, Ms. Davis had put more recent evidence before the Officer emanating directly from the Ministry of Health in St. Vincent which led to a very different conclusion. This document stated that the “Integration of mental health services into primary care is very limited due to inadequate psychiatric surveillance and support services such as social workers, counselors, and occupational therapists”.

[12] The Ministry of Health document went on to observe that there was “no structured rehabilitation programme offered at any government health institution”. The document also referred to the availability of mental health support from non-governmental organizations, but noted that “these programmes are insufficient to offset the many social problems challenging the society.”

[13] Where a decision-maker refers to evidence supporting its finding in some detail, but does not mention evidence leading to the opposite conclusion, the Court may infer that the decision-maker overlooked the contradictory evidence when making its finding of fact: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* [1998] F.C.J. No. 1425, 157 F.T.R. 35 at paras.14-17.

[14] It was an error for the Officer not to address the Ministry of Health information, given that this seemingly reliable evidence directly contradicted a central finding upon which the decision was based.

[15] The Officer also erred in assessing the hardship that Ms. Davis would suffer as a result of being separated from her family in Canada. The Officer noted Ms. Davis' father's statement that her well-being was "extremely dependant on our presence in her life and the ability to remain here in Canada, a place of safety". After referring to Ms. Davis' relationship with her siblings, the Officer then went on to state that "the evidence before me does not establish that severing these ties would have a significant negative impact on her that would constitute an unusual and undeserved or disproportionate hardship".

[16] This finding is problematic, as it flies in this face of the psychological evidence that was before the Officer. This evidence indicated that Ms. Davis and her father had a "close-knit, strong attachment" and that she was "highly dependant upon this man's presence in her life". In the opinion of the psychologist, "breaking such strong bonds would likely be emotionally devastating for her". Indeed, it was the psychologist's professional opinion that Ms. Davis "would be at very high risk of suicide" if she were required to leave Canada and the support of her family members behind.

[17] In light of this evidence it is difficult to discern from the Officer's reasons how the Officer came to the conclusion that severing Ms. Davis' relationship with her family in Canada "would not have a significant negative impact on her that would constitute an unusual and undeserved or disproportionate hardship".

[18] The final, and perhaps most fundamental concern with the Officer's decision as it relates to the mental health aspect of Ms. Davis' H&C application is that it focuses almost exclusively on the

availability of mental health care in St. Vincent. No real attention was paid to whether requiring Ms. Davis to return to St. Vincent to access that care would amount to undue, undeserved or disproportionate hardship.

[19] The uncontradicted expert evidence before the PRRA Officer was that Ms. Davis would be at risk of a complete emotional breakdown if she were forced to return to St. Vincent, which could well result in her becoming suicidal. In such circumstances, it was not enough for the Officer to simply look at the availability of mental health care in St. Vincent. As Ms. Davis' counsel put it, even if the health care in St. Vincent was perfect, the Officer still had to determine whether putting Ms. Davis through all of this amounted to undue, undeserved or disproportionate hardship. This question was never really addressed by the Officer, further rendering the decision unreasonable.

Conclusion

[20] For these reasons, the application for judicial review is allowed.

[21] Citing Justice Phelan's recent decision in *Sivapatham v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 314, [2010] F.C.J. No. 366, Ms. Davis urges me to direct that her H&C application be re-assessed by an Officer in any office selected by the Respondent, other than the Niagara Falls office. While I am satisfied that a different Officer should carry out the reassessment of Ms. Davis' application, she has not persuaded me that this reassessment needs to be carried out in a different CIC office.

Certification

[22] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a different PRRA Officer for re-determination; and

2. No serious question of general importance is certified.

"Anne Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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