Federal Court  Cour fédérale

Date: 20110321

Docket: IMM-2641-10

Citation: 2011 FC 345

Ottawa, Ontario, March 21, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

MOYA MECKESHA CAMPBELL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Enforcement Officer D. Puzeris (the Officer) dated May 10, 2010, wherein the Applicant was denied a deferral of her removal pursuant to section 48 of the *Immigration and Refugee Protection Act*, RS 2001, c 27 [IRPA].

[2] Based on the reasons below, the application is dismissed.

I. Background

A. *Factual Background*

[3] Moya Meckesha Campbell (the Applicant) first came to Canada in 2004 on a student visa. On November 18, 2006, she claimed refugee status on the basis of feared abuse at the hands of her former boyfriend. Her claim was refused on August 21, 2007 when she was found not to be credible. She sought judicial review and was denied leave on January 28, 2008.

[4] She filed an application for permanent residence on humanitarian and compassionate grounds (H&C) on September 24, 2007, and on May 28, 2008 she sought a Pre-Removal Risk Assessment (PRRA); both were refused in October 2008. On November 24, 2008, the Applicant was directed to report for removal. On November 25, 2008, she filed applications for judicial review of both the H&C and PRRA decisions, and on December 15, 2008 her removal was stayed pending the outcome of the applications. She was denied leave to seek review of the PRRA decision on April 8, 2009, and her application for judicial review of the H&C decision was dismissed on June 30, 2009.

[5] The Applicant met her husband after her arrival in Canada. They were married in May 2008. She applied for permanent residency as a member of the in-Canada spousal class on May 14, 2008 with her husband as her sponsor.

[6] On April 29, 2010, the Applicant was directed to appear for removal as all of her applications for leave and for judicial review had been concluded and her removal was no longer stayed. The removal was scheduled for May 14, 2010. On May 6, 2010, she requested a deferral of her removal since her spousal sponsorship application was still outstanding. The request was refused on May 10, 2010, and that refusal is the subject of this application for judicial review.

[7] On May 14, 2010, Justice Yves de Montigny granted a stay of the Applicant's removal pending the outcome of this application.

[8] On August 19, 2010, the spousal sponsorship application was refused. The Applicant is seeking leave to review that decision (court file IMM-5288-10).

B. *Impugned Decision*

[9] The Officer noted that the sponsorship application had been outstanding for 24 months, but concluded that there was insufficient evidence that a decision was imminent. The Officer also concluded that the Applicant did not qualify for an administrative deferral because she had been deemed removal ready, and sent a call-in notice for a removal interview, before her sponsorship application was received. The Officer noted that the Applicant had not provided any new evidence of risk and that the alleged risk had been rejected in both her refugee claim and her PRRA. Finally, the Officer considered the policy objective of family reunification, but concluded that a removal would not necessarily result in the Applicant's permanent separation from her spouse.

II. Issue

[10] The Applicant argues that the Officer breached procedural fairness and that the decision is unreasonable. The Respondent submits that, since her spousal sponsorship application has been refused, there is no live issue for this court to decide.

[11] In my view, the only issue for the Court to decide is:

(a) Is this application for judicial review moot?

III. Mootness

[12] The leading decision on the law of mootness is *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 57 DLR (4th) 231. In *Borowski*, the Supreme Court adopted a two-step analysis: first determining whether there remains a live controversy, and then determining whether the Court should exercise its discretion to hear the case even though it has become moot. There are three factors that a court should consider in deciding whether to exercise its discretion to hear a moot case: whether the dispute retains its adversarial nature, judicial economy and whether special circumstances warrant the use of scarce judicial resources to resolve a moot issue, and the separation of powers and the lawmaking function of the courts.

[13] This Court applied *Borowski*, above, in *Rahman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 137, 216 FTR 263 wherein Prothonotary John A. Hargrave summarized

the *Borowski* test before finding that an application for mandamus had become moot when Mr. Rahman became a permanent resident.

IV. Argument and Analysis

A. *The Issue is Moot*

[14] The Applicant challenges the decision on the grounds that the Officer ignored evidence, based the decision on outdated and incorrect information, and reached an unreasonable conclusion. The Applicant argues that the Officer relied on an outdated estimate of when the sponsorship application would be processed, when a more recent estimate submitted by the Applicant suggested that a decision would be forthcoming in approximately four months. The Applicant also argues that the Officer ignored the lengthy delay in processing the application, which resulted from a backlog of files and from no fault of the Applicant. Finally, the Applicant argues that the Officer's decision that she did not qualify for an administrative deferral was unreasonable because the sponsorship application had been received before she attended a removal interview.

[15] All of these issues are moot since the sponsorship application has now been refused. The Respondent cites *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311. In *Baron*, the Court of Appeal answered the following certified question:

> Where an applicant has filed an application for leave and judicial review challenging a refusal to defer removal pending a decision on an outstanding application for landing, and a stay of removal is granted so that the person is not removed from Canada, does the fact

> that a decision on the underlying application for landing remains outstanding at the date the Court considers the application for judicial review maintain a ‘live controversy’ between the parties, or is the matter rendered moot by the passing of scheduled removal date?

[16] In determining that the passage of a scheduled removal date did not render the review of a deferral decision moot, the Court of Appeal characterized the controversy between the parties as being the underlying decision. The Court stated that, so long as that underlying decision was pending, the controversy remained live.

[17] In the present matter, the underlying decision was the sponsorship application. That application is no longer pending. It is clear that there is no live controversy and that this application is moot. Although the court retains the discretion to hear a moot application, this application does not warrant an exercise of this discretion.

V. Conclusion

[18] No question was proposed for certification and none arises.

[19] In consideration of the above conclusions, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-2641-10**
STYLE OF CAUSE:	**CAMPBELL v. MCI**
PLACE OF HEARING:	**TORONTO**
DATE OF HEARING:	**FEBRUARY 3, 2011**
REASONS FOR JUDGMENT AND JUDGMENT BY:	**NEAR J.**
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APPEARANCES:

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