

Federal Court



Cour fédérale

Date: 20120126

Docket: IMM-1480-11

Citation: 2012 FC 96

Ottawa, Ontario, January 26, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

DELMA BETTY ANN JOHN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Delma Betty Ann John arrived in Canada from Grenada in 2001. Originally, she entered Canada on a visitor's visa, but that expired in 2002. In 2004, she filed an application for permanent residence on humanitarian and compassionate [H&C] grounds. An immigration officer denied her request. That officer was subsequently suspended for taking bribes.

[2] Ms. John re-filed her H&C application and added supplementary information, but she was turned down again. Ms. John argues that the officer failed to consider the best interests of the various children adversely affected by the decision – those for whom Ms. John was employed as a caregiver, as well as her nieces and nephews in Canada and Grenada – a total of 12 children. She also maintains that the officer failed to take adequate account of her degree of establishment in Canada. She asks me to quash the officer's decision and order another officer to reconsider her application.

[3] In essence, the issue is whether the officer's decision was reasonable in light of the evidence on establishment and the best interests of the children. I cannot conclude that the officer's decision was unreasonable in either area. The officer took account of all the evidence, and balanced the various positive and negative factors. I must, therefore, dismiss this application for judicial review.

II. The Officer's Decision

[4] The officer took note of Ms. John's family members in Canada - a brother, sisters, nephews, nieces and a sister-in-law. In Grenada, she has two sisters, four brothers and an elderly aunt. She is an active volunteer in the community and involved in her church. She worked as a caregiver for two families. She has many friends here.

[5] The officer accepted that, if she returned to Grenada, Ms. John and her extended family would suffer emotional and financial hardship.

[6] The officer noted that Ms. John has a savings and chequing account, and has not relied on social assistance. She has taken courses at Woodsworth College, George Brown College, and the Centre for Addiction and Mental Health. In terms of her employment record, the officer noted that Ms. John has helped run a catering business, and has worked as a cashier, housekeeper and caregiver.

[7] With respect to her attachment to Grenada, the officer mentioned her family members there. In addition, she had completed high school in Grenada and worked as a caregiver there for three years. She was also active in her church there.

[8] As factors supporting a positive decision, the officer listed Ms. John's degree of establishment in Canada - the length of time she has lived here, her employment and volunteer work, and her attachments to family, friends, church and community. She also considered the potential hardship of returning to Grenada, as well as the best interests of the various children.

[9] As factors supporting a negative decision, the officer mentioned Ms. John's family in Grenada, and the fact that she has lived and worked in Canada illegally since 2002.

[10] The officer's analysis began with a recognition that Ms. John bore the onus of showing that the hardship of being denied an H&C would be unusual, undeserved or disproportionate.

[11] With respect to establishment, the officer noted that Ms. John came to Canada for economic and family reasons, but then overstayed her visa and remained here illegally. Naturally, having been

in Canada for nearly 10 years, she had established herself to a certain extent here. She had a valid passport and enough money to travel back to Grenada. The officer found that Ms. John had not shown that severing her employment, church participation and volunteer work in Canada would have such a significant negative impact that it would justify an H&C.

[12] Regarding hardship upon return to Grenada, the officer acknowledged that Ms. John would be separated from her family members here and would have to re-adjust to living in Grenada. However, she could resume her connection with her family there. Her family in Grenada mentioned the country's poor economic situation and their reliance on money Ms. John sends them. However, that situation applied to the whole country, and there was also evidence that Grenada was recovering from the effects of the 2004 hurricane.

[13] The officer observed that Ms. John would be returning to Grenada with new skills and had savings on which she could rely in the short term. The officer found little evidence that Ms. John would not be able to re-establish herself in Grenada, or that she would face serious hardship if she had to apply for permanent resident status from there.

[14] With respect to the best interests of the children, the officer considered that Ms. John had cared for her niece and nephew for more than three years and had a strong bond with them. However, the children had their parents in Canada and the USA, and had previously been separated from Ms. John when they immigrated to Canada. Further, the officer noted that those children were now young adults and could stay in touch with their aunt by mail, phone or internet. Her other sister's twins were just four years old, and although Ms. John babysat them occasionally, she was no

longer their caregiver. Ms. John's brother and his four children lived in Ottawa and were already separated from their aunt.

[15] Ms. John also served as a caregiver to a friend's two children. She had a close bond with those children, but was no longer their caregiver; the children were in school. The officer noted that her friend was on permanent disability through worker's compensation and was seriously ill. She was also separated from her husband, who had bipolar disorder. However, she had help from other family members.

[16] The officer took into account the fact that, at present, Ms. John works as a caregiver for two families. The children are very young and, while caregivers are in demand, the officer noted that the children would have the support of their parents until a new person could be found.

[17] In conclusion, the officer found that the hardships associated with Ms. John's return to Grenada were not unusual, undeserved or disproportionate.

III. Was the Officer's Decision Unreasonable?

[18] Ms. John submits that the officer's decision was unreasonable because she failed to take adequate account of her establishment in Canada and the negative impact her departure would have on the best interests of a dozen (or more) children.

[19] In my view, Ms. John has not shown that the officer failed to be “alert, alive and sensitive” to the best interests of the numerous children that depend on her. For example, in the case of her friend’s children, the officer considered their current ages and circumstances, including the ways in which the children would be cared for in Ms. John’s absence.

[20] Therefore, I find that the officer was not unreasonable in determining that, in the absence of Ms. John, the various children affected by her return to Grenada would still receive adequate care. In particular, the officer considered the best interests of the affected children in Grenada. The officer accepted that it would be better for those children if Ms. John continued to be employed in Canada and sent them a portion of her salary. But this was merely one factor among many to consider.

[21] With respect to the issue of establishment, Ms. John submits that the officer unreasonably discounted this evidence because it reflected the time she spent in Canada without status. In her favour, she has been in Canada for almost a decade and has been employed steadily, mostly caring for Canadian children. She has supported herself, as well as her family in Canada and abroad, without receipt of social assistance. She has a number of close family members in Canada, and has been heavily involved in community, volunteer and church activities. She has completed training and university courses, and also has a good civil record. In part, her establishment in Canada is a consequence of her having to submit a second H&C application for reasons beyond her control.

[22] In my view, the officer gave detailed consideration to Ms. John’s degree of establishment in Canada. However, she concluded that Ms. John had not shown that returning to Grenada would have such a significant negative impact that an H&C exemption was merited. She also took into

account Ms. John's lack of status noting, in particular, that she had not complied with a voluntary departure notice.

[23] Looking at the evidence and the officer's analysis as a whole, I cannot conclude that her conclusion was unreasonable. The officer conducted an even-handed and thorough review of Ms. John's application. While Ms. John may dispute the weight the officer accorded various positive and negative factors, that is not a basis on which I can allow an application for judicial review. So long as the officer's decision is justified, intelligible and transparent, and falls within the range of defensible outcomes based on the facts and the law, I must uphold it.

IV. Conclusion and Disposition

[24] The officer fully considered the best interests of the various children affected by her decision, and took full account of the degree of Ms. John's establishment in Canada. Accordingly, I cannot conclude that the officer's decision was unreasonable in light of the evidence before her. I must, therefore, dismiss this application for judicial review. 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 dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1480-11

STYLE OF CAUSE: DELMA BETTY ANN JOHN
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 29, 2011

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

DATED: January 26, 2012

APPEARANCES:

Daniel Kingwell FOR THE APPLICANT

Ada Mok FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann Frankel Sandaluk, LLP FOR THE APPLICANT
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario