Federal Court  Cour fédérale

Date: 20140902

Docket: IMM-833-14

Citation: 2014 FC 835

Ottawa, Ontario, September 2, 2014

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

JAMIE LEANNE DUNNE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Appeal Division [Tribunal], dated January 23, 2014, refusing her appeal pursuant to subsection 63(3) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Tribunal found that there are not sufficient humanitarian and compassionate [H&C] considerations warranting special relief from the removal order made on October 11, 2012.

[2] It is well-established that the standard of review in regards to questions of fact, or mixed fact and law, is reasonableness, while questions of law as well of procedural fairness are governed by a correctness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190; *Sing v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125, (*sub nom Lai v Canada (Minister of Citizenship and Immigration*) at para 51). There has been neither breach of procedural fairness, nor any error in law committed by the Tribunal. The present application must fail. Relief on the basis of H&C considerations is discretionary. Essentially, the applicant has failed to convince the Court that the impugned decision is unreasonable.

[3] The applicant is a 23 year old citizen of Ireland. She came to Canada in 1998 at age seven as a dependant of her mother and has not returned to Ireland since. While she is a permanent resident of Canada, she never became a citizen. Aside from her biological father who lives in the United States, her entire immediate family resides in Canada, including her three year old daughter, Keyara, born January 20, 2011. Custody of the child is shared with the father, a Canadian citizen, who has the child three days a week. The applicant's immigration status in Canada became jeopardized as a result of two criminal offences: on February 2, 2012, the applicant was convicted of robbery and on October 3, 2012, she was convicted of assault causing bodily harm. She was sentenced to two years probation with conditions that included 50 hours of community work for the first offence, while she was sentenced to a two month conditional sentence order and probation for one year for the second offence. On October 11, 2012, the applicant was issued a deportation order on grounds of criminal inadmissibility under subsection 36(1) of the IRPA for her conviction for robbery. The applicant was not reported for the second offence.

[4] The applicant's appeal was heard by the Tribunal on September 19, 2013. The legal validity of the removal order was never challenged; rather, the applicant sought relief under paragraph 67(1)(c) of the IRPA, which provides the following:

67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,	67. (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :
[…]	[…]
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

[5] The Tribunal concluded that such considerations were insufficient to grant special relief (decision at para 47). The reasons provided by the Tribunal are clear and transparent. The reasoning is articulate and clearly suggests the conclusion reached by the Tribunal. The Tribunal correctly identified the relevant factors and applied them to the case at hand (decision at para 8; referring to *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4; *Chieu v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 84 at paras 40 and 90). Contrary to the allegation made by the applicant, any mischaracterization or misreading of remote elements of the evidence does not render the overall reasoning capricious or arbitrary. While the Court may have reached a different conclusion, it is not its role to re-evaluate the evidence.

[6] Specifically, the Tribunal took into account: a) the seriousness of the offences that led to the deportation order; b) the possibility and extent of the applicant's rehabilitation; c) her remorsefulness; d) her family and community support; e) the length of time the applicant has been in Canada and her degree of establishment; f) whether she has family in Canada and the dislocation to the family that would result from her deportation; g) the best interest of the applicant's child; and h) the degree of hardship that would be caused to the applicant if removed. The Tribunal acknowledged that the factors are not exhaustive and must be consistent with the objectives of the IRPA, including the need "to protect the health and safety of Canadians and maintain the security of Canadian society" as found in paragraph 3(1)(h) of the Act (decision at para 9). I dismiss any allegation made by the applicant's counsel that the Tribunal would have somewhat made a reviewable error of law in the treatment of the rehabilitation and remorsefulness criteria. It must be remembered that the discretionary decision of the Tribunal must be read as a whole and that it is not sufficient to point out a few errors of fact or mischaracterization of the evidence. Such errors must be determinative and must affect the rest of the reasoning of the Tribunal.

[7] In regards to the seriousness of the offences, the Tribunal concluded that the applicant's convictions are for offences that "fall on the serious side of the spectrum because they not only involved threats of violence and violence against the victims but also the victims were vulnerable individuals." In addition, the seriousness was "exacerbated" by aggravating circumstances, including that the applicant "boasted about her actions and humiliated the victims through social media" (decision at para 16). The cyber-bullying and girl-to-girl violence has led to considerable media interest as well. The conclusion reached by the Tribunal with respect to the seriousness of

the offence has not been seriously challenged by the applicant, while there are other negative factors highlighted by the Tribunal in the impugned decision.

[8] The applicant's learned counsel speaks of a "perverse" decision when referring to the Tribunal's assessment of the evidence relating to remorse and rehabilitation. Quite the contrary, the Tribunal's reasoning is "nuanced". Clearly, the Tribunal took into account the main positive and negative considerations in assessing the applicant's remorse and rehabilitation. For example, the Tribunal acknowledged that the applicant participated in anger management counselling, that she has not had any further convictions and that her probation officer confirmed that she has displayed some insight into the factors that led to her offences (decision at paras 16 and 20). Yet, the Tribunal concluded that there "is limited credible evidence from the [applicant] or others as to what the appellant was taught or has learned from counselling […], the anger management program or the subsequent one-on-one counselling" while she has not "[…] learned sufficient or meaningful lessons from her criminal activities […]" (decision at paras 21 and 22).

[9] I must presume that the Tribunal considered all relevant evidence, including the fact that the applicant is currently employed and also attending hairdressing school. The Tribunal is also better placed than this Court to give proper weight to the fact that the applicant had been physically abused by her biological father, been sexually assaulted as well as been bullied herself. The applicant disagrees with the some statements made by the Tribunal, including that she "[…] provided no satisfactory explanations or insight into why, if she herself had been a victim of such actions, she would bully, threaten and physically abuse other vulnerable individuals", but any such disagreement is a matter of perspective. The applicant also wants to

minimize her behaviour and questions the Tribunal's findings with respect to her continued consumption of alcohol and friendship with the "co-accused" Samantha Williams. The Tribunal's findings are based on the evidence. The explanations provided by the applicant's counsel are an open invitation to rehear the matter. Instead, the Tribunal should have accepted the applicant's testimony that she was drinking occasionally only, that the co-accused in question was her best friend and was not involved in one of the offences, and that the applicant's addiction to social media is not a crime. Mere disagreement on the interpretation to be given to otherwise relevant evidence is not enough to render a decision unreasonable.

[10] With regards to remorse, the Tribunal concluded that "[t]he applicant has expressed regret for the offences, appears to have complied with the conditions of her sentencing and probation and has no subsequent convictions." However, it found that she "[…] has demonstrated little genuine remorse for or insight into her behaviour" and "[…] does not appear to have learned sufficient or meaningful lessons from her criminal activities, experience with law enforcement officials, the court system, Canada Immigration, or the anger management program and counselling in which she participated" (decision at paras 22 and 24). The Tribunal also found that the applicant's apology to the victim in her first offence "was not likely a genuine or credible expression of remorse but rather an effort to bolster her case in an effort to prevent her removal from Canada" (decision at para 23). Thus, the applicant "[…] has not provided sufficient evidence to demonstrate that she is genuinely remorseful for her actions or that she has taken timely and meaningful steps toward rehabilitation to be considered to be sufficiently on a path of rehabilitation. Therefore the panel finds the [applicant] continues to pose an unacceptable risk to Canadian society" (decision at para 26).

[11] In particular, the Tribunal was allowed to conclude that the applicant's apology to the victim was not genuine and was motivated by the immigration proceedings because it did not come about until 2013 (decision at para 23). Similarly, the Tribunal's determinations regarding the applicant's social media activity is also reasonable. While the applicant contextualized her messages, sent via Facebook, to the mother of the robbery victim, and highlighted the mother's persisting harassment, the Tribunal could still find it troubling that the applicant had stated that "[the victim has] turned around and done so much to get back at us for it, it's hard to feel bad for her." Since she testified that social media is still hard for her, I think it was open to the Tribunal to conclude that using Facebook and Twitter was a negative factor in her remorse and rehabilitation.

[12] The Tribunal was also "not satisfied that the [applicant] has an effective personal support system available in Canada, either within her family or her community, which assists and effectively supports her rehabilitation" (decision at para 31). In particular, the Tribunal found that they "were not able to prevent the [applicant] from engaging in inappropriate behaviour or committing serious criminal offences" (decision at para 31). Furthermore, some "[…] appear to have enabled and contributed to her criminal behaviour" (decision at para 31). Again, these conclusions of fact have not been seriously attacked by the applicant. It is not the reviewing Court's function to reassess the evidence. I must defer to the Tribunal's expertise and good sense.

[13] The Tribunal noted that most of the applicant's family lives in Canada and that her establishment here is a positive factor. However, the Tribunal found that "there would not be any

undue adverse impact on or dislocation of family in Canada" although "there would be some emotional impact to the [applicant's] family in Canada if the [applicant] were removed" (decision at para 35). In terms of hardship, the Tribunal said that "there was no credible evidence that the [applicant] could not establish herself in Ireland" (decision at para 42). She lived for a third of her life there and would have no difficulties with language and her family could help facilitate contact with relatives (decision at para 42). Again, these findings are based on the evidence, and while this Court could be of different opinion about the degree of hardship, this is not enough to find a reviewable error in the Tribunal's reasoning.

[14] Finally, the Tribunal considered the best interest of the applicant's child, a Canadian citizen. It concluded that it is in the child's interest to "remain predominantly with the [applicant]." However, "[t]here was insufficient credible evidence to show that the child's father would prevent the [applicant] from taking the child to Ireland if she is removed and he is granted some visitation rights" (decision at para 39). It found that "the child would not be adversely affected if the [applicant] is removed and the child accompanies the [applicant] to Ireland" (decision at para 39). If the father refused to consent to the applicant taking the child to Ireland, an event that the Tribunal saw as "not likely", it would be a "positive factor weighing heavily in favour of granting special relief" (decision at para 40).

[15] The applicant's counsel argues that although the Tribunal formulates an alternative determination of adverse effect to the child it is apparent that the Tribunal has applied the former and not the latter determination. I kindly disagree, in both scenarios, the best interest of the child was considered by the Tribunal. It turns out that the Tribunal viewed that it was in the best

interest of the child to remain in Canada with her mother, but in itself it was insufficient to overweight the negative factors outlined in the decision. It is also well established that the best interest of the child is not the only factor to be considered. As the Federal Court of Appeal stated in *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 6, "the best interests of children, whether they be Canadian or foreign, is only one of the considerations which an immigration officer should take into account. There are obviously many other factors which can be taken into account, including the objectives of Canadian immigration policy […]" [emphasis added].

[16] While the impugned decision is certainly a harsh one, it falls within the range of acceptable outcomes. I do not believe that the Tribunal's decision should be set aside and the matter reheard by another panel. The Tribunal made considerable effort in its decision to thoroughly examine the evidence, the personal circumstances and actions committed by the applicant. Its findings of fact are based on the applicable criteria and are expressed in an intelligible and transparent decision of 22 pages. Any error made by the Tribunal is not determinative of the Tribunal's overall assessment.

[17] For these reasons, the present application must fail. Counsel agree that there is no question of general importance warranting certification in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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