

Federal Court



Cour fédérale

Date: 20150921

Docket: IMM-1577-15

Citation: 2015 FC 1097

Montréal, Quebec, September 21, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

SHIRLON VITALIS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of a decision by a Senior Immigration Officer [Officer], dated March 12, 2015, refusing her application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds. The applicant requests that the Court set aside the decision of the Officer and send the matter back for redetermination. The present application must fail.

[2] The applicant is a citizen of Saint Lucia. She has two daughters – aged 9 and 17 – who are also citizens of Saint Lucia and reside in that country. The applicant arrived in Canada on March 5, 2010, and was allowed to remain in Canada as a visitor for six months. She did not leave Canada at the end of her authorization period. Since that time, the applicant has been working as a caregiver, and affirms that this employment allows her to send money back to Saint Lucia to support her daughters. On May 27, 2014, the applicant filed an H&C application, which she updated in January 2015.

[3] After having analyzed the applicant's file as a whole, the Officer concluded that the applicant had not demonstrated, on the balance of probabilities, that the refusal of her request would cause unusual and undeserved or disproportionate hardship.

[4] First, while taking account of the role the applicant played in the lives of those families for whom she worked as a caregiver, as well as the social network she built during her time in Canada, the Officer noted that the applicant's establishment in Canada was not significant and gave little weight to this factor.

[5] Second, the Officer noted that there is legislation in Saint Lucia protecting women against discrimination, and that the wage inequality mentioned by the applicant as being a negative factor could exist in Canada as well. While the Officer acknowledged the elevated incidences of sexual violence against women in Saint Lucia, as demonstrated by the evidence submitted by the applicant, he noted that the government was taking measures to address this issue, and that recourse was available to victims. Regarding high rates of domestic violence in

the country, the Officer determined that this evidence was not relevant, as the applicant had indicated her marital status as single, and had not mentioned having a spouse or partner. Finally, in relation to higher rates of poverty amongst single mothers in Saint Lucia, the Officer noted that the applicant had previously worked as a teacher in her country of origin, and currently worked in Canada as a caregiver. The Officer thus concluded that the applicant could draw on these two skillsets in obtaining employment if she were to return to Saint Lucia.

[6] Third, in terms of the best interests of the applicant's children, the Officer stated that the applicant did not describe the current situation of her children, nor did she describe the role of their father in their lives. The Officer noted that the applicant's mother is the person designated as the children's guardian in Saint Lucia. The Officer also acknowledged that the applicant submitted two receipts showing that she had transferred money via MoneyGram, as evidence that she was providing financial support to her daughters in Saint Lucia. One of these receipts names neither the sender nor the recipient, while the other indicates the applicant as the sender and the father of the applicant's children as the recipient. The applicant supplied two other receipts for money transfers with InstaChèque, also indicating the father as the recipient, along with two other bills and four receipts. The Officer found this evidence inconclusive. In addition to these receipts and bills, the Officer referred to a letter from the applicant's mother, dated April 2014, which states that "[t]he money that is received helps the children with food, education and other amenities", but found the evidence in this regard to be insufficient, in the absence of further corroboration. Thus, while the Officer accepted that the applicant had sent money on some occasions to her daughters, she had not demonstrated that she was taking care of all their needs, or that their interests would be adversely affected if the applicant did not receive the relief

sought. In addition, the Officer noted that it was apparent that the father continued to be present in the lives of the applicant's daughters. Finally, the Officer acknowledged the evidence provided by the applicant that there is a risk of child labour and sexual exploitation in Saint Lucia, due to the high levels of poverty. Nevertheless, the Officer stated that the applicant had not expressed fear that her daughters would fall victim to ill treatment or exploitation, nor had she demonstrated the link between the exploitation of children in the work force in Saint Lucia and the situation of her own children.

[7] Did the Officer made a reviewable error?

[8] Firstly, the applicant submits that the Officer treated the statements she made in her affidavit as mere allegations rather than as evidence, noting that the Officer "rejected several facts that were presented within the sworn affidavit". The applicant goes on to suggest that if the truthfulness of statements was at issue, the Officer should have given the applicant the chance to respond to his doubts during an interview since in the absence of a determination as to credibility, an applicant's evidence is presumed to be true. Thus, the applicant submits that the present case raises concerns of procedural fairness, for which the appropriate standard of review is that of correctness.

[9] The respondent, by contrast, frames the issue as being a question of whether the Officer's decision was based on the *sufficiency* of the evidence, and addresses this matter under the general umbrella of whether or not the Officer's decision was reasonable. I agree with the respondent. It is apparent that the Officer's findings of fact were all related to the sufficiency of the evidence

presented by the applicant, rather than her credibility, and that the applicant attempts to qualify the Officer's conclusion on the lack of evidence as a conclusion related to her credibility. The Officer simply stated for each factor – the applicant's degree of establishment, the country conditions, and the best interests of the children – that the evidence provided was insufficient. As such, the standard of reasonableness applies to the determinations of fact made by the Officer.

[10] Secondly, the applicant submits that in making his decision, the Officer relied on speculation and that the findings made are otherwise unreasonable and not supported by the evidence. In particular, the applicant notes that the Officer made inappropriate assumptions relating to her capacity to find work as a "teacher" or a "cleaning person" in Saint Lucia, despite the documentary evidence presented by the applicant of high rates of poverty and unemployment in the country, particularly amongst female-headed households. The applicant also clarifies that she was a day care worker, rather than a teacher, in Saint Lucia. Furthermore, the applicant claims that the Officer took insufficient account of the fact that in Saint Lucia, "incomes are very minimal and "teaching" not a real work option for her", given that her experience is as a daycare teacher and her level of education is minimal. The applicant also submits that the Officer drew unreasonable conclusions relating to the arguments presented on the condition of women in Saint Lucia, including the evidence provided relating to gender-based discrimination and violence. The applicant states that the Officer's conclusions constitute a "hopeful" analysis of a hard reality lived by many women in Saint Lucia", and do not make proper reference to the evidence provided. Finally, the applicant submits that the Officer erred in not giving sufficient weight to the evidence showing that she was supporting her daughters by sending money to Saint Lucia, and that it is in the best interests of the children for their mother to continue to work in Canada.

[11] I find all these arguments unconvincing. It is not the role of the Court to reassess the evidence and come to its own conclusions of fact. It is apparent that all the evidence presented by the applicant was duly considered and analyzed by the Officer, as can be seen from the Officer's notes. On each of the three grounds of the applicant's application – her establishment in Canada, the conditions in Saint Lucia, and the best interests of her children – the Officer's notes demonstrate that he considered and weighed the evidence. The Officer stated that this evidence indeed established that women in Saint Lucia are frequently the victims of violence, discrimination and poverty, and noted that, consequently, a certain weight was accorded to this evidence. However, he determined that this evidence was not directly relevant. Furthermore, while the Officer apparently confused the applicant's day care work as being that of a teacher, this error was not determinative. The fact is that the applicant was employed in Saint Lucia. It was incumbent upon the applicant to provide further corroborative evidence if she wished the Officer to conclude that she would not be able to earn a living in her home country. The applicant's failure to provide such evidence did not shift the burden to the Officer to verify whether or not the applicant would, in fact, be able to make a living based on the work experience she had. The Officer was permitted to draw inferences based on common sense and logic, according to the evidence on record. The Officer also considered the evidence that the applicant was sending money for her daughters in Saint Lucia. The Officer was entitled to give little weight to this evidence, which did not conclusively establish that the daughters depended entirely on the applicant's financial support. The applicant's mother's letter is also written in very general terms. It was open to the Officer to infer that the applicant was not the sole financial supporter of the children in view of the lack of other receipts or further details in this respect.

[12] Overall, I find that there has been no breach of natural justice and that the outcome reached by the Officer is within the range of acceptable outcomes that are defensible in fact and law. Accordingly, the present application shall be dismissed. Counsel agree that this case raises no question of general importance.

JUDGMENT

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

No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1577-15

STYLE OF CAUSE: SHIRLON VITALIS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 10, 2015

**REASONS FOR JUDGMENT
AND JUDGMENT:** MARTINEAU J.

DATED: SEPTEMBER 21, 2015

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