Federal Court  Cour fédérale

Date: 20151027

Docket: IMM-1303-15

Citation: 2015 FC 1216

Ottawa, Ontario, October 27, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

NADJA BETTHAUS

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] Ms. Betthaus is a German citizen. She is in Canada illegally and a removal order has been issued against her. She is seeking judicial review of a decision by an enforcement officer denying her request to defer her removal from Canada, pending the outcome of her humanitarian and compassionate [H&C] application.

[2] The parties are agreed that the style of cause must be amended because there are errors in the names of both the applicant and respondent.

Background

[3] In May 2010, Ms. Betthaus came to Canada on a one year working holiday visa. During her time in Canada, she started a relationship with Matthew Phillips and became pregnant. In May 2011, she left Canada when her visa expired.

[4] In June 2011, Ms. Betthaus sought to re-enter Canada as a visitor. During questioning at the airport, she failed to inform the Canada Border Services Agency [CBSA] that she was pregnant and intended to stay in Canada indefinitely. She was granted a visitor's visa, valid until August 31, 2011.

[5] In July 2011, she married Matthew Phillips and in October 2011, she gave birth to her son, Mason Dean Phillips.

[6] In August 2014, the Applicant was assaulted by her husband. Matthew Phillips was arrested and charged with assault. Ms. Betthaus stopped living with her husband after the assault, and moved into the basement of the house of his parents, where she and Mason still live.

[7] In October 2014, the CBSA was informed that Ms. Betthaus had applied for income assistance. Up until this point, it appears that the CBSA was unaware that she had overstayed her visa.

[8] In November 2014, two CBSA officers interviewed Ms. Betthaus about her circumstances and immigration status. The next day, an exclusion order was issued against her. In December 2014, she filed an H&C application for permanent resident status.

[9] In March 2015, the Applicant requested a deferral of her removal from Canada, pending the outcome of her H&C application. The entire H&C application was placed before the enforcement officer with the request for deferral with the observation that the application "is based on the best interests of Ms. Betthaus's three year old Canadian child Mason Dean Phillips." Among the documents filed in support of the application is a letter dated November 27, 2014, written by Samantha Hosie, Child Protection Social Worker, Ministry of Child and Family Development, in which she says:

> The Director has determined that Mrs. Phillips needs to be Mason's primary caregiver, due to Mr. Phillips violence compounded by substance abuse. At this time Mason is only able to see his father supervised at the discretion of the Director. As a professional child protection worker, it is my opinion that it is undoubtedly in Mason's best interests that Mrs. Phillips remains in Canada to care for him. Mason is exhibiting signs of trauma due to witnessing violence against his mother and is currently receiving therapy for this. It is highly likely that should Mason lose his mother, he will be further traumatized. Furthermore, if Mrs. Phillips is issued a removal order the Director cannot currently, or in the immediate future, support Mr. Phillips as Mason's primary caregiver.
>
> Please notify the Director immediately if a removal order is issued as the Director will need to take immediate action to protect this child. [emphasis added]

[10] On March 17, 2015, the enforcement officer issued his decision denying the deferral and this application for leave and judicial review was filed that same day.

[11] Ms. Betthaus's main contention is that the enforcement officer unreasonably ignored evidence that her child would be traumatized by being separated from her, if she were removed.

[12] The officer writes:

> Jurisprudence has shown that when considering the short term best interests of a child the obligation is limited to circumstances in which there is no practical alternative to deferring removal in order to ensure the care and protection of the child. The removal officer must be satisfied that removal would not place the child at risk. Evidence must demonstrate imminent risk of harm should the child remain in Canada while the parent is removed. This does not appear to be the case a letter from the Ministry of Children and Family Development (MCFD) indicate that they will take immediate action to protect the child if Nadja Betthaus is removed.

[13] Ms. Betthaus submits that the enforcement officer's decision is unreasonable because in finding that there was no evidence of imminent risk of harm to Mason, the officer ignored or failed to consider the opinion of Ms. Hosie that "it is highly likely that should Mason lose his mother, he will be further traumatized."

[14] The enforcement officer called Ms. Hosie after receiving the deferral request, but the applicant criticizes him for failing to ask "[w]hat trauma the child had suffered; what counselling had been offered, whether the child benefitted from the counselling, what signs or behaviours the child exhibited that lead Hosie to believe the child had been traumatized, or why she believed the child would be further traumatized if separated from his mother; or how severe or minor the trauma might be."

[15] She submits that having overlooked that the child would very likely be further traumatized if separated from his mother, it cannot be said that the officer considered all the relevant evidence. Accordingly, she submits that while the decision is intelligible, it is not justified and is not defensible in respect of the facts placed before the officer.

[16] I am unable to agree with the submission of the applicant that the decision is not justified based on the evidence before the officer or that the officer failed to consider all of the evidence.

[17] It is clear from the record that the enforcement officer spoke to Ms. Hosie after receiving the request for deferral and before making his decision. The notes are brief but reveal that he had a discussion with respect to Mason's risks. He writes:

> During the interview I learned the following information:
>
> …
>
> -if BETTHAUS leaves Mason will be at risk; MCFD would take custody as PHILLIPS is not able to take custody of Mason at this time.
>
> -BETTHAUS is the primary parent

I am unable to conclude, as the applicant wishes, that the risks discussed did not include the traumatization mentioned in the letter that prompted this call.

[18] That Mason may be traumatized by the loss of his mother is sad, but the opinion the applicant relies on, which was the only evidence before the officer, does not even remotely suggest that this result cannot or will not be ameliorated by the actions of the MCFD. In fact, it appears it has already been involved in obtaining therapy for the trauma Mason has previously

experienced. Moreover, it is noted that in her H&C application Ms. Betthaus provided evidence that Mason has a strong relationship with his grandparents and other relatives.

[19] In the face of this evidence, I cannot conclude that the enforcement officer's decision not to defer removal was unreasonable.

[20] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to read:

Nadja Betthaus

Applicant

and

The Minister of Public Safety and Emergency Preparedness

Respondent

2. This application for judicial review is dismissed; and

3. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1303-15
STYLE OF CAUSE:	NADJA BETTHAUS v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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