Federal Court  Cour fédérale

Date: 20160127

Docket: IMM-2150-14

Citation: 2016 FC 95

Ottawa, Ontario, January 27, 2016

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ARHET TECLEMARIAN TOCRURAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Arhet Teclemariam Tocrurai arrived in Canada in 2005 from Eritrea and obtained refugee status here. In 2009, she was denied permanent residency after she was found to be inadmissible based on her prior connection with the Eritrean Liberation Front (ELF), a group allegedly involved in terrorist activities whose objective was to obtain independence for Eritrea from Ethiopia. Her involvement with the ELF amounted to providing, on demand, food, shelter,

and a nominal financial contribution to ELF members in her remote village. She felt she had no choice but to comply with those demands.

[2] Ms Tocrurai asked an immigration officer to reconsider the inadmissibility decision. She also asked for a waiver based on humanitarian and compassionate factors (H&C). The request for reconsideration was denied and no decision was made on the H&C request.

[3] While she has raised several arguments, Ms Tocrurai's main concern is the lack of determination on her H&C. She maintains that the immigration officer had an obligation to consider her request. She asks me to quash the officer's decision and order another officer to reconsider her application for permanent residence.

[4] I agree that the officer had a duty to consider her H&C request and I must, therefore, allow this application for judicial review. The sole issue is whether the officer was obliged to consider Ms Tocrurai's H&C request.

A. *Did the officer have a duty to consider H&C factors?*

[5] The Minister maintains that the officer had no duty to consider H&C factors arising from Ms Tocrurai's permanent residence application since her counsel had stated that further submissions would be provided later. In a letter to the officer, Ms Tocrurai's counsel wrote:

> We hope to be in a position to send you our materials in the next few weeks. We would ask that no decision be made on the waiver request until such time as you have received our submissions. If the decision maker is ready to render a decision and our materials are not yet in, then please advise us so that we can provide what is currently available.

[6] The anticipated submissions were never made. Therefore, says the Minister, the officer was entitled to ignore H&C considerations.

[7] I disagree.

[8] In her written submissions, Ms Tocrurai alerted the officer to H&C factors in her favour, including the following facts:

- She has been separated from her husband since her arrival in Canada in 2005;
- She has no criminal record and has lived a quiet life;
- She lives under contract stress and anxiety due to her lack of status;
- She worked at a poultry factory in Windsor, Ontario until she was hit by a car in 2009.
- She suffered physical injuries that have prevented her from working since the accident.

[9] In the circumstances, the officer had an obligation to consider the H&C factors in front of him even though there were further submissions that were outstanding. Indeed, even if Ms Tocrurai had not expressly requested consideration of those factors (which she did), the officer was obliged to consider evidence that would be relevant to her protection as a Convention refugee (*Kathirgamathamby v Canada (Minister of Citizenship and Immigration)*, 2013 FC 811 at para 26; *Abid v Canada (Minister of Citizenship and Immigration)*, 2011 FC 164 at para 35, 36).

[10] Similarly, I do not agree with the Minister's submission that the officer was precluded from considering the H&C factors because the letter asked him to hold off on making a determination. I do not read the letter as waiving Ms Tocrurai's right to an H&C determination.

[11] Therefore, the officer erred in failing to consider the relevant H&C factors identified in Ms Tocrurai's permanent residence application, making the denial of her application unreasonable.

II. Conclusion and Disposition

[12] The officer failed to take into account H&C factors when deciding Ms Tocrurai's permanent residence application. In the circumstances, the officer's decision denying that application does not represent a defensible outcome based on the facts and the law. I must, therefore, allow this application for judicial review and order another officer to reconsider Ms Tocrurai's application. 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 allowed, and the matter is remitted to another officer for reconsideration.
2. No question of general importance is stated.

"James W. O'Reilly"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2150-14
STYLE OF CAUSE:	ARHET TECLEMARIAN TOCRURAI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 26, 2015
JUDGMENT AND REASONS:	O'REILLY J.
DATED:	JANUARY 27, 2016

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