Federal Court Cour fédérale

Date: 20160720

Docket: IMM-5856-15

Citation: 2016 FC 832

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 20, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

FARAH SULAIMAN
MONA ALSAYED
ADNAN ALSAIED

Applicants

and

THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review made under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA] of a decision made by a Canada Border Services Agency officer [the officer], stating that the applicants were not eligible under any of

the exceptions set out by the *Safe Third Country Agreement*, and excluding the applicants from Canada for a period of one year for contravention of subsection 20(1) of the IRPA.

II. The facts

[2] The principal applicant, Ms. Farah Sulaiman, is a stateless Palestinian who was born in Saudi Arabia. The applicants Mona Alsayed and Adnan Alsaied are her children, who are minors and citizens of Syria.

[3] The applicant's husband, Rami Elsayed, is a Syrian citizen who is currently working in Saudi Arabia. He has a resident permit in Saudi Arabia, which is tied to his job.

[4] On November 16, 2015, the applicant entered the United States along with her children, using a visitor's visa. The applicant's husband was unable to accompany the applicants, as his employer refused to let him leave Saudi Arabia.

[5] On November 21, 2015, the applicant arrived at the Lacolle border crossing station with her children, with the goal of claiming refugee protection in Canada.

[6] On November 22, 2015, the officer issued the applicant an exclusion order for a period of one year.

III. Issues in dispute

[7] There are two (2) issues in dispute:

1) Did the officer violate the applicants' right to an interpreter and their right to counsel?

2) Did the officer err in determining that the applicants did not fall under one of the exception categories pursuant to the *Safe Third Country Agreement*?

IV. Analysis

[8] The standard of review for questions of the right to counsel and the right to an interpreter is the standard of correctness, since these rights are protected by sections 10 and 14 of the *Canadian Charter of Rights and Freedoms* (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 58 [*Dunsmuir*]). The standard of review for questions of fact and questions of mixed fact and law is the standard of reasonableness [*Dunsmuir*, at paragraph 166].

A. *Did the officer violate the applicants' right to an interpreter and their right to counsel?*

[9] The principal applicant claims that she did not fully understand what was said during the interview with the officer, which took place in English. She also claims that she was not offered the services of a lawyer or an interpreter. She maintains that she informed the officer that her understanding of English was limited, even requiring the officer's assistance to complete the forms, and that she did not understand the nature or consequences of the documents that she was required to sign.

[10] For its part, the respondent maintains that the officer's notes clearly indicate that the principal applicant spoke fluent English and that it is possible to master a language and not fully understand certain questions from time to time.

[11] I share the respondent's point of view in this regard. The attached notes from the officer's affidavit, describing the applicant's answers to questions, show that the principal applicant understood English. It is clear that she would not have been able to participate and answer the questions posed by the officer during the interview in the same way if she had not understood what was happening.

[12] Furthermore, the principal applicant has not provided evidence of any reason to doubt the veracity of the officer's notes. The officer is presumed to be a disinterested party within the context of immigration proceedings. There is therefore no reason to doubt, in the circumstances, that an interpreter was in fact offered to the applicant.

[13] Regarding the issue of the right to counsel, I am of the opinion that the applicant did not have such a right, given that she was neither being detained nor arrested, and was free to return to the United States. The facts show that the applicant underwent a routine interview to identify the reasons why she wished to enter Canada and to determine whether she met the admission criteria: *Heredia v. Canada (Citizenship and Immigration)*, 2010 FC 1215, at paragraph 13:

> [13] In addition, this was a routine examination to identify the reasons why the applicant sought to enter Canada and to determine whether he met the requirements for admission. It is important to remember that the applicant entered Canada as a stowaway and had no identity documents in his possession. The examination was of an administrative nature and the CBSA officer was under no

> legal obligation to inform the applicant of the possibility that an exclusion order could be issued against him or of the consequences of such an order.

[14] The officer therefore did not violate the right to an interpreter, nor the right to counsel in the circumstances.

B. *Did the officer err in determining that the applicants did not fall under one of the exception categories pursuant to the Safe Third Country Agreement?*

[15] The *Safe Third Country Agreement* allows four types of exceptions, including one for refugee claimants who have family members in Canada. The *Agreement* defines a family member as a:

- spouse;
- legal guardian;
- child;
- father or mother;
- brother or sister;
- grandfather or grandmother;
- grandchild;
- uncle or aunt;
- nephew or niece;
- common-law partner;
- same-sex spouse.

[16] The principal applicant declared to the officer that her husband had uncles in Canada. She maintains that these individuals are also her uncles through marriage and that the text of the *Agreement* does not define the word “uncle.” Since ties by marriage are not excluded, she argues that she and her children should have been admitted under the family member exception.

[17] Yet, the Court notes that the applicant’s position does not correspond with the usual meaning of the word “uncle.” The *Petit Robert* defines this words as follows:

> Le frère du père ou de la mère, et par ext. Le mari de la tante. [TRANSLATION: The father’s brother or mother’s brother, and by extension, the aunt’s husband.]

[18] In English, the *Canadian Oxford Dictionary* defines it in similar terms:

> . . . the brother of one’s father or mother . . . an aunt’s husband.

[19] It is therefore quite clear that this word refers to blood relations between the individuals and does not include the uncles of the applicant’s husband, who are therefore not, with respect to her or her children, family members within the meaning of the *Agreement*. It was therefore reasonable for the officer not to admit the applicants to Canada and to exclude them for a period of one year.

V. Certified question

[20] At the hearing, the applicant proposed a certified question to define the word “uncle” within the meaning of the *Agreement*. Since “uncle-in-law” and “aunt-in-law” are not widely recognized relationship ties, I see no serious question of general importance to certify.

VI. Conclusion

[21] The application for judicial review is dismissed and no question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and that there is no question of general importance to certify.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5856-15
STYLE OF CAUSE:	FARAH SULAIMAN, MONA ALSAYED, ADNAN ALSAIED v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 30, 2016
JUDGMENT AND REASONS:	ANNIS J.
DATED:	JULY 20, 2016

APPEARANCES:

Perla Abou-Jaoudé	FOR THE APPLICANTS
Simone Truong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Perla Abou-Jaoudé Montréal, Quebec	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT