Federal Court  Cour fédérale

Date: 20160824

Docket: IMM-13-16

Citation: 2016 FC 960

Ottawa, Ontario, August 24, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

AMIRA S.M. SHAAT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Shaat is a citizen of Albania. She applied for permanent residency under the skilled worker class. The application included her daughter Rahmah as a dependent. All members of the family successfully passed the required medical examinations except for Rahmah.

[2] Rahmah was born in 1999 with Congenital Myelomeningocoele and Hydrocephalus with Blindness and Neurological Disorder. As a result of this condition she functions with two shunts, the first was surgically inserted at birth and the second at six years of age. The respondent's physician determined that Rahmah was medically inadmissible on the basis of a health condition that might reasonably be expected to cause excessive demand on health or social services in Canada.

[3] The respondent sent three separate letters to Ms. Shaat in March 2015, September 2015 and October 2015 explaining the diagnosis and the basis for the physician's determination of Rahmah's medical inadmissibility. In these letters Ms. Shaat was invited to provide additional medical information/documents if any, about her daughter's medical condition. In September 2015 and October 2015 Ms. Shaat was also invited to address concerns relating to the availability of adequate settlement funds as required under subparagraph 76(1)(b)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] as "it has come to our attention that an important portion of the balance which appeared on your previous bank statement on file …, was obtained through a loan from someone else". Ms. Shaat's representative provided responses to the first and third letters.

[4] In replying to the respondent's correspondence, Ms. Shaat's representative provided further information relating to Rahmah's medical condition, including an assessment from a specialist doctor. The respondent was also asked to consider allowing Rahmah to enter Canada on a Temporary Resident Permit [TRP] pursuant to section 24 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] if she were found medically inadmissible. Finally, Ms.

Shaat's representative also states that if Rahmah is found inadmissible and a TRP is not granted, Rahmah's uncle would adopt her.

[5] Ms. Shaat's representative did not provide any information regarding the respondent's concerns relating to unencumbered settlement funds. Instead the respondent was requested to disclose the source of the information regarding the loan and the exact nature and content of the information. Ms. Shaat's representative argued that there was a procedural fairness obligation to disclose these details to Ms. Shaat.

[6] In December 2015 a Designated Immigration Officer [Officer] rejected Ms. Shaat's application for permanent residence under the skilled worker class finding Rahmah medically inadmissible on health grounds because her health condition might reasonably be expected to cause excessive demand on health or social services in Canada pursuant to paragraph 38(1)(c) of the IRPA.

[7] Ms. Shaat asks that I quash the officer's decision and return the matter for reconsideration by a different officer. The application raises the following issues:

A. Did the Officer breach procedural fairness obligations by directly contacting Ms. Shaat's specialist doctor?

B. Was there an obligation to advise Ms. Shaat of the source, nature and content of information indicating settlement funds had been obtained through a loan?

C. Did the Officer misapprehend the purpose of section 24 of the IRPA when addressing the question of a TRP? and

D. Did the Officer err in determining that the proposed adoption by Rahmah's uncle would be an adoption of convenience?

[8] I am not convinced that there was either a breach of procedural fairness or that the Officer erred. The application is dismissed for the reasons that follow.

II. Standard of Review

[9] The questions raised by Ms. Shaat in relation to issues A and B above concerning procedural fairness and natural justice, are to be reviewed on standard of correctness (*Burra v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1238 at para 9 [*Burra*]).

[10] Issues engaging questions of mixed fact and law, which includes a determination of medical inadmissibility are reviewed on standard of reasonableness (*Burra* at para 10). Similarly the interpretation by a tribunal of its home statute, subject to certain exceptions which do not arise here, is reviewed on a standard of reasonableness (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 at paras 51 and 54 [*Dunsmuir*]).

III. Analysis

A. *Did the Officer breach procedural fairness obligations by directly contacting Ms. Shaat's specialist doctor?*

[11] Ms. Shaat does not take issue with the respondent having contacted her specialist doctor. Rather Ms. Shaat submits the respondent should have made contact through her and that she had a right to know that questions had been posed as a non-response could negatively impact her application. I am not convinced that direct contact with the doctor resulted in a breach of fairness in this case. However if there was a breach I am satisfied that it was cured in subsequent communications between the respondent and Ms. Shaat's representative.

[12] Ms. Shaat's counsel argued that the letter written by the respondent to the doctor setting out the respondent's questions was never provided to Ms. Shaat. However, the respondent notes email correspondence to Ms. Shaat's representative, dated October 5, 2015, seeking Ms. Shaat's authorization for the release of information by the specialist doctor. This email indicates an attachment entitled "Rahmah –Q's to Dr Tamer Hassan.docx". The respondent submits this attachment was the letter setting out the questions posed to the specialist doctor. Ms. Shaat's counsel submits the attachment was never received.

[13] I am satisfied that the record indicates receipt of the questions posed to the specialist doctor as an attachment to the October 5, 2015 email. However, even if Ms. Shaat did not receive a copy of the questions posed it is not disputed that she provided authorization to the Officer to obtain any information from the specialist doctor. Furthermore the specialist doctor

did not provide information until after the authorization had been granted. Finally, Ms. Shaat provided the respondent a further undated report from Dr. Hassan in November 2015. I am not convinced that the manner in which questions were posed to a medical expert in respect of a medical report produced by that specialist discloses a reviewable error based on the facts and circumstances before me.

B. *Was there an obligation to advise Ms. Shaat of the source, nature and content of information indicating settlement funds had been obtained through a loan?*

[14] Ms. Shaat argues that she was entitled to receive detailed information in the possession of the respondent indicating that settlement funds she had identified in her application as being available were in fact encumbered funds. I simply cannot agree.

[15] The obligation of the Officer was to highlight the concern and provide Ms. Shaat an opportunity to respond to that concern. Not providing detailed information relating to the source is not a breach of procedural fairness in a context where the content of the duty is at the low end of the spectrum. As noted by Justice Judith Snider in *Ulybin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 629 at paragraph 23 "The question is not whether the actual document was disclosed to the Applicant but whether the Applicant had the opportunity to meaningfully participate in the decision-making process." In this case Ms. Shaat was given the opportunity to meaningfully participate and chose not to take advantage of it. It was sufficient that Ms. Shaat was aware of the existence of the allegation that the funds were unencumbered (*Guleed v Canada (Minister of Citizenship and Immigration)*, 2012 FC 22 at para 29.

[16] There was no breach of the duty of procedural fairness by not providing the exact source of the information regarding the loan to Ms. Shaat.

C. *Did the Officer misapprehend the purpose of section 24 of the IRPA when addressing the question of a TRP?*

[17] Ms. Shaat argues that the Officer failed to comprehend the purpose of section 24 of the IRPA when considering the request that a TRP be issued. Again I disagree.

[18] In *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275, Justice Michel Shore addresses the exceptional nature of and consequences of TRPs and then notes at paragraph 22 that "TRPs should thus be recommended and issued cautiously".

[19] It was Ms. Shaat's onus to establish compelling reasons warranting the issuance of a TRP notwithstanding the finding that Rahmah was medically inadmissible. While Ms. Shaat requested a TRP she simply relied on the submissions advanced in support of her position that Rahmah was medically admissible to Canada. In the circumstances it was reasonable for the Officer to conclude that a TRP "would only serve to overcome the medical inadmissibility…".

D. *Did the Officer err in determining that the proposed adoption by Rahmah's uncle would be an adoption of convenience?*

[20] Ms. Shaat argues that if Rahmah were legally adopted by her uncle, she would cease to be her dependent child for the purpose of her application and as a result, subsection 4(2) of the

IRPR would not be engaged. Ms. Shaat argues that the failure of the Officer to recognize the inapplicability of subsection 4(2) of the IRPR in this circumstance was an error. I disagree.

[21] Subsection 4(2) of the IRPR states:

4(2) A foreign national shall not be considered an adopted child of a person if the adoption	4(2) L'étranger n'est pas considéré comme étant l'enfant adoptif d'une personne si l'adoption, selon le cas :
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) did not create a genuine parent-child relationship.	b) n'a pas créé un véritable lien affectif parent-enfant entre l'adopté et l'adoptant.

[22] It has been previously determined by this Court that where an adoption is undertaken to enhance an application for landing, it is an adoption that is entered into primarily for the purpose of acquiring status or privilege under the IRPA (*Lee v Canada (Minister of Citizenship and Immigration)* 2007 FC 84 at paras 14 and 15 [*Lee*]). In this case it is not disputed by Ms. Shaat that the proposed adoption of Rahmah was advanced for the purpose of enhancing the application.

[23] The Officer reasonably concluded that the proposed adoption would be considered an adoption of convenience under the IRPR.

IV. Certified Question

[24] Ms. Shaat has proposed the following question for certification:

> Should a legal and genuine adoption of a dependent child who is found medically inadmissible to Canada; thus making her no longer a dependent child of the principal applicant, be sufficient to exclude the principal applicant from the prescribed circumstances outlined in section 23(b)(ii) of the regulations or is the adoption as described by regulation 4 of the IRPR, that is an "adoption of convenience"?

[25] The Federal Court of Appeal has set out the test for certification of issues for the purposes of an appeal under paragraph 74(d) of the IRPA on a number of occasions (*Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at paras 10-12; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 168 at para 9). These authorities establish that this Court may certify a question under paragraph 74(d) of the IRPA only where it (1) is dispositive of the appeal and (2) transcends the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance.

[26] The proposed question fails on the ground of general importance or broad significance. The wording of subsection 49(2) of the IRPR is not ambiguous and is to be considered based on the facts and circumstances before the decision maker. The facts and circumstances of this case demonstrate that the adoption was being proposed for the purpose of acquiring status or privilege under the Act. This circumstance has been previously considered and addressed by this Court in *Lee*.

[27] I therefore decline to certify the proposed question.

V. Conclusion

[28] The Officer did not commit a reviewable error in considering Ms. Shaat's application for permanent residency under the skilled worker class and in determining that Rahmah was medically inadmissible to Canada. Similarly the Officer's discretionary decisions in respect of the TRP and adoption issues fall within the range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir* at para 47).

JUDGMENT

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

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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