Federal Court  Cour fédérale

Date: 20161103

Docket: IMM-1831-16

Citation: 2016 FC 1232

Toronto, Ontario, November 3, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DAWN ANDREA FARLEY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Dawn Andrea Farley (the "Applicant") seeks judicial review of the decision made by a Senior Immigration Officer (the "Officer") on April 13, 2016, dismissing her application for permanent residence made on humanitarian and compassionate grounds ("H&C"), pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant is a citizen of Guyana. She entered Canada in 1999 and was removed in August**,** 2013. During her sojourn in Canada, the Applicant gave birth to two children, a son born in 1999 and a daughter born in 2003. The children remained in Canada following the removal of the Applicant and, with the written consent of the Applicant, reside with their maternal grandparents in Canada.

[3] The Applicant applied for recognition in Canada as a Convention refugee, in 2001. Her application was unsuccessful. A Pre-Removal Risk Assessment application was denied in 2011. The decision now under review was the third H&C application submitted by the Applicant.

[4] In her most recent application for permanent residence on H&C grounds, the Applicant presented submissions based on the best interests of her children, family relationships and country conditions in Guyana.

[5] In her decision, the Officer acknowledged the inherent difficulties for the children arising from their separation from the Applicant. However, she noted that the children are lovingly supported by their grandparents in Canada. The Officer ultimately concluded that she was not satisfied that the children's "best interest will be negatively affected by the outcome" of the Applicant's H&C application.

[6] The Officer also considered the situation of the Applicant. She noted that the Applicant has two adult sons living in Guyana. She observed that there was insufficient evidence submitted

by the Applicant to address the “ability and willingness” of these adult children to provide support to the Applicant in Guyana.

[7] The Applicant now submits that the Officer erred in applying the hardship test when assessing the best interests of her children. She also argues that the Officer erred by failing to adequately consider the evidence submitted.

[8] The Minister of Citizenship and Immigration (the “Respondent”) submits that the Officer applied the right test and committed no reviewable error in her assessment of the evidence before her.

[9] An H&C decision involves the exercise of discretion, as informed by the statutory language. An H&C decision is reviewable on the standard of reasonableness; see the decision in *Kanthasamy v. Canada (Citizenship and Immigration)*, [2015] 3 S.C.R. 909 at paragraph 44.

[10] The standard of reasonableness, as discussed by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47, requires that a decision be justifiable, transparent and intelligible and fall within a range of possible, acceptable outcomes. A decision meets that standard when the reasons are clear, precise and intelligible, and illustrate how the decision was reached; see the decision in *Dunsmuir, supra*.

[11] I agree with the submissions of the Respondent that the Officer committed no error in her assessment of the best interests of the children. The Officer was not obliged to use formulaic

words. It is sufficient that she identified factors specific to each of the two children and assessed them. She was not satisfied that the best interests of the children depended upon reunification with their mother in Canada.

[12] I see no error in the manner in which the Officer dealt with the personal circumstances of the Applicant. She noted an absence of evidence. The burden lay upon the Applicant to adduce whatever evidence was necessary in order to support her claim for the positive exercise of discretion pursuant to subsection 25(1) of the Act.

[13] While the circumstances of the Applicant invite sympathy, I am not satisfied that she has shown any reviewable error by the Officer in the process leading to the negative decision now under review.

[14] In the result, this application for judicial review is dismissed, no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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