Federal Court  Cour fédérale

Date: 20161209

Docket: IMM-2315-16

Citation: 2016 FC 1366

Ottawa, Ontario, December 9, 2016

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ANNETTE MARIA FRANCIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a negative decision by a senior immigration officer ("Officer") of Citizenship and Immigration Canada dated May 19, 2016 refusing Ms. Francis' ("Applicant") application for permanent residence on humanitarian and compassionate ("H&C") grounds.

Background

[2] The Applicant is 66 years of age and a citizen of Grenada. She entered Canada on November 9, 2014 to visit her daughter. She subsequently sought refugee protection on the basis of the years of abuse she had suffered at the hands of her former spouse in Grenada, and abuse she experienced from the community in Grenada because of her daughter's sexual orientation. The Applicant's claim for refugee protection was rejected on March 25, 2015, an appeal to the Refugee Appeal Division ("RAD") was also rejected, and her subsequent application for leave to judicially review the RAD's decision was dismissed by this Court on April 13, 2016.

[3] The Applicant applied for permanent residence from within Canada on H&C grounds in November 2015 on the basis of hardship in her home country, establishment in Canada, and her mental health condition. Her application was rejected the Officer on May 19, 2016, and that decision is the subject of this judicial review.

Decision Under Review

[4] Because the Applicant's risk allegations had already been assessed under ss. 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA") in her refugee application, the Officer did not consider them in the H&C application, but stated that he would consider her allegations in the broader context of their degree of hardship.

[5] The Officer acknowledged the prior abuse that the Applicant had suffered at the hands of her former spouse but stated that the Applicant's ex-husband, if still alive, would be 72 years old,

that they had been divorced for more than 14 years, and that, since then, she had resided in Grenada until 2014 without being abused by him. The Officer concluded that the Applicant had submitted insufficient evidence to persuade him that her ex-husband would abuse her in "any shape or form after being divorced from her for the past 14 years".

[6] The Officer then considered the evidence that the Applicant had submitted to corroborate her mental illness, which included a letter indicating hospitalization for mental health episodes on four occasions when she resided in Grenada. The Officer found this to be evidence that she was able in the past to receive treatment in Grenada. He also noted that she has a daughter, three sisters, and a brother in Grenada who have assisted her in the past to overcome her illness. The Officer also considered evidence from Canadian doctors stating that the Applicant has post-traumatic stress disorder ("PTSD") and the Officer accepted this as fact. The Officer noted that this condition could have been triggered by the rejection of the Applicant's refugee claim.

[7] The Officer stated that he was empathetic to the Applicant's health problems and acknowledged the immigration process can be a stressful experience. However, he noted that the purpose of the H&C process is to provide relief from unusual, undeserved or disproportionate hardship caused if an applicant is required to leave Canada and apply for permanent residence from abroad in the normal fashion. The Officer found that the Applicant had not submitted sufficient evidence to demonstrate this level of hardship should she be forced to return to Grenada.

[8] The Officer considered the importance of family reunification, but also noted that this could be achieved through other possibilities within the immigration system, such as the existing family class program, or the eligibility for a Super Visa. The Officer also acknowledged that the Applicant may face some difficulties in readjusting to life in Grenada, but noted that she has spent the majority of her life there.

[9] Ultimately, the Officer stated that, having considered all the information and evidence, he was not persuaded that the Applicant's case was deserving of an exemption for the in-Canada selection process as he was not of the opinion that such an exemption was justified on H&C considerations.

Issues and Standard of Review

[10] In my view, the sole issue is whether the decision was reasonable. The standard of review applicable to an officer's findings of fact in assessing an H&C application is reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 45 ("*Kanthasamy*"); *Taylor v Canada (Citizenship and Immigration)*, 2016 FC 21 at paras 16-18).

Analysis

[11] The Applicant submitted that she had provided a letter from her psychiatrist, Dr. Pink, dated March 22, 2016 which indicates that she has a history of multiple admissions to hospital in Grenada for psychotic episodes, and that since her arrival in Canada, she has been admitted to the hospital twice for psychotic decompensation. The second admission, for a period of three

weeks in October 2015, yielded a diagnosis of schizophreniform disorder. Dr. Pink stated that the Applicant was treated successfully with Paliperidone 6 mg daily, that she continues to be compliant with her medications, and that there is no further evidence of psychotic symptoms. The Applicant had reported to Dr. Pink that, of all of the medications she has been on in the past, this was the most effective.

[12] Dr. Pink also stated that she had been in contact with Ellen Gabriel, a representative of the Ministry of Health in Grenada, to inquire about the availability of Paliperidone in Grenada and was informed that the medication was not on their formulary. Dr. Pink concluded that, in her opinion, the Applicant should remain on that specific medication indefinitely to prevent further relapse of her psychotic symptoms. If she were to return to Grenada, where it is not available, there is a high likelihood that she would have further psychotic episodes.

[13] The Applicant submits that the Officer failed to mention this important piece of evidence in his decision. However, the Respondent submits that the fax confirmation page illustrates that counsel for the Applicant sent the letter to the wrong number and, as a result, it was never received by the Officer. I note that the Applicant does not contest this nor is there any evidence that her counsel sought a reconsideration from the Officer when the error came to light. Additionally, the letter does not appear in the Certified Tribunal Record. In these circumstances, the Officer's failure to consider the letter is not an error.

[14] That being said, even without that letter from Dr. Pink, there is evidence in the record indicating that the Applicant's mental health will likely deteriorate if she is removed from

Canada. In a letter dated March 3, 2015, a social worker, who is the Applicant's counselling therapist at Access Alliance, expresses the opinion that the Applicant is living with complex PTSD and, based on the minimal personal support systems available to the Applicant other than those in Canada, the belief that the Applicant's welfare is at risk of acute worsening should she be forced to leave the country. In a letter dated February 14, 2015, clinical psychologist Dr. Gerald Devins states: "If refused permission to remain in Canada, her condition will deteriorate (e.g. possible major depressive episode)".

[15] In the Officer's reasons, although he accepts that the Applicant has PTSD, he does not consider the impact of removal on her mental health. Rather, he bases his refusal on his finding that the Applicant has submitted insufficient evidence to demonstrate that she does not have access to health treatment in Grenada, and that her family in the past has assisted her to "overcome her illness". In my view, this approach is not in alignment with the Supreme Court of Canada's decision in *Kanthasamy* which held that the fact that an applicant's mental health would likely worsen if he/she were removed from Canada is a relevant consideration that must be identified and weighed regardless of whether there is treatment available in their home country to help with their condition. Moreover, there was no evidence before the Officer that the Applicant has previously "overcome" her illness. She was admitted to a mental hospital in Grenada on several occasions, but the evidence clearly shows that her mental health issues have persisted, if not deteriorated, since then.

[16] Availability of treatment is not the only factor to be considered and, in this matter, there is uncontested evidence in the record that the Applicant's mental health will likely deteriorate if

she is removed from Canada. The Officer failed to address this point and thereby committed a reviewable error.

[17] In my view the Officer also erred in his treatment of the evidence pertaining to the abuse suffered by the Applicant at the hands of her ex-husband. The Officer refers to the January 28, 2015 letter from Dr. Les Richmond and notes that the doctor states that the Applicant was assaulted by her husband sometime in and around the 1990's. The Officer concludes that the Applicant "has resided in Grenada until 2014 without being abused by her ex-husband" and that she had submitted insufficient evidence to persuade him that her 72-year-old ex-husband from whom she had been divorced for the past 14 years would abuse her. However, in his letter, Dr. Richmond not only described the assault in the 1990's which resulted in her right tibia and fibula at her the right ankle being broken but also stated that sometime in and around 2013, she was again assaulted by her husband who hit her with a piece of wood causing her to sustain a fracture of her left tibia and fibula at the left ankle. The doctor described the scars for both her right and left ankles and he found they were consistent with her history of trauma and surgery.

[18] Thus, the Officer's conclusions are directly contradicted by the evidence in Dr. Richmond's letter and no acknowledgement of, or explanation for this is provided by the Officer. Although the risk allegations were previously considered under ss. 96 and 97 of the IRPA, the Officer stated that he would consider them in the broader context of their degree of hardship. Given the failure to address this contradictory evidence, I am not persuaded that the Officer did so. The failure to consider this significant contradictory evidence is a reviewable

error (*Cepeda-Gutierez v Canada (MCI)*, (1998), 157 FTR 35, at para 17, *Mora Gonzalez v Canada (MCI)*, 2014 FC 750, at paras 54 and 59).

[19] Given my above findings, it is not necessary to address the Applicant's other submissions as the decision is unreasonable. This is because the errors render it impossible to determine if the decision falls within the range of possible, acceptable outcomes which are defensible in light of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The decision is set aside and the matter is remitted for redetermination by a different officer;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2315-16
STYLE OF CAUSE:	ANNETTE MARIA FRANCIS v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 8, 2016
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	DECEMBER 9, 2016

APPEARANCES:

Johnson Babalola	FOR THE APPLICANT
Stephen Jarvis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Johnson Babalola Barristers and Solicitors North York, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT