Federal Court  Cour fédérale

Date: 20161219

Docket: IMM-2235-16

Citation: 2016 FC 1390

Ottawa, Ontario, December 19, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

KAM FA WONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review of a decision by an officer [the Officer] of Citizenship and Immigration Canada, dated May 9, 2016, which refused the Applicant's application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds under s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in greater detail below, this application is dismissed, as the Officer's decision is reasonable, falling within the range of possible, acceptable outcomes on the facts of this case.

II. Background

[3] The Applicant, Kam Fa Wong, is a citizen of Hong Kong. She entered Canada in 2008 and met Mr. Chi Heng Anthony Chin, a Canadian citizen, whom she subsequently married in March 2010, after living together since September 2009. In November 2010, Ms. Wong submitted a permanent residence application as a member of the spouse in Canada class. Mr. Chin passed away in September 2014, and Ms. Wong subsequently requested that her spousal sponsorship application be converted to an application for permanent residence on H&C grounds.

[4] In making the decision refusing Ms. Wong's application, the Officer was not satisfied that there were sufficient H&C considerations in the application to warrant an exemption from applicable legislative requirements, so as to allow her application for permanent residence to be processed from within Canada. The Officer acknowledged that Ms. Wong has been living in Canada since 2008 and that it was her wish, along with that of her deceased husband, that she live in Canada permanently. The Officer also noted that Ms. Wong's husband is buried in Toronto, that she wishes to continue to visit him, that Ms. Wong has many friends in Canada who are willing to help her financially or otherwise, and that Ms. Wong considers Canada her home and is confident she can find a job here once she obtains a work permit. The Officer

acknowledged that Ms. Wong has received financial support through her late husband's life insurance policy and that she appears to be able to support herself independently.

[5] However, the Officer found that Ms. Wong had not demonstrated that her establishment in Canada was to such a degree that returning to Hong Kong to apply for permanent residence status would cause a hardship. The Officer noted that, since Ms. Wong arrived in Canada in 2008, she had returned to Hong Kong approximately every 4-6 months, that she has no history of employment in Canada, volunteer work, or upgrading of skills, and that she has no family connections in Canada. On the subject of family relationships, the Officer gave more weight to Ms. Wong's relationships in Hong Kong, noting that she has a 23 year old daughter with whom she lived before her most recent return to Canada, that her parents were born in China, and that there was no indication they were deceased.

[6] Finally, the Officer noted that Ms. Wong has a criminal conviction in Hong Kong dated August 13, 1997 and stated that, while the convictions were almost 20 years ago, a criminal record does not weigh in her favour.

[7] The Officer referred to having considered Ms. Wong's establishment, her desire to remain close to her deceased spouse, her family in Hong Kong, and her criminal record. However, the Officer was not satisfied that Ms. Wong had presented sufficient H&C considerations to warrant an exemption.

III. Issue and Standard of Review

[8] The issue raised by the parties' arguments is whether the Officer's decision is reasonable, including consideration of the adequacy of the Officer's reasons.

[9] The standard of review applicable to an officer's findings of fact in assessing an H&C application is reasonableness (see *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], at para 44; *Taylor v Canada (Minister of Citizenship and Immigration)*, 2016 FC 21, at para 16).The adequacy of reasons is also to be determined on a standard of reasonableness, as inadequacy of reasons is not a stand-alone basis for judicial review. Rather, reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes (see *Newfoundland and Labrador Nurses Union v Newfoundland and Labrador (TB)*, 2011 SCC 62, at para 14).

IV. Analysis

[10] Ms. Wong states that the issue of establishment is essential to her application. Her counsel describes her as a "housewife", explaining that she has established her life in Canada based on her relationship with her husband. He supported her before his death, and since his death she has been supported by the resulting life insurance. As such, it has not been necessary for her to seek paid employment or to upgrade her language skills. Ms. Wong argues that establishment for someone in her circumstances assumes a different complexion than that of an applicant whose establishment is a function of integration into the Canadian economy, and that the Officer was obliged to consider her application from that perspective.

[11] I agree with Ms. Wong's submission that s. 25(1) of IRPA is intended to respond flexibly to the equitable goals of the provision and that immigration officers have the ability to consider and give weight to all relevant humanitarian and compassionate considerations in a particular case (see *Kanthasamy*, at para 33). As such, an applicant is certainly not precluded from succeeding in an H&C application because he or she does not have paid employment. Rather, each H&C application will turn on the applicant's particular circumstances and immigration officers' consideration of various factors, including but not limited to establishment in Canada and the other factors set out by the Supreme Court of Canada in paragraph 27 of *Kanthasamy.*

[12] In the case at hand, Ms. Wong's application was based on establishment and her desire to remain in Canada. However, she did not satisfy the Officer that her particular circumstances demonstrated a degree of establishment sufficient to warrant an H&C exemption. I have considered the various arguments Ms. Wong has raised in challenging the Officer's decision but do not find the Officer's assessment of her application to be unreasonable. That assessment was not restricted to Ms. Wong's lack of paid employment. It also considered that she had no history of volunteer work or upgrading of skills since her arrival in Canada, as well as the fact she has no family connections in Canada. As noted by the Respondent, the case law establishes that, even where an applicant has maintained employment and integrated into the community, this does not necessarily constitute an unusually high degree of establishment such as would warrant the granting of an H&C exemption (see *Persaud v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1133, at para 45).

[13] Ms. Wong notes the Officer's conclusion that it would not be a hardship for her to apply for permanent residence from Hong Kong. She argues that it is not reasonable to expect her to return to Hong Kong to apply, particularly as it is not clear on what basis she would then qualify. I agree with the Respondent that the fact an applicant may not be successful in a permanent residence application submitted from abroad does not make such an analysis unreasonable (see *Lionel v Canada (Minister of Citizenship and Immigration)*, 2009 FC 236, at para 21).

[14] Ms. Wong also refers the Court to factual errors made by the Officer in the decision. The Officer referred to Ms. Wong returning to Hong Kong approximately every 4 to 6 months since 2008, with her last return being in December 2014 until April 2015. In fact, Ms. Wong returned to Hong Kong only twice since arriving in 2008, the second occasion being the trip between December 2014 and April 2015 when her mother was ill and ultimately passed away. The decision also states that there is no indication Ms. Wong's parents are deceased, when in fact her mother passed away in 2015.

[15] The Respondent acknowledges these errors by the Officer but argues that they are not material to the decision. Ms. Wong refers the Court to *B'Ghiel v Canada (Minister of Citizenship and Immigration)*, IMM-2545-97, July 8, 1998 (F.C.T.D.) [*B'Ghiel*], in which Justice Hugessen identified factors that were improperly considered in a visa officer's decision and set aside the decision on the basis that it was impossible to know what weight the officer gave to those factors.

[16] My conclusion is that the concern expressed by Justice Hugessen in *B'Ghiel* does not apply in the present case. The Officer's conclusion was that Ms. Wong had not demonstrated that her establishment was to such a degree that returning to Hong Kong to apply for permanent residence would cause a hardship. In reaching this conclusion, the Officer referred to Ms. Wong's return trips to Hong Kong, her lack of history of employment in Canada, the lack of volunteer work, the absence of any upgrading of her skills, and having no family connections in Canada. Ms. Wong did make return trips to Hong Kong during the periods she has been living in Canada. In the context of the Officer's overall decision, considering several factors, I cannot conclude that the Officer's error in identifying the number of trips to Hong Kong materially impacted the decision.

[17] Similarly, in relation to Ms. Wong's parents, the Officer afforded weight to her family relationships in Hong Kong. While only one of her parents was living, both that parent and her adult daughter live in Hong Kong, and she has no family in Canada. Again, I cannot conclude that this factual error materially impacted the Officer's decision.

[18] Ms. Wong also argues that the Officer erred in the treatment of the 1997 convictions in Hong Kong. Her convictions were for driving a motor vehicle with alcohol concentration above the prescribed limits and for careless driving. She takes the position that the careless driving conviction is equivalent to a provincial traffic offense, not a criminal offense, and that, although the other conviction is the equivalent of a Canadian criminal conviction, she is deemed rehabilitated under s. 18(2) of the *Immigration and Refugee Protection Regulations* [IRPR], as the offense occurred more than 10 years ago.

[19] The effect of s. 18(2) of the IRPR is to eliminate inadmissibility to Canada under s. 36 of IRPA. However, Ms. Wong has cited no authority for the proposition that the deemed rehabilitation also has the effect of making it an error for an immigration officer to consider the convictions in the context of an H&C application. I also note the particular manner in which the Officer treated the convictions in the present case, stating that, while the convictions were almost 20 years ago, a criminal record does not weigh in Ms. Wong's favour. The Officer acknowledged how long ago the convictions occurred, and I cannot conclude it to be an error for the Officer to have found that this portion of her history was not a positive factor in her H&C application.

[20] Finally, I find no merit to the argument that the Officer's reasons were inadequate. The Officer considered the evidence and Ms. Wong's submissions, recounted the factors that weighed for and against her application, afforded particular weight to her family relationships which were in Hong Kong rather than Canada, and concluded that she had not demonstrated sufficient establishment or hardship to warrant an exemption. The reasons are intelligible and the result falls within a range of possible outcomes, making the decision reasonable and affording no basis for the Court to interfere.

[21] The application for judicial review is therefore dismissed. No question was proposed for certification for appeal, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2235-16
STYLE OF CAUSE:	KAM FA WONG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 8, 2016
JUDGMENT AND REASONS:	SOUTHCOTT, J.
DATED:	DECEMBER 19, 2016

APPEARANCES:

Marvin Moses	FOR THE APPLICANT
Nicole Rahaman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Marvin Moses Moses Law Office Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT