Federal Court  Cour fédérale

Date: 20170126

Docket: IMM-2989-16

Citation: 2017 FC 102

[ENGLISH TRANSLATION]

Montréal, Quebec, January 26, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ROSE KADJE

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision made by an immigration officer on June 30, 2016, refusing the Applicant's application for permanent residence on humanitarian and compassionate grounds (H&C application) under subsection 25(1) of the IRPA.

II. Facts

[2] The Applicant, age 65, is a citizen of Cameroon and is a nurse by profession. She has two sons who live in Canada. One is a Canadian citizen, and the other is a permanent resident. She also has five grandchildren and one nephew in Canada. Her husband, retired; her third son, physician and some of her grandchildren still live in Cameroon.

[3] In May 2011, the Applicant came to Canada to visit her sons and grandchildren.

[4] The Applicant says that she had been hospitalized a few times in Cameroon prior to her arrival in Canada. Hepatitis tests had been performed, and all of the results were reportedly negative.

[5] Shortly after her arrival in Canada, the Applicant felt unwell and saw a physician — at her family's expense — and received results indicating that she had hepatitis C.

[6] On October 6, 2011, the Applicant submitted a refugee claim.

[7] In March 2012, the Applicant filed an application for permanent residence on humanitarian and compassionate grounds.

[8] In April 2012, the Applicant received a liver transplant. Since then, she has been under close medical supervision. She also has ophthalmologic problems, more specifically, bilateral macular edema, for which she must receive additional medical care.

[9] On July 11, 2013, the Refugee Protection Division of the Immigration and Refugee Board denied the Applicant's refugee claim.

[10] On March 9, 2016, an immigration officer refused the Applicant's H&C application. The Applicant filed an application for leave and judicial review of that decision, but the Federal Court dismissed the leave application due to the Applicant's failure to perfect her record.

[11] On June 15, 2016, an immigration officer agreed to reopen the H&C application after receiving a letter from counsel for the Applicant.

III. Decision

[12] On June 30, 2016, after reopening her file, a senior immigration officer refused the Applicant's H&C application, upholding the March 9, 2016, decision.

[13] The officer concluded that the Applicant had an equal number of family ties in Canada and Cameroon and that she could remain in contact with her family members in Canada by internet and telephone if she were to return to Cameroon.

[14] The officer found that the Applicant had come to Canada to receive medical care, knowing that she had severe health problems and would obtain better treatment in Canada than in Cameroon.

[15] With regard to follow-up for her liver transplant, the officer found that the Applicant had not demonstrated that the required treatment and medications would be unavailable in Cameroon. The officer did not give probative value to the letter from a Cameroonian physician, doubting its authenticity. Moreover, the officer found that there was nothing proving that treatment would be unavailable in Cameroon's large cities, though it is non-existent in the rural areas. The officer was also unconvinced that other medications or generic forms would be unavailable in Cameroon. Lastly, the officer determined that, although the Applicant's husband has only a monthly pension of $400, the Applicant could receive considerable financial support from her family members. Her family members in Canada would be able to support her financially, in addition to her son in Cameroon, since, as a physician, he could provide his mother with care.

IV. Submissions of the Parties

A. *Submissions of the Applicant*

[16] The Applicant argues that the immigration officer's decision is unreasonable. The Applicant's argument is based essentially on the officer's erroneous interpretation of the medical evidence she submitted when her H&C application was reopened. Firstly, she claims that the officer erred in saying that the letter from the Cameroonian physician was unsigned and did not

bear a legible seal. Secondly, the Applicant claims that the officer erred in assuming that the anti-rejection medications could be available in the capital and that the specific medications could be substituted with other medications, that is, with generics. Thirdly, the officer apparently erred in finding that the cost of $900 per month for the Applicant's medication and treatment expenses in Cameroon were those incurred following the liver transplant; these were in fact costs related to the Applicant's other health problems.

[17] Lastly, the Applicant argues that the officer erred in speculating that she could remain in contact with her grandchildren by internet or telephone.

B. *Submissions of the Respondent*

[18] According to the Respondent, the immigration officer's decision is reasonable.

[19] The Respondent submits that it was open to the officer to determine whether the Applicant's departure would compromise the best interests of her grandchildren, considering that they could remain in contact with her by internet or telephone. The Applicant did not submit any documentation leading the officer to conclude that their best interests would be compromised if she were to leave Canada. As a result, she did not discharge her burden of proof (*Owusu v. Canada (Minister of Citizenship and Immigration)*, [2004] 2 FCR 635, 2004 FCA 38).

[20] The Respondent also submits that the Applicant had not demonstrated that the care required for her health problems — including her ophthalmologic problems and follow-up for her liver transplant — would be unavailable in Cameroon. The Applicant did not provide any

evidence demonstrating that treatment would not be available anywhere in Cameroon, rather than solely in the rural areas. Considering that her family members are already financially supporting her in Canada, it was open to the officer to find that they would continue to do so if she were to return to Cameroon. Consequently, the officer's decision would fall within a range possible outcomes and be reasonable.

V. Issue

[21] The issue in this case is the following:

Did the immigration officer err in fact by rendering a decision contrary to the available evidence?

[22] The standard of review applicable to the officer's decision on whether or not to grant an exemption on humanitarian and compassionate grounds is that of reasonableness. Our Court must show deference in the judicial review of the decision of an immigration officer exercising this discretion (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817; *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 [*Dunsmuir*]).

VI. Relevant provisions

[23] Subsection 25(1) of the IRPA sets out exemptions from the law for humanitarian and compassionate considerations.

Humanitarian and compassionate	**Séjour pour motif d'ordre humanitaire à la demande de**

considerations — request of foreign national	**l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

VII. Analysis

[24] The Court finds that, despite the letter from the Cameroonian physician describing the absence of appropriate treatment to ensure the Applicant's survival following her liver transplant, the officer nevertheless found that she could obtain the required medications and treatment in Cameroon:

> [TRANSLATION] . . . in the rural area where she resides, the Bandjoun village in western Cameroon, there is no technical

> platform for her long-term treatment. Her anti-rejection medication, Prograf, is not available in Cameroon and requires a serum dosage for treatment. In Cameroon and based on information, no laboratory currently provides this dosage.
>
> (Letter from Dr. Kamdem Philippe, at page 26 of the Immigration, Refugees and Citizenship Canada file)

[25] The physician specifies that the Applicant's anti-rejection medication is not available anywhere in Cameroon, not only in the village of Bandjoun. The officer's speculations as to the existence and availability of a generic medication that could replace the Applicant's medication are not based on any evidence on file.

[26] Consequently, the officer rendered a decision that was not justified, transparent and intelligible, and it did not fall within the range of possible acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir*, above, at paragraph 47). The Court finds that the immigration officer erred in his analysis of the medical evidence the Applicant submitted. As a result, the officer's conclusions were contrary to the evidence, and his decision is unreasonable.

VIII. Conclusion

[27] The application for judicial review is allowed and the matter is referred back to another immigration officer for redetermination.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, and the matter is referred back to another immigration officer for redetermination. There is no question of general importance to certify.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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