Federal Court Cour fédérale

Date: 20171102

Docket: IMM-1275-17

Citation: 2017 FC 984

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, November 2, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JEUDI ALFRED, MICHELINE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

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] against a decision rendered on March 6, 2017, by a Canada Border Services Agency [CBSA] officer. In that decision, the officer found that the

applicant's refugee claim could not be referred to the Immigration and Refugee Board's Refugee Protection Division (RPD) in accordance with paragraph 101(1)(*e*) of the IRPA.

II. Facts

[2] The applicant, age 42, is a Haitian citizen.

[3] On September 21, 2016, the applicant and her husband, also a Haitian citizen, left Haiti and arrived in the United States on visitor visas. The couple claimed refugee protection in the United States, stating that they feared for their lives in Haiti because of her husband's involvement in a political party.

[4] On March 4, 2017, while still living in the United States, the spouses entered Canada through the Saint-Bernard-de-Lacolle port of entry. They filed a refugee claim under the Safe Third Country Agreement [Agreement] between Canada and the United States without waiting for a final decision on their refugee claim filed in the United States.

[5] On March 6, 2017, during her interview with the CBSA officer, the applicant stated that she had her mother, Marie Hémène Henry, a permanent resident, and her half-brother, Pierre Antoine Laloi, a permanent resident, in Canada.

[6] The officer refused to receive the refugee claim because he was not satisfied that the applicant was able to prove that she was related to the above-noted individuals within the meaning of section 159.5 of the *Immigration and Refugee Protection Regulations*, SOR/2002-

227 [IRPR]. The same day, an exclusion order was issued against the applicant by the Minister's delegate under section 228 of the IRPR, following the inadmissibility report completed by the CBSA officer under subsection 44(1) of the IRPA.

III. Decision

[7] On March 6, 2017, the officer found that the refugee claim was inadmissible and could not be referred to the RPD pursuant to paragraph 101(1)(*e*) of the IRPA.

[8] Based on information gathered during the interview with the applicant, the officer recorded the reasons for his refusal to receive the applicant's refugee claim in the Global Case Management System [GCMS] noting, among other things, that the applicant stated that she had a half-brother and a mother in Canada. Following checks in the GCMS, these individuals, whom the applicant claimed were family members, apparently did not name the applicant in their refugee claim when they arrived in Canada. According to the applicant, this omission was due to the fact that the applicant and her half-brother have a different father.

[9] The officer also noted inconsistencies between the applicant's and her husband's version of the facts regarding the period during which Ms. Henry allegedly lived with the couple in Haiti. In addition, the applicant reportedly told the officer that she did not have any memory of her father because she was too young to remember the circumstances surrounding his death in 2004. Yet, the officer noted that the applicant was 29 years old when her father died. Finally, the GCMS showed that the applicant and her husband had applied for Canadian visas and that, in

those applications, the couple had stated that they were visiting Pierre Laloi, a "friend of the family."

[10] For these reasons, the officer found that the applicant did not have any family in Canada. That decision is the subject of this application for judicial review.

IV. Issues

[11] This case raises the following issues:

1. Did the officer violate the principles of natural justice and procedural fairness?
2. Is the officer's decision reasonable?

[12] The standard of review applicable to decisions rendered by immigration officers according to which a refugee claim filed in Canada under the Agreement is deemed inadmissible is that of reasonableness (*Biosa v. Canada* (*Public Safety and Emergency Preparedness*), 2014 FC 431 at paragraph 17; *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 51 [*Dunsmuir*]). The Court is therefore not required to intervene if the officer's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above, at paragraph 47).

V. Relevant provisions

[13] The following IRPA provisions are relevant in this case:

Ineligibility	**Irrecevabilité**
101 (1) A claim is ineligible to	**101** (1) La demande est

be referred to the Refugee Protection Division if	irrecevable dans les cas suivants :
…	[...]
(e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or	e) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

[14] The following IRPR provisions are also relevant:

159.5 Paragraph 101(1)(e) of the Act does not apply if a claimant who seeks to enter Canada at a location other than one identified in paragraphs 159.4(1)(a) to (c) establishes, in accordance with subsection 100(4) of the Act, that	**159.5** L'alinéa 101(1)e) de la Loi ne s'applique pas si le demandeur qui cherche à entrer au Canada à un endroit autre que l'un de ceux visés aux alinéas 159.4(1)a) à c) démontre, conformément au paragraphe 100(4) de la Loi, qu'il se trouve dans l'une ou l'autre des situations suivantes :
…	[…]
(b) a family member of the claimant is in Canada and is	b) un membre de sa famille est au Canada et est, selon le cas :
…	[…]
(ii) a permanent resident under the Act, or	(ii) un résident permanent sous le régime de la Loi,

VI. Analysis

[15] For the reasons that follow, this application for judicial review is dismissed.

A. *Did the officer violate the principles of natural justice and procedural fairness?*

[16] The applicant argues that the officer erred by recording, in his letter, the number of the application filed by the applicant instead of providing the written reasons for his refusal. In addition, the officer allegedly failed to specify the paragraph corresponding to the applicant's situation, namely paragraph 101(1)(*e*) of the IRPA. The officer had a duty to justify and substantiate his decision to allow the applicant to understand the merits of his decision and defend herself with full knowledge of the facts. The officer's decision is unintelligible.

[17] The respondent, on the other hand, finds that there was an inadvertent clerical error in the letter sent to the applicant because the reasons for the decision are summarized in the applicant's application number. The respondent submits that this certainly does not change the substance of the matter. The respondent submits, however, that the notes taken by the officer during the interview with the applicant, which are recorded in the GCMS, may be considered as reasons in support of a decision (*Alkhairat v. Canada* (*Citizenship and Immigration*), 2017 FC 285 at paragraph 16).

[18] The Court considers that the notes that the officer recorded in the GCMS present sufficient detailed reasons to satisfy the duty of procedural fairness. The notes in the GCMS communicated to the applicant satisfy the requirement for reasons. In fact, the Supreme Court of Canada held that when no other documents indicate the reasons for the decision, the officer's notes should be considered, by inference, as the reasons for the decision (*Baker v. Canada* (*Minister of Citizenship and Immigration*), [1999] 2 SCR 817 at paragraph 44). Although the

officer was able to refer to paragraph 101(1)(*e*) of the IRPA, there is no doubt that the decision is still understandable, and this provision of the IRPA is the only one that could apply in the case at hand. The notes in the GCMS and the inadmissibility letter in response to the refugee claim, considered together, sufficiently reflect the reasons for the decision and satisfy the requirements of natural justice. The Court finds that the officer's decision is justified, transparent, and intelligible (*Dunsmuir*, above, at paragraph 47).

VII. Is the officer's decision reasonable?

[19] According to the applicant, the officer should have allowed the refugee claim because the applicant's mother and half-brother are permanent residents of Canada. The applicant claims that she told the truth about being related to these individuals. The applicant even provided the officer with copies of her mother's birth certificate and her parents' marriage certificate.

[20] The respondent, on the other hand, submits that the officer's decision is reasonable. The respondent adds that Ms. Henry's and Mr. Laloi's affidavits, filed on August 31, 2017, do not have an impact in the context of this application. Only the evidence before the administrative decision-maker may be considered (*Osagie v. Canada* (*Citizenship and Immigration*), 2017 FC 635 at paragraph 8).

[21] The respondent recalls that the couple lived in the United States for approximately six months and applied for refugee status (application still pending) before entering Canada. The officer would have been correct in finding that there was no relation between the applicant and Mr. Laloi and Ms. Henry, in light of all the evidence.

[22] Based on the evidence and the information in the applicant's file, as well as on the officer's notes in the GCMS, the Court finds that the officer's decision was reasonable. In fact, the applicant was unable to prove that she had family members in Canada, which would have allowed her to benefit from one of the exceptions provided for in sections 159.1 to 159.7 of the IRPR.

[23] Although the officer's decision is brief and the reasons are in the GCMS notes, the Court is satisfied that "that does not impugn their validity" (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador* (*Treasury Board*), 2011 SCC 62 at paragraph 16). For these reasons, the Court finds that the officer's decision was reasonable. The officer's decision falls within a "range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir*, above, at paragraph 47).

VIII. Conclusion

[24] This application for judicial review is dismissed.

[25] The style of cause is amended to reflect the correct respondent, namely the Minister of Public Safety and Emergency Preparedness.

JUDGMENT in IMM-1275-17

THIS COURT ORDERS that the application for judicial review be dismissed. There is no question of importance to be certified.

"Michel M.J. Shore"
Judge

Certified true translation
This 11th day of September 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1275-17
STYLE OF CAUSE:	JEUDI ALFRED, MICHELINE v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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