Federal Court  Cour fédérale

Date: 20180827

Docket: IMM-3917-17

Citation: 2018 FC 859

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 27, 2018

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

WISLANDE FLERIDOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In this application for judicial review, the applicant is asking that the Court set aside the decision rendered by an immigration officer ("the officer") dated August 8, 2017, who denied her application for permanent residence pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001 c. 27 (the "Act" or "IRPA") because she is inadmissible to Canada.

II. Facts

[2] The applicant is a Haitian citizen who was born on February 10, 1980. On June 30, 2011, she arrived in Canada under the Live-in Caregiver Program and worked at her cousin's residence.

[3] On June 12, 2013, the applicant filed an application for a permanent residence visa in the live-in caregiver category. In her application, she included her spouse, Mardoche Joseph, and three daughters, Youlandie Castellan, Roseberline Jerome and Ruth Fleridor, as dependants. Because Ruth Fleridor did not meet the definition of a "dependant child" due to her age, the officer removed her from the case file.

[4] The officer conducted a preliminary review of the case, which raised concerns about the good faith of the relationship between the applicant and her spouse and the veracity of the family relationship between the applicant and the two children.

[5] As a result, the spouse was called for an interview by the visa office in Haiti. The information provided by the spouse was considered insufficient to show there was a good faith relationship with the applicant, since he had limited knowledge of the applicant's life in Canada, their plans and the lives of the two girls in Haiti.

[6] DNA evidence was sought on February 14, 2017, to verify the relationship between the applicant and the girls she identified as dependants. Following the request for DNA, the applicant asked to have the two girls removed from the file.

[7] Since there may have been misrepresentations in her application, the applicant was called for an interview on June 20, 2017.

[8] At the interview, the officer questioned the applicant about her spouse, the two girls and her refusal to submit the DNA evidence.

[9] The applicant could not satisfactorily explain why her spouse had only limited knowledge of her life in Canada and the lives of the girls. Her only explanation was that her spouse did not answer the questions correctly because he was under stress during the interview. There was nothing to explain the contradictions between the information given by the applicant and her spouse. Also, the applicant repeatedly maintained that the girls were her biological children. The applicant contradicted herself with respect to the girls' birth certificates and provided several versions of the facts regarding their origin and the manner in which she obtained them.

[10] The officer repeated her request that the applicant have the DNA test done within the next 30 days. During this interview, the officer clearly explained to her that if her statements were found to be false, she could be deemed inadmissible for misrepresentation.

[11] On July 19, 2017, the officer received an email application for an extension of time for the DNA test. The applicant did not provide any reasons to support her application. On July 28, 2017, the officer attempted to call the applicant to discuss her application for an extension of time. The applicant's cousin answered and indicated that the applicant was absent. After a brief discussion, the cousin told the officer that the applicant had lied about the children and that they

were not her biological children. The officer replied that if the applicant wanted this information to be considered before she made her decision, the officer had to receive the information from the applicant within three days.

[12] On July 31, 2017, the officer received a letter from the applicant stating that the girls were not her biological children, but that she considered them her children since birth. The applicant admitted that she had lied and apologized.

[13] On August 8, 2017, the officer advised the applicant that her application for permanent residence was denied for the following reasons:

> [TRANSLATION]
> I regret to inform you that your application for permanent residence has been denied because it has been determined that you did not meet the requirements of the *Immigration and Refugee Protection Act*. . . .
>
> I am satisfied on a balance of probabilities that you are inadmissible because you made a misrepresentation or failed to report material facts in your application, and you breached the law by not providing truthful answers to the questions you were asked during the review. The following breaches were committed:
>
> – Including Youlandine Castellan, Roseberline Jerome and Ruth Fleridor on your application and declaring they were family members (biological or adopted children)
>
> – Declaring that you were the three children's biological mother
>
> – Declaring that you were in a good faith relationship with Mardoche Joseph
>
> – Submitting fraudulent documents, i.e. Birth Certificates.

> I have reviewed your application despite the misrepresentations / lack of material facts. Because of this misrepresentation / omission of material facts, an incorrect decision could have been made, namely the authorization of the immigration and permanent residence of persons who do not meet the requirements.
>
> For the above reasons, I am not satisfied that you are not inadmissible and that you meet the requirements of the Act. As a result, your application for permanent residence is denied. . . .

[14] On September 17, 2017, the applicant filed an application for leave to apply for judicial review of the officer's decision.

[15] On January 2, 2018, the applicant also filed a request for reconsideration of the decision. The applicant admitted that she had made misrepresentations regarding the children whom she had declared and that she had submitted false birth certificates for them. She stated that two of the children were actually her sisters, and one was her niece. She apologized and expressed remorse. The applicant stated that she had not understood the consequences of her actions.

[16] In her request for reconsideration, the applicant claimed that the officer had breached procedural fairness, that the interests of the children had not been considered, and she denied having made misrepresentations regarding her spouse Mardoche.

[17] After having thoroughly reviewed the case and all the new evidence submitted by the applicant, the officer remained satisfied that the applicant was inadmissible for misrepresentation and denied the request for reconsideration on January 19, 2018.

[18] It is important to point out that the application for judicial review was filed against the officer's original decision, not against the decision pursuant to the request for reconsideration.

III. Issues

[19] At the beginning of the hearing, counsel for the applicant indicated that his submissions would be limited to the following issues:

(1) Was there a breach of procedural fairness in failing to give the applicant an opportunity to respond to her possible inadmissibility?

(2) Did the officer make an unreasonable error in her assessment of humanitarian and compassionate grounds?

(3) Did the officer make an unreasonable error in finding that the applicant was not in a good faith relationship with her spouse?

IV. Standard of review

[20] The parties agree on the standards of review that apply in this case. As the Supreme Court of Canada decided in *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, an analysis is not required in every case to determine the proper standard of review. Where the standard of review applicable to an issue is well established by previous jurisprudence, the reviewing court may adopt that standard. This Court has repeatedly held that the standard of review applicable in this case is reasonableness. This Court must therefore determine whether the officer's finding is justified, transparent and intelligible and falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." The standard of review applicable to procedural fairness issues is correctness.

V. Analysis

(1) Was there a breach of procedural fairness in failing to give the applicant an opportunity to respond to her possible inadmissibility?

[21] The applicant argues that she was never informed that her application could be denied because the respondent believed that she could be inadmissible. She maintains that she was not warned during her June 20, 2017, interview and did not receive a procedural fairness letter, which constitutes a breach of the duty of procedural fairness by the officer.

[22] After the applicant's cousin revealed that Youlandie and Roseberline were not the applicant's biological children, the officer did not give the applicant sufficient time to respond to the officer's concerns before a report was filed under subsection 44(1) of the IRPA. According to the applicant, she had the right to expect that the officer would ask her to submit written submissions to explain the allegations of misrepresentation and submit humanitarian and compassionate grounds to allow *de facto* family members to immigrate to Canada.

[23] When considering an application for permanent residence, the officer is obliged to proceed with due regard for procedural fairness. According to case law, procedural fairness requires that the applicant be sufficiently informed of the extent of the immigration officer's concerns and have the opportunity to submit arguments.

[24] In this case, the officer treated the applicant fairly. Prior to the June 20, 2017 interview, the applicant was well aware of the officer's concerns and the type of questions she might have to answer. The applicant had the opportunity to provide explanations. In addition, she was

granted an extension of time after the interview to submit any information she deemed necessary for the determination of her application. Based on the officer's testimony and despite the applicant's testimony to the contrary, I am satisfied that the applicant was advised that if her statements were found to be false, she could be found inadmissible.

[25] Given the circumstances, the officer cannot be faulted. At no time was there a breach of procedural fairness.

(2) Did the officer make an unreasonable error in her assessment of humanitarian and compassionate grounds?

[26] The applicant submits that in her assessment of humanitarian and compassionate grounds, the officer did not consider the applicant's request to include her children as *de facto* dependent family members, rendering the decision unreasonable. In her opinion, because the applicant had raised the children as her own since birth, the officer should have expanded her review to consider humanitarian and compassionate grounds and obtained more information on the children's situation, knowing that their best interests would be affected.

[27] The applicant failed to establish that the officer had made an error. The officer exercised her discretion and considered a humanitarian and compassionate application even though the applicant had not asked her to. In addition, the officer provided explanations in this regard to show why humanitarian and compassionate considerations were not sufficient to overcome the inadmissibility. The applicant did not provide documentation to corroborate the fact that she provided financial support for the children, and she did not clearly explain how they came into

her life. Moreover, she did not demonstrate that a *de facto* relationship actually existed between them.

[28] Also, the officer gave the applicant the opportunity to provide additional information on the children's status in her request for reconsideration, which was denied and not disputed by the applicant. In her reconsideration decision, the officer specifically considered the *de facto* relationship with the children. She had several reasons for finding that this relationship did not exist, including the fact that the applicant was unable to give birth dates without her checklist and that she opted to remove the children from the case file when confronted with the consequences that could result from making misrepresentations.

[29] The applicant did not establish that the officer's decision on this issue was unreasonable.

(3) Did the officer make an unreasonable error in finding that the applicant was not in a good faith relationship with her spouse?

[30] The applicant claims that the officer made an unreasonable error in finding that her relationship with her spouse, Mardoche, was not in good faith. According to the applicant, after leaving Haiti, they continued their relationship and talked to one another every day. She submits that the officer focused on the fact that Mardoche experienced difficulty in answering questions during his interview and that she cannot be held responsible for his discrepancies.

[31] Based on the evidence in the record, the officer's finding that the applicant's relationship with Mardoche is not genuine seems well founded and certainly not unreasonable. There are

several contradictions between the information provided by the applicant and her spouse. Furthermore, he was unable to answer general questions about the applicant's life, and the applicant could not provide reasonable explanations on this subject. She also contradicted herself in her request for reconsideration when she told the officer that they had not been together since April 19, 2017, whereas, during her June 20, 2017 interview, she insisted that they were still in a relationship.

VI. Conclusion

[32] For the above reasons, I am not satisfied that the officer's decision was unreasonable. In addition, the applicant has not established that there was a breach of procedural fairness by the officer. Consequently, the application for judicial review is dismissed.

[33] None of the parties raised any question of general importance to be certified. There is therefore no question for certification.

JUDGMENT in IMM-3917-17

THIS COURT'S JUDGMENT is that:

1. This application is dismissed**;**

2. No question is certified.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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