Federal Court  Cour fédérale

Date: 20180830

Docket: IMM-70-18

Citation: 2018 FC 873

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 30, 2018

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

ANTOINETTE NASSIF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA] against a decision [Decision] by the

Immigration Appeal Division [IAD] on November 24, 2017, refusing to allow the applicant's appeal of the removal order.

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

II. Facts

[3] On July 24, 2006, the applicant, her spouse and her three children arrived in Canada from Lebanon as permanent residents. Upon their arrival in 2006, the family rented an apartment in Laval. The applicant's spouse returned to Lebanon soon after to live with his mother. The children remained in Canada with their mother and attended school for three years, until June 2009.

[4] In 2007, Anthony, the applicant's eldest son, was diagnosed with heart problems at Sainte-Justine Hospital in Montréal and was told that he would need a pacemaker.

[5] In 2008, Vanessa, the applicant's daughter, was diagnosed with psoriasis at Sainte-Justine Hospital and was followed and received effective treatment for the condition before her departure for Lebanon in 2009.

[6] On August 18, 2009, the applicant and her spouse purchased a condominium in Laval. That same month, the applicant applied for Canadian citizenship for her and her two sons.

[7] In late August 2009, the applicant and her children returned to Lebanon. Her son Anthony was unable to have the pacemaker inserted before his departure. The applicant states that she and her family returned to Lebanon for vacation and that they had not intended to leave the country permanently or cut their ties to Canada.

[8] When the applicant and her children returned to Lebanon, they joined her spouse, who had been living with his mother since July 2006. His mother, aged 84 at the time, had heart problems and diabetes. As a result, the applicant decided not to return to Canada and enrolled her children in private school in Lebanon.

[9] In 2010, the applicant's spouse purchased a home in Lebanon. The applicant and her family have lived there ever since. However, the applicant returned to Canada for brief stays in 2011.

[10] Beginning on June 26, 2011, the applicant and her family stayed in Canada for a month in the furnished apartment she had rented. During that stay, the applicant renewed her permanent resident card for a five-year period, making it valid until July 17, 2016.

[11] The applicant was summoned to appear before Citizenship and Immigration Canada [CIC] regarding her citizenship application. On August 12, 2011, she returned to Montréal to provide the documents required for the citizenship applications for her and her two sons. She subsequently returned to Lebanon.

[12] On December 6, 2011, the applicant returned to Montréal with her two sons to renew their permanent resident cards.

[13] On April 14, 2014, the applicant received a notice from CIC summoning her to a test for her Canadian citizenship application, scheduled for May 15, 2014.

[14] On May 3, 2014, the applicant arrived at Montréal International Airport. She was interviewed by an immigration officer, who determined that, during the five-year period from May 4, 2009, to May 3, 2014, she had resided in Canada for 120 days in total, meaning that she had not complied with her residency obligation. The officer found that the humanitarian and compassionate considerations she cited were insufficient to maintain her permanent resident status. A departure order was issued against her.

[15] After the departure order was issued against her, the applicant returned to Lebanon.

[16] The applicant contested the departure order before the IAD. She did not contest the legal validity of the decision. She cited paragraph 67(1)(c), stating that "taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief", namely the bests interests of her children, particularly of her daughter, Vanessa.

[17] On July 17, 2016, the applicant's permanent resident card expired while she was outside Canada.

[18] On April 10, 2017, the Canadian Embassy in Lebanon refused to issue a travel document to the applicant so that she could return to Canada. On July 6, 2017, the Canadian Embassy in Lebanon refused a second time to issue a travel document so that she could return to Canada.

[19] On November 16, 2017, the applicant returned to Canada with her daughter, crossing the land border from the United States. She stated that she did not have any problems at customs at that time.

[20] On November 24, 2017, a hearing was held before the IAD. On December 6, 2017, the IAD rendered a decision in which it concluded, on the balance of probabilities, that there were no humanitarian and compassionate considerations to warrant special relief to the applicant, considering the other circumstances of the case.

III. Issues

[21] This application for leave raises two issues:

- Did the applicant establish the existence of a reasonable apprehension of bias by the IAD?
- Was it reasonable for the IAD to conclude that the applicant did not demonstrate, on the balance of probabilities, that there were humanitarian and compassionate considerations to warrant special relief?

IV. Applicable standards of review

[22] In *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 58, the Supreme Court of Canada stated that the reasonableness standard of review applied to IAD

decisions rendered under paragraph 67(1)(c) of the IRPA. The allegation of bias is a question of procedural fairness and is subject to the correctness standard of review.

V. Analysis

A. *Absence of reasonable apprehension of bias*

[23] The applicant claims that the immigration officer demonstrated bias upon her arrival at the Montréal International Airport on May 3, 2014, by questioning her right to enter Canada, which was subsequently reflected in the officer's decision to dismiss the appeal of the removal order.

[24] There is no evidence indicating that the applicant or her counsel raised an apprehension of bias during the hearing before the IAD. The Court agrees with the respondent that the applicant is prohibited from raising this argument in the judicial review.

[25] Given the inadmissibility order issued against the applicant, the expiration of her permanent resident card and the two refusals by authorities to issue a travel document enabling her to return to Canada legally, it was valid for the IAD to ask her questions about how she had managed to cross the Canadian border on November 16, 2017.

B. *The IAD's decision is reasonable*

[26] The applicant is essentially asking the Court to re-examine the evidence to draw a different conclusion. This is not the Court's role in the judicial review of an administrative decision.

[27] The IAD found that the applicant's allegation that she and her children had left Canada in August 2009 only for vacation and that she had not yet decided not to return to Canada lacked credibility. The IAD based that finding on the following evidence:

- At paragraphs 27 and 28 of her affidavit, the applicant alleges that she left her furniture at the home of her friends in Laval and that it was not shipped to Lebanon. However, the applicant presented no evidence to the IAD or to this Court to support that allegation.
- At paragraph 84 of her memorandum, the applicant claims that her first opportunity to resettle in Canada was in April 2017. She claims that she was unable to resettle in Canada during the eight-year period between August 2009 and April 2017 because of her children's health problems. However, the IAD found that the applicant and her three children had no compelling reason not to return to Canada as soon as possible after spending one month on vacation in Lebanon in late August 2009. The IAD based that finding on a review of the children's medical records.
- The IAD found that the evidence on file was insufficient to convince it that the reasons for the applicant's continuous and prolonged stay in Lebanon from August 2009 to November 24, 2017, the date of the hearing of her application, were related to her children's medical needs. Her children could conceivably have received appropriate medical treatment for their health problems if they returned to Canada after their planned one-month vacation in August 2009.

[28] The evidence submitted to the IAD demonstrates that the applicant's spouse never resided in Canada and that he has been living with his mother in Lebanon since 2006.

[29] No objective evidence was filed to demonstrate that the applicant was prevented from returning to Canada because of her mother-in-law's health problems during the period from 2009 to 2011. The only evidence filed regarding her mother-in-law was the certificate confirming her death on June 21, 2011.

[30] There is also no objective evidence to support the applicant's claim about the uncertainty and danger of changing physicians.

[31] The IAD also considered the fact that the applicant briefly returned to Canada to renew her immigration documents and for citizenship tests during the reference period, but that she had made no attempt to return to Canada permanently, even after the inadmissibility order was issued against her on May 3, 2014, until the time of the hearing.

[32] The applicant cannot reasonably cite delays in the administrative process to explain her own failure to comply with her residency obligation.

[33] The case law acknowledges that the potential for establishment is irrelevant to the evaluation of humanitarian and compassionate considerations: *Canada (Public Safety and Emergency Preparedness) v. Lotfi*, 2012 FC 1089 at paragraphs 21−23.

[34] The IAD was not convinced by the applicant's allegation that her daughter, Vanessa, had to attend school in Canada and had to have her mother with her to do so.

[35] The IAD took into consideration that Vanessa had attended school in Lebanon for the past eight years and that there was no indication that she would experience difficulties if she were to continue attending school in Lebanon until she reached the age of majority, 18, after which time she could choose to return to Canada to continue her studies.

[36] Lastly, the IAD considered that, during the relevant five-year period, the applicant was required to be present in Canada for at least 730 days. However, the applicant was in Canada for only 120 days. The applicant's failure to comply with her residency obligation is considerable.

VI. Conclusion

[37] The application for judicial review is dismissed and no question is certified for appeal.

JUDGMENT in IMM-70-18

THE COURT ORDERS that the application for judicial review is dismissed and no question is certified for appeal.

"Peter Annis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-70-18
STYLE OF CAUSE:	ANTOINETTE NASSIF v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JULY 19, 2018
JUDGMENT AND REASONS:	ANNIS J.
DATED:	AUGUST 30, 2018

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