Federal Court  Cour fédérale

Date: 20180926

Docket: IMM-4810-17

Citation: 2018 FC 950

Ottawa, Ontario, September 26, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

BALJINDER KAUR KHAIRA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Khaira is a 62-year-old citizen of India who seeks judicial review of the October 27, 2017 Reconsideration decision that maintained the denial of her application for permanent resident status on humanitarian and compassionate grounds (H&C). Although Ms. Khaira's circumstances are sympathetic, there was a lack of evidence to support her claim for relief. The Reconsideration decision is reasonable and the Officer properly considered the best interests of the child (BIOC). For the reasons that follow, this judicial review is dismissed.

Preliminary Issue

[2] In her Notice of Application for Leave and Judicial Review, Ms. Khaira sought judicial review of the October 27, 2017 Reconsideration decision.

[3] Although the Order from this Court granting leave refers to "the decision of a Senior Immigration Officer of Citizenship and Immigration Canada, dated October 17, 2017," the reference to the October 17, 2017 date is an error as the decision for which leave was sought is the October 27, 2017 Reconsideration decision.

[4] Accordingly, this judgment is with respect to the October 27, 2017 Reconsideration decision.

Background

[5] Ms. Khaira is 62 years of age and resides with her son, his wife and their daughter. Ms. Khaira holds a multiple entry visa that is valid until March 2020. Following the death of her husband in India, she came to Canada to reside with her son. She claims to be fully dependent upon him because of her age.

H&C Decision

[6] In support of her H&C claim, Ms. Khaira asserts that she is a widow and was living alone in India following the death of her husband. Ms. Khaira says that she does not have family in

India who can support her and that her only family is her son upon whom she is completely dependent. She claims that she cannot care for herself and says she requires assistance with everyday activities because of her advanced age. She also claims to have a close bond with her granddaughter and says there would be emotional and psychological hardship if they were separated.

[7] Ms. Khaira says she does not have anywhere to live in India and cannot provide for herself financially. She claims that she cannot reside with any of her siblings in India as they are all elderly and in need of assistance.

[8] The H&C Officer considered her submissions and the supporting evidence. With respect to her claim that she needs assistance due to her health, the Officer noted that there was a lack of medical evidence to support this claim. The Officer also found that there was insufficient evidence that she would be unable to support herself in India or that she would not receive any necessary medical care in India.

[9] While the Officer acknowledged that her son and daughter-in-law assist her and that there may be some hardship in the event of her return to India, there was no evidence that they would stop supporting her if she returned to India.

[10] The Officer noted that Ms. Khaira holds a multiple entry visa that is valid until March 17, 2020, and that permanent family reunification could occur through the normal process of family class sponsorship. The Officer stated that the scenario of being an aging foreign national with children in Canada is similar to many others, and that separation caused by following the normal

process of applying for permanent resident status from outside Canada is not exceptional enough to warrant H&C relief.

[11] The Officer commented that although there may be a period of adjustment, Ms. Khaira does have family in India who would provide some support in resettlement. The Officer also noted that Ms. Khaira lived at the same address in India since 1977 prior to moving to Canada. Therefore, she would still be familiar with the culture and the language.

[12] With respect to the BIOC, the Officer stated that although this is an important factor to consider, it is not necessarily determinative. Ms. Khaira stated that she and her granddaughter are close and that they would both face hardship if separated. The Officer accepted that she plays a positive role with her granddaughter. However, the Officer found that the child's best interests can be met by her parents in Canada and that contact with Ms. Khaira could continue through modern communication methods should she return to India.

[13] The Officer recognized that there will always be difficulty leaving Canada and acknowledged Ms. Khaira's desire to remain in Canada, but that is not a ground for granting H&C relief. As the Officer indicated, leaving friends and family is expected and is not sufficient to justify H&C intervention outside of the normal immigration regime.

Reconsideration Decision

[14] After rendering the H&C decision, the Officer received a request for reconsideration dated October 24, 2017. The Officer examined the submissions and noted that no new materials

had been provided and the Reconsideration submissions merely repeated the original submissions. For this reason the Officer maintained the refusal of the H&C application on the Reconsideration.

Issues

[15] Although Ms. Khaira raises various issues, they can be addressed as follows:

Is the Reconsideration decision reasonable?

Was the BIOC reasonably considered?

Standard of review

[16] The standard of review of a reconsideration decision is reasonableness (*Kaur v Canada (Citizenship and Immigration)*, 2015 FC 674 at para 32).

[17] On a reasonableness review, the Court considers if the decision is justified, transparent and intelligible and within the range of possible acceptable outcomes defensible on the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47)

Analysis

Is the Reconsideration decision reasonable?

[18] Ms. Khaira argues that the Officer failed to properly consider her plight as an elderly widow and the Officer failed to appreciate the hardships she would experience on return to India. She submits that she is completely dependent on her son and will not be able to cope on her own in India. She argues that the Officer should have convened an interview to more fully understand her circumstances.

[19] On the Reconsideration application, Ms. Khaira relied upon the same submissions and the same evidence as she relied upon in support of her original H&C application. In the H&C refusal, the Officer found there was insufficient evidence to support the claims made about her health and her need for assistance. The Officer also concluded that her son would continue to support her even if she returned to India. The Officer further noted that there was no evidence that her family in India would not provide her with support.

[20] In an H&C application, the onus is on the applicant to submit evidence to support the claims made. Further, there is no obligation on the officer to conduct an interview (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 8). The only issue here is if the Reconsideration decision is reasonable. Even though it was a reconsideration of her H&C application, Ms. Khaira continued to carry the evidentiary burden to produce evidence to support her claim.

[21] The Officer reasonably expected medical or financial evidence in support of the various assertions made by Ms. Khaira. Here she simply did not meet the evidentiary onus on her to establish that she is entitled to H&C relief. With no new evidence being offered on

Reconsideration, it was reasonable that her claim for relief be denied on the same grounds as the H&C denial.

[22] Ms. Khaira has not identified any evidence or submissions that were not properly considered by the Officer on Reconsideration. Therefore, there is no basis for this Court to intervene.

BIOC

[23] Ms. Khaira submits that, pursuant to *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75, the Officer had to be "alert, alive and sensitive" to her granddaughter's best interests.

[24] Although the Officer accepted that Ms. Khaira played a role in her granddaughter's life and was a positive influence, he noted that no specific details were provided on their relationship. The Officer concluded that the best interests of the grandchild would be met by her being with her parents in Canada.

[25] This Court has held that, without more, the separation between a child and an extended family member such as a grandparent is not sufficient to warrant H&C relief. This hardship is inherent in circumstances where families reside in two different countries (*Tran v Canada (Citizenship and Immigration)*, 2018 FC 210 at para 11).

[26] Here the BIOC analysis and conclusion are reasonable.

Conclusion

Ms. Khaira has not identified a reviewable error in the Reconsideration decision. As a result, this judicial review is dismissed.

JUDGMENT in IMM-4810-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review of the October 27, 2017 Reconsideration decision is dismissed.

2. No serious question is certified.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4810-17
STYLE OF CAUSE:	BALJINDER KAUR KHAIRA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 28, 2018
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	SEPTEMBER 26, 2018

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