

Federal Court



Cour fédérale

**Date: 20180905**

**Docket: IMM-5634-17**

**Citation: 2018 FC 889**

**Toronto, Ontario, September 5, 2018**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**SHIRLEY-ANN MONICA DOWERS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Shirley-Ann Monica Dowers (the Applicant) seeks judicial review of the decision of an Officer (the “Officer”), refusing her application for permanent residence on Humanitarian and Compassionate (“H&C”) grounds, pursuant to section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of St. Vincent and the Grenadines. She came to Canada in 1999 and has remained here since.

[3] The Applicant has worked during her time in Canada and has contributed to the support and maintenance of family members, including minor children, in St. Vincent.

[4] An application for H&C relief was refused by a representative of the Minister of Citizenship and Immigration (the “Respondent”) by a decision dated November 1, 2016. Upon application for leave and judicial review, that refusal was set aside by Reasons and Judgement of Justice Campbell in case number IMM-4902-16. The Judgement provided that the matter was to be re-determined by a different decision-maker.

[5] The Applicant filed further submissions in support of her application, including a request that if the H&C application were refused, that a Temporary Resident Permit (“TRP”) be issued to her. The H&C application was refused in a decision dated December 7, 2017.

[6] The Applicant now argues that the Officer unreasonably failed to consider the Reasons of Justice Campbell in re-determining her application. She also submits that the Officer unreasonably assessed her establishment in Canada and the best interests of minor children. Finally, the Applicant argues that the Officer erred by failing to address her request for a TRP.

[7] The Respondent, in reply, submits that the decision of the Officer meets the applicable standard of review, that is reasonableness, and no error was made in refusing the Applicant's application.

[8] The decision of the Officer, relative to the H&C application, is reviewable on the standard of reasonableness; see the decision in *Kisana v Canada (Minister of Citizenship and Immigration)*, [2010] 1 F.C.R. 360 (F.C.A.) at paragraph 18.

[9] According to the decision in *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190, that standard requires that a decision be transparent, justifiable and intelligible, falling within a range of possible acceptable outcomes that is defensible on the law and the facts.

[10] The failure to address the Applicant's request for a TRP had been considered to be an error of law or of procedural fairness, reviewable on the standard of correctness; see the decision in *Shah v Canada (Minister of Citizenship and Immigration)*, 399 F.T.R. 146 (F.C.) at paragraph 36.

[11] Having reviewed the Certified Tribunal Record, the affidavit of the Applicant, the decision of the Officer and the submissions of Counsel for the parties, I am satisfied that the application for judicial review should be allowed.

[12] In the first place, the Officer apparently misunderstood the evidence submitted about the Applicant's support for her nieces and nephews in St. Vincent. The evidence was submitted to

address the best interests of children, otherwise known as “BIOC”. The Officer’s treatment of that evidence is contrary to the guidance given by the Supreme Court of Canada in its decision in *Kanhasamy v Canada (Citizenship and Immigration)*, [2015] 3 S.C.R. 909 at paragraphs 34–40.

[13] Second, I agree with the submissions of the Applicant that the Officer erred by failing to deal with her request for a TRP. The Officer was not entitled to ignore that request. The submission of the Respondent that the TRP is an “inherent” part of a H&C application is not persuasive.

[14] In the result, the application for judicial review is allowed, the decision of the Officer will be set aside and the matter remitted to a different Officer for re-determination. There is no question for certification arising.

**JUDGMENT IN IMM-5634-17**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed, the decision is set aside and the matter remitted to a different Officer for re-determination. There is no question for certification arising.

“E. Heneghan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5634-17

**STYLE OF CAUSE:** SHIRLEY-ANN MONICA DOWERS v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 4, 2018

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** SEPTEMBER 5, 2018

**APPEARANCES:**

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