

Federal Court



Cour fédérale

Date: 20190228

Docket: IMM-3353-18

Citation: 2019 FC 227

Ottawa, Ontario, February 28, 2019

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

MONIQUE JOYCELYN SAMUEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Proceeding

[1] This application is for judicial review of a decision of a Senior Immigration Officer [the Officer], dated February 26, 2018, in which he or she refused the Applicant's application for permanent residence on humanitarian and compassionate [H&C] grounds [the Decision]. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. Background

A. Applicant's Background

[2] The Applicant is a thirty-eight year old citizen of St. Vincent and the Grenadines [St. Vincent]. She arrived in Canada as a visitor in December 2000 and since then has remained in Canada without status.

[3] When she was eight years old, the Applicant was badly burned in a household accident. She was in hospital for six months and was abused by the nurses. After she left the hospital, the Applicant was treated poorly because of her visible scars.

[4] The Applicant came to Canada when she was twenty years old to assist her cousin with her newborn baby. She arrived on a visitor visa which expired after six months and she did not apply to regularize her status.

[5] In 2008, the Applicant met her husband, Frank Sealy [Frank] and on December 15, 2012, they married. Frank promised to sponsor her. However, their marriage deteriorated as the Applicant learned of his infidelity.

[6] Her mental health suffered during the marriage. In September 2013, she was hospitalized and following this, attended counselling bi-weekly for about two years.

[7] On March 2, 2014, Frank assaulted her. The Applicant called the police and Frank was made subject to a restraining order. She moved out of their house after this incident.

[8] In 2014, the Applicant filed an H&C application which was denied in January 2015. An application for leave to judicially review that decision was dismissed. An exclusion order was

issued against the Applicant on April 26, 2017. In September 2017, she submitted a second H&C application and in November 2017, she submitted an application for a Pre-Removal Risk Assessment [PRRA].

[9] In support of her H&C application, the Applicant provided a psychiatric assessment written by Dr. Parul Agarwal, dated October 13, 2017 [Agarwal Report]. Dr. Agarwal found that she had Major Depressive Disorder [MDD], but concluded that it was in remission. The Agarwal Report stated:

She developed these symptoms in the aftermath of her accident as a child, and later in the context of her experience of being cheated on and being subjected to verbal and physical abuse of her husband in Canada. During the session, it was clear to this writer that since her separation and with the help of counseling, Monique has been able to achieve full remission from her symptoms of MDD and she feels emotionally stable at present.

[10] On February 26, 2018, the Officer rejected both the H&C and the PRRA applications.

B. *H&C Application*

[11] The Applicant's H&C application was based on the following factors:

- Her history of family/domestic violence;
- Her establishment in and ties to Canada;
- Conditions in St. Vincent;
- The best interests of various children in her life; and
- The hardship she would face on her return to St. Vincent.

I will only discuss the factors which relate to her establishment because they are relevant to this decision.

[12] At the time of her application, the Applicant had lived in the Greater Toronto Area for close to 17 years. She submitted that she had been consistently employed as a cleaner, housekeeper, and babysitter during this time and provided letters from some of her employers.

She also provided:

- i) a copy of her lease for the period from May 2014 to November 2014;
- ii) some receipts for remittances to her family members in St. Vincent;
- iii) documents showing enrolment in employment skills classes;
- iv) a large number of support letters from members of her community, including friends, family members, her brother, and people she knew through her church;
- v) police records dealing with the incident in which she was assaulted by her husband.

III. Decision

[13] The Officer noted that the Applicant has lived in Canada for 17 years, but found that the weight he would otherwise have accorded to her length of stay in Canada was “greatly diminished” by the fact that she did not have valid immigration status for the vast majority of the time. The Officer also gave “minimal weight” to her financial establishment in Canada due to the “absence of documentary evidence of her income from employment such as paystubs, income

tax returns or other documents indicating her financial establishment.” Lastly, the Officer gave negative weight to the fact the Applicant was working without authorization.

[14] The Officer gave strong positive weight to the Applicant’s social ties and involvement in her community. The Officer gave some positive weight to the evidence that she had worked continuously and had upgraded her employment skills by taking classes with Employment Ontario.

[15] The Officer also considered the best interests of the Applicant’s nieces and nephews in St. Vincent. The Officer accepted that the Applicant sends financial support to her family members in St. Vincent, but stated there was little evidence that the children would not receive adequate food, household or school supplies if she were to leave Canada.

[16] The Officer acknowledged that Dr. Agarwal diagnosed the Applicant with MDD and stated that after receiving counselling her MDD is currently in full remission. The Officer acknowledged the importance of the Applicant’s network of family and friends in helping her to cope with the repercussions of the traumatic events she experienced in St. Vincent and in Canada and gave this considerable weight.

IV. Discussion

[17] When an officer takes an applicant’s lack of status into consideration (which he is entitled to do), the officer must balance the need to respect Canada’s immigration laws with the fact that section 25 of the IRPA will frequently involve applicants who are without status. In my view, it is contrary to this need for balancing and therefore unreasonable to repeatedly discount positive H&C factors related to establishment because of non-status.

[18] In this case, the Officer gave negative or little weight to three factors based on non-status:

- he gave no weight to her 17 years in Canada;
- he gave minimal weight to her financial establishment because she did not have pay stubs or income tax returns (these, in my view, are not documents ordinarily available to employees without status who are engaged in household work); and
- he gave little weight to her work because she did not have a work permit.

[19] In my view, it was unreasonable of the Officer to discount three factors based on non-status when there was evidence (which he accepted) that she had worked continuously, had upgraded her skills, had solid references, had paid rent, had never relied on social assistance and had sent money to her family in St. Vincent.

V. Certification

[20] No question was posed for certification for appeal.

JUDGMENT IN IMM-3353-18

THIS COURT'S JUDGMENT is that the application is allowed and the H&C application is to be reconsidered in light of these Reasons.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3353-18

STYLE OF CAUSE: MONIQUE JOYCELYN SAMUEL v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 14, 2019

JUDGMENT AND REASONS: SIMPSON J.

DATED: FEBRUARY 28, 2019

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