Federal Court  Cour fédérale

Date: 20191218

Docket: IMM-2654-19

Citation: 2019 FC 1618

Ottawa, Ontario, December 18, 2019

PRESENT: Mr. Justice Boswell

BETWEEN:

ROSA MULUGETA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Rosa Mulugeta, is a citizen of Eritrea who has Convention refugee status in Italy. In September 2015, she applied for a permanent resident visa as a member of the Convention Refugee Abroad class and Humanitarian-protected Persons Abroad class. Ms. Mulugeta's aunt and four other individuals sponsored the application.

[2] In a letter dated April 17, 2019, a Migration Officer at the Embassy of Canada in Rome, Italy, refused the application. Ms. Mulugeta has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the Officer's decision. She asks the Court to set aside the decision and return the matter to be redetermined by a different officer. The issue, therefore, is whether this relief should be granted.

[3] For the following reasons, this judicial review application is granted.

I. The Officer's Decision

[4] The Officer refused Ms. Mulugeta's application on the basis that, through her local integration, she had a durable solution in Italy. The Officer noted that, under paragraph 139(1)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], a permanent resident visa can be issued to a foreign national in need of refugee protection if there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada — either by voluntary repatriation or resettlement in their country of nationality or habitual residence, or by resettlement or an offer of resettlement in another country. The Officer found Ms. Mulugeta did not meet these requirements because she had been accepted as a Convention refugee in Italy.

[5] The Officer referenced various country conditions reports, which indicated that the Italian government had made limited attempts, with mixed results, to integrate refugees into the country's society. The Officer considered that Italy is a member of the G7 along with Canada and has one of the strongest economies in the world. The Officer noted that Italy has a complex

legal system for refugee protection, and refugees, such as Ms. Mulugeta, are legally protected in Italy.

[6] The Officer also noted that Italy is a country in which it is possible to achieve local integration as a refugee. The Officer remarked that, despite her submissions concerning difficult working conditions, Ms. Mulugeta is legally entitled to work in Italy. The Officer found that, while Ms. Mulugeta did not have the same access to the economy as Italian nationals because she faces discrimination as a visible minority female, she could access social services and the police if necessary.

[7] The Officer observed that, although it often took years for refugees to become economically stable and fluent in the local language, this did not preclude a durable solution. The Officer was not satisfied that Ms. Mulugeta was a foreign national described under paragraph 139(1)(d) of the *IRPR*.

[8] The Officer then proceeded to assess whether humanitarian and compassionate [H&C] factors based on family reunification overcame the ineligibility under paragraph 139(1)(d). Although the Officer noted that Ms. Mulugeta has extended family in Canada willing to support her, this was insufficient to overcome the durable solution in Italy. According to the Officer, the resettlement program's primary purpose is to offer protection to refugees who do not have an alternative durable solution and is not primarily a family reunification program.

[9] The Officer noted that although it would be easier for Ms. Mulugeta to be reunited with her three children in Canada (they currently live with her mother in Ethiopia), this was not in and of itself a compelling reason to overcome the normal requirements of the program in which Ms. Mulugeta had applied. In the Officer's view, the quality of life and education in Italy was comparable to Canada, and there was insufficient evidence to suggest that discrimination faced by children in Italy was significantly higher than in Canada.

[10] The Officer thus found that relief from the requirements of paragraph 139(1)(d) of the *IRPR* was not justified by the H&C grounds presented by Ms. Mulugeta and, consequently, refused the application.

II. The Parties' Submissions

A. *Applicant's Submissions*

[11] Ms. Mulugeta says the Officer unreasonably characterized her circumstances as challenges faced by any newcomer when, in fact, she experiences discrimination, abuse, and exploitation as a single female refugee. According to Ms. Mulugeta, the Officer failed to assess her actual experiences to determine whether she could live permanently in safety and dignity in Italy and to partake in its legal, economic, and social benefits. Ms. Mulugeta says the Officer also failed to assess whether widespread discrimination exists which prevents her real access to these benefits, and which precludes a durable solution.

[12] Ms. Mulugeta contends that the Officer's analysis with respect to local integration was deficient because there was no comparison of her individual circumstances with the guidelines established by Immigration, Refugees and Citizenship Canada. According to Ms. Mulugeta, an analysis based on generalizations about country conditions, without considering her personal circumstances, is unreasonable.

[13] Ms. Mulugeta notes that, although the Officer observed that the European Union [EU] managed a program to relocate asylum seekers to other EU member states for asylum, the Officer failed to consider the relevance of this to her, particularly why relocation would be necessary at all if Italy could offer a durable solution to all refugees within the country. In Ms. Mulugeta's view, Italy has become overburdened by its responsibilities as a host-state, such that it needs assistance from other countries.

[14] Ms. Mulugeta says the Officer failed to provide a complete analysis to determine whether effective local integration existed. According to Ms. Mulugeta, the only analysis provided by the Officer served to minimize and not address her circumstances. In Ms. Mulugeta's view, the Officer failed to recognize that she faces discrimination in her ability to obtain employment as a refugee from Eritrea and as a single woman. Ms. Mulugeta claims she faces exploitive work conditions, verbal and physical abuse, inappropriate touching and physical contact, and threats, and that these are not normal challenges that would improve with time but are a pattern of exploitation and discrimination of an isolated and vulnerable person.

[15] Ms. Mulugeta argues that the Officer failed to engage with the difficult circumstances she faces in Italy, including the hardship and the impact on the best interests of her children, in assessing whether H&C relief was warranted. In her view, the Officer unreasonably focused on the fact that the resettlement program's purpose was not the reunification of families. Ms. Mulugeta notes that the Officer observed that the quality of life and education are comparable in Italy and Canada, and that there was insufficient evidence to suggest discrimination faced by children in Italy is higher than in Canada.

[16] According to Ms. Mulugeta, the Officer's focus on the supposition that the resettlement program's purpose is to offer protection to refugees who do not have a durable solution, and not the reunification of families, caused the Officer to lose sight of the purpose of section 25 of the *IRPA*. Ms. Mulugeta says the Officer's analysis imposed discrete and high thresholds, which limited the Officer's ability to consider and give weight to all relevant H&C considerations.

[17] Ms. Mulugeta further says the Officer failed to consider how her circumstances in Italy impact her ability to care for her children, particularly since her work schedule is demanding and her financial resources do not allow her to care for and support her children. These circumstances, compared to those in Canada where a settlement plan and a support network would be in place, significantly impact the best interests of her children. According to Ms. Mulugeta, the Officer limited the assessment of the best interests of her children to a finding of a general absence of discrimination against them, a factor that was not raised by her.

[18] Ms. Mulugeta claims the Officer did not appropriately identify and define the best interests of her children and examine them with a great deal of attention. According to Ms. Mulugeta, the Officer was not alert, alive, and sensitive to the children's best interests. To give full and careful attention to the best interests of a child, Ms. Mulugeta says there must be a thorough assessment of the child's interests, which includes education, accommodation, and personal safety.

B. *Respondent's Submissions*

[19] The Respondent says the solution offered by the foreign country does not need to be perfect; it only needs to be durable. The Respondent points out that the onus rested on Ms. Mulugeta to convince the Officer that she had no reasonable prospect of a durable solution within a reasonable period.

[20] The Respondent notes that Ms. Mulugeta was accepted as a Convention refugee in Italy in 2015, that she is living and working in Italy, and there is no evidence suggesting she will be sent back to Eritrea. The Respondent acknowledges that, while Ms. Mulugeta's employment situation is difficult and exploitive, the Officer reasonably found that social services and the police are present, and she can approach them if necessary.

[21] According to the Respondent, the Officer correctly stated that the primary objective of the resettlement program is to offer protection to refugees who do not have a durable solution and is not a family reunification program. It was reasonable, the Respondent says, for the Officer to conclude that family reunification and better opportunities to educate and raise Ms.

Mulugeta's children was not, in and of itself, a compelling reason to overcome the normal requirements of the resettlement program. In the Respondent's view, the Officer came to this decision independently and there was no fettering of discretion in refusing Ms. Mulugeta's request for H&C relief.

[22] The Respondent notes that the Officer remarked that Ms. Mulugeta's children live with their grandmother in Ethiopia, that she cannot afford to bring her children to Italy, and that even if she could, she would have difficulty supporting them. According to the Respondent, the Officer reasonably noted that Ms. Mulugeta's sponsors could provide financial and other types of support to her and her family while she is safely in Italy. The Respondent further notes that the Officer reasonably considered that the quality of life and education in Italy are comparable to Canada, and that discrimination faced by children in Italy was not significantly higher than in Canada.

III. Analysis

A. *What is the standard of review?*

[23] The Court's jurisprudence establishes that an officer's decision as to whether an applicant is a member of the Convention Refugee Abroad class or the Humanitarian-Protected Persons Abroad class is a question of mixed fact and law reviewable on the reasonableness standard (*Hongoro v Canada (Citizenship & Immigration)*, 2019 FC 1002 at para 6; *Helal v Canada (Citizenship & Immigration)*, 2019 FC 37 at para 14; *Sar v Canada (Citizenship and Immigration)*, 2018 FC 1147 at para 19; *Gebrewldi v Canada (Citizenship & Immigration)*, 2017

FC 621 at para 14; *Abdi v Canada (Citizenship & Immigration)*, 2016 FC 1050 at para 18; *Bakhtiari v Canada (Citizenship and Immigration)*, 2013 FC 1229 at para 22; *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at para 25; and *Qarizada v Canada (Citizenship and Immigration)*, 2008 FC 1310 at para 15).

[24] An officer's assessment of H&C grounds presented by an application involves questions of mixed fact and law and is reviewable on a standard of reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]).

[25] The reasonableness standard tasks the Court with reviewing an administrative decision for the existence of justification, transparency and intelligibility within the decision-making process, and determining whether the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law (Dunsmuir v New Brunswick, 2008 SCC 9 at para 47). Those criteria are met if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

B. *The Officer's decision is not reasonable.*

[26] The Officer's decision is not reasonable because he or she failed to sufficiently assess the best interests of Ms. Mulugeta's three children.

[27] In *Kanthasamy*, the Supreme Court of Canada observed that:

> [35] The "best interests" principle is "highly contextual" because of the "multitude of factors that may impinge on the child's best interest": [citations omitted]. It must therefore be applied in a manner responsive to each child's particular age, capacity, needs and maturity: [citation omitted]. The child's level of development will guide its precise application in the context of a particular case.
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> …
>
> [39] A decision under s. 25(1) will therefore be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered: [citation omitted]. This means that decision-makers must do more than simply *state* that the interests of a child have been taken into account: [citation omitted]. Those interests must be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence: [citations omitted].

[28] In her submissions, Ms. Mulugeta stated that her children need their mother's care, supervision, and emotional support. Ms. Mulugeta also stated that she does not have the financial means to pay for her children's transportation to Italy from Ethiopia, and even if she could do so, she does not earn sufficient income to support them and does not have sufficient time off work to raise and care for them and assist with their education.

[29] Ms. Mulugeta further submitted that her admission to Canada would facilitate family reunification and enable her children to benefit from the support, assistance, and physical presence of their Canadian relatives and sponsors. According to Ms. Mulugeta, the situation would be different if she were in Canada because her sponsors' assistance would mean less extensive work hours, and she would be able to spend parenting time with her children and have a network to rely upon.

[30] These submissions with respect to the best interests of Ms. Mulugeta's children were not reasonably considered, or sufficiently assessed, by the Officer. The Officer restricted the analysis to Ms. Mulugeta's sponsors being able to financially support her and her children in Italy, and to the absence of a higher risk of discrimination against the children in Italy.

[31] The Officer failed to consider that Ms. Mulugeta's work schedule would prevent her from being physically present and available to take care of her children's needs should they join her in Italy. The Officer also failed to consider what Ms. Mulugeta's and her children's admission to Canada would entail; notably, the physical presence of the sponsors and their assistance in taking the children to and from school and to other activities.

[32] The Officer's decision is unreasonable because the interests of Ms. Mulugeta's children were not sufficiently considered. Their interests were not "well identified and defined" and not examined "with a great deal of attention" considering all the evidence.

[33] The Officer should have considered the purpose of subsection 25(1) of the *IRPA* in his or her H&C analysis. That purpose is to offer equitable relief in circumstances that would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another (*Kanthasamy* at para 21).

IV. Conclusion

[34] The Officer unreasonably assessed the best interests of Ms. Mulugeta's children. The Officer's decision must be set aside, and the matter returned for redetermination by a different officer.

[35] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

[36] The Respondent has been incorrectly named in the notice of application as the Minister of Immigration, Refugees and Citizenship. According to the federal Registry of Applied Titles, the applied title for the Department of Citizenship and Immigration is Immigration, Refugees and Citizenship Canada.

[37] The correct Respondent to this application for judicial review is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, subsection 5(2), and *IRPA* subsection 4(1)). The style of cause will be amended, therefore, with immediate effect, to name the Minister of Citizenship and Immigration as the Respondent in lieu of the Minister of Immigration, Refugees and Citizenship Canada.

JUDGMENT in IMM-2654-19

THIS COURT'S JUDGMENT is that: the application for judicial review is granted; no serious question of general importance is certified; and the style of cause is amended, with immediate effect, to name the Minister of Citizenship and Immigration as the Respondent in lieu of the Minister of Immigration, Refugees and Citizenship Canada.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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