

Federal Court



Cour fédérale

Date: 20211007

Docket: IMM-7532-19

Citation: 2021 FC 1045

Fredericton, New Brunswick, October 7, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

DONNA MARIA DALE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a Visa Officer's decision dated November 20, 2019, refusing the Applicant's permanent resident application on humanitarian and compassionate (H&C) grounds. For the reasons that follow, the judicial review is dismissed as the Officer reasonably considered the evidence in support of the Applicant's H&C application.

Background

[2] The Applicant is a citizen of Jamaica who arrived in Canada in 2015, and married shortly thereafter. Her husband, a Canadian citizen, filed an in-land spousal sponsorship application for the Applicant and her two minor children. The Applicant also received a work permit. Her work permit expired in 2018, and her subsequent applications were refused.

[3] In 2017, the Applicant's husband was charged with assaulting her and threatening to cause her death or grievous bodily harm. He pled guilty to assault and uttering threats, and received a conditional sentence and three years' probation. Following this, the Applicant's husband withdrew the spousal sponsorship application.

[4] The Applicant applied for H&C relief pursuant to the provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

H&C Decision Under Review

[5] In assessing the Applicant's H&C application, the Officer considered evidence of her establishment in Canada, her employment and her connections in the community. The Officer noted that the Applicant's work permit expired in May 2018, and no evidence was provided on how she has been financially supporting herself since that time.

[6] The Officer considered the Applicant's minor daughter, who was residing in Jamaica, and the Applicant's claim that she sends monthly financial support to her daughter. With respect to

the best interests of the Applicant's daughter, the Officer ultimately concluded the Applicant reuniting with her daughter in Jamaica was in her best interests.

[7] On the issue of reintegrating back to Jamaica, the Officer noted that the Applicant's mother and 9 siblings are living in Jamaica. The Officer considered the Applicant's statement that she would have difficulty finding a job in Jamaica, however, based upon her past experience, the Officer was satisfied that she would find employment.

[8] The Officer noted the evidence of her mental health including the psychological assessment, the diagnosis of posttraumatic stress disorder, as well as the ongoing impacts from the spousal abuse she experienced. However, the Officer determined that she could access the necessary counselling in Jamaica.

[9] Overall, the Officer was not satisfied that these factors justified an exemption under subsection 25(1) of the *IRPA*.

Issues

[10] The Applicant argues that the Officer's decision is unreasonable for failing to properly consider the evidence on the following issues:

- a. Establishment
- b. Best interests of the child (BIOC)
- c. Risk and adverse country conditions
- d. Domestic violence.

Standard of Review

[11] The applicable standard of review of the H&C Officer's decision is reasonableness.

[12] As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 99, "A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" [Citations omitted.]

Analysis

H&C General Principles

[13] Subsection 25(1) of the *IRPA* authorizes the Minister to grant relief to a foreign national seeking permanent resident status who is inadmissible or otherwise does not meet the requirements of the Act. The Minister may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations under the Act if the Minister "is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national [...]."

[14] The H&C considerations include matters such as "children's rights, needs and best interests; maintaining connections between family members; and averting the hardship a person

would suffer on being sent to a place where he or she has no connections” (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 41).

[15] However, H&C relief is an exceptional and highly discretionary measure (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15).

a. Establishment

[16] The Applicant argues that the Officer failed to properly assess her employment history. The Officer finds that “there is little on file demonstrating that she has remained employed after the expiration of her work permit, or how she is supporting herself since May 19, 2018, without authorization to work in Canada.” The Applicant argues that this is an adverse inference being drawn by the Officer.

[17] I disagree. The Officer’s statement is made directly in relation to the fact that without a work permit, the Applicant has no status to work in Canada. Her H&C application did not provide the Officer with any evidence or details as to how she is supporting herself. In the circumstances, this is a proper factor to be considered by the Officer in conjunction with an H&C application.

b. Best Interests of the Child (BIOC)

[18] The Applicant has three children in Jamaica. However, the Officer noted that only the Applicant's youngest daughter was a minor and accordingly limited the BIOC considerations to her interests.

[19] In the H&C application, the Applicant explained that it was in the best interests of her children for her to remain in Canada so she can financially support them in Jamaica. She also notes that her objective in obtaining permanent residence status is to have her children join her in Canada.

[20] In considering this issue, the Officer notes a lack of evidence that the Applicant has been financially supporting her children in Jamaica. This finding is directly related to the Officer's finding of a lack of evidence as to how the Applicant was financially supporting herself. She argues that her Affidavit contains her sworn statement that she financially supports her children. However, in light of the fact that the Applicant does not have status to work in Canada, and in the absence of any supporting documents such as banking records or money transfers, it was reasonable for the Officer not to be persuaded by the bald assertion in her Affidavit.

[21] Likewise, the statements contained in the report of Dr. Devins - a clinical psychologist who performed a psychological assessment of the Applicant in 2018 - that she is sending money to her children in Jamaica, is not first hand evidence and is based entirely upon the Applicant's self reporting to the Doctor. This is not supportive evidence of the Applicant's claim to be providing financial support.

[22] With respect to the education system in Jamaica, the Officer notes that the information provided by the Applicant - including an article on the education challenges in Jamaica from the Caribbean Education Foundation - was of a general nature, and the Applicant did not explain how this applies specifically to her daughter. The Applicant argues that this is a misapprehension of the evidence, and that the evidence highlights the well-known systemic issues and educational barriers in Jamaica.

[23] In the circumstances, since the Applicant raised the issue of the quality of the education system in Jamaica, it was reasonable for the Officer to expect evidence specific to the Applicant's daughter. The evidence offered by the Applicant was of a general nature and not specific to her daughter's circumstances. This is not a misapprehension of evidence; but rather, a weighing of evidence by the Officer.

[24] Overall, with respect to the BIOC analysis, the Officer reasonably weighed the evidence. However, the Officer ultimately concluded that it was in the daughter's best interests to be reunited with her mother in Jamaica.

c. Risk and Adverse Country Conditions

[25] The Applicant argues that the Officer's finding regarding her employability in Jamaica is unreasonable because the Officer imposed an impossible test by finding: "I acknowledge it may take some time to find employment as a result of living overseas since 2015, but it is not an impossible feat." The Applicant argues that this is not the test and that the Officer has fettered

his discretion by setting a test with a threshold of impossibility. She also highlights the evidence in her Affidavit that her family members in Jamaica are not able to financially support her.

[26] The reasonableness of the Officer's approach to this issue is in response to the quality of the evidence offered by the Applicant. The evidence before the Officer was that the Applicant had been employed in the Caribbean while she lived there. This combined with the fact that she remained employed in Canada is, on the facts, not an unreasonable conclusion.

[27] The Applicant challenges the Officer's finding regarding her mental health needs. She argues that she will not be able to get mental health treatment in Jamaica. In support, the Applicant provided a general news article and report on health care in Jamaica. In considering this, the Officer noted that the Applicant had received the recommended therapy in Canada, and there was a lack of evidence with respect to her current mental health. In the absence of current and direct evidence, the Officer was not satisfied that the Applicant would not be able to receive counselling in Jamaica. In the circumstances, this was a reasonable conclusion.

d. Domestic Violence

[28] The Applicant argues that the Officer ignored or failed to consider the circumstances of her abusive marriage. The Officer explicitly acknowledged these circumstances and states: "I acknowledge the applicant was in an abusive marriage and left prior to the completion of her FC1 sponsorship application [...] While I sympathize with the applicant, I do not find this factor, in and of itself, warrants the granting of this application, however, I do give it some weight."

[29] In my view, the Officer appropriately considered this factor and it is not the role of this Court to reweigh the evidence considered by the Officer (*Vavilov*, at para 125).

Conclusion

[30] The onus was on the Applicant to present sufficient evidence to warrant the exercise of discretion by the Officer (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5). In this case, the Applicant's evidence fell short of satisfying the Officer that discretion ought to be exercised in her favour. The Officer reasonably considered the evidence and properly weighed the BIOC considerations. The Officer's decision is reasonable and there is no basis for this Court to intervene.

JUDGMENT IN IMM-7532-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No certified questions were proposed.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7532-19

STYLE OF CAUSE: DONNA MARIA DALE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 18, 2021

JUDGMENT AND REASONS: MCDONALD J.

DATED: OCTOBER 7, 2021

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