Federal Court  Cour fédérale

Date: 20220510

Docket: IMM-3204-21

Citation: 2022 FC 685

Ottawa, Ontario, May 10, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

BEVERLLY FRANCES SINNETTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Beverlly Frances Sinnette, is a 67-year-old citizen of Trinidad and Tobago [Trinidad] and has been in Canada without status for 34 years; she first arrived in 1988 and has not returned to Trinidad since. Other than a cousin in Canada, Ms. Sinnette's family – her three adult sons, two sisters and two brothers, and the families of the one sister and one brother who are married – all live in Trinidad. Ms. Sinnette seeks judicial review of a decision

dated April 21, 2021 [Decision], rendered by a senior immigration officer [Officer], that refused her application for permanent residence on humanitarian and compassionate [H&C] grounds – she was seeking an exemption from the requirement of applying for permanent residence from abroad. The Officer found that the factors submitted by Ms. Sinnette were insufficient to justify an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] For the reasons that follow, I am dismissing Ms. Sinnette's application. I have no doubt that 34 years is tantamount to a lifetime in Canada, however, given the limited evidence submitted by Ms. Sinnette in support of her application, I am unable to find fault with the Decision in any way. Ms. Sinnette remains free, of course, to apply for permanent residence from outside of Canada.

II. Background and decision under review

[3] Ms. Sinnette arrived in Canada in October 1988 at the age of 33, without a visa – according to her, at that time, citizens coming from Trinidad did not need a visa to enter Canada. She states that her primary purpose in coming to Canada was to escape the domestic abuse she endured at the hands of the father of two of her children; Ms. Sinnette claims that as a teenager, she was sexually abused by him on two occasions, which resulted in pregnancy both times. Once in Canada, Ms. Sinnette obtained a work permit in January 1989, with multiple extensions; her last work permit expired in March 1998.

[4] Ms. Sinnette claims that she filed for refugee protection shortly after arriving in Canada but that she did not receive any correspondence from, at the time, the Department of Employment and Immigration, leaving her to believe that her claim was taking time to be processed and that she would eventually be contacted. In any event, Ms. Sinnette was unable to obtain any information about her claim despite various requests under the *Access to Information Act*, RSC 1985, c A-1.

[5] In January 1991, Ms. Sinnette was the subject of a report by an immigration officer under paragraph 27(2)(f) of the now-repealed *Immigration Act*, RSC 1985, c I-2, which provided for the preparation of such a report when a person "came into Canada at any place other than a port of entry and failed to report forthwith to an immigration officer or eluded examination or inquiry under this Act or escaped from lawful custody or detention under this Act."

[6] Following her marriage to a Canadian citizen in March 1995, Ms. Sinnette submitted a spousal application in 1996, only to request sometime later that her husband's name be removed following the breakdown of their marriage and that she be considered as an independent applicant. Ms. Sinnette's application for permanent residence was refused in June 1997; a removal order was issued against her around the same time. In the meantime, Ms. Sinnette had made a second refugee claim in May 1997, which was denied in February 1998. She had also obtained a study permit in August 1997, which expired in March 1998.

[7] Notwithstanding the removal order that was issued against her in June 1997, Ms. Sinnette has remained in Canada. She asserted in her H&C application that the reason she remained was

that her mother was taking care of her children and that she was sending them money so as to provide for them (her boys were 22, 25 and 27 years old in 1997); it was not possible to support them from Trinidad given her limited education and the difficulty in securing well-paying jobs due to her age – she was 42 years old at the time. In June 2000, a warrant for her arrest was issued by the Canada Border Services Agency [CBSA]; however, for reasons of which one can only speculate, it took the CBSA over 20 years to track her down. Ms. Sinnette was finally located and arrested in December 2020 and was released the same day after being interviewed. In the meantime, Ms. Sinnette submitted her second application for permanent residence, this time on H&C grounds, in March 2020.

[8] The Officer considered the following factors: Ms. Sinnette's establishment in Canada, the best interests of the twins she cares for, the hardship she would face if she returned to Trinidad and country conditions in Trinidad. In particular, the Officer determined that Ms. Sinnette had achieved what the Officer identified as significant establishment and integration into the Canadian culture. Ms. Sinnette has been volunteering, in particular at a hospital's chaplain department in 1995 and 1996 and at her local church since 1998, and her application is supported by numerous letters from family in Trinidad, friends and fellow churchgoers in Canada, the father of her third child, and various clergy members. On the financial side, the Officer noted that Ms. Sinnette had been self-employed as a cleaner in Ontario from October 2007 to March 2014 and that she has been working as a caregiver and nanny for a family in Ontario since April 2014, taking care of twins who were six months old when Ms. Sinnette arrived, and who are now about eight years old. Submissions included various receipts such as mobile phone receipts, shopping receipts, prescription receipts, and donation receipts, as well as bank

statements that regrettably did not indicate the owner of the account. Accordingly, the Officer was unable to conclude that the savings shown on the bank statements were those of Ms. Sinnette. The Officer accepted that Ms. Sinnette was currently employed, but he or she noted that little recent tax documentation, such as tax returns, T4 slips and/or notices of assessment, had been adduced to indicate that she has been paying taxes while working in Canada. As stated earlier, Ms. Sinnette's last work permit expired in March 1998. Overall, and although the Officer determined that Ms. Sinnette has significant establishment in Canada, the Officer had this to say:

> . . . I find that while the applicant has built a social network and shown volunteerism in Canada, I am not satisfied that she has paid taxes while working or possesses savings to fund her long term stay in Canada. The applicant continued to stay in Canada without authorization and her failure to abide by the IRPA is additionally a negative consideration, in my opinion. I do not believe that persons who fail to abide by Canada's immigration laws should be better placed to obtain permanent residence than those who follow them. While the applicant has significant establishment in Canada, I find that her failure to abide by the IRPA and IRPR detract from her positive establishment in Canada. Time spent is not evidence of establishment in and of itself, but must be considered. The evidence submitted does not support that the applicant has integrated into Canadian society to the extent that her departure would cause hardship that was beyond her control and not anticipated by the IRPA.
>
> [Emphasis added.]

[9] As regards the best interests of the twins Ms. Sinnette cares for, the Officer noted the glowing letter of support from the twins' mother, but he or she found that there was little objective or corroborative evidence to demonstrate that the level of interdependence between the children and the applicant is such that the requested exemption is warranted. The Officer also found little objective and corroborative evidence that alternative and adequate care for the

children would be unavailable, and he or she determined that given the children's young ages, it was more likely than not that they would be able to adapt to a new caregiver over time – in fact, there was little objective and corroborative evidence to suggest otherwise. On the whole, the Officer stated the following:

> I accept that the applicant and the children she provides care for have formed bonds, and I have given this some positive weight. I acknowledge that applicant [*sic*] will miss these children should she have to return home, however I do not find that the evidence before me supports that they would be unable to adjust to her departure from Canada. While not ideal, I find that the physical separation can be offset, to a degree, by contact via telephone, email and/or Skype, while she awaits PR processing in the normal fashion. Overall, there is insufficient objective evidence before me to indicate that there would be a significant negative impact on the best interests of the children if the applicant should return to her home country.
>
> [Emphasis added.]

[10] Regarding the hardship that Ms. Sinnette would face in returning to Trinidad, the Officer was unable to assign any weight to Ms. Sinnette's claim that the father of two of her children had sexually abused her because there was little documentary or corroborative evidence to support it. Furthermore, the Officer gave little weight to Ms. Sinnette's claim that her family in Trinidad is dependent on her financially because she gave little details or objective evidence to demonstrate that her removal would amount to financial hardship for her family or that she would be unable to continue to financially support them – her sons are 46, 50 and 51 years old today. The Officer considered that Ms. Sinnette's work experience would more likely than not assist her in obtaining employment in Trinidad.

[11] As to country conditions in Trinidad, Ms. Sinnette submitted that she would face hardship as a woman and as a result of poor employment opportunities. She relied on excerpts from articles describing country conditions in Trinidad. The Officer accepted that country conditions in Trinidad are not perfect, but he or she found that she was unable to link her personal situation to the generalized conditions of Trinidad and that there was little evidence to indicate that she would be unable to access adequate protection or services from the state. Finally, the Officer found that there was insufficient evidence to demonstrate that she would be unable to find employment or to receive social assistance or that her children would be unable or unwilling to provide financial assistance upon her return. The Officer further noted that Ms. Sinnette's resourcefulness and her ability to secure accommodation and a source of income since her arrival in Canada in 1988 show that she would be able to do the same upon her return to Trinidad. The Officer gave this factor little weight.

[12] In the end, and on the basis of the limited documentary evidence before him/her, the Officer determined that Ms. Sinnette had not established that circumstances exist to justify a positive exemption, and he or she refused her application. The Officer considered the extent to which Ms. Sinnette, given her particular circumstances, would face difficulties if she had to leave Canada in order to apply for permanent residence abroad in the normal manner, and although there may inevitably be some hardship associated with being required to leave Canada, the Officer found that this alone will not generally be sufficient to warrant relief on H&C grounds under subsection 25(1) of the Act.

III. Legislative regime

[13] According to subsection 25(1) of the Act, on request of a foreign national who is inadmissible or who does not meet the requirements of the Act, the Minister may grant an exemption from any applicable criteria or obligations of the Act if the Minister is of the opinion that it is justified by H&C considerations relating to the foreign national, taking into account the best interests of a child directly affected:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25(1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the	25(1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

> foreign national, taking into account the best interests of a child directly affected.

IV. Issue and standard of review

[14] The sole issue in this application for judicial review is whether the Officer's decision not to grant an exemption on H&C grounds is unreasonable. Ms. Sinnette raises three specific questions:

a. whether the Officer erred in the assessment of Ms. Sinnette's establishment by taking into account her failure to abide by Canada's immigration laws and by focusing on the absence of evidence demonstrating that she had paid her taxes;

b. whether the Officer erred in using her establishment in Canada against her in the hardship analysis; and

c. whether the Officer erred in the assessment of the country conditions in Trinidad as regards sexual abuse.

[15] The applicable standard of review for the merits of an H&C decision is the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; see also, prior to *Vavilov*, *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 57-62 and *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44). A reasonable decision is one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constraint the decision maker." Therefore, this Court must ask "whether

the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at paras 85, 99, 102). Furthermore, subsection 25(1) of the Act confers broad discretion on the Minister. The granting of an exemption based on H&C grounds is deemed exceptional and discretionary and is entitled to deference (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15).

V. Analysis

[16] Ms. Sinnette argues that the Officer was overly focused on the length of her unauthorized stay in Canada, which clouded his or her judgment in the assessment of her establishment factors, and cites in support of her position this Court's decisions in *Jaramillo Zaragoza v Canada (Citizenship and Immigration)*, 2020 FC 879 [*Jaramillo Zaragoza*]; *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 at para 21 [*Sebbe*]; *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 777; and *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1142. I cannot agree with Ms. Sinnette. The Officer considered that Ms. Sinnette's failure to address her status in Canada for over 23 years weighed against what was otherwise significant positive establishment; it was certainly open to the Officer to discount Ms. Sinnette's establishment for having unlawfully failed to depart Canada when a removal order was issued in 1997 and arrest warrant was issued for her as far back as 2000 (*Osorio Diaz v Canada (Citizenship and Immigration)*, 2015 FC 373 at para 21).

[17] Also, I fail to see how any of the decisions cited by Ms. Sinnette assist her. In both *Jaramillo Zaragoza* and *Sebbe*, the problem, amongst other things, was that the immigration officer had found that the degree of establishment of the applicants was rooted in the length of

time that they had spent in Canada, and that it was their time spent without status in Canada that had given them the tools to build such establishment. That is not the case here; at no time did the Officer credit Ms. Sinnette's establishment in Canada to the 32 years that she was in Canada without status. To the contrary, the Officer found that Ms. Sinnette's time in Canada without status was actually a negative factor weighing against the otherwise positive elements of her establishment.

[18] In any event, the fact that the Officer considered her time spent in Canada following the arrest warrant that was issued against her in 2000 as a result of the removal order was not determinative of the Officer's decision. What was conclusive was the insufficient evidence that Ms. Sinnette had submitted to support her contention that she has integrated into Canadian society to the extent that her removal would cause her hardship. The real question when reviewing an officer's assessment is "whether the officer engaged in a consideration of all of the relevant factors that weigh in favour of – or against – the grant of relief under subsection 25(1)" (*Lopez Bidart v Canada (Citizenship and Immigration)*, 2020 FC 307 at para 31, citing *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at paras 16-22). Here, the Officer indeed turned his/her mind to assessing the level of disruption that may result from Ms. Sinnette having to abandon what she has built in Canada and return to Trinidad to apply for permanent residence. After assessing the factor of establishment, the Officer stated the following:

> The evidence submitted does not support that the applicant has integrated into Canadian society to the extent that her departure would cause hardship that was beyond her control and not anticipated by the IRPA.

[19] As stated by Mr. Justice Zinn in *Sebbe*, an immigration officer must analyze and assess the degree of establishment of an applicant and how it weighs in favour of granting an exemption (*Sebbe* at para 21); that is precisely what the Officer did in this case. Since Ms. Sinnette has not pointed to any particular factors relevant to her establishment that were not considered by the Officer, I see nothing unreasonable in the Officer's analysis.

[20] Ms. Sinnette also argues that the Officer unreasonably focused on her failure to provide notices of assessment in order to demonstrate that she had paid her taxes while she was working in Canada. She states that the Officer "gave weight" to the fact that she did not pay her taxes but failed to reasonably assess her establishment factors. I do not agree with Ms. Sinnette. The Officer stated that he/she was "not satisfied that she has paid taxes while working or possesses savings to fund her long term stay in Canada" after noting that "little recent tax documentation, such as tax returns, T4 slips and/or Notices of Assessment have been adduced to indicate that the applicant has been paying taxes while working in Canada." It was certainly open to the Officer to reasonably consider whether Ms. Sinnette paid any income taxes as evidence of participation in the Canadian economy in the assessment of her establishment (*Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904 at para 28).

[21] Ms. Sinnette further submits that the Officer turned a positive into a negative and used her positive establishment factors against her in mitigating the hardship she would experience if she returned to Trinidad (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at para 23; *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at para 26). The Officer noted Ms. Sinnette's resourcefulness and her ability to secure accommodation and a source of

income in Canada and found that these factors were indicative of her ability to do the same upon her return to Trinidad. While I agree that an officer cannot ascribe weight to an applicant's establishment so as to use it against the applicant to mitigate future hardship, that is not what the Officer did in this case. Here, the Officer found that Ms. Sinnette's evidence of her establishment did not support that she has integrated into Canadian society to the extent that her departure would cause hardship that was beyond her control, which is, in essence, a descriptive way of stating that the hardship would not be unusual and undeserved or disproportionate.

[22] As regards country conditions, Ms. Sinnette argues that the Officer stated that there was insufficient evidence to assign any weight to the claim of sexual abuse she suffered at the hands of the father of two of her children, but that he/she accepted later in the Decision that she was sexually assaulted as a teenager. I do not agree with Ms. Sinnette's interpretation of the Officer's reasons. On the one hand, when considering the hardship Ms. Sinnette would face upon her return to Trinidad, the Officer found that there was little documentary or corroborative evidence to support the claim that she would be pursued and threatened by her abuser if she returned to Trinidad. On the other hand, in the context of considering the country conditions regarding sexual abuse and gender-based violence in Trinidad, the Officer accepted, admittedly with very little documentary or corroborative evidence in support, that Ms. Sinnette was sexually assaulted as a teenager. I see nothing contradictory in those two findings.

[23] Ms. Sinnette further argues that the Officer did not adopt an empathetic approach in acknowledging that she may experience sexual abuse or gender-based violence if she returns to Trinidad (*Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212 at para 34). I do not

agree. The Officer acknowledged the existence of sexual abuse and gender-based violence in Trinidad but was not satisfied of the existence of a sufficient link between the generalized risk to women in Trinidad and Ms. Sinnette's personal situation (*Uwase v Canada (Citizenship and Immigration)*, 2018 FC 515 at paras 41-43).

[24] Finally, Ms. Sinnette submits that the Officer omitted to consider evidence establishing the absence of state protection for sexual abuse and gender-based violence in Trinidad. She points to excerpts from a report published by Freedom House and found on the Refworld (UNHCR) database that was linked to her H&C submissions, which state that "[t]here are no laws against sexual harassment," that "[t]he government has struggled in recent years to address violent crime, which is mostly linked to organized crime and drug trafficking," that "[d]ue process rights are provided for in the constitution, but are not always upheld. Rising crime rates and institutional weakness have produced a severe backlog in the court system…," and that "[t]he judicial branch is generally independent, but subject to some political pressure and corruption." I find that these excerpts are mostly general in nature, applying to all the crimes in Trinidad. In any case, the Officer was not satisfied that there was a link between Ms. Sinnette's personal situation and the generalized conditions of Trinidad. An officer may exercise his or her discretion in weighing the different factors, and the role of this Court is not to reweigh evidence (*Vavilov* at paras 125-126).

VI. Conclusion

[25] What is clear is that time, alone, does not create establishment, although it may factor in to the hardship analysis when determining whether disruption of that establishment weighs in

favour of granting the exemption (*Sebbe* at para 21). In this case, on the whole, I cannot see any reviewable error on the part of the Officer. I must, therefore, dismiss the application for judicial review.

JUDGMENT in IMM-3204-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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