Federal Court  Cour fédérale

Date: 20240723

Docket: IMM-6404-23

Citation: 2024 FC 1153

Ottawa (Ontario), July 23, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

KARAMJEET KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of India and seeks judicial review of the decision to refuse the deferral of her deportation in Canada in May 2023. At the time she filed the Application, she had argued that it was an unreasonable decision not to defer her removal even though she had a pending humanitarian and compassionate ("H&C") application, an application for temporary resident permit ("TRP"), a spousal sponsorship and a pending judicial review of her application

for Pre-Removal Risk Assessment (“PRRA”). The decision not to defer removal was largely based on the fact that the Applicant’s PRRA application was rejected and that she faced an enforceable removal order.

[2] There were substantial and determinative changes to the facts of this case by the time I heard the judicial review application. In February 2024, Canada Border Services Agency (“CBSA”) determined that the Applicant was indeed a genuine student and she was issued a three-year TRP, together with an open work permit.

[3] Further, the Respondent had consented to allow the judicial review application of the negative PRRA decision, and the matter was referred back to be decided by a different PRRA officer. The Applicant filed a notice of discontinuance in her application against the PRRA decision in this Court file no. IMM-1282-23, on September 20, 2023.

[4] Therefore, by the time I heard the application, the Applicant did not face an enforceable removal order. Simply put, there is no foreseeable removal to argue about its deferral.

[5] The determinative issue before me is therefore mootness. For the reasons set out below, I decline to decide the Application on its merits as it is moot. The application for judicial review is therefore dismissed.

II. Relevant Background

[6] On April 25, 2018, the Applicant arrived in Canada on a study permit that was based on a fraudulent acceptance letter from Seneca College. After her arrival, her immigration consultant told her that there was an issue with her admission due to a dispute between the consultant and Seneca College. She did not contact Seneca College and instead enrolled in a different institution in Edmonton. She was eventually referred to the Immigration Division ("ID") of the Immigration and Refugee Board ("IRB") for misrepresentation. She was found to be inadmissible for misrepresentation, and the Federal Court dismissed her application for judicial review of that decision (*Kaur v Canada (M.P.S.E.P.)*, 2023 FC 87).

[7] On June 29, 2023, the Applicant obtained a study permit and a work permit. In 2023, CBSA investigated and found that she was a genuine student who complied with the conditions of her study permit and was affected by a fraud by her consultant. On February 7, 2024, following this investigation, the Applicant was issued a three-year TRP, an open work permit and a study permit. On May 2, 2024, the Court granted leave to hear this application.

III. Issues

[8] In my decision, I will address the following issues only:

a) Is the Application for judicial review moot?
b) If yes, should the Court still hear the Application?

IV. Analysis

A. *Is the Application Moot?*

[9] As the Supreme Court of Canada [SCC] set out in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*], a case is moot where a decision of a court will have "no practical effect" on the rights of the parties and where "no present live controversy exists" which affects the rights of the parties (*Borowski*, at 353). The general principle is that courts will decline to hear a case that is moot, where the case raises "merely a hypothetical or abstract question": *Borowski* at 353.

[10] At the hearing, the Applicant's counsel conceded that the issue of removal is moot. However, he argued that this Court should make a declaratory judgment under paragraph 18.1 (3)(b) of the *Federal Courts Act* [the "Act"]. The Applicant argued, without referring to any legal authorities, that this Court must declare that removal should not be enforced when there is a pending H&C application for at least six months because it constitutes an unfairness for the likes of the Applicant.

[11] First, I disagree that s. 18.1 of the Act applies to hypothetical cases not supported by the facts before the Court. The Applicant's counsel referred to no authority on a "six-month" rule or that this Court's declaratory judgment should be made in disregard of the facts. In this case, the Applicant had filed her H&C application in January 2023 and removal was scheduled to take place in May 2023. Therefore, counsel's unsupported argument on the unfairness of removal for

those who have a pending H&C application, i.e., in counsel's words, filed at least six months prior to removal, simply does not apply to this case.

[12] There is simply no live controversy between the parties because not only is the Applicant enjoying a valid three-year TRP until 2027 and a pending H&C that should be decided by then, she is no longer removal-ready. This is because her PRRA application has been returned to the PRRA office to be re-determined.

B. *Should the Court Hear the Application even if it is moot?*

[13] When a case is moot, courts should only consider it where it is in the interest of justice or the public interest to do so: *ES v Joannou*, 2017 ONCA 655 [*ES*] at para 37. "The mootness doctrine is not applied strictly, to ensure important questions that might independently evade review are heard by the Court (Borowski at 360)."

[14] At the Judicial Review hearing, counsel for the Applicant focused the bulk of his argument on the continued risk to the Applicant upon removal to India. When I asked to comment on public interest factors, he argued that removing an individual who has a pending H&C application, and that the H&C application is filed in a timely fashion and that the individual has done nothing wrong, is inherently unfair and against public interest. He further argued that the Applicant got media coverage in Edmonton because she was a victim of fraud by a crooked consultant.

[15] I find that the counsel has confused the Applicant's media coverage and public profile with public interest. The Respondent has satisfactorily responded to the potential "unfairness" by consenting to re-examining the PRRA, issuing a three-year TRP and an open work permit. I also find that the Applicant's counsel arguments is factually incorrect when he continued to focus on the Applicant doing "nothing wrong", when she was found to be inadmissible for misrepresentation. Her H&C application was also filed some four months prior to the initial scheduled date of removal, and it was therefore not unduly delayed. It is not in public interest for this Court to make a hypothetical decision, especially when the evidence of the case at hand does not support the hypothetical facts.

[16] The Federal Court of Appeal [FCA] has confirmed the three factors the Court should consider when determining whether to exercise its discretion to hear a moot case: *CUPE Canadian Union of Public Employees (Air Canada Component) v Air Canada*, 2021 FCA 67 [*CUPE*] at para 9, citing *Amgen Canada Inc v Apotex Inc*, 2016 FCA 196 [*Amgen*] at para 16 and *Borowski* at 358-363.

[17] The considerations are:

i. The absence or presence of an adversarial context;

ii. Whether there is any practical utility in deciding the matter or if it is a waste of judicial resources; and

iii. Whether the court would be exceeding its proper role by making law in the abstract, a task reserved for Parliament.

[18] I find that there is no adversarial context in this case because the Applicant's removal has indeed been deferred. There is a pending PRRA and a three-year TRP at the conclusion of which, and subject to certain conditions, the Applicant could apply for permanent residence.

[19] There is no practical utility in deciding the matter where the principled raised by the Applicant's counsel simply do not apply to the facts of this case. The Respondent has also remedied the potential "injustice" by consenting to the reassessment of the PRRA and by issuing a longer-term TRP.

[20] There is a lack of practicality and a waste of judicial resources in deciding the application on its merits. Even if I were to allow the judicial review, no removal could possibly take place until the PRRA is re-assessed. The Applicant is also enjoying a three-year TRP. Therefore, even if I were to grant the judicial review, it would have had no practical effect.

[21] Finally, for the reasons already stated, the Applicant is only asking this Court to make law in the abstract, which would exceed this Court's proper role. This is particularly the case here where the proposed problem for which the Applicant urges this Court to exercise its discretion simply does not apply the facts of this case: the H&C was not unduly delayed and a PRRA officer is already reassessing the danger elements. The Applicant is not facing removal in the foreseeable future.

[22] Finally, declaring the case moot is does not frustrate the underlying judicial review. The Applicant is already enjoying the results of a favourable review.

[23] For all the reasons cited above, I decline to determine the merits of the Application.

V. Conclusion

[24] The application for judicial review is dismissed for mootness.

[25] There are no certified questions in this case.

JUDGMENT in IMM-6404-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There are no certified questions.

"Negar Azmdueh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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