

Date: 20080724

Docket: IMM-166-08

Citation: 2008 FC 895

Ottawa, Ontario, July 24, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

SIMARJIT KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of Pre-Removal Risk Assessment Officer, G. Vlachos (the Officer), dated December 19, 2007, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), in which the Officer refused an exemption from the permanent resident visa requirements on humanitarian and compassionate (H&C) grounds.

ISSUES

[2] One issue is raised in the case at bar: did the Officer fail to provide adequate reasons, or otherwise fail to address the grounds raised by the applicant, and thereby err in concluding that the applicant would not suffer unusual, undeserved or disproportionate hardship if required to apply for permanent residence from outside Canada?

[3] The judicial review shall be dismissed for the following reasons.

FACTUAL BACKGROUND

[4] The applicant is a citizen of India, born on January 26, 1963. She arrived in Canada on November 3, 2000, and made a claim for refugee protection. The claim was denied on March 18, 2003 and her application for leave and judicial review was denied by this Court on July 18, 2003. The applicant claimed refugee status following a series of events that occurred between March 1997 and March 2000 in her native country, India. Notably, the applicant alleged that her husband was a member of Akali Dal Armistar, and was arrested and tortured on three occasions. She also alleged that she was arrested and beaten on one occasion. She approached a human rights organization, and claimed that she was consequently arrested, beaten and raped by police over a period of two days. The applicant subsequently discovered that her husband was dead. The applicant's claim was rejected on the grounds of credibility.

[5] The applicant filed an H&C application in August 2005 based on the best interests of the children, and her prolonged inability to leave Canada resulting in establishment. The applicant is a

widow and the mother of two children of 17 and 18 years of age, respectively. In her submissions to the Officer, she included photocopies of two citizenship cards with the notation “relative”. The applicant also indicated that she volunteered at the local Sikh temple. She has been employed since her arrival and has paid her bills. Further, she has amassed ten thousand dollars in savings. Since coming to Canada, she has sent money to India to support her family members there, which she claims she would be unable to do if she were employed in India.

[6] The applicant provided updated submissions for the H&C application on October 22, 2007 and identity documents on November 14, 2007. The identity documents provided include a photocopy of the applicant’s birth certificate, dated January 10, 2002, a family ration card issued in January 1998, and an election card issued on January 18, 2001.

DECISION UNDER REVIEW

[7] The Officer rejected the applicant’s H&C application, concluding that she had not demonstrated that she would face unusual, undeserved or disproportionate hardship if required to apply for permanent residence from outside of Canada. In coming to this decision, the Officer considered the applicant’s identity, the risk to the applicant upon return, the applicant’s personal situation (establishment), and the best interests of the children.

[8] The Officer determined that the applicant failed to establish her identity. The determination was supported by the following reasons:

- a) The Officer noted that the Immigration and Refugee Board (IRB) accepted the applicant's birth certificate as an acceptable identity document. However, the Officer mentioned that the applicant did not submit her birth certificate when it was requested on April 21, 2005 by Canada Border Services Agency. The document was requested a second time; the applicant explained that it must be with the IRB file, but the Officer noted that no efforts were made to retrieve the document.
- b) A request was made for the applicant to produce a passport. The applicant explained that she was refused service by the India High Commission in Ottawa because she made a claim for refugee status. Further, she explained that the High Commission had refused to give her a refusal letter.
- c) The Officer considered the identity documents submitted following the final request. One was an Indian electoral card. The Officer determined that this document was not genuine based on the fact that it was printed on the wrong colour and quality of paper; that it was the wrong size, of poor quality and issued following the applicant's arrival in Canada.
- d) The Officer also considered the applicant's ration card, which she mentioned was of poor quality and easily able to be altered. She noted that a translation, dated November 5, 2005, was included with the submissions. Because the translation predated the submission of the document by two years, the Officer considered that the applicant withheld the document for that period of time in order to avoid removal.

- e) The Officer wrote that the applicant appeared to be much older than the age indicated by her identity documentation. The Officer considered a psychological report which stated a similar observation.

[9] The Officer concluded that the risk that the applicant would face if returned would not amount to undue hardship for the following reasons:

- a) The Officer considered that the evidence provided by the applicant in support of the allegations of risk before the IRB was found not to be credible.
- b) The Officer noted that the applicant did not make any specific claims of risk in her H&C application, nor did she submit any evidence that would support her allegation of risk. The Officer therefore determined that she did not have any evidence which would allow her to come to a different conclusion than that of the IRB.
- c) Finally, the Officer considered the country conditions in India, and determined that no change was indicated by the documentary evidence that would warrant a positive decision.

[10] The Officer concluded that the applicant's personal situation did not reflect sufficient establishment to warrant an exemption on H&C grounds. She relied on the following elements :

- a) The Officer noted contradictions in the length of time the applicant claimed to have been employed. In her 2005 submissions, the applicant stated that

she had been working at C.M. Finition from November 2000 until November 2003, and again from November 2004 until May 2004. In her 2007 submission, she stated that she was unemployed from her date of entry into Canada until April 2003, and was employed from May 2003 to May 2004. A letter from C.M. Finition dated June 4, 2004 indicated that the applicant began employment on April 12, 2004. The Officer noted that no explanation was provided for the contradictions.

- b) The Officer noted that the tax assessments filed for 2000 and 2002 bore the name of Jaswinder Singh, and not the applicant. The Officer drew a negative inference from this discrepancy and as well as the discrepancies related to the dates of employment.
- c) The Officer considered the applicant's submission that she made many new friends through work and her community life. She noted the applicant's good financial planning, and the fact that she amassed ten thousand dollars in savings. The Officer considered that the applicant would have less earning power in India, but determined that her work skills and financial management skills would be transferable.
- d) The Officer determined that the applicant had not demonstrated that she had personal attachments in Canada that would cause hardship if severed. The Officer noted in her review of the facts, that though the applicant submitted copies of two citizenship cards which she indicated belonged to relatives, no indication was made as to how these people were related to her.

[11] The Officer determined that it was in the best interests of the children to have their mother with them in India, and as such the best interests of the children was not a positive factor in the assessment of the H&C application:

- a) The Officer noted that the applicant sent financial support to her children in India. However, the Officer also considered the fact that the applicant's son and daughter were 17 and 18 years of age respectively, as well as the fact that no identity documents were submitted for them. The Officer determined that only the applicant's reduced income would negatively affect the children. However, given the applicant's savings and the fact that the children are almost of age to contribute financially, the Officer concluded that the best interests of the children did not constitute a positive factor.

ANALYSIS

Standard of review

[12] This Court has previously held that the review of H&C decisions should be afforded considerable deference, and that the applicable standard was reasonableness *simpliciter* (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817).

[13] Following the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, review of H&C decisions should continue to be subject to deference by the Court, and are

reviewable on the newly articulated standard of reasonableness (*Dunsmuir*, at paragraphs 55, 57, 62, and 64).

[14] For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process. The decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, at paragraph 47).

Did the Officer fail to provide adequate reasons, or otherwise fail to address the grounds raised?

[15] The applicant raises four arguments. First, the applicant submits that the Officer erred by considering the applicant's identity after recognizing that the IRB concluded that identity was established. The applicant further submits that the Officer erred by discounting the applicant's explanation that the embassy would not provide her with a passport.

[16] I cannot accept this argument. It was open to the Officer to note the applicant's failure to produce the requested documents. While the Officer may consider what happened before the IRB, she was certainly not bound by the decision or any conclusions therein. Further, it is my opinion that the Officer's determination that the applicant failed to establish her identity was not determinative of the claim; in the event that the Officer erred by examining the applicant's identity, the error would be immaterial.

[17] Second, the applicant argues that the Officer wrongly considered the risk faced by the applicant, since she did not raise risk in her H&C application.

[18] The Officer's review of the risk which the applicant might face upon return as a factor in her H&C application does not constitute an error. To the contrary, it demonstrates that the Officer conducted a careful assessment of the application. The H&C application made pursuant to section 25 of the Act provides for exceptional relief from the requirements of the Act, and constitutes a discretionary decision. In the context of the legislative scheme, the Officer may examine all factors which are deemed to be relevant to the file. The Officer's examination of risk in the case at bar is no exception.

[19] Third, the applicant alleges that the Officer erred in her assessment of the facts relating to the applicant's personal situation and establishment, and that the Officer did not mention in her decision that the applicant was a widow with only five years of education. Notably, she points to the fact that the Officer did not take into consideration the length of her stay in Canada as a positive factor. Further, the applicant disagrees with the Officer's conclusion as to her ability to find work and save money in India.

[20] The arguments raised by the applicant demonstrate a disagreement with the conclusions of the Officer; the applicant asks the Court to intervene by reweighing the evidence. Weighing the evidence is a task which falls squarely within the purview of the Officer, and is not the role of the Court unless reviewable errors are demonstrated. The Officer provided clear and cogent reasons for her determination with regard to the establishment of the applicant, and the decision clearly falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and

the law. The date of arrival is clearly indicated in the section of the decision entitled Immigration Information, and again under Case Summary. In combination with the Officer's reasons addressing the degree of establishment, it was not necessary for her to explicitly address the length of the applicant's stay in Canada.

[21] Finally, the applicant submits that the officer's general statement that the applicant would not suffer undue hardship is not supported by the evidence, and the lack of reasons warrants the review of the decision.

[22] I do not agree. The Officer clearly addressed the relevant factors in making her determination. The applicant has failed to point to any evidence that relevant H&C factors were not addressed in the decision. As a whole, the decision was justified, intelligible and transparent.

[23] The parties did not submit questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-166-08

STYLE OF CAUSE: **SIMARJIT KAUR**
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: July 22, 2008

REASONS FOR JUDGMENT
AND JUDGMENT: Beaudry J.

DATED: July 24, 2008

APPEARANCES:

Andrea C. Snizynsky FOR APPLICANT

Bassam Khouri FOR RESPONDENT

SOLICITORS OF RECORD:

Andrea C. Snizynsky FOR APPLICANT
Montreal, Quebec

John H. Sims, Q.C. FOR RESPONDENT
Deputy Attorney General of Canada
Montreal, Quebec