Date: 20090211

Docket: IMM-1001-08

Citation: 2009 FC 130

Ottawa, Ontario, February 11, 2009

PRESENT: The Honourable Mr. Justice Louis S. Tannenbaum

BETWEEN:

STEPHANIE MU WONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of an immigration officer dated February 14, 2008, by which the applicant's application for permanent residence based on humanitarian and compassionate considerations was denied.

[2] The applicant, Stephanie Mu Wong, is a citizen of France and lived in French Polynesia, specifically Tahiti, before entering Canada.

[3] She arrived in Canada on August 31, 2006, having previously visited the father of her child, Kolobay Twanga, four times. On November 9, 2006, the applicant gave birth in Canada to her third child, a daughter named Tikahana Sofia Twanga. Mr. Twanga is apparently the father of two of Ms. Wong's children.

[4] The father of the child, Kolobay Twanga, is a citizen of Congo. He is a Catholic priest and is presently in Canada as a doctoral student at the Université de Sherbrooke. Mr. Twanga has only a temporary resident visa for Canada.

[5] The applicant claims that she separated from Mr. Twanga because he was abusive.

[6] On November 14, 2007, the applicant submitted an application for permanent residence based on humanitarian and compassionate considerations. In her application, she said that it was in the best interests of her daughter to stay in Canada so that she could maintain a relationship with her father and have a better material life.

[7] On February 13, 2008, the immigration officer called the applicant to confirm a few points in her file. During that conversation, the applicant explained the she had had a custody hearing that day and that the child's father had not seen his daughter for over a year.

[8] The applicant is alleging that she believed that that telephone call was intended to be a [TRANSLATION] “minor update on certain questions” and explains that she [TRANSLATION] “was not prepared for a final interview for the determination of her case”.

[9] She explains that she did not have the opportunity to file additional documents or contact her counsel before the immigration officer’s decision was made on February 14, 2008.

[10] On June 15, 2008, the Ontario Superior Court (Family Court) issued an order confirming that the applicant had temporary custody of her daughter and that this custody entitled her to travel abroad. In addition, the order gave Mr. Twanga the right to supervised visits with his daughter.

[11] The main issue in this judicial review is whether the immigration officer breached the applicant’s right to procedural fairness by interviewing her without her counsel being present and by failing to request supplementary documents.

[12] This Court must also determine whether the immigration officer erred in finding that there were insufficient humanitarian and compassionate considerations to grant a permanent resident visa to the applicant.

[13] The applicant is claiming that the immigration officer breached her right to procedural fairness during the telephone interview by reason of the fact that she did not have the opportunity to have her counsel present and that the information given during that interview was of paramount

importance to the evaluation of her case. She is stressing that, despite the fact that she told the immigration officer that a family court proceeding had been instituted, the officer did not find it appropriate to request a copy of the order and inquire as to the nature of the proceeding. Consequently, the applicant is of the opinion that her right to fairness was breached and that her representative would have insisted on providing these documents before a decision was made.

[14] The applicant argues that the order dated February 13, 2008, had no determinative influence on the immigration officer's decision. The order concerns two motions filed by Mr. Twanga: the first asking the Court to add his sister as a party to the child custody proceedings, and the second to enable Mr. Twanga to have supervised visits with his daughter at his sister's home.

[15] However, I wish to point out that Mr. Twanga attempted by way of a motion to the Ontario Superior Court (Family Court) to transfer his parental rights to his sister. It should also be pointed out that the applicant asserts that Mr. Twanga has had very little contact with the child since her birth and that it was by way of a motion that he tried to establish his visitation rights with his daughter.

[16] The immigration officer noted in the reasons that it would be reasonable to believe that with her education and work experience that the applicant could support her three children abroad. In addition, the officer noted that it is reasonable to believe that the father could pay support for his daughter even if she lived abroad with her mother.

[17] During the interview and according to the officer's notes, the applicant stated that [TRANSLATION] "I was going to leave Canada once my daughter was born, but my daughter's father did not want to give me permission to take my daughter" (Tribunal Record, p. 17).

[18] For all these reasons, I find that the immigration officer's decision is reasonable. Despite the applicant's claim, I do not believe that her right to procedural fairness was breached. I find that the officer's reasons demonstrate that the officer took into account the proceedings before the Ontario Superior Court, and consequently no additional evidence was necessary for the officer to make a decision.

[19] The applicant's application for permanent residence is based primarily on the fact that the applicant believes that it is in her daughter's best interests that she remain in Canada. When a child is affected by a decision, an immigration officer is legally required to demonstrate that he or she is "alive, attentive, or sensitive" to the child's best interests.

[20] The applicant asserts that she left Mr. Twanga because he abused her. She explains that Mr. Twanga tried to have his parental rights transferred to his sister by way of a motion to the Ontario Superior Court (Family Court), that he has had very little contact with the child since her birth, and that it is by way of a motion that he tried to establish his visitation rights with his daughter.

[21] Since her entry into Canada, the applicant has not worked and currently receives social assistance. However, she was trained as a French teacher.

[22] In dismissing the application, the immigration officer considered the following:

a. the fact that the applicant alleges that the father of her daughter was abusive;

b. the applicant's daughter was 1 year and 3 months old when the decision was made;

c. the evidence submitted was not sufficient to establish that the child had a relationship with her father, and in fact the evidence shows that the child had not had contact with her father for over a year;

d. the applicant has temporary custody of the child and has permission to travel abroad with her;

e. the father does not wish to obtain custody of his daughter;

f. the father wants to have his daughter adopted by his sister (the child's aunt);

g. the applicant is educated and has many employment opportunities in France;

h. the applicant has the ability to support her daughter if she lived abroad;

i. the child could obtain French citizenship if she returned to France with her mother;

j. it is reasonable to believe that the child could visit her father and that her father could also visit her even if she lived abroad.

[23] Given the elements considered by the immigration officer, it is obvious that the child's best interests were examined and that the officer was "alive, attentive, or sensitive". The officer's decision therefore falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Consequently, I am satisfied that the decision is reasonable and that this Court's intervention is not warranted.

JUDGMENT

For the reasons given above, the application for judicial review is dismissed. No question of general importance was submitted for certification.

"Louis S. Tannenbaum"
Deputy Judge

Certified true translation
Susan Deichert, LLB

AUTHORITIES CONSIDERED BY THE COURT

1. *Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 429
2. *Kolosovs v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 165
3. *Abu Laban v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 661
4. *Alexander v. Canada (Solicitor General)*, 2005 FC 1147
5. *Arumugam v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 985
6. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817
7. *Dunsmuir v. New Brunswick*, 2008 SCC 9
8. *Hawthorne v. Minister of Citizenship and Immigration*, 2002 FCA 475
9. *Legault v. Minister of Citizenship and Immigration*, 2002 FCA 125
10. *Melchor v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1327
11. *Spencer v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 990
12. *Thompson-Blake v. Canada (Public Safety and Emergency Preparedness)*, 2008 FC 572
13. *Zambrano v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 481

FEDERAL COURT

SOLICITORS OF RECORD

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