Federal Court Cour fédérale

Date: 20100415

Docket: IMM-4283-09

Citation: 2010 FC 415

Toronto, Ontario, April 15, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

IDA SIREGAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ida Warni Siregar seeks judicial review of a negative decision in relation to her application for permanent residence based on humanitarian and compassionate grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. Ms. Siregar has not persuaded me that the decision was unreasonable. Consequently, the application will be dismissed.

I. Background

[2] Ms. Siregar is a 37-year-old Indonesian citizen who entered Canada on February 10, 2005 as a visitor. Ms. Siregar claims that she was deceived into coming to Canada, having been led to believe that she would be able to earn enough money in this country to allow her to repay a debt she owed in Indonesia.

[3] Once in Canada, Ms. Siregar entered into a romantic relationship with a Chinese man, and subsequently became pregnant with his child. She says that the father of the child abandoned her when he discovered that she was pregnant.

[4] On April 12, 2006, Ms. Siregar was arrested for being in Canada without a valid immigrant visa and working without a permit. She then applied for refugee protection, claiming that she was ashamed and fearful of returning to Indonesia as an unmarried Muslim mother of a mixed-race child. She also alleged that she feared for her life, as she owed money to a smuggler who facilitated her entry into Canada.

[5] The Immigration and Refugee Board rejected Ms. Siregar's claim, finding that certain aspects of her evidence lacked credibility. The Board concluded that there was no serious possibility that she would face persecution in Indonesia based on any of the Convention refugee grounds. The Board also determined that Ms. Siregar was not a person in need of protection under section 97(1) of the *IRPA*. Ms. Siregar's application for leave and judicial review of this decision was dismissed.

[6] Ms. Siregar then applied for a Pre-Removal Risk Assessment (PRRA), and an H&C exemption. Her H&C application was based, in part, on the risk that she says that she would face if she were forced to return to Indonesia. This was the same risk relied upon in her refugee claim. Ms. Siregar also relied on her establishment in Canada, and submitted that it would be in the best interests of her Canadian-born daughter for her to remain in Canada.

[7] Both of these applications were subsequently denied in two decisions made by the same Pre-Removal Risk Assessment officer, and a removal date was set for October 2, 2009. Ms. Siregar sought a stay of her removal. However, in an Order dated October 1, 2009, Justice Snider determined that there was no evidence that Ms. Siregar would suffer irreparable harm if she were returned to Indonesia, with the result that the motion was dismissed. I am advised that Ms. Siregar returned to Indonesia shortly thereafter.

II. Analysis

[8] The officer accepted that Ms. Siregar would experience some hardship and difficulty in re-establishing herself if she were to return to Indonesia. However, the officer concluded that this hardship did not amount to a hardship that was unusual and undeserved or disproportionate.

[9] Ms. Siregar argues that in coming to this conclusion, the officer made several factual findings that were not supported by the evidence. For example, she claims that the officer found that she would have familial support if she returned to Indonesia. This was unreasonable, Ms. Siregar

says, given that she comes from a strict Muslim family that would react very negatively to the news that she had borne a child out of wedlock.

[10] With respect, the officer did not make such an unequivocal finding, having concluded only that Ms. Siregar “might” be able to obtain support from her parents and siblings. In coming to this conclusion, the officer considered the findings of the Immigration and Refugee Board, which did not accept that Ms. Siregar came from a strict Muslim family. It is noteworthy that Ms. Siregar provided no new evidence in her H&C application on this point.

[11] The Immigration and Refugee Board also found that Ms. Siregar’s alleged fear of her family’s reaction to the news that she had borne a child out of wedlock was speculative. The officer recognized that this finding was not binding upon him, but decided that he was prepared to give it considerable weight. This was something that the officer was entitled to do, especially given that Ms. Siregar had provided no additional evidence on this point.

[12] Ms. Siregar says that the officer’s finding that she would be able to rely on her past work experience to support herself and her daughter in Indonesia was unreasonable, given that it was the bankruptcy of her business that led her to come to Canada in the first place. However, what the officer actually said was that Ms. Siregar could rely on “her catering entrepreneur skills and/or her Canadian work experiences to assist her in obtaining employment”. Ms. Siregar was employed in at least two different jobs while in Canada, working in her most recent job for more than two years prior to her removal from Canada. In light of this, the officer’s finding is not unreasonable.

[13] Insofar as the best interests of Ms. Siregar's young daughter are concerned, Ms. Siregar relies on the decision in *Alie v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 925, [2008] F.C.J. No. 1149 as authority for the proposition that it is not enough for the officer to look at the conditions that the child will face in Indonesia. Consideration must also be given to the benefits that would accrue to the child if she were to stay in Canada. It is, however, clear that the *Alie* case is readily distinguishable from the present case.

[14] In *Alie*, the focus of the officer's analysis was on the hardship that a Canadian-born child's family would face if they were removed from Canada with, or without the child. As the Court observed, this was an error, as the focus of the officer's analysis should have been on the interests of the child herself, rather than the family: at para. 9.

[15] As the Federal Court of Appeal observed in *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, 392 N.R. 163, officers may be presumed to know that living in Canada will offer many opportunities for a child. Quoting *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 F.C. 555, the Court held that "[t]he inquiry of the officer … is predicated on the premise, which need not be stated in the reasons, that the officer will end up finding, absent exceptional circumstances, that the "child's best interests" factor will play in favour of the non- removal of the parent": at para. 5

[16] According to *Kisana*, the officer's task is to examine the likely degree of hardship to the child that will be caused by the removal of the parent, and to weigh this along with other factors. That is what the officer did in this case.

[17] Finally, Ms. Siregar argues that the officer erred by failing to consider the fact that she was a victim of human trafficking in assessing the question of hardship. This argument was presented to the Immigration and Refugee Board and was categorically rejected by it, with the Board observing that Ms. Siregar was never forced into anything resembling debt bondage or the sex trade. Leave to judicially review this decision was subsequently denied by this Court.

[18] Ms. Siregar relies upon the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime*, G.A. Res. 25, Annex II, UNGAOR, 55th Sess., Supp. No. 49, UN Doc. A/RES/55/25 (Nov. 15, 2000), entered into force December 25, 2003 (or the "*Palermo Protocol*") to support her contention that she was the victim of human trafficking. However, a review of this document discloses that human trafficking requires "exploitation". "Exploitation" is defined as including prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs: see Article 3.

[19] While Ms. Siregar may have been misled by the agents who brought her into Canada illegally regarding her earning potential in this country (although the Board found that her evidence

on this point “defied credulity”), she was never subjected to any of the above practices. By her own admission, she lived freely in Toronto for several months after arriving in Canada before choosing to work on a farm in Leamington, Ontario with her boyfriend. It was Ms. Siregar herself who sought out this employment.

[20] As a consequence, the officer’s finding that Ms. Siregar was not a victim of human trafficking was reasonable.

III. Conclusion

[21] Having failed to identify a reviewable error on the part of the officer, it follows that the application is dismissed.

[22] Ms. Siregar proposes the following question for certification:

> Is it required for an H&C officer to consider the *Palermo Protocol* with respect to finding whether an applicant is a victim of human trafficking?

[23] In light of my finding that Ms. Siregar does not meet the definition of human trafficking contained in the *Palermo Protocol*, it follows that the answer to this question would not be dispositive of this case. Accordingly, I decline to certify it.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Anne Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4283-09
STYLE OF CAUSE:	IDA SIREGAR v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 14, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	MACTAVISH J.
DATED:	April 15, 2010

APPEARANCES:

Michael Loebach	FOR THE APPLICANT
Tamrat Gebeyehu	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Offices of Michael Loebach	FOR THE APPLICANT
Myles Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT