

Federal Court



Cour fédérale

Date: 20111110

Docket: IMM-2558-11

Citation: 2011 FC 1302

Toronto, Ontario, November 10, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

MAHBOOB UNNISA HAKEEM

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mahboob Unnisa Hakeem's fourth request to defer her removal from Canada on medical grounds was refused. She sought judicial review of that decision and a stay of removal was subsequently granted by this Court. For the reasons that follow, her application for judicial review will be dismissed.

The Deferral Request

[2] Ms. Hakeem is a 59 year old citizen of India. She suffers from a number of health problems including diabetes, depression and orthopaedic issues. Her attending physician and her cardiologist suspect that she may also suffer from a heart condition, although this had not been confirmed through testing by the time of her deferral request.

[3] Ms. Hakeem's removal was rescheduled for April 20, 2011. Her most recent deferral request asked that her removal be deferred in order to allow her to undergo an angiogram in order to "conclusively determine if she has coronary heart disease". Although an appointment was obtained for the angiogram prior to the scheduled removal date, Ms. Hakeem did not end up having the test at that time as she was in immigration detention.

[4] Ms. Hakeem's deferral request also stated that she would not be able to access medical care once she was living in India.

[5] The removals officer obtained a medical opinion from a Citizenship and Immigration Canada [CIC] doctor, which found that Ms. Hakeem's medical condition was stable and that she was fit to fly. Ms. Hakeem then provided the enforcement officer with additional letters from her family doctor and her cardiologist regarding her health situation. She also provided a letter from a doctor in India regarding the cost and availability of medical care in that country.

[6] The enforcement officer did not provide this additional information to the CIC doctor for his consideration, which, Ms. Hakeem says, was a reviewable error. Rather, the officer concluded that

Ms. Hakeem's medical tests had not thus far established that she in fact suffered from heart disease, and determined that she was fit to fly. The officer further found that Ms. Hakeem had not demonstrated that she would be unable to access medical care in India. Consequently, the request for a deferral was refused.

[7] The day before Ms. Hakeem was to be removed from Canada, this Court granted a stay of her removal pending the hearing of her application for judicial review.

Is this Application Moot as it Relates to the Angiogram Issue?

[8] The first question to be determined is whether this application is now moot insofar as it was based upon Ms. Hakeem's need for additional time for medical testing.

[9] In *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 F.C.R. 311, at paras. 29-31, the Federal Court of Appeal observed that where a deferral is sought pending the happening of a particular event, the happening of that event will render the application to judicially review the refusal of the deferral moot.

[10] The respondent points out that Ms. Hakeem sought the deferral of her removal in part to give her the chance to have an angiogram. She has now had seven months to have the test, which, the respondent says, renders the application for judicial review moot.

[11] A review of the record discloses that Ms. Hakeem's family doctor first recommended that she undergo an angiogram in 2009. She refused to have the test at that time.

[12] On April 11, 2011, Ms. Hakeem's cardiologist advised her family doctor that he was booking Ms. Hakeem for an angiogram which was to take place on April 19, 2011. Although the test was not carried out because of Ms. Hakeem's detention, the fact that a date for the test could be obtained within a week of requesting it suggests there are no significant wait times for the procedure.

[13] We do not know whether Ms. Hakeem has now had her angiogram as she has chosen not to put any evidence before the Court regarding the rescheduling of the test. Indeed, her silence on this point is deafening. For all we know, the test may have taken place months ago. It is also possible that Ms. Hakeem has once again decided not to have the test. What we do know is that Ms. Hakeem has now had seven months to have the test and that she has not established that she encountered any difficulties rescheduling the test in the period since the stay was granted.

[14] In the unique circumstances of this case, I am prepared to draw an adverse inference against Ms. Hakeem, and find that the passage of time has rendered this aspect of the application moot.

The Availability of Medical Care in India

[15] Ms. Hakeem's deferral request was also based upon her alleged inability to access medical care in India.

[16] In dealing with this aspect of the application, I would start by observing that the discretion of enforcement officers to defer removal is very limited and deferrals are intended to be temporary:

see *Baron*, above, at para. 51 and *Canada (Minister of Public Safety and Emergency Preparedness) v. Shpati*, 2011 FCA 286, [2011] F.C.J. No. 1454 at para. 45.

[17] The unavailability of medical care in the country of destination or the inability to access it are not temporary impediments that can be addressed by a short-term delay of removal. Rather, they are on-going problems that would more properly be addressed through the H&C process.

[18] Even if the unavailability of medical care in the country of destination is a matter that can properly be taken into account by an enforcement officer in dealing with a request to defer, I am nevertheless satisfied that the officer reasonably concluded that Ms. Hakeem had not established that she would be unable to access proper medical care in India.

[19] While Ms. Hakeem asserts that she is impecunious, she did not provide the enforcement officer with any evidence to support this contention. She did, however, provide the officer with a copy of the submissions filed in connection with her most recent H&C application. These submissions described the significant support that Ms. Hakeem receives from her large extended family in Canada and the financial resources that are available to the family. In these circumstances, the officer's conclusion that Ms. Hakeem had not demonstrated that she would be unable to access medical care in India was perfectly reasonable.

Conclusion

[20] For these reasons, the application for judicial review is dismissed.

[21] Ms. Hakeem acknowledges that, practically speaking, the outcome will be the same whether this application is granted or dismissed. Either way, a new date will likely be set for her removal from Canada, and the process will start all over again. It would certainly be in Ms. Hakeem's interest to ensure that any further requests for deferral are accompanied by complete and up-to-date medical information, including the results of any angiography testing that she may have undergone.

Certification

[22] Ms. Hakeem has proposed the following questions for certification:

1. Is it within a removal officer's discretion to consider that this applicant may not have access to medical care for a potentially life-threatening condition?
2. Is it within a removal officer's discretion to consider that removal of the applicant may be the cause of a potentially life-threatening medical event in her destination country?

[23] While I have expressed concerns as to whether the ability of an applicant to access medical care in his or her home country is an appropriate consideration on a request to defer, I have decided the issue based upon the lack of evidence adduced by Ms. Hakeem to support her claim that she would be unable to access adequate medical care in India. Consequently, the answer to the first question would not be dispositive of her application.

[24] The second question would similarly not be dispositive of this case in light of my reasons for dismissing the application. As a result, I decline to certify either question.

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-2558-11

STYLE OF CAUSE: MAHBOOB UNNISA HAKEEM v.
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 9, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** MACTAVISH J.

DATED: NOVEMBER 10, 2011

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