Federal Court  Cour fédérale

Date: 20120813

Docket: IMM-8956-11

Citation: 2012 FC 982

Ottawa, Ontario, August 13, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

SERENA ELIZABETH ATKINS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of Senior Immigration Officer M.C. Bennett (Officer), dated October 31, 2011, refusing the applicant's application for permanent residence on humanitarian and compassionate (H&C) grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

Facts

[2] The applicant, Serena Elizabeth Atkins, is a citizen of Jamaica. She arrived in Canada in February 2009 and made a refugee claim in December 2009. Her claim was based on her fear of crime and violence in Jamaica, particularly following the sexual assault and beating of a close friend. She also alleged she was at greater risk than other women because she was a teacher.

[3] Her claim was rejected on April 8, 2011. While she was found credible, the Refugee Protection Division (RPD) determined that her evidence did not establish that she faced a risk to her life or more than a mere possibility of persecution. She submitted her Pre-Removal Risk Assessment (PRRA) application on August 26, 2011, and her H&C application on September 16, 2011. In her PRRA application she advanced new allegations of risk from her creditors in Jamaica, arising from her failure to repay significant loans, to come to Canada.

[4] By decision dated October 31, 2011, the Officer refused the applicant's application for permanent residence on H&C grounds. The Officer noted that the grounds advanced by the applicant were her risk upon return to Jamaica, her degree of establishment in Canada, and that she was being questioned as a witness in a Live-In-Caregiver Program scam.

[5] In the section of the decision titled "Factors for Consideration", the Officer noted the following risk factors:

> [T]he applicant stated that she wanted to leave Jamaica for years due to the escalating crime and violence; particularly due to an incident that occurred to a close friend.

[6] In the section titled "Reasons and Decision", the Officer stated the following regarding the applicant's allegations of risk:

> The applicant stated that she is at risk in Jamaica. I am the Senior Immigration Officer who assessed the applicant's Pre Removal Risk Assessment application and I am guided by the principle that when risk is cited as a factor in an H&C application, the risk is assessed in the context of the applicant's degree of hardship.

[7] The Officer then recounted the applicant's fear of violence particularly due to an incident in which her friend was beaten and sexually assaulted. The Officer found that no risk had been established on a balance of probabilities on this basis. The Officer further found that crime and violence are generalized problems in Jamaica and are not risks that are personal to the applicant. The Officer therefore found that the applicant had not established unusual and undeserved or disproportionate hardship on the basis of risk.

[8] The Officer also found that the applicant's length of time in Canada and establishment in Canada were not out of the ordinary and did not warrant an H&C exemption. The Officer noted that there was no evidence that the applicant needed to remain in Canada to be questioned about the Live-In Caregiver Program scam, and therefore found no H&C grounds in this regard.

[9] It is evident, therefore, that the Officer did not consider, in the context of the H&C decision, the risk arising from the creditors.

[10] The application was therefore refused.

Standard of Review and Issue

[11] The applicant argues that the Officer ignored relevant evidence and breached the principles of procedural fairness. The former issue is reviewable on a standard of reasonableness and the latter is reviewable on a standard of correctness: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Analysis

[12] The applicant argues that by ignoring the allegation of risk from her creditors the Officer erred in rendering the H&C decision. The Officer noted this allegation of risk in the PRRA decision but the discussion of risk factors in the H&C decision was limited to general risks from crime and violence in Jamaica.

[13] The respondent notes that the applicant did not allege in her H&C application that she was at risk from her creditors; instead, she alleged that she was heavily in debt, that bill collectors were harassing her mother, and that she would be unable to support her daughter if returned. The respondent also notes that, in the PRRA decision, the Officer found that the applicant had presented no evidence to establish a risk from her creditors.

[14] Specifically, in the PRRA decision the Officer concluded: "[t]he applicant has presented no evidence regarding any loan she took out from a bank in Jamaica, that any bank sued the co-signer(s) to recover their money, or that any co-signer(s) are making any threats against the applicant." The respondent therefore argues, in my view, correctly, that it could not have been an

error for the Officer to not mention this allegation in the H&C decision since it was not supported by any evidence. A review of the Certified Tribunal Record confirms that no evidence was submitted to substantiate these allegations and therefore the failure to explicitly address the risk from creditors was not a reviewable error. To put the point more directly, as there was no evidence to support the allegation of risk in the PRRA decision the Officer was under no obligation to migrate or transpose the same non-existent evidence to the H&C context and re-cast it as hardship scenario. The onus rested with the applicant to advance the argument that risk from creditors posed a separate and discrete aspect for consideration in the H&C conduct; indeed, legislative amendments to the *IRPA* make clear that the PRRA and H&C considerations are discrete:

***IRPA*, Section 25 (1.3)**	***LIPR*, section 25 (1.3)**
25 (1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	25 (1.3) Le ministre, dans l'étude de la demande d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

[15] The applicant also argues that the Officer breached the principles of procedural fairness by failing to interview her before rendering her decision. However, as the respondent notes, there were no issues of credibility in the decision and thus there is no breach of the duty of fairness.

Certified Question

[16] The following question was proposed for certification:

> In the determination of the application for permanent residence, does the PRRA Officer who is also seized of the application for permanent residence on Humanitarian and Compassionate grounds have an obligation to apply and consider the risk factors raised in the PRRA application but not in the H&C application, as these factors relate to the question of hardship?

[17] As noted above, the Officer was under no obligation to migrate or transpose a risk, in respect of which there was no supporting evidence, from the PRRA context into the H&C context. The proposed question has no factual foundation, and is therefore a hypothetical question. It does not meet the criteria for a certified question: *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145, [2010] 1 FCR 129, paras. 22-29. Even if answered in the affirmative, it would not be dispositive of the appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8956-11
STYLE OF CAUSE:	SERENA ELIZABETH ATKINS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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