Federal Court Cour fédérale

Date: 20131008

Docket: IMM-11625-12

Citation: 2013 FC 1017

Calgary, Alberta, October 8, 2013

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

FAITH AYANRU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Faith Ayanru seeks judicial review of the refusal of her application for permanent residence on humanitarian and compassionate grounds. The principal basis for her application for judicial review is her assertion that the reasons offered by the immigration officer for rejecting her H&C application were insufficient.

[2] As will be explained below, I have concluded that the H&C officer's reasons meet the standard established by recent appellate jurisprudence and that the officer's decision was reasonable. Consequently, Ms. Ayanru's application for judicial review will be dismissed.

Analysis

[3] Ms. Ayanru relies upon my decision in *Adu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 565, 139 A.C.W.S. (3d) 164 in support of her claim that the reasons provided by the officer were inadequate. *Adu* is to some extent distinguishable from this case on its facts, as the reasons in *Adu* identified all of the positive factors supporting a grant of H&C relief, and then refused the application without any explanation for the refusal. The applicant in *Adu* thus could not understand why the H&C application had been refused. In contrast, the officer in this case identified and weighed both the positive and negative factors in determining that H&C relief should not be granted.

[4] It should also be noted that the law relating to the sufficiency of reasons in administrative decision-making has evolved substantially since the time that *Adu* was decided, both with respect to the degree of scrutiny to which fact-based, discretionary decisions such as the one at issue in this case should be subjected, and in relation to the sufficiency of reasons as a stand-alone ground for judicial review.

[5] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada held that in reviewing a decision against the reasonableness standard, regard must be had to the justification, transparency and intelligibility of the decision-making process, and whether the

decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir* at para. 47.

[6] A reviewing Court must, moreover, pay "respectful attention to the reasons offered *or which could have been offered* in support of a decision": *Public Service Alliance of Canada v. Canada Post Corporation and Canadian Human Rights Commission*, 2010 FCA 56, [2011] 2 F.C.R. 221, at para. 164 [emphasis in the original].

[7] In *Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, the Supreme Court held that the adequacy of reasons is not a 'stand-alone' basis for quashing a decision. Rather, reasons must be read together with the outcome of the case, in order to determine whether the result falls within a range of possible outcomes: at para. 14.

[8] In *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405, the Supreme Court reiterated that administrative decision-makers "do not have to consider and comment upon every issue raised by the parties in their reasons", even on seemingly central issues, provided that the decision, when "viewed as a whole in the context of the record, is reasonable": at para. 3.

[9] Where, as here, a decision-maker is considering a fact-specific, discretionary matter with little legal content, the range of possible, acceptable outcomes available to the decision-maker may be quite broad. As a consequence, it will be relatively difficult for an applicant in such a case to

show that a decision falls outside of the range of possible, acceptable outcomes: *Attorney General of Canada v. Lawrence Abraham et al.*, 2012 FCA 266, , 440 N.R. 201 at para. 44.

[10] Ms. Ayanru based her H&C application on three grounds – the best interests of her four children in Nigeria, the risk she says that she would face at the hands of her ex-husband in that country and her establishment in Canada.

[11] The officer gave little weight to the best interests of Ms. Ayanru's children, explaining that limited information had been provided with respect to the interests of the children, and that it had not been explained how returning Ms. Ayanru to her children in Nigeria would affect their interests. Not only is this finding reasonable, it also bears noting that the children were all over the age of 18 by the time that a decision was made in relation to Ms. Ayanru's H&C application.

[12] With respect to the risk allegedly faced by Ms. Ayanru in Nigeria, the H&C officer noted that Ms. Ayanru's refugee claim had been dismissed on credibility grounds and that no additional evidence of risk had been provided in support of her H&C application, nor had Ms. Ayanru demonstrated that she could not live safely in various cities in Nigeria.

[13] Much of the information provided by Ms. Ayanru in support of her H&C application related to the issue of establishment. The officer expressly stated that this evidence had been considered and recognized that Ms. Ayanru had achieved a reasonable level of establishment in Canada. While accepting this as a positive factor, the H&C officer nevertheless found that her level of

establishment was not unusual for someone who had been in Canada for some nine years, and did not warrant an exemption.

[14] It is thus clear why Ms. Ayanru's application for H&C relief was refused. While Ms. Ayanru may not agree with the decision, and, in particular, with the officer's finding with respect to the extent of her establishment in Canada, it falls within the range of possible acceptable outcomes which are defensible in light of the facts and the law, based upon the record that was before the officer.

[15] Ms. Ayanru is clearly an industrious and capable individual who has worked very hard to make a good life for herself in Canada. While her efforts are certainly to be commended, the test is not whether an H&C applicant would be a welcome addition to Canada.

[16] As Justice Pelletier observed in *Irimie v. Canada (Minister of Citizenship and Immigration)* (2000), 101 A.C.W.S. (3d) 995, 10 Imm. L.R. (3d) 206, if this were the test, it would "make the H&C process an ex post facto screening device which supplants the screening process contained in the [legislation]". This would, in turn, "encourage gambling on refugee claims in the belief that if someone can stay in Canada long enough to demonstrate that they are the kind of persons Canada wants, they will be allowed to stay": at para. 26.

[17] According to Justice Pelletier, the "degree of attachment is relevant to the issue of whether the hardship flowing from having to leave Canada is unusual or disproportionate. It does not take those issues out of contention": *Irimie*, at para. 20. In this case, the H&C officer reasonably

determined that Ms. Ayanru had not demonstrated that she would suffer unusual, undeserved or disproportionate hardship based upon her establishment in Canada if she were compelled to apply for permanent residence from outside Canada.

Conclusion

[18] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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