

Federal Court



Cour fédérale

**Date: 20150311**

**Docket: IMM-8316-13**

**Citation: 2015 FC 308**

**Toronto, Ontario, March 11, 2015**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**PATIENCE THULIE MATSENJWA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

**(Delivered Orally from the Bench in Toronto, Ontario on March 10, 2015)**

[1] Patience Thulie Matsenjwa (the Applicant) has applied for judicial review of a Decision dated November 5, 2013 made by a Senior Immigration Officer (the Officer) wherein she rejected the Applicant's application for permanent residence from within Canada on humanitarian and compassionate grounds (the Decision). The application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27.

[2] The Applicant is a 26 year old citizen of Swaziland. She first arrived in Canada on November 28, 2009 at which time she made a claim for refugee protection. In her claim, she alleged that she fears persecution at the hands of her own family because she has refused to marry her aunt's 47 year old husband. The Applicant's claim was heard by the Refugee Protection Division on June 27, 2011. It rejected her claim on April 21, 2011 on the basis that she was not a credible witness.

[3] On April 6, 2012 the Applicant gave birth to a son as an unwed mother. He is a Canadian citizen, he is now 3 years old and his name is Brandon.

I. The Issues

[4] There are two issues:

1. Was the Officer's decision about hardship reasonable?
2. Was the Officer's decision about Brandon's best interests reasonable?

II. Issue 1

[5] In my view, in line with the Federal Court of Appeal's decision in *Kanthisamy v. Canada (Citizenship and Immigration)*, 2014 FCA 113, the Officer reasonably interpreted section 25 of the IRPA as requiring her to consider whether the hardship alleged by the Applicant had a direct personal impact on her life. However, in deciding this issue the Officer said the following:

I find that the documents are supportive of the depiction of Swaziland as patriarchal society and as such are not indicative of a direct personal impact on the applicant as a woman in Swaziland.

[6] In my view this statement is unreasonable because the Officer failed to consider how a single unwed mother who had only the support of female relatives would fare in a patriarchal society.

[7] The Officer also said:

Women refusing to follow custom may be treated as outcasts by family members; however, the information before me does not support that the applicant would not have avenues of redress and recourse available to her in Swaziland if required. The applicant has also not established that it constitutes a hardship for her to access the avenues available to her in Swaziland.

[8] This statement is unreasonable because there is no suggestion that there was any information before the Officer about the existence of any avenues of redress or recourse in the event of a forced marriage. Nevertheless, it seems that the Officer felt that the Applicant should have known that there were such avenues and that she could access them.

[9] Further, the Officer makes no mention of statistics showing that two third of the population lives on less than a dollar a day and that the unemployment rate is 30% in a society that discriminates against women. In my view, these facts required attention. I also note that the Officer did not seem to appreciate that the Applicant's degree of establishment had included finding a job as a hotel housekeeper which permitted her to support her son. The fact that she would lose that position as a supporting parent and face economic and social uncertainty in Swaziland is a hardship that, in my view, should have been considered.

III. Issue 2 – Best Interests of the Child

[10] The Officer's analysis is unreasonable because it is inadequate. It relies heavily on the passage of recent legislation in Swaziland about child welfare with no indication of how the legislation links to the Applicant's situation. The analysis is also inadequate because there is no discussion of how the mother's ability or inability to support her child impacts his best interests. Given that the child is a toddler his best interests are inextricably intertwined with his mother's social and economic well-being. In this regard the Officer did not consider all the relevant factors which include the high unemployment, the low standard of living, discrimination against women, the high likelihood of sexual violence, the high likelihood of contracting aids, and her status as a single unwed mother with no male protection.

[11] For all these reasons, the application will be allowed and the H&C application will be sent back for reconsideration by a different officer.

[12] No question was posed for certification for appeal.

**ORDER**

**THIS COURT ORDERS** that the application is allowed and the H&C application is sent back for reconsideration by a different officer.

“Sandra J. Simpson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8316-13

**STYLE OF CAUSE:** PATIENCE THULIE MATSENJWA v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 10, 2015

**ORDER AND REASONS:** SIMPSON J.

**DATED:** MARCH 11, 2015

**APPEARANCES:**

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