Federal Court Cour fédérale

Date: 20161028

Docket: IMM-1399-16

Citation: 2016 FC 1202

Ottawa, Ontario, October 28, 2016

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

ANA JULIA BOHORQUEZ GONZALEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Ana Julia Bohorquez Gonzalez [the Applicant], challenges a negative sponsorship decision by the Immigration Appeal Division [IAD] on behalf of her 32 year old daughter Luisa Fernanda Perez Bohorquez [Luisa] and 7 year old accompanying daughter, Anasofia Perez Bohorquez.

[2] On November 7, 2013, after an interview with a visa officer in Bogotá, Colombia, it was determined that Luisa was not a dependent child due to mental disability under the *Immigration and Refugee Protection Act*, SC 2001 c27, and therefore not a member of the family class. The Applicant appealed the decision to the IAD. The IAD unraveled a tangled web of untruths by a number of players and on March 8, 2016, delivered a lengthy decision. It found that Luisa was not a member of the family class because she did not fall under the definition of a dependent child (i.e. financially dependent on the Applicant) due to a mental condition.

II. Factual Background

[3] The Applicant originally came to Canada from Colombia on March 5, 2007, based on a fear of Revolutionary Armed Forces of Columbia (FARC). She was found to be a convention refugee in June 2008, and a Canadian citizen in 2014. It was not until the Applicant attempted to sponsor Luisa that the IAD stated it discovered much of the Applicant's personal information form from her refugee application was manifestly untrue.

[4] The Applicant is married and she has 3 children: Luisa, Valentina and Luis. Luis lives with his parents and Valentina with her boyfriend. Both Luis and Valentina came to Canada before their parents and were granted refugee status. When the Applicant was first granted refugee status she applied in Bogotá for concurrent processing of her husband, mother, Luisa and her granddaughter. After Luisa was interviewed in Bogotá, the Applicant was notified that because Luisa was older than 22 at lock-in date, that she and her child were not members of the family class and their applications for permanent resident status were refused. On June 20, 2012, the Federal Court denied leave to judicially review the visa officer's decision. In 2013, the

Applicant's mother and husband obtained permanent residency and left Luisa and her child alone in Colombia.

[5] On June 3, 2013, Luisa applied for permanent residence for herself and her child and was co-sponsored by her mother and father on the same grounds that had been refused by the visa officer. Again, her application was refused by a visa officer. The Applicant appealed this decision to the IAD.

[6] The IAD found the Applicant (as well has her husband and son) not credible about multiple critical issues. In particular, the IAD noted significant discrepancies between the Applicant's basis of claim for refugee status, statements made to visa officers, and contradictory evidence put forward before the IAD itself. The Applicant was not credible with respect to the following: the duration of her and Luisa's residence in the United States; the extent and quality of Luisa's education; Luisa's past employment; Luisa's marriage while living in the United States; Luisa's ongoing employment as an early childhood educator; and the Applicant and her husband's unreported income in Canada despite each being recipients of Ontario Disability Support Payments.

[7] The IAD concluded that Luisa continues to be employed in Colombia as an early childhood educator. Furthermore, she spent 15 years in the United States, graduating from an American high school which could partially explain difficulties in reading and writing Spanish. That, despite successful refugee claims, the Applicant and family members have gone back to Colombia to visit Luisa. The IAD concluded that given Luisa's history of education and

employment, she was not dependent on the Applicant for financial support due to mental disability.

III. Issue

[8] The issue I must determine is whether the IAD reasonably concluded that Luisa is not a member of the family class.

IV. Standard of Review

[9] The parties both submit that the applicable standard of review is reasonableness and I agree.

V. Analysis

[10] The relevant definition of "member of a family class" is found at s. 117(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations]. At the time of the visa officer's decision, section 2 of the Regulations defined a "dependent child" as:

> "dependent child", in respect of a parent, means a child who
>
> (a) has one of the following relationships with the parent, namely,
>
> (i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or
>
> (ii) is the adopted child of the parent, and
>
> (b) Is in one of the following situations of dependency, namely,
>
> (i) is less than 22 years of age and not a spouse or common-law partner,

> (ii) is 22 years of age or older and has depended substantially on the financial support of a parent since before the age of 22 – or if the child became a spouse or common-law partner before the age of 22 or since becoming a spouse or common-law partner, as the case may be, has been a student
>
> (A) continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority, and
>
> (B) actively pursuing a course of academic, professional or vocational training on a full-time basis, or
>
> (iii) **is 22 years of age or older and has depended substantially on the financial support of a parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition.**
>
> [emphasis added]

[11] This judicial review comes down to the highlighted subparagraph. Is Luisa unable to financially support herself, since before the age of 22, due to a physical or mental condition? Only mental disability was presented in the sponsorship application.

[12] This requires a two-step evaluation: first, is the individual over 22 years of age (the age is now 19); and second, are they financially dependent because of mental disability. The IAD made a separate assessment under section 133(1)(j)(i) of the Regulations (as they were at the time of application) with respect to the financial requirements of the Applicant which was not contested.

[13] The Applicant's counsel led the Court through the record in great detail to show why the IAD was not reasonable in their credibility findings. The Applicant disputes the IAD's treatment of multiple medical reports submitted to support Luisa's claim of mental disability. The Applicant further challenges the IAD's negative assessment of the medical reports for their

medical evaluation but then relied on them for their finding that Luisa was in the United States for 15 years.

[14] In response, the Respondent took the Court through the timeline of each medical report compared with where the Applicant and Luisa's physical presence was alleged to be. Clinical observations, treatments, follow up, omissions, recommendations and diagnoses were all discussed at length.

[15] Having considered all of the arguments by the parties against the record and the reasons, I find the IAD's treatment of the medical reports to be reasonable.

[16] The Applicant submitted that Luisa was unable to support herself because of a mental disability. The basis for this assertion is that she can only communicate in English and therefore cannot maintain a job in Colombia. Further, she could not get a job because she was under police protection. This, according to the Applicant, explains why she could not send financial support directly to Luisa as it would give away her residence. The Applicant argues that the IAD erred in their negative assessment of Luisa's dependence due to mental disability and determination that Luisa could support herself as an early childhood educator. The IAD's reliance on Luisa's education and her Facebook postings was unreasonable given the sworn statutory declarations and the evidence that payments were sent monthly by the Applicant to her friend Silvia (who is a friend and neighbour of Luisa).

[17] The IAD made supportable findings on the evidence in determining that Luisa does not have a mental disability which prevents her from supporting herself. The treatment of the medical reports was fair and reasonable. The onus was on the Applicant to demonstrate financial dependence due to mental disability and she failed to do so due to lack of credibility. Here are a few of the many inconsistencies in the evidence that are set out by the IAD to support their findings:

a. School: It is repeatedly claimed that Luisa can neither read nor write Spanish well. The IAD points out that this could reasonably be explained by her 15 years of education at English schools in the United States. During her November 3, 2011 interview Luisa claimed that she had never been enrolled in full-time post-secondary education. It was later revealed she was able to obtain a diploma in early childhood education. Her brother Luis claimed to have no contact with Luisa in the United States while she went to school. When Respondent's counsel pointed out he attended the same school as Luisa for six months he changed his testimony. At first the Applicant claimed Luisa and Luis were denied asylum while attending school in the United States and then later admitted they had not even applied for asylum.
b. Work: On social media Luisa indicated that she was employed in Colombia as an early childhood teacher related to the Holmes School. At different points the IAD determined that "there was no credible evidence that she was prevented from being employed due to dyslexia" and that "the applicant has the intelligence to work as her mother initially contended but that she has a different way of learning."
c. Money: The Applicant sends the equivalent of $600 to $700 a month to her friend Silvia Montoya. However, the financial records provided were in Spanish and there is no basis

to determine that Luisa is the ultimate recipient to support her due to disability. The reason given was that Luisa was hiding from FARC and they did not want the identification number to show up. Yet the family visits Colombia with no apparent fear of FARC.

d. Marriage: the IAD analyzed the evidence given by Luisa in her November 3, 2011 interview in which she said she was never married. In fact Luisa was married in the United States to an American citizen on May 31, 2003 until the marriage was annulled December 27, 2013. This only came to light because Canada Border Services Agency intercepted a package of documentation that was mailed by the Applicant to Luis containing photocopies of Luisa's United States marriage certificate along with a note to do whatever it takes to get the rest of the family out of Columbia.

e. Disability: Luisa's claims of disability are contradicted by both herself and the Applicant. In Luisa's November 3, 2011 interview, she admitted that she is not unable to financially support herself due to mental disability. The Applicant also admitted in a November 7, 2011 email that Luisa was not dependent on her because of a mental condition and that it was only because of FARC that Luisa was unable to support herself in Colombia. Despite this a clinical psychologist, on whom the Applicant relies, accepted the "embroidered truth offered by…" the Applicant and Luisa when diagnosing her as "having borderline cognitive deficit that only allows her to perform simple tasks and low level responsibilities." The IAD could find no indication that tests were administered or any treatment or follow up was done to substantiate this diagnosis.

[18] It is not my role to reweigh the evidence or to make factual findings. The Applicant's detailed arguments about erroneous factual findings noticeably did not address other unassailable findings. Even if I found the findings presented in argument to be in error (which I do not), cumulatively, it was still reasonable for the IAD to determine that Luisa did not meet the requirements to be a member of the family class.

[19] Reasonableness requires that the decision must exhibit justification, transparency and intelligibility within the decision making process and also the decision must be within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

[20] Based on the entire record before the IAD including the Applicant's and Luisa's past failed applications (which the IAD was entitled to consider), I find that the IAD decision was reasonable. The IAD meticulously went through the medical reports in their determination that Luisa was not a dependent child. It weighed the evidence while noting omissions and contradictions and came to a reasonable conclusion based on those determinations.

[21] No question for certification was presented and none arose so no question will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1399-16
STYLE OF CAUSE:	ANA JULIA BOHORQUEZ GONZALEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 19, 2016
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	OCTOBER 28, 2016

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