Federal Court  Cour fédérale

Date: 20161125

Docket: IMM-1364-16

Citation: 2016 FC 1309

Ottawa, Ontario, November 25, 2016

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

SYLVIA ANITA WILLIAMS
RAMON MARTIN WILLIAMS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek to set aside a decision of an Immigration Officer (the Officer) dated March 8, 2016, which refused their application for permanent residence from within Canada and found that there was insufficient evidence to justify an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 on Humanitarian and Compassionate (H&C) grounds.

[2] For the reasons that follow, the application for judicial review is dismissed.

I. Background

[3] The Applicants, Sylvia Williams and her son Ramon Williams, are citizens of Barbados. They came to Canada as visitors on December 23, 2011. They have remained in Canada without status since June 30, 2013. They applied for permanent residence in Canada on H&C grounds in June 2015 noting, among other things, that they had extensive family in Canada, that they were upgrading their education and, that Mr. Williams had a visual impairment and was doing well in Canada.

II. The Decision Under Review

[4] In the decision dated March 8, 2016, the Officer found that the evidence did not justify an H&C exemption from the requirement that the Applicants apply for permanent resident status outside Canada.

[5] The Officer considered the Applicants' submissions regarding their establishment in Canada, including their family ties, Ms. Williams' allegations of domestic violence by her former common law partner, Mr. Williams' visual impairment and the adverse conditions they may face if they returned to Barbados.

[6] The Officer noted that both Applicants had been upgrading their education in Canada and are members of a local church and that Ms. Williams has been involved in volunteer activities.

The Officer noted that the Applicants had been living in Canada off savings and assistance from family members, but no information had been provided about how they planned to support themselves once their savings were exhausted.

[7] The Officer noted the support letters provided by Ms. Williams' sisters and brother, all of whom are Canadian citizens, but found that the letters lacked detail and did not establish that the emotional impact of the Applicants' return to Barbados exceeded what would normally be expected in such circumstances.

[8] The Officer acknowledged the mental and physical health consequences associated with domestic violence but found there was insufficient evidence to verify Ms. Williams' claim of abuse. Although Ms. Williams had requested police reports from Barbados, it appeared that she did not follow up. In addition, there was no other evidence regarding the psychological challenges Ms. Williams faces as a victim of abuse or whether she faces any threat from her former common-law partner.

[9] The Officer noted the Applicants' claim that their home in Barbados had been ordered to be demolished and that they would have no home to return to.

[10] The Officer also considered the limited documentary evidence provided about Mr. Williams. The Officer accepted that he is legally blind but noted the absence of any evidence about his current health condition, discrimination in Barbados or that he would be unable to continue his education.

[11] The Officer concluded that both separately and cumulatively there was insufficient evidence to justify of an exemption from the Act on H&C grounds.

III. **The Issues**

[12] The Applicants argue that the Officer's decision is unreasonable because the Officer: failed to consider their circumstances as a whole; failed to give serious consideration to their family ties to Canada and their lack of ties in Barbados; failed to give serious consideration to their establishment in Canada; and, failed to assess the H&C submissions with a view to the underlying equitable purpose of H&C relief and the guidance of the Supreme Court of Canada in *Kanthasamy v Canada*, 2015 SCC 61, [2015] 3 SCR 909, [*Kanthasamy*].

IV. **The Standard of Review**

[13] The parties agree that the standard of review of a discretionary decision is reasonableness (*Terigho v Canada (Minister of Citizenship and Immigration)*, 2006 FC 835 at para 6, [2006] FCJ No 1061 (QL); see also *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 57-62).

[14] To determine whether a decision is reasonable, the Court looks for "the existence of justification, transparency and intelligibility within the decision-making process" and considers "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1

SCR 190). Deference is owed to the decision-maker and the Court will not re-weigh the evidence.

V. **The Decision is Reasonable**

[15] The Applicants' submissions on judicial review amount to a request to have the evidence considered by the Officer re-weighed. This is not the role of the Court. Although the Applicants' circumstances suggest that they would benefit from remaining in Canada with their extended family, the Applicants did not meet the onus on them to support their application for an H&C exemption with sufficient evidence. The Officer is not required to read between the lines or to illicit additional evidence to support an application.

[16] The Officer considered all of the evidence submitted and reasonably found that it was limited and lacked detail. The Officer understood the purpose of the H&C exemption and considered all the evidence cumulatively but simply did not have sufficient evidence before her to justify the exemption and to grant the relief.

The Officer considered the Applicants circumstances as a whole

[17] The Officer addressed each relevant H&C factor and made a finding on the Applicants' establishment, their attachment to their family, the impact of their departure on their family in Canada, the allegations of domestic violence in Barbados, the demolition of their house in Barbados, Mr. Williams' visual impairment and his activities in Canada, and the general statement of Ms. Williams' brother that conditions in Barbados have deteriorated. The Officer

clearly stated that she had considered the circumstances individually and cumulatively. There is no support for the Applicant's argument that the Officer failed to consider their overall circumstances.

The Officer considered the Applicants' establishment

[18] The Officer reasonably found that the letters of support did not address how the Applicants would support themselves once their savings ran out, whether their family in Canada currently provided assistance to Mr. Williams that would not be available if they returned, or how their family in Canada would be impacted by their departure. The Officer acknowledged their membership in a Church and that they had both recently taken courses to upgrade their education. The Officer reasonably noted that there was no evidence that Ms. Williams' intention to become a music producer had any prospect or that she could not pursue this in Barbados.

[19] There was also little evidence of any challenges faced by Mr. Williams due to his visual impairment or that he would be adversely affected if he returned to Barbados.

[20] The Applicants submit that the Officer erred in finding insufficient establishment in the absence of any benchmark to determine the expected level of establishment based on *Kachi v Canada (Minister of Citizenship and Immigration*), 2015 FC 871 [*Kachi*] where the Court stated at para 15 that, "[i]t is not good enough to say that their degree of establishment was insufficient without setting a benchmark". I do not regard *Kachi* as establishing a principle that an Officer must first indicate the appropriate benchmark. This would not be possible given that the circumstances of each claimant and their evidence of establishment will differ. Moreover, in the

present case, the Officer did not find that the Applicants' establishment fell short of any particular expected level, rather that they had demonstrated "some establishment in Canada", noting that this is only one factor in an H&C assessment.

The Officer did not fail to consider the Applicants' attachment to their family in Canada

[21] The Officer considered each letter provided by Ms. Williams' brother and sisters and reasonably found that they lacked detail. The Officer acknowledged that the letters of family members described the familial activities they share in Canada, but concluded, as established in the jurisprudence, that the separation of the Applicants from their family was an unfortunate consequence but was not hardship justifying an exemption.

[22] As Justice Abella noted in *Kanthasamy* at para 23:

> There will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1): see *Rizvi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 463, at para. 13 (CanLII); *Irimie v. Canada (Minister of Citizenship and Immigration)*, 10 Imm. L.R. (3d) 206; (2000), 10 Imm. L.R. 206 (F.C.T.D), at para. 12. Nor was s. 25(1) intended to be an alternative immigration scheme: House of Commons, Standing Committee on Citizenship and Immigration, Evidence, No. 19, 3rd Sess., 40th Parl., May 27, 2010, at 15:40 (Peter MacDougall); see also Evidence, No. 3, 1st Sess., 37th Parl., March 13, 2001, at 9:55 to 10:00 (Joan Atkinson).

The Officer did not make any unreasonable inferences

[23] The Officer explained why she found insufficient evidence of the allegations of domestic violence. The Officer noted the type of evidence that might have assisted the Applicants' claim.

Although Ms. Williams sent a request to police in Barbados for copies of charges and reported instances of domestic abuse, that letter does not specify any dates of alleged incidents nor indicate whether Ms. Williams was inquiring about reports that she made of these incidents. There was no evidence that this request was followed-up nor was there evidence of challenges experienced by Ms. Williams as an abuse survivor or evidence of present contact or threats made by her former common-law partner.

[24] With respect to the demolition of the Applicant's house in Barbados, although the Officer noted that the notice of demolition was a copy, the Officer also found that there was no evidence at all about how the documents reached the Applicants or whether they followed up in any way, including exercising their appeal rights, which could have prevented the demolition of their home. The Officer reasonably found a lack of evidence about whether the Applicants would have access to housing in Barbados.

The Officer did not fail to understand the equitable purpose of H&C relief

[25] With respect to the Applicants' submission that the Officer's H&C analysis does not reflect the approach established by the Supreme Court of Canada in *Kanthasamy,* I do not agree. The Officer explored each possible H&C factor and assessed all the evidence of hardship as broadly as possible, but reasonably found the evidence to be lacking.

[26] *Kanthasamy* provides guidance to decision-makers, including to weigh all the relevant facts before them and to not apply the notion of "unusual and undeserved or disproportionate

hardship" as thresholds for relief separate from the equitable goals of section 25 (at paras 25 and 33). Justice Abella stated at para 25:

> What does warrant relief will clearly vary depending on the facts and context of the case, but officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them: *Baker*, at paras. 74-75.

[27] The Officer did not set "unusual and undeserved or disproportionate hardship" as a threshold. The Officer considered each factor and then considered all the factors cumulatively.

[28] The Officer's decision bears all the hallmarks of a reasonable decision; the Officer did not ignore any evidence, the Officer assessed all the evidence and explained why it was insufficient; and, the Officer did not err in law in her understanding of the proper approach to an H&C analysis. The decision is justified, transparent and intelligible.

JUDGMENT

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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