Federal Court  Cour fédérale

Date: 20170705

Docket: IMM-5034-16

Citation: 2017 FC 653

Ottawa, Ontario, July 5, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

CARSANDRA ALEXANDER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Carsandra Alexander, came to Canada from Grenada in 1999. In December 2011, she filed for permanent residency on humanitarian and compassionate grounds and was landed as a permanent resident in January 2013.

[2] In October 2013, the Applicant married Mr. Yvan Denroy Burke, her common-law partner with whom she has allegedly been living since 1997.

[3] The Applicant applied to sponsor her husband in August 2014 by submitting an inside Canada sponsorship application based on the Spouse or Common-Law Partner in Canada Class.

[4] By letter dated November 16, 2016, an officer at the Case Processing Centre of Immigration, Refugees and Citizenship Canada [IRCC] in Mississauga found the Applicant ineligible to sponsor her husband because she had failed to declare her common-law partner in her 2011 application for permanent residence and as such, she did not meet the requirements of paragraph 125(1)(*d*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. This provision operates to prevent a foreign national from being considered a member of the spouse or common-law partner in Canada class if the foreign national was a non-accompanying family member and was not examined at the time the sponsor made an application for permanent residence and became a permanent resident.

[5] The Applicant seeks judicial review of this decision. She submits that she declared her common-law partner to Citizenship and Immigration Canada [CIC] when she applied for permanent residency in 2011, as the information was included in the Supplemental Information Form and in the affidavit enclosed with her application. As for her common-law partner not being examined in 2011, she contends that the CIC officer who treated her application had to have determined that he was not required to be examined and thus fell within the exception to the exclusion, as described in subsection 125(2) of the IRPR. Otherwise, the CIC officer breached his duty by failing to inform her of the implications of her common-law partner not being examined, pursuant to subsection 125(3) of the IRPR.

[6] The Respondent argues that when the Applicant submitted her permanent residence application in 2011, she was required to complete a Generic Application Form for Canada. In that form she was to declare "her current marital status", the date of marriage or entering of a common-law relationship, the name of her "current spouse/common-law partner" and whether the declared family member would be accompanying her to Canada, and if not, why. Despite the clear language of the form, the Applicant declared herself as "single" and left the other spaces blank. The Respondent submits that it was not unreasonable for the IRCC officer to find that the Applicant did not declare her common-law partner on her application for permanent residence and thus was ineligible to sponsor her common-law partner pursuant to paragraph 125(1)(*d*) of the IRPR, even if he was mentioned elsewhere in her application.

[7] At the outset of the hearing, I indicated to counsel for the parties that I had concerns regarding the inclusion of documentation in the Applicant's application record that was not part of the Certified Tribunal Record [CTR] and in particular, the Applicant's 2011 permanent residency application. Both parties argued that the 2011 application should have been included in the CTR as it would normally have been reviewed by the IRCC officer in the context of the 2014 sponsorship application or at the very least, the IRCC officer would have had access to it. There appears to have been some confusion regarding the contents of the CTR as the Court received an initial copy on April 18, 2017 and further documentation on June 23, 2017. The parties agreed that I should proceed on the basis that the Applicant's 2011 permanent residency application formed part of the CTR, given its relevance to the IRCC officer's determination and since both parties referred to it extensively in both their written and oral submissions.

[8] Accordingly, I have considered all of the material submitted by the parties as well as their oral and written submissions and find that the IRCC officer's decision is unreasonable.

[9] The decision of an IRCC officer regarding applications for permanent residence under the family class involves questions of mixed fact and law reviewable under the standard of reasonableness (*Thakor v Canada (Citizenship and Immigration)*, 2011 FC 400 at para 26). In reviewing a decision against the reasonableness standard, the Court must consider 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 (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[10] The Global Case Management System [GCMS] notes which support the IRCC officer's determination of ineligibility state on May 19, 2016: "SPR landed on 2013/01/30 and there is no evidence that this relationship was declared/examined when SPR landed". This statement is clearly wrong as there is evidence that the Applicant declared her common-law partner when she applied for permanent residency in 2011. While the information was not included in the Generic Application Form, the Applicant did declare her common-law partner both in section 5 of her Supplementary Information Form (IMM-5283) and in an affidavit enclosed with her application.

[11] It is not clear from the decision or the record how the IRCC officer came to the conclusion that there was no evidence that the Applicant declared her common-law partner. The Court is unable to determine whether the IRCC officer missed the information in the

Supplementary Information Form and accompanying affidavit or whether the IRCC officer ignored it and inferred from the fact that Mr. Burke had not been examined pursuant to paragraph 125(1)(*d*) of the IRPR that the Applicant had not declared him. As such, the decision lacks both intelligibility and transparency. Moreover, as the Applicant contends, it is also possible that the CIC officer who processed the Applicant's permanent residency application in 2011 determined pursuant to subsection 125(2) of the IRPR that an examination of Mr. Burke was not required, in which case the IRCC officer's decision would be unfounded and clearly unreasonable.

[12] Given the CTR is possibly incomplete, and in the absence of further documentation relating to the 2011 application including the supporting GCMS notes, I am unable to determine, without engaging in speculation, how the IRCC officer reached the conclusion in 2016 that there was no evidence that the Applicant had declared her common-law partner when she applied and was granted her permanent residence.

[13] For these reasons, the application for judicial review is allowed and the matter is remitted to a different IRCC officer for redetermination.

[14] No questions were proposed for certification and I agree that none arise.

JUDGMENT in IMM-5034-16

THIS COURT'S JUDGMENT is that:

1) The application for judicial review is allowed and the matter is remitted to a different Immigration, Refugees and Citizenship Canada officer for redetermination;
2) The style of cause is amended from the Minister of Immigration, Refugees and Citizenship to the Minister of Citizenship and Immigration;
3) No question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5034-16
STYLE OF CAUSE:	CARSANDRA ALEXANDER v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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