Federal Court  Cour fédérale

Date: 20180905

Docket: IMM-635-18

Citation: 2018 FC 886

Ottawa, Ontario, September 5, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SHARON CEZAIR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Sharon Cezair, is a citizen of Trinidad and Tobago. She arrived as a visitor to Canada in 1997. She did not leave when her status expired and has remained in Canada ever since. She has supported herself in a variety of jobs over the past twenty years and has been actively involved in various church and community activities. Ms. Cezair is not married. She has no children and she does not have any other relatives in Canada.

[2] In 2017, she sought to regularize her status in Canada and submitted an application seeking permanent residence from within Canada on humanitarian and compassionate [H&C] grounds. In a decision dated January 26, 2018, her application was denied by a senior immigration officer [Officer].

[3] Ms. Cezair now seeks judicial review of that decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. She argues that the Officer considered and applied the wrong legal test by failing to undertake a holistic assessment of the factors advanced in support of the application and by considering the factors advanced solely through a lens of hardship, contrary to the decision of the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. She further submits that the Officer ignored or misconstrued evidence relating to her establishment in Canada and the adverse conditions she would face upon return to Trinidad and Tobago.

[4] The application is granted for the reasons that follow.

II. Decision under review

[5] After setting out a detailed summary of the submissions advanced in support of Ms. Cezair's H&C application, the Officer expressly noted that, in arriving at a finding, a global assessment of the H&C factors advanced had been performed.

[6] The Officer observed that Ms. Cezair had failed to seek an extension of her visitor status subsequent to entering Canada in 1997 and noted that she made no other attempt to regularize

her status until she filed her H&C application in 2017. The Officer concluded that this demonstrated disregard for Canada's immigration laws and that this factor was "significantly not in her favour."

[7] The Officer then considered evidence of establishment. The Officer remarked that Ms. Cezair had been in Canada for twenty years and in that time had worked in a variety of fields, including caring for ill or disabled individuals. The Officer also noted that Ms. Cezair had obtained various certifications relating to both her volunteer activities and her paid work as a caregiver. The Officer also observed the absence of any documentation concerning Ms. Cezair's finances or any income tax assessment notices. The Officer remarked that having worked in Canada without authorization reflected deliberate non-compliance with immigration regulations and that this factor also weighed negatively in the assessment.

[8] In considering Ms. Cezair's volunteering and community involvement, the Officer acknowledged numerous letters and photographs from a variety of community organizations and noted that this evidence weighed positively in her favour. Similarly, the Officer positively viewed letters of support from friends in Canada. However, the Officer did not find the evidence relating to her relationships in Canada was sufficient to establish hardship as the evidence was insufficient to indicate these relationships could not be maintained from Trinidad and Tobago by way of phone, email, or the use of other technology.

[9] The decision then addressed Ms. Cezair's submissions relating to conditions in Trinidad and Tobago. The Officer acknowledged: (1) that returning to Trinidad and Tobago would be

difficult for a single woman who has lived abroad for as long as she had; (2) the disparity in wages between men and women; and (3) the prevalence of gender-based violence. The Officer acknowledged conditions in Trinidad and Tobago are "far from ideal" but concluded that H&C relief was not intended to "make up the difference in standard of living."

[10] The Officer then provided an extensive summary of the contents of the 2016 US Department of State report [DoS report] on Trinidad and Tobago. The Officer noted that the DoS report indicated discrimination and violence against women are among the most serious human rights problems in Trinidad and Tobago. The Officer further noted that the DoS report also stated that "[w]omen generally enjoyed the same legal status and rights as men" and that laws and regulations prohibiting discrimination on various grounds, including sex, were effectively enforced.

[11] The Officer concluded, based on a cumulative assessment of the evidence and the difficulties the applicant would face given her particular circumstances that some hardship was inevitable in her having to leave Canada to apply for permanent resident status. However, the Officer concluded this hardship alone was not sufficient to warrant H&C relief.

III. Issues

[12] As set out above, the applicant raises two issues:

A. Did the Officer apply the wrong test? and

B. Did the Officer ignore or misconstrue relevant evidence?

IV. Standard of Review

[13] A reviewing court need not engage in a standard of review analysis where the jurisprudence has previously determined the standard against which a particular category of question is to be reviewed (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57 and 62).

[14] As noted by the applicant, there has been some divergence in the jurisprudence as to the standard of review to be adopted where, in an H&C context, the legal test applied is in issue. As I noted in *Shrestha v Canada (Citizenship and Immigration)*, 2016 FC 1370 at paragraph 6, this question was canvassed in some detail by Justice Richard Mosley in *Gonzalez v Canada (Citizenship and Immigration)*, 2015 FC 382 at paragraphs 23 to 35. Justice Mosley concluded, and I agree, that the choice of legal test is subject to review against a standard of correctness.

[15] The jurisprudence establishes, and the parties agree, that an officer's H&C findings are to be reviewed against a standard of reasonableness (*Kanthasamy* at paras 42-44).

V. Analysis

A. *Did the Officer apply the wrong test?*

[16] The applicant argues that contrary to the Officer's express statements in the impugned decision that a "global" or "holistic" assessment of the factors advanced in support of the H&C application was undertaken, the Officer applied a narrow and segmented test of hardship. In support of this position, the applicant points to the Officer's reference to hardship when: (1) assessing the impact on the applicant of severing ties with friends in Canada; (2) summarizing

the impact on the applicant of the country conditions as disclosed in the evidence; and (3) acknowledging the inevitability of some hardship being the consequence of being required to leave Canada.

[17] In *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 [*Marshall*], Justice Henry Brown recently considered the test to be used in assessing an H&C application. He noted that prior to the Supreme Court of Canada decision in *Kanthasamy*, hardship was the general test; however, post *Kanthasamy*, H&C officers should not only consider the traditional H&C factors but must also consider whether the circumstances "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Marshall* at paras 29-33 citing *Kanthasamy* at paras 13, 21 and 33).

[18] I agree with Justice Brown. When considering an application for H&C relief, an officer is required to do more than simply assess whether one of the high thresholds of unusual, undeserved, or disproportionate hardship has been met. Instead, an officer must consider all the relevant H&C considerations advanced in support of the application, including hardship, to determine if equitable relief is warranted in the circumstances (*Kanthasamy* at para 33).

[19] However, an officer's obligation to address all relevant H&C factors must be considered in the context of the submissions made in support of the application. In this case, the submissions stated that Ms. Cezair would face "considerable hardship" if removed from her community in Canada and that uprooting her would cause her "undue hardship."

[20] In this case, the Officer clearly acknowledged that a global assessment of the H&C factors had been undertaken in conjunction with the submissions made. In conducting the assessment, the Officer considered Ms. Cezair's establishment in Canada based upon her community involvement, her relationships, her volunteer activities, her status in Canada, and her employment history. The Officer also considered the suitability of country conditions in Trinidad and Tobago in light of Ms. Cezair's circumstances. Having completed this review and having made findings in respect of each of these factors, the Officer summarized the circumstances and reached a conclusion "[b]ased on a cumulative assessment of the evidence."

[21] The circumstances here are, in my opinion, readily distinguishable from those in *Mursalim v Canada (Minister of Citizenship and Immigration)*, 2018 FC 596 [*Mursalim*], where Justice John Norris found that the officer's segmented approach and consideration of hardship alone "led the officer to ignore a key unifying element" (*Mursalim* at paras 37 and 38). This did not occur here. I am satisfied that the Officer did not err in assessing hardship in response to the submissions made and that the test applied was consistent with that set out in *Kanthasamy*.

B. *Did the Officer ignore or misconstrue relevant evidence?*

[22] Having concluded that the Officer applied the correct test, I turn to Ms. Cezair's argument that the Officer ignored or misconstrued her evidence relating to her establishment in Canada and the risks she faced if required to return to Trinidad and Tobago.

[23] The respondent submits that the Officer reasonably addressed and weighed Ms. Cezair's establishment evidence and her evidence relating to discrimination and violence against women in Trinidad and Tobago.

[24] In respect of the evidence of establishment I agree with the respondent. Although the Officer's analysis is limited, it summarizes the submissions made, sets out the conclusions reached and is supported by brief reasons that reflect the required elements of justification, transparency, and intelligibility. The same cannot be said with respect to the conclusions reached in relation to the country condition evidence.

[25] Ms. Cezair identified two risks relating to country conditions. The first was gender-based discrimination, and the second was gender-based violence.

[26] Discrimination against women and violence against women are two different concepts. After expressly acknowledging that violence and discrimination against women are serious human rights issues in Trinidad and Tobago, the Officer undertook a review of the evidence as it relates to gender-based discrimination. In so doing, the Officer identified facts and circumstances that reasonably support the ultimate conclusion reached. However, the analysis ended there. The Officer gave no express consideration to the risk as it relates to gender-based violence. Despite the failure to address this risk, the Officer concluded "I have considered the general country conditions in Trinidad and Tobago however I am not persuaded that the applicant would face more than a minimal hardship based on her particular circumstances."

[27] Where directly relevant evidence is not considered or analyzed by a decision-maker, the door is opened to an inference that the decision-maker made an erroneous finding of fact without regard to the evidence or ignored contradictory evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (TD) at para 17). In this case, the failure to address the issue of gender-based violence impacts the transparency, justification, and intelligibility of the decision, rendering it unreasonable (*Dunsmuir* at para 47).

VI. Conclusion

[28] The Application is granted. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT in IMM-635-18

THIS COURT'S JUDGMENT is that:

1. The application is granted;

2. The matter is returned for redetermination by a different decision-maker; and

3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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