Federal Court  Cour fédérale

Date: 20200508

Docket: IMM-3013-19

Citation: 2020 FC 603

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 8, 2020

PRESENT: Associate Chief Justice Gagné

BETWEEN:

MARIE THECELAINE LAGUERRE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Marie Thechelaine Laguerre is a citizen of Haiti. She arrived in Canada in October 2016 with her sister, after spending eight years in Mexico to study, and a year in the United States as a tourist. Her refugee claim was dismissed as not being credible, and she failed to appear on the date scheduled for her removal in late 2017. A warrant was issued and executed against her and

that is when she filed an application for permanent residence on humanitarian and compassionate considerations [H&C Application]. She is now challenging the negative decision made on this application by a senior immigration officer.

II. Impugned decision

[2] The first part of the decision deals with the Refugee Protection Division's negative findings regarding the applicant's credibility, which are not relevant for the purposes of this application.

[3] The officer goes on to note that an H&C Application is an exceptional measure that gives the Minister the discretion to depart from the rule set out in subsection 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], which requires anyone wishing to become a permanent resident of Canada who does not fall into one of the categories set out in subsection 72(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], to apply from abroad.

[4] The officer then considered the three reasons provided in support of the applicant's H&C Application, namely, her establishment in Canada, the best interests of her nieces and nephews, and finally the unfavourable conditions prevailing in her country of origin.

(1) Establishment in Canada

[5] The applicant had a valid work permit until September 2019. She worked in a department store from July to November 2017, but has been unemployed since. Since she failed to explain to the officer's satisfaction why she was unable to use her physiotherapist training acquired in Mexico, the officer concluded that the applicant had not become financially self-sufficient in Canada and that there was nothing to suggest that she could not earn a living as a physiotherapist in her country.

[6] The applicant stated that she was doing volunteer work to integrate into society and to prepare for her entry into the workforce. She submitted documentary evidence with respect to training she had done, her voluntary work and her involvement in general, as well as photos and letters of support from family members and friends. The officer took into account the family ties she has in Canada: her parents, brothers, sister, and nieces and nephews are permanent residents or Canadian citizens. The officer did not question the affection uniting the members of the family, but concluded that a return to Haiti would not have a significant impact on them. After all, they had lived apart for several years before the applicant's arrival in Canada. In addition, the family members living in Canada would be able to visit her in Haiti since their status in Canada allows them to travel.

[7] The applicant has another sister and a brother-in-law who still live in Haiti, and her father was there at the time of the H&C Application, although he has permanent residence in Canada.

[8] The applicant had been in Canada for only three years at the time of her H&C Application, which is relatively short compared to the time she spent in Haiti, Mexico and the United States.

[9] Consequently, since the applicant had not demonstrated a level of establishment specific to Canada, the officer gave little weight to this factor.

(2) The best interests of the children

[10] The officer then considered the fact that the applicant is attached to her nieces and nephews, and that she is involved in their lives. However, he also considered the fact that these children are surrounded by their parents and several members of their extended family and that there is nothing in the evidence to show that the latter will not be able to meet all of the children's needs in the applicant's absence.

[11] Relying on the Federal Court of Appeal's decision in *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, the officer noted that it was up to the applicant to prove the impact that her return to Haiti would have on the best interests of her nieces and nephews. However, the evidence provided by the applicant did not satisfy the officer.

[12] The officer further noted from the decision in *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, that although the interests of any child affected by the removal of a loved one must be seriously considered, this factor does not always outweigh the other factors or interests involved.

[13] The officer therefore also gave little weight to this factor.

(3) Country conditions in Haiti

[14] The officer began by noting that the fears of violence raised by the applicant in support of her refugee claim were not raised in her H&C Application.

[15] The applicant argued that Haiti is currently experiencing a period of insecurity, but did not submit any documentary evidence in support of this allegation. The officer nevertheless consulted the documentation relating to Haiti and acknowledged that the situation remains very difficult since the 2010 earthquake and the subsequent hurricanes. He also recognized that women are vulnerable, especially those living in displaced persons' camps. However, the officer concluded that this general instability affects the entire Haitian population and is not personal to the applicant.

[16] He considered the fact that the applicant has a university education and a family in Haiti, and that she is not likely to end up in a displaced persons' camp if she returns to her country.

[17] The officer also gave little weight to this factor and rejected the applicant's H&C Application.

III. Issue and standard of review

[18] This application for judicial review raises a single issue: did the officer err in his assessment of the evidence?

[19] The reasonableness standard applies to the review of decisions of immigration officers who exercise broad discretion when assessing and weighing all the factors specific to people applying for permanent residence on humanitarian and compassionate considerations (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 108, 116).

IV. Analysis

(1) Applicant's establishment in Canada

[20] The applicant argued that she made considerable efforts to find stable employment and that she got involved in the community by volunteering in a church. She added that speaking three languages is also an asset.

[21] With respect, it is not sufficient for the applicant to repeat before the Court the arguments raised before the officer and to ask that more weight be given to them. Here, the applicant must show how the officer erred and how his decision was unlawful.

[22] The applicant criticized the officer for not taking into account her desire and intention to integrate into Canadian society. However, the intention to integrate is generally not a factor that has to be considered; immigration officers must consider the evidence and assess the level of establishment, or lack thereof. In other words, there must be concrete evidence of establishment. The applicant did not provide any and cannot criticize the officer for his finding in this regard.

(2) The best interests of the children

[23] The applicant submitted letters of support from family members in Canada, who extolled her human qualities and welcomed the presence in their lives of their two older sisters (the applicant and her sister with whom she came to Canada). She argued that one of the objectives of the IRPA is specifically family reunification in Canada and that she is now very involved in her nieces and nephews' lives.

[24] First, it is important to remember that the importance to be given to this factor differs according to whether the children in question are those of the person threatened with removal, or whether they are her nieces or nephews, or the children of close friends of the family.

[25] I am of the opinion that in the circumstances of this case, it was reasonable for the officer to conclude that it was not shown that the applicant would not be able to keep in touch with her nieces and nephews in the event of her return to Haiti, just like she had done while in Mexico or the United States. It was also reasonable to conclude that since these children are surrounded by their parents and several members of their extended family, it was not shown that they would suffer following the applicant's departure.

[26] I see no error in the officer's analysis that would justify this Court's intervention.

(3) Country conditions in Haiti

[27] The applicant alleges that the unfavourable conditions for vulnerable women prevailing in Haiti weigh in favour of her H&C Application being granted. She adds that as a woman living alone with no fixed address and without the protection of her father (now back in Canada) or the Haitian state, she would be vulnerable. Her family could certainly support her financially, but they could not offer her any protection whatsoever.

[28] It is well established that general adverse country conditions, which have no nexus with an applicant's specific and personal situation, do not weigh in favour of permanent residence being granted based on humanitarian and compassionate considerations (*Mathewa v Canada (Minister of Citizenship and Immigration)*, 2005 FC 914 at para 10; *Bakenge v Canada (Citizenship and Immigration)*, 2017 FC 517 at paras 31–32; *D'Souza v Canada (Citizenship and Immigration)*, 2017 FC 264 at paras 18-20).

[29] The officer took into account the fact that the applicant was educated and that her training as a physiotherapist could enable her to earn a living in her country. He also took into account that the applicant's sister and brother-in-law currently reside there and that her father was there when she filed her H&C Application. Added to this is the fact that the applicant's sister, with whom she lived in Mexico and the United States and with whom she entered Canada, will probably also have to return to Haiti since the Court denied her application for leave with respect to a negative decision similar to the one under review (IMM-3014-19).

[30] In light of the evidence presented, I believe that it was reasonable for the officer to conclude that the applicant had not demonstrated the existence of a nexus between her personal situation and the situation of vulnerable women living in Haiti and who are at risk of being persecuted or experiencing violence because of this vulnerability. It was also reasonable for the officer to acknowledge as he did that the situation is far from ideal in Haiti, but that it is a generalized situation that applies to all Haitians, and not to the applicant personally.

V. Conclusion

[31] The Court's role is not to repeat the exercise of weighing the evidence, which Parliament chose to entrust to the Minister and the immigration officers appointed by the Minister. The Court's role is to ensure that decisions are lawful in order to safeguard the legality, rationality and fairness of the administrative process. Since the officer considered and weighed each of the factors relied on by the applicant and fully explained the weight given to each of these factors, and since his decision is one of the possible outcomes, there is no reason for the Court to intervene.

[32] The parties did not propose any question of general importance for certification, and no such question arises from the facts of this case.

JUDGMENT in IMM-3013-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

Certified true translation
This 10th day of June 2020.

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3013-19
STYLE OF CAUSE:	MARIE THECHELAINE LAGUERRE v THE MINISTER OF CITIZENSHIP & IMMIGRATION
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