Federal Court  Cour fédérale

Date: 20211102

Docket: IMM-499-21

Citation: 2021 FC 1167

Ottawa, Ontario, November 2, 2021

PRESENT: Madam Justice Walker

BETWEEN:

WISLANDE FLERIDOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Fleridor, is a citizen of Haiti. She seeks judicial review of a decision (Decision) of a senior immigration officer (Officer) dated January 7, 2021 refusing her application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds.

[2] For the reasons that follow, the application will be dismissed. The Officer assessed the Applicant's evidence regarding the H&C factors relevant to her situation and clearly explained

their conclusion that she had provided insufficient evidence warranting the extension of relief on the principles embodied in subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (*IRPA*).

I. Overview

[3] The Applicant arrived in Canada in June 2011 through the Live-in Caregiver program and worked at her cousin's residence.

[4] On June 12, 2013, the Applicant filed an application for a permanent residence visa (PR Application) in the live-in caregiver category. She included in her application a spouse and three minor daughters. The Applicant's application was denied for misrepresentation on August 8, 2017. Most notably, the Applicant admitted that she had lied about her relationship to the three children and had submitted fraudulent birth certificates for them. They are not her biological children although she considers them as daughters. Rather, two are her sisters and one is her niece. The Applicant requested reconsideration of her PR Application on January 8, 2018 but her request was rejected later the same month.

[5] The Applicant applied for judicial review of the denial of her PR Application and not the denial of her reconsideration request. The Court dismissed the application for review of the initial denial in a decision dated August 27, 2018 (2018 FC 859) (2018 FC Decision). The Court concluded that the decision was reasonable and that there had been no breach of procedural fairness. The Applicant had been given an interview to permit her to address the reviewing officer's concerns regarding her relationship with the three girls she claimed as daughters and her

refusal to provide DNA evidence to establish that relationship. The officer also questioned the Applicant regarding concerns about her relationship with the alleged spouse.

[6] The Applicant submitted an application for permanent residence on H&C grounds (H&C Application) in April 2019 based on: (1) her establishment in Canada; (2), the best interests of her two sisters and her niece in Haiti and, in respect of both her establishment and the best interests of the child (BIOC) analysis, the son of a cousin living in Toronto (Jayden); and (3) the country conditions in Haiti.

[7] The Officer refused the H&C Application for the following reasons:

1. General: The Applicant's H&C submissions regarding her sisters and niece largely recycle the arguments she presented in her request for reconsideration of the PR Application. The Court reviewed those arguments in the context of its review of the initial denial. Further, the Applicant continued to work after the expiry of her work permit in January 2018 which reflected an ongoing disregard for Canadian immigration laws.

2. Establishment in Canada: The Applicant provided evidence that she had worked from 2013 to 2019 and had been able to support herself and send monetary transfers to her family in Haiti. However, other than letters of support from her church and two cousins, she presented little additional proof of establishment in Canada. Referring to the Supreme Court's decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 (*Kanthasamy*), the Officer concluded that the Applicant's evidence of her establishment did not warrant the exceptional measure of permanent residence in Canada on H&C grounds.

3. BIOC: On the date the Applicant filed the H&C Application, her two sisters were 19 and 23 years old respectively and were not considered in the Officer's BIOC analysis. Other than the date of birth of her minor niece in Haiti, the niece's address and names of her parents and college, the Applicant's evidence regarding the best interests of the niece focussed on her receipt of her aunt's generosity. In a letter submitted in support of the H&C Application, Jayden wrote that he has a close relationship with the Applicant and that he too had benefited from the Applicant's generosity. The Officer concluded that the best interests of the niece and Jayden played a positive role in the H&C analysis but alone did not warrant relief.

4. Country conditions in Haiti: The Applicant stated that she risks being reduced to poverty and prevented from assisting her family should she be required to return to Haiti. She relied on the adverse conditions in the country to demonstrate the conditions she would face as a woman in Haiti. The Officer acknowledged that Haiti suffers from grave socioeconomic problems that are exacerbated by natural disasters. For these reasons, removals from Canada to Haiti have been suspended. Nevertheless, the Officer noted that the Applicant provided little evidence of the circumstances she herself would face should she return to Haiti or regarding the living circumstances of her Haitian family. The existence of serious issues in Haiti without evidence regarding the Applicant's personal circumstances required the Officer to speculate as to the issues she would face upon return.

[8] The Officer summarized the Decision by stating that their role was to approach the H&C Application with an open mind as a reasonable person in a just and civilized society moved to relieve the misfortunes of another (*Kanthasamy* at para 13). The Officer also stated that it was not reasonable to repeatedly punish the Applicant for her misrepresentation in the PR Application. However, the Applicant's conduct subsequent to her admission of misrepresentation was a negative factor.

[9] The Officer found that, when balanced with the Applicant's failure to respect immigration laws, the three H&C factors that were the basis of the H&C Application (including the existence of adverse country conditions in Haiti) did not warrant relief.

II. Analysis

[10] In this application, the Applicant challenges each of the Officer's findings and reiterates her request for an interview should this matter be returned for redetermination.

[11] The Applicant's arguments challenging the merits of the Decision are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

at paras 10, 23 (*Vavilov*); *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 777 at paras 13, 37-39 (*Ahmed*)). Where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and determine whether the decision "is based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[12] Upon review of the Decision and despite her arguments to the contrary, I am satisfied that the Officer considered the Applicant's H&C submissions and the country condition evidence for Haiti comprehensively and provided intelligible and justified reasons for their findings.

[13] The Applicant first submits that the Officer ignored the spirit and purpose of subsection 25(1) of the *IRPA*, conflated their consideration of H&C factors with a section 97 analysis, and adopted a tone that is dismissive and derisive. I have reviewed the Decision carefully against the case law cited by the Applicant and her submissions to the Officer and to the Court. I find no suggestion of any dismissive or derisive tone or language. Further, the Officer makes clear at a number of points in the Decision that they are aware of the purpose of subsection 25(1) and the guidance provided by the Supreme Court in *Kanthasamy*. The Applicant's arguments reflect her genuinely held view that the Decision is unreasonable but do not reflect a reading of the Officer's analysis and Decision as a whole. In the same vein, the Officer's analysis of the country conditions in Haiti and their feared impact on the Applicant and her family is consistent with the H&C jurisprudence. The Officer's focus is on the application of the general country conditions to the Applicant's own situation should she be required to return. I find no conflation of section 25 and 97 analyses in the Decision.

[14] Second and building off her argument regarding tone, the Applicant argues that the Officer was unduly influenced by her prior misrepresentation and unauthorized work in Canada but I am not persuaded by the submission. The Officer considered the Applicant's breaches of Canadian immigration law at the outset of the Decision and made no error in so doing. The Officer did not mischaracterize the breaches or treat them as fatal to the H&C Application. As noted above, the Officer specifically acknowledged that it is not reasonable to endlessly punish the Applicant for her misrepresentation in the PR Application. The Officer also considered the fact that the Applicant's continued work had enabled her to be self-supporting and to continue to regularly transfer money to her family in Haiti. I find that the Applicant's arguments in this regard are a request to the Court to reweigh the evidence and replace the Officer's determination with its own.

[15] The Applicant argues that the Officer committed a reviewable error in commenting that she was attempting to have the evidence of her relationship with the three children in Haiti reconsidered as part of the H&C Application. She states that the evidence was not considered by the Court in the course of its 2018 FC Decision "because the documents had already been reviewed by the [o]fficer and the basis for the appeal was therefore moot".

[16] I have reviewed the 2018 FC Decision. The Court did not make a finding of mootness. In paragraph 28, my colleague Justice Lafrenière noted that the officer who reviewed the PR Application provided the Applicant the opportunity to provide information regarding her relationship with the children in Haiti. Justice Lafrenière stated that, in the reconsideration decision, "the officer specifically considered the *de facto* relationship with the children. She had

several reasons for finding that this relationship did not exist, including the fact that the applicant was unable to give birth dates without her checklist and that she opted to remove the children from the case file when confronted with the consequences that could result from making misrepresentations".

[17] I have also reviewed the Applicant's submissions regarding the three children in her H&C Application. Significant parts of those submissions repeat the submissions made in the PR Application. The Officer did not err in their observation in this regard. In any event, the Officer considered the Applicant's evidence of the ongoing support of her minor niece in Haiti and her relationship with Jayden. The Officer's BIOC analysis in the Decision reasonably assesses this evidence, including the letter from Jayden and the Applicant's financial concerns regarding her ability to provide ongoing support to her niece.

[18] The Applicant focusses her submissions challenging the BIOC analysis in the Decision on the best interests of her niece. She cites Justice Pentney's description of reasonableness review following *Vavilov* and the requirement that an administrative decision maker truly engage with the evidence (*Ahmed* at para 38). In this case, the Officer did so when the Decision is viewed against the Applicant's very sparse information regarding the niece, including that contained in the letter from the Applicant's cousin in Canada.

[19] The Applicant argues that the Officer disregarded her objective evidence regarding the hardship she would face in Haiti. She states that there was substantial evidence in the record that established the health and economic crises in the country, and the effects of those crises on

women in particular. The Applicant states that the Officer avoided any mention of evidence contradictory to their conclusions, evidence that would establish a severe diminution in her living conditions and those of her immediate family for whom she states she is the primary breadwinner.

[20] I do not agree with the Applicant's arguments. First, the Officer accepted the objective evidence regarding the dire situation in Haiti. The submission that the Officer failed to cite the "contradictory evidence" is misplaced because they did not attempt to rely on any contradictory evidence. The Decision rests on the insufficiency of the Applicant's evidence and submissions regarding her own and her family's circumstances (*Paul v Canada (Citizenship and Immigration)*, 2017 FC 744 at paras 22-23). Other than being a woman and providing some financial support to specific members of her family, the Applicant submitted little evidence regarding her own living situation should she return or those of her various siblings. I agree with the Applicant that the general conditions in Haiti were very relevant to the analysis of her risk of personal hardship in Haiti (*Maroukel v Canada (Citizenship and Immigration)*, 2015 FC 83 at para 34) but the Officer assessed those conditions and acknowledged that the Applicant may encounter difficulties in employment and in other aspects of her life. The Officer's explanation for their conclusion is rational and transparent.

[21] In the absence of particularized evidence from the Applicant, I find no reviewable error in the Officer's conclusion that the conditions in Haiti, when assessed with the other H&C factors relied on, did not warrant the relief requested.

[22] Finally, I am not persuaded by the Applicant's argument that the Officer committed a breach of her right to procedural fairness in refusing her request for an interview.

[23] The standard of review applicable to procedural fairness issues is correctness. The bases for the Applicant's procedural fairness argument are the Officer's (1) expressed skepticism of the Applicant's stated remorse for her misrepresentations in the PR Application because it is undermined by her subsequent conduct in continuing to work in Canada and hope for a positive H&C determination; and, to a lesser extent (2) the Officer's concern regarding the father's death certificate. The Applicant states that these comments amount to a veiled credibility finding (*AB v Canada (Citizenship and Immigration)*, 2020 FC 498 at para 95).

[24] I do not agree with the Applicant's argument for two reasons. First, it was open to the Officer to consider the Applicant's decision to continue working in Canada after the expiry of her work permit (*Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904 at para 29). This conduct is distinct from and subsequent to her misrepresentation in the PR Application. Second, the Officer's comments regarding the father's death certificate are an incidental aspect of the Decision. The Officer did not question the father's death itself or the fact that it figured in the Applicant's financial concerns surrounding a return to Haiti.

III. Conclusion

[25] The application is dismissed.

[26] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-499-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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