Date: 20040917

Docket: IMM-7655-03

Citation: 2004 FC 1268

Ottawa, Ontario, the 17th day of September 2004

Present : The Honourable Mr. Justice Simon Noël

BETWEEN:

MARIAM AHMAD
MOHAMMAD JABER
YANNAL JABER

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision by immigration officer Vicky Hajdamacha (the officer), dated September 17, 2003, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (Act). In that decision, the officer refused the immigrant visa exemption application of the principal applicant, Mariam Ahmad (applicant), pursuant to subsection 25(1) of the Act.

ISSUE

[2] Did the officer err in refusing to the applicant's application for a Ministerial exemption and in determining that there were no humanitarian and compassionate grounds to justify this application?

[3] For the following reasons, I answer this question in the negative and the application for judicial review will therefore be dismissed.

THE FACTS

[4] The applicant is a Jordanian woman accompanied by her two eldest sons in this application. Her son Mohammad was 17 years old when this application was submitted. Despite the fact that he is now 18 years old, his application is still joined to his mother's since he was 17 years old when that application was filed.

[5] The applicant and her son Yannal arrived in Canada from the United States around August 31, 2000, at the Port of Entry at Lacolle, Quebec. They claimed refugee status when they arrived. The Immigration and Refugee Board (IRB) determined that the applicants were not Convention refugees and that the testimony of the principal applicant was devoid of credibility. The applicants' pre-removal risk assessment (PRRA) was decided on October 31, 2002, and that decision was negative. The applicant filed this application following that dismissal.

[6] The applicant is the wife of Wael Jaber, a Palestinian-Jordanian. Together they have five children, three of whom accompanied the applicant to Canada, namely: her daughter Dujana Jaber, 3 years old, Canadian; her son Yannal, 12 years old, American and Jordanian; and Mohammad, 18 years old, Jordanian. On August 22, 2000, the female applicant, then pregnant with her daughter Dujana, left Jordan with her son Yannal. The applicant's husband remained in Jordan and opposed her departure for the West. Later, he spurned her. The applicant's own family, who remained in Jordan, told her that she had dishonoured her family and that she was therefore no longer welcome in Jordan. On August 14, 2000, Mohammad obtained a visitor's visa for Canada in Amman, and arrived on September 17, 2000. Mohammad claimed refugee status on September 22, 2000. Dujana, the Canadian child, was born on December 7, 2000.

[7] At the IRB hearing on January 28, 2002, Yannal withdrew his refugee claim. On April 10, 2002, the IRB dismissed the principal claim of the applicant as well as that of her son Mohammad. On October 31, 2002, there was a negative decision on the PRRA and the applicants' removal was scheduled for January 16, 2003. However, when the applicants reported to the American border, Mohammad was refused entry to the country. The applicants' removal was cancelled. On February 12, 2003, the applicant filled out an application for permanent residence on humanitarian and compassionate grounds in which she stated that she feared being persecuted by her family if she were to return to her country and that single women are easy targets in Jordan.

[8] In May 2003, the respondent contacted the applicant in order to give her a new date for her removal to the United States. The applicants' counsel then contacted the respondent to remind him of the undertaking that had been made to review the application for residence on humanitarian and compassionate grounds. The respondent acknowledged this undertaking and cancelled the date scheduled for the applicants' removal. On September 3, the applicants once again received a date for their removal, namely September 18 at 8:30 a.m. The applicants' counsel once again contacted the respondent to remind him of the undertaking to proceed with the review of the application for permanent residence on humanitarian and compassionate grounds before the removal. Yet, on September 11, Anne-Marie Signori, of Citizenship and Immigration Canada (CIC), advised the applicants' counsel that the applicants' removal would stand, that he would have the opportunity to make other submissions as well as file other documents at CIC and that there would be a decision on the application for residence on humanitarian and compassionate grounds before the scheduled removal date. Counsel confirmed the information provided in that phone call in a letter that he sent to CIC. On September 16, 2003, counsel sent additional documents to CIC in support of the application.

[9] On September 17, 2003, CIC made a negative decision against the applicants and on October 20, 2003, the immigration officer, Vicky Hajdamacha, submitted the reasons of her decision dated September 17 to the applicants' counsel.

IMPUGNED DECISION

[10] The officer dismissed the applicant's refugee claim because of her failure to establish adequate humanitarian and compassionate grounds and also her lack of credibility. The officer determined that Jordan attaches importance to children and to their well-being by providing them with necessary educational and health services. In the PRRA, CIC contended that the applicant was not a likely victim of an "honour crime" considering the particular facts of her case, especially the fact that her husband harboured no ill-will toward her. CIC also held that Jordanian woman can be without a man and sense a "[TRANSLATION] certain degree of freedom", including the freedom to take control of their lives. The officer stated the following at page 5 of her decision:

> [TRANSLATION]
>
> I note that the applicant did not submit a document recognized in her country noting the end of her marriage. I did not find information in the objective documentation that being disowned by her husband was grounds for an honour crime and that divorced women were targeted by their family members for dishonouring the family. I give more weight to the objective documentation reviewed indicating, with many examples, that honour crimes in Jordan are mostly related to the woman's sexual conduct and that documentation does not support the fact that in Jordan being disowned by one's husband casts doubt on the honour of the family. Furthermore and according to the objective documentation reviewed, divorce is accepted in Jordan and a man can obtain a divorce more easily than if a woman requests it. I note here that it is the claimant's husband who no longer wants to live with her and that he put an end to the marriage.

ARGUMENTS OF THE PARTIES

The applicants

[11] The applicants dispute the officer's decision based essentially on the following three arguments:

a. relying on the decisions in *Shah v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1299 (F.C.A.) (QL); *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (QL) and *Cardinal v. Director of Kent Institution* [1985] 2 S.C.R. 643 (QL); the applicants allege that the immigration officer did not submit to the applicant the extrinsic evidence that she considered in making her decision;

b. the immigration officer erred when she assessed the principle of the best interest of the child; and

c. according to the decision in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)* [1998] 1 S.C.R. 1222 (QL); and *Canada (Director of Investigation and Research) v. Southam Inc.* [1997] 1 S.C.R. 748 (QL); the immigration officer's decision was not reasonable considering the facts in the case.

The respondent

[12] The respondent states that, as stated by the Supreme Court of Canada in *Baker*, *supra*, as well as in *Southam*, *supra*, at paragraphs 54 to 62, the standard of judicial review to apply to the decision of an immigration officer under subsection 114(2) of the Act and pursuant to section 2.1 of the *Immigration and Refugee Protection Regulations*, is the standard of reasonableness *simpliciter*. Further, the respondent submits that the notes of the immigration officer assessing the application for exemption on humanitarian and compassionate grounds are sufficient to meet the procedural fairness requirements and that the immigration officer's discretionary power should be considered with a certain deference and respect.

[13] The respondent relies on the decision of Hansen J. in *Chen v. Canada (Minister of Citizenship and Immigration)* [2002] F.C.J. No. 341 (F.C.T.D.) (QL), which echoes *Mancia v. Canada (Minister of Citizenship and Immigration)* [1998] F.C.J. No. 565 (C.A.) (QL), to dispute the applicant's argument regarding the extrinsic evidence and to submit that it is patently unfounded. The respondent relies on *Legault v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 457 (C.A.) (QL); *Baker*, *supra*; *Zolotareva v. Canada (Minister of Citizenship and Immigration)* [2003] F.C.J. No. 1596 (F.C.) (QL); and *Suresh v. Canada (Minister of Citizenship and Immigration)* [2002] 1 S.C.R. 3 (QL), to submit that in her written submissions the applicant was completely silent about the two elements that she is now alleging; i.e., the psychological impact of removal on her children and the impact of a school interruption for her two sons. Thus, the respondent argues that in this case the immigration officer properly identified the "interest of the child" factor and from there, she had to determine the weight to assign to this factor under the circumstances. The respondent also submits that the picture painted by the applicant is not at all consistent with the objective documentary evidence on the situation in Jordan retained by the immigration officer, especially because she had not done anything improper which could result in an honour crime and because she is on good terms with her husband, who can have more than one spouse, and because he has given her the freedom to choose what she wants for her future and the future of her children.

ANALYSIS

The standard of review

[14] In the context of a judicial review of decisions made under subsection 25(1) of the Act, the Minister is authorized to grant an exemption from a regulation made under subsection 25(1) of the Act or to facilitate admission in any other way, if he is satisfied that such an exemption or facilitation is justified by the existence of humanitarian and compassionate grounds. Thus, based on the case law cited, I agree with the respondent that in this case the appropriate standard of review is that of reasonableness *simpliciter* because the Minister's decision under subsection 25(1) of the Act is entirely discretionary and, on that basis, the applicant has the burden of establishing that there are humanitarian and compassionate grounds justifying a favourable recommendation.

[15] Based on my assessment of the evidence, the applicant has not discharged this burden. The officer substantiated her decision very well by stating in clear and unequivocal terms the reasons that she doubted the truthfulness of the applicant's allegations. Based on my assessment of the case law, as stated at paragraph 44 in *Chen*, *supra*, the officer could take into account the objective documentary evidence accessible to the public to decide and was not bound to provide them to the applicant before deciding:

> . . . I am not satisfied that the principles of fairness as enunciated in *Baker*, *Haghighi* and *Bhagwandass* extend so far as to require disclosure in the circumstances of this case. In other words, the PCDO was not obligated to disclose publicly available documents describing general country conditions of which the applicant is deemed to have been aware in advance of rendering her decision.

To arrive at that finding, I note that the documentation predates the submissions made to the officer and that the applicants did not file evidence to the effect that the documents were not accessible to the public. Further, there is no "extraordinary" information warranting their

disclosure to the applicants. As mentioned above, in my opinion the criteria set out in *Chen*, *supra*, were respected by the officer.

[16] Further, in light of the evidence and the case law filed, in my opinion the interests of the children were well identified and analysed by the officer and it was therefore incumbent on the officer to determine the appropriate weight to assign to this factor under the circumstances in this case, while taking into account the submissions made by the applicants to this effect.

[17] Furthermore, I note that the arguments about psychological impact, etc., on the children resulting from a removal to Jordan were not provided to the officer. We cannot address an allegation based on facts that were not before her. My review of the decision regarding the interest of the children is satisfactory. I am also persuaded that the applicant's profile does not correspond with that of an honour crime victim, but rather that of a woman separated from her husband and I quote the reasons of the officer on this point (see page 6 of the decision):

> [TRANSLATION]
>
> As for the applicant's fear that she will be targeted by men because she will not have male protection, I note that by her side stands her 18-year-old son, Mohammad. Notwithstanding that fact, I could not find in the objective documentation reviewed any information to the effect that women living alone in Jordan are targeted by men. Further, nobody in any country can protect themselves against random criminality. This is a general risk that all women face, regardless of the country they live in.

[18] The parties were asked to submit a question for certification but none was proposed.

ORDER

For all of these reasons the application for judicial review is dismissed and no question will be certified.

"Simon Noël"
Judge

Certified true translation

Kelley A. Harvey, BA, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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