Federal Court  Cour fédérale

**Date: 20120605**

**Docket: IMM-7317-11**

**Citation: 2012 FC 690**

**Ottawa, Ontario, June 5, 2012**

**PRESENT: The Honourable Mr. Justice Near**

**BETWEEN:**

**SYLVIA MAY MARTIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Sylvia May Martin, contests the rejection of her application for permanent residence on humanitarian and compassionate (H&C) grounds under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

## I. Background

[2] A citizen of Jamaica, the Applicant has lived in Canada since January 1992. She is the mother of three Canadian born children aged 15, 16 and 18 years old.

[3] This is her second H&C application. The first was rejected in 2005, while the most recent, the subject of this application for judicial review, was rejected in 2011.

[4] In making a negative determination, the Immigration Officer (Officer) found that there was no objective evidence to support contentions that the Applicant was abused by her former partner and he had vowed to kill her. In addition, there was insufficient objective evidence that the Applicant had provided clear and convincing evidence that state protection would be unavailable to her in Jamaica. As the Officer concluded, "[t]he applicant provides virtually no details of the alleged abuse, her attempts in seeking state protection or the alleged continued threat to her from her former partner."

[5] The Officer further noted that the Applicant provided "minimal detail" as to her establishment in Canada. There was no employment listed until 1999. No letters or documents from her volunteer work were provided since 2009. While there was information that the Applicant relied on financial support from the father of her children and from the Church, the Officer noted that no details of this financial support were provided. Despite the submissions of Applicant's counsel that she is the primary caregiver, there was insufficient objective evidence that this was so from a financial perspective.

[6] The best interests of the Applicant's children were considered with reference to letters from them requesting that their mother remain in Canada. The Officer recognized it would be difficult for the children and the important role of a mother in this context. Nevertheless, it was noted that the children have their father, two half-sisters and three aunts in Canada. The Officer found that they would not "be bereft of financial resources or familial love and support should their mother return to Jamaica and apply for permanent residence in the usual way."

[7] The Officer ultimately concluded: "I am not of the opinion that the hardship of having to obtain a permanent resident visa from outside Canada would be unusual and undeserved or disproportionate and in this regard I am not of the opinion that granting the requested exemption is justified on humanitarian and compassionate grounds."

## II. Issue

[8] The issue before the Court is whether the Officer erred in considering the best interests of the Applicant's children.

## III. Standard of Review

[9] H&C determinations are to be afforded deference and reviewed on a standard of reasonableness (see *Garas v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1247, [2010] FCJ no 1559 at para 22; *Ahmad v Canada (Minister of Citizenship and Immigration*),

2008 FC 646, 2008 CarswellNat 1565 at para 11; *Inneh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 108, 2009 CarswellNat 239 at para 13).

[10] For a determination to be reasonable, it would demonstrate the existence of justification, transparency and intelligibility or, to put it another way, fall within the range of acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

## IV. Analysis

[11] The Applicant asserts that the Officer erred in not being alert, alive and sensitive to the best interests of her children (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CarswellNat 1124 at para 75). She disputes the Officer's reference to her records that she resides with the children's father but they are not cohabitating and relies on him for financial support. This suggests there is a bond between the children and their father that is not supported by their letters.

[12] She further contests the suggestion that her children would not "be bereft of financial resources or familial love and support should their mother return to Jamaica and apply for permanent residence in the usual way" because they have their father, half-sisters and aunts in Canada. She receives infrequent child support payments from the children's father and there was no evidence that other family members would be capable of meeting their needs. The conclusion that her removal would not cause hardship was therefore unreasonable.

[13] Although I recognize that there is a requirement to be alert, alive and sensitive to the best interests of the child where applicable, I fail to see how the issue was not adequately addressed by the Officer in the present case.

[14] I must agree with the Respondent that the Applicant's issue is primarily with the weight assigned to the various aspects of the best interests of the children. The Officer considered the letters from the children asking that their mother not be removed because it would be difficult for them. It expressly acknowledged the important role of their mother. At the same time, this was balanced against the presence of family members in Canada to ensure that they would not be "bereft of financial resources and familial support should their mother return to Jamaica."

[15] That approach was reasonable under the circumstances. While the best interests of the child are an important factor to be given substantial weight in assessing the degree of hardship, they need not be determinative (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, 2002 CarswellNat 746; *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, 2002 CarswellNat 3444 at para 6).

[16] As the Federal Court of Appeal recently confirmed in *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2009] FCJ no 713 at para 24, the Court has no role in reweighing factors in this regards as "[i]t will more often than not be in the best interests of the child to reside with his or her parents in Canada, but this is but one factor that must be weighted together with all relevant factors."

[17] Moreover, conflicting evidence as to the exact nature of the Applicant's living and financial arrangements with respect to the children's father does not undermine the Officer's broader conclusion. There was a sufficient evidentiary basis to reasonably conclude that the children would not be bereft of support in Canada, as family members were in the picture to varying degrees, should their mother be returned to Jamaica to pursue a permanent residence application through the normal course.

[18] In general, the Officer was concerned that the Applicant failed to provide sufficient information along with her application on H&C grounds to establish hardship that would be unusual, undeserved or disproportionate. Evidence of the best interests of the children as presented was not sufficient to overcome these concerns.

## V. Conclusion

[19] Since the Officer's consideration of the best interests of the children was reasonable, the application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

" D. G. Near "

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | **IMM-7317-11** |
| **STYLE OF CAUSE:** | **SYLVIA MAY MARTIN v MCI** |
| **PLACE OF HEARING:** | **TORONTO** |
| **DATE OF HEARING:** | **APRIL 30, 2012** |
| **REASONS FOR JUDGMENT AND JUDGMENT BY:** | **NEAR J.** |
| **DATED:** | **JUNE 5, 2012** |

**APPEARANCES:**

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