

Federal Court



Cour fédérale

Date: 20120517

Docket: IMM-6593-11

Citation: 2012 FC 600

Toronto, Ontario, May 17, 2012

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

JANICE VALNEY JANETTA GEORGE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application is a challenge to a decision of an Officer of the Minister of Citizenship and Immigration Canada (H&C Officer) in which the Applicant was denied permanent residence from within Canada on humanitarian and compassionate grounds. A principle feature advanced by the Applicant in making her application was that she is fully established in Canada and she would suffer undeserved, unusual, or disproportionate hardship from being required to apply from outside Canada. For the reasons that follow, I find that the H&C Officer's negative determination on this feature renders the decision as unreasonable.

[2] In her application for relief the Applicant presented herself as a 55 year-old citizen of St. Vincent who has: lived in Canada for 23 years; raised two dependent Canadian children to teen age years; been financially independent; supported herself and her children by working as a cleaner and a child carer; acted as a Sunday school and outreach program teacher; and enjoyed the active support of her Church community.

[3] Guidance for the H&C Officer in reaching a determination on establishment is expressed in IP 5: *Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds (Guidelines)*, in particular, in provision 11.5:

The degree of the applicant's establishment may be measured with questions such as the following:

- Does the applicant have a history of stable employment?
- Is there a pattern of sound financial management?
- Has the applicant remained in one community or moved around?
- Has the applicant integrated into the community through involvement in community organizations, voluntary services or other activities?
- Has the applicant undertaken any professional, linguistic or other studies that show integration into Canadian society?
- Do the applicant and their family members have a good civil record in Canada? (e.g. no criminal charges or interventions by law enforcement officers or other authorities for domestic violence or child abuse).

The applicant's establishment up to the time of the Stage 1 assessment may be considered. The fact that the Applicant has some degree of establishment in Canada is not necessarily sufficient to satisfy the hardship test: (*Diaz Ruiz v Canada* (Minister of Citizenship & Immigration), 2006 FC 465, 147 A.C.W.S. (3d) 1050 (F.C.); *Lee v Canada* (Minister of Citizenship & Immigration), 2005 FC 413, 138 A.C.W.S. (3d) 350 (F.C.)).

[4] In assessing the Applicant's degree of establishment, the H&C Officer provides the following analysis:

The applicant has been out of immigration status in Canada since 28-Apr-1989, for over 22 years. Her application lists employment in Canada since 1998. She has never applied for and received a work permit. She states she is self employed as a babysitter, cleaning houses and for a cleaning company on a contract basis (Jeeves Janitorial and Carpet Cleaning Services Inc., Pickering, ON) since Sept 1998. She provided a letter dated 06Nov2008 from Don Carmichael stating he had hired her at his office (Index Strategy Inc in Richmond Hill, ON) and to clean his home on a bi-monthly basis. Also provided a letter dated 28Feb2008 from Kelly and David Jones stating they hired the applicant to clean their home and to look after their children, a letter dated 24Jan2008 from Robin Kalbrleisch stating that the applicant worked as a housekeeper for them, a letter dated 07Feb2008 from Wes Mills stating applicant works for him as a housekeeper, and a letter of employment dated 15Feb2008 from Jeeves Janitorial & Carpet Cleaning in Pickering, ON stating that the applicant has worked for them as a subcontractor cleaner part time since 1998. The applicant states she has notified taxes in Canada since arriving in 1989.

[...]

I have not weighed the applicant's establishment in Canada heavily for several reasons. Firstly, I am not satisfied her establishment was out of her control. Secondly I am not satisfied that her establishment is to an unusual degree. She works part time jobs, rents an apartment, has friends and family in Canada, and is involved in her church community and volunteers her time at the church. This would be a reasonable establishment in Canada over 22 years. I note that her work with youth at her church is commendable; I do not find that this is sufficient reason to approve her application. Insufficient evidence was provided to illustrate that she could not find similar employment and establish herself to the same degree into the community in St. Vincent. Also, the applicant has failed to provide sufficient evidence of adequate financial support in Canada. She has not provided tax statements, or updated employment information and evidence.

[Emphasis added]

(Application Record, pp. 14 – 15)

With respect to the H&C Officer's findings, Counsel for the Applicant argues as follows:

It is respectfully submitted, the immigration officer did not properly take into account the successful establishment made by the applicant during her approximately 23 year history in Canada. In her reasons, the immigration officer has given positive consideration to the majority of the factors involved in establishment such as the length of time in Canada; her stable work history throughout her time in Canada; her remaining in Toronto throughout her time in Canada; her active involvement in church activities; her family ties in Canada and her good civil record. In her reasons, the immigration officer was unduly concerned and acted unreasonably by finding the applicant did not obtain a work permit which she could not legally obtain as she was out of status, her failure to pay income tax during her time in Canada and that she does not have any savings in Canada even though the immigration officer was aware that the applicant was the sole means of support for herself and her children and received no support from the fathers of her Canadian born children.

(Applicant's Memorandum, para. 18)

I agree with this argument. Indeed, on a liberal interpretation of the evidence, the Applicant has met all of the criteria outlined in the *Guidelines*, but one: the Applicant has not engaged in further professional or linguistic studies.

[5] The H&C Officer found establishment to be within the Applicant's control and assigned little weight to her evidence offered to prove this fact. It appears that the reason for this determination is a belief that the Applicant should or could conform to conduct expected of a person who has status in Canada. Thus, the criteria the Applicant had to meet included holding a work permit, holding a certain type of job, and paying taxes. In my opinion, the fact that the Applicant did not conform to this expectation inhibited a fair assessment of the evidence of who the Applicant is:

a person who has put down deep roots in Canada. In my opinion, the *Guidelines* place a focus on this phenomenon, which is found on the unique circumstances of each individual case.

[6] As a result, I find that the decision under review is unreasonable.

ORDER

THIS COURT ORDERS that:

1. The decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination.
2. There is no question to certify.

“Douglas R. Campbell”

Judge

Federal Court



Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6593-11

STYLE OF CAUSE: JANICE VALNEY JACETTA GEORGE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 16, 2012

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: MAY 17, 2012

APPEARANCES:

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