Federal Court  Cour fédérale

**Date: 20120525**

**Docket: IMM-6890-11**

**Citation: 2012 FC 634**

**Ottawa, Ontario, May 25, 2012**

**PRESENT: The Honourable Madam Justice Snider**

**BETWEEN:**

**HEATHER NATASHA ALEXANDER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP & IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

## I. Introduction

[1] The Applicant, Ms. Heather Alexander, is a citizen of St. Vincent and the Grenadines (St. Vincent) who came to Canada in 1995 on a visitor's visa and never left. In a decision dated September 20, 2011 (the Decision), an immigration officer (Officer) determined that the Applicant's application to apply from within Canada for permanent resident status on

humanitarian and compassionate (H&C) grounds was denied. The Applicant seeks judicial review of that decision.

[2] The Applicant's immigration history is lengthy and complicated. Beginning in 2007, the Applicant made several attempts to regularize her status. An initial application to apply for permanent residence in Canada on H&C grounds was refused in November 2007. In 2008, she initiated a refugee claim that was denied in October 2010. In April 2008, she submitted an application under the *In-Canada Spousal and Common-Law Partner* Class. During an interview with immigration officials in February 2010, the Applicant disclosed that her first marriage had terminated in May 2008; the application was converted, in February 2010, to an H&C application. The Applicant amended her H&C application further in July 2011, when she advised officials that she was in a common-law relationship with a second person with whom she had a child. On September 19, 2011, the Applicant provided further submissions indicating that she and her son were in therapy due to abuse from the common-law spouse, from whom she was now separated.

## II. Issues

[3] The Applicant raises three issues in this case:

1. Was the Decision unreasonable because the Officer did not adequately analyse her establishment in Canada?

2. Were the reasons inadequate?

3. Did the Officer fail to take into account the Applicant's submissions on September 19, 2011?

[4] For the reasons that follow, I conclude that the Decision should stand.

## III. Analysis

### A. *Standard of review*

[5] The standard of review applicable to the first issue is reasonableness (see, for example, *Shah v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1269, [2011] FCJ No 1553; *Inneh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 108, [2009] FCJ No 111; *Tameh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1235, [2008] FCJ No 1563; and *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2008 FC 646, [2008] FCJ No 814).

[6] The Applicant submits that the adequacy of reasons is reviewable on a standard of correctness. I do not agree. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14, [2011] 3 SCR 708, the Supreme Court of Canada held that the adequacy of reasons is not a freestanding ground for quashing a decision. Rather, the reviewing court must read the reasons together with the outcome to determine if the

outcome is within the “range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Thus, this second issue is merely a subset of the first issue. The overarching issue is whether the Decision is reasonable.

[7] The third issue is one of procedural fairness. A failure to take into account information that could have a material impact on the decision is a reviewable error.

B. *Issue #1: Reasonableness of the Decision*

[8] The Applicant argues the Decision is unreasonable because the Officer did not properly examine her establishment in Canada. In the Applicant’s submission, the Officer did not consider her employment history, financial stability, or residence in Canada. He also did not consider her involvement in the community or support from her family in Canada. Finally, the Applicant points to the lack of reasons with respect to the Applicant’s father’s cancer treatment.

[9] I do not find the Applicant’s arguments to be persuasive.

[10] I first observe that the Officer considered each and every aspect of the Applicant’s establishment in Canada. Moreover, the Officer explained, for each assertion, why the evidence was not sufficient or did not lead to a conclusion that the establishment would lead to undue hardship.

[11] With respect to the reasonableness of the Decision and the adequacy of the Officer's reasons, it is helpful to review the following relevant findings the Officer made:

- the Applicant had not shown she could not receive counselling in St. Vincent for the abuse she suffered;

- the Applicant had not shown the support her Canadian family provided her would not continue if she were returned to St. Vincent;

- the Applicant had not shown she could not continue her relationship with her father from St. Vincent; and

- the Applicant had not shown she would be unable to be employed and support herself in St. Vincent if she returned there.

[12] On my review of the record, it is apparent the Officer was familiar with the contours of the Applicant's request for H&C relief and his reasons show that he considered and weighed all the positive ingredients in her application. The reasons clearly show that the Applicant failed to satisfy the Officer of the unusual and undeserved or disproportionate hardship she would suffer if returned and this was the basis on which he denied her request. No reviewable error arises from either the adequacy of the Officer's reasons or his conclusion.

[13] I also observe that the submissions from the Applicant were brief. Beyond bald assertions that there would be hardship for her and her son, there was simply no description of her alleged hardship in returning to St. Vincent, from where she could apply to return to Canada in the usual manner.

[14] As the Respondent notes, *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 8, [2004] 2 FCR 635, teaches that "applicants have the onus of establishing the facts on which their claim rests". Although the Applicant says a positive determination based on her establishment in Canada was inevitable, this is simply not the case. The evidence as to her establishment in Canada was that she has family here, has worked here, and has become connected to the community here. Inherent in the notion of H&C applications is that hardship is a normal consequence of deportation proceedings, and that relief is to be granted only when hardship goes beyond the inherent consequences of deportation. The Officer considered all of the evidence and reasonably concluded that the Applicant's establishment would not cause undue hardship.

C. *Issue #2: Alleged failure to consider September 19, 2011 submissions*

[15] The Officer received further submissions from the Applicant on September 19, 2011. The Decision is dated September 20, 2011. The Applicant submits that these submissions were ignored. I do not agree.

[16] A review of the Decision demonstrates that the September 19 submissions were considered. The Officer specifically referred to these submissions at various parts of his reasons. For example, at page four of his reasons, he notes that the Applicant said in the updated submissions she worked for Bee Clean. Given that the Applicant did not refer to Bee Clean in her original submissions, this demonstrates that the Officer clearly reviewed and considered the updated submissions. The Decision also contains references to the Applicant's father's cancer, support from community and family members, the separation from her abusive common-law spouse and her counselling. All material matters in the September 19, 2011 submissions were addressed and considered.

## IV. Conclusion

[17] Despite the somewhat sympathetic situation that is faced by the Applicant, I am not satisfied that the Court should intervene in this case. The Decision is reasonable and was made with due regard to all of the evidence. The Officer's conclusion that the hardship the Applicant would suffer was not unusual and undeserved or disproportionate was within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[18] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-6890-11 |
| **STYLE OF CAUSE:** | HEATHER NATASHA ALEXANDER v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MAY 17, 2012 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | SNIDER J. |
| **DATED:** | MAY 25, 2012 |

**APPEARANCES:**

| | |
|---|---|
| Nancy Lam | FOR THE APPLICANT |
| Amy King | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Nancy Lam<br>Barrister and Solicitor<br>Toronto, Ontario | FOR THE APPLICANT |
| Myles J. Kirvan<br>Deputy Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |