Federal Court  Cour fédérale

Date: 20120813

Docket: IMM-7392-11

Citation: 2012 FC 988

Ottawa, Ontario, August 13, 2012

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

NABILA MOUNIR AZER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Nabila Mounir Azer, the Applicant, applies for judicial review of the September 13, 2011 decision of the Immigration Officer refusing the application to have her application for permanent residence processed from within Canada on humanitarian and compassionate (H&C) grounds.

[2] The Applicant is a social worker by training who said she left Egypt following threats made against her life by Muslim fundamentalists. The Applicant has a long history in the Canadian immigration system having been unsuccessful in a refugee claim and having received two negative

PRRA assessments. She applied on humanitarian and compassionate grounds to make an application for permanent residence visa from within Canada which was refused and is the subject of this judicial review application.

[3] The Officer determined that the Applicant would not face unusual, undeserved or disproportionate hardship if she were to apply for permanent residence from Egypt. The Officer separated the reasons for refusal under two broad categories: the first deal with the Applicant's medical conditions and her establishment in Canada; the second concern the risk or hardship relating to her previous problems in Egypt and the present conditions in Egypt. The Applicant has only raises issues with the Officer's findings regarding her medical conditions and establishment in Canada.

[4] The Officer gave little weight to the psychiatric medical opinion because the doctor's language was sympathetic rather than professional. The Officer was not persuaded the diagnosis was objective and accurate. The Officer accepted the Applicant had emotional problems in addition to non-psychological medical problems but found the reasonable treatment or help would be available to the Applicant in Egypt. The Officer did not give the Applicant's medical conditions significant weight for or against her H&C application.

[5] The Officer also considered the Applicant's establishment in Canada as neutral or slightly positive since, while the Applicant was in Canada for more than ten years, much of that was during her pursuit of a non-credible refugee claim.

[6] The Supreme Court of Canada held in *Dunsmuir v New Brunswick*, 2008 SCC 9 that there are only two standards of review: correctness for questions of law and reasonableness involving questions of mixed fact and law and fact. The Supreme Court also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated.

[7] The appropriate standard of review for a decision on H&C grounds is reasonableness. *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817. A heavy burden rests on applicants to satisfy the Court that the decision under section 25 requires the intervention of the Court. *Mikhno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 386.

[8] The Applicant submits the Officer inferred that the psychiatrist's medical opinion was neither valid nor credible. The Applicant argues that this is an error as the Officer is not a psychiatrist and is therefore not qualified to challenge the validity of Dr. Edward's professional assessment and ignore his diagnoses of major depression and PTSD.

[9] The Applicant also submits that the Officer refused to accept the Applicant's claim in light of the Officer's conclusion that the RPD's negative credibility finding was a strong negative factor in the Application. The Applicant submits that while the RPD are experts in assessing credibility, it should be noted that they did not have the benefit of the psychiatrist's medical report. The Applicant argues the Officer had this report yet refused to give this assessment the appropriate weight it deserved.

[10] The psychiatrist's opinion is clear in stating the Applicant suffered from PTSD and a major depressive disorder. The Officer is not a psychiatrist and is therefore not qualified to challenge the validity of the doctor's professional assessment without evidence that it was incorrect. *Lozano Pulido v Canada (Minister of Citizenship & Immigration)*, 2007 FC 209.

[11] On the other hand, the Officer is entitled to weigh the psychiatric report. The Officer provided clear and detailed reasons as to why she gave little weight to the medical evidence. The Officer accepted that the Applicant has both psychological and non-psychological medical problems, but that the Officer found that the information before her did not suggest reasonable treatment or help would be unavailable to the Applicant in Egypt.

[12] It is open to the Officer to expect factual underpinnings to support the medical opinion formed. *Solomon v Canada (Minister of citizenship and Immigration)*, 2004 FC 1252 paras 10 – 14. The Officer gave the report little weight for three reasons: first, the doctor's choice of language cast doubt on the professionalism of the report; second, the doctor did not refer to any standardized tests he administered upon which to base or confirm his diagnosis; and third, the doctor accepted without question the Applicant's account of how she was treated in Egypt, an account which the RPD found as not credible.

[13] The psychiatrist's medical opinion of PTSD relies on the Applicant's tale of persecution in Egypt. This account was not accepted by the RPD which is tasked with assessing credibility and has expertise in country conditions. The burden is on an applicant in a refugee claim to make a case before the RPD. The Applicant here did not submit a psychiatric report before the RPD at her

refugee hearing and it is not open for this Applicant to now attribute a current psychiatric report back to her refugee hearing.

[14] Considering all of the foregoing, I am satisfied the Officer was entitled to consider the RPD's negative assessment of the Applicant's claim of persecution in Egypt.

[15] I also am satisfied the Officer is entitled to note the medical opinion letters make no reference to tests used to determine diagnosis. The letters suggest a sympathetic analysis and the Officer is entitled to look to see if that opinion is supported by appropriate testing.

[16] In result, I consider the Officer's decision to give the psychiatric reports little weight falls within a range of possible, acceptable outcomes.

[17] The Applicant submits she has been in Canada since 2000 and in the over 11 years that she has been here, she has become well established. The Applicant submits the Officer acknowledged the Applicant's establishment in Canada. The Applicant argues no reasonable line of analysis exists that could have led to the Officer's conclusion that the Applicant remained in Canada improperly which affected the weight given to her strong level of establishment. The Applicant submits that the Officer erred in giving only slight positive weight to the Applicant's establishment.

[18] This Court has held that almost anyone who has been here for a significant period of time can develop strong relationships and ties to Canada, but the test is whether an applicant has adduced

sufficient evidence of likely unusual and undeserved or disproportionate hardship to warrant the exceptional grant of Ministerial discretion contemplated in s. 25.

[19] The Officer considered those factors that weighed in the Applicant's favour such as the presence of her brother, her volunteer church involvement, her work and friends and the departmental delays in handling her application. The Officer also appropriately considered factors that she felt weighed against the Applicant's establishment in Canada which was the Applicant's long immigration history of including her refugee claim that was found to be non-credible, two PRRA applications, two H&C applications, several applications to the Federal Court, and a failure to appear for a PRRA interview with a subsequent warrant issuing.

[20] In my view, the Officer considered all the factors in assessing the Applicant's establishment in Canada. The Applicant has failed to demonstrate that the Officer's decision is unreasonable as the Officer's determination is falls within the range of possible outcomes referred to in *Dunsmuir*.

[21] Neither party has submitted a serious question of general importance for certification.

[22] The application for judicial review is dismissed.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Leonard S. Mandamin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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