

Federal Court



Cour fédérale

**Date: 20121204**

**Docket: IMM-2801-12**

**Citation: 2012 FC 1413**

**Ottawa, Ontario, December 4, 2012**

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

**BETWEEN:**

**LEOKADIA JODLOWSKA**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application by Leokadia Jodlowska challenging a decision by a Removals Officer (Officer) whereby her request for a deferral of removal was denied. That decision was stayed by the Order of Justice Elizabeth Heneghan on March 23, 2012 and the matter was heard on the merits at Toronto, Ontario on November 20, 2012.

[2] Ms. Jodlowska is a 77 year old citizen of Poland of Roma ethnicity. She has been living in Canada for eleven years. She suffers from a number of chronic but non life threatening medical

problems, most notably the onset of dementia. She presently lives with her daughter and son-in-law, who assist with her daily needs.

[3] Ms. Jodlowska's claim for a deferral was based on her medical circumstances and her Roma ethnicity. It was contended that, because of her deteriorating health and the discrimination she would face as an elderly Roma, she would not be able to cope in Poland without the assistance of her family. She argued that her removal ought to be deferred until a recently submitted Humanitarian and Compassionate (H&C) application was determined.

[4] The Officer declined to defer removal. He noted that Ms. Jodlowska's pending H&C application would not be rendered moot by her return to Poland and that no decision on that application was imminent.

[5] The Officer also took note of Ms. Jodlowska's medical condition. After speaking with the family physician he was told that she was physically fit to fly but would need assistance en route. Arrangements were accordingly made for two officers to accompany Ms. Jodlowska on her return flight to Poland. Advice from a Senior Medical Officer with the Department indicated that Ms. Jodlowska's health problems could be adequately treated in Poland. With respect to the other barriers to resettlement in Poland the Officer found as follows:

As stated above, I find that insufficient evidence has been provided to demonstrate that Ms. Jodlowska would not be able to rely on other friends, family or social and health agencies in Poland for support in the treatment of her health conditions. I note that Ms. Jodlowska has had approximately three months to make arrangements for her return to Poland.

[6] The Officer also found that the risk of discrimination had already been addressed by the Refugee Protection Division (RPD) and in a PRRA. His own authority was “extremely limited” and did not include a reassessment of those earlier findings.

[7] Counsel for Ms. Jodlowska took issue with the Officer’s finding that there was insufficient evidence to establish that Ms. Jodlowska’s medical and daily needs could not be met in Poland. This finding was said to be inconsistent with the evidence that Ms. Jodlowska had no family in Poland who could assist her, and was otherwise speculative.

[8] It seems to me, however, that in the context of a return to a European country an applicant bears an evidentiary burden of establishing that medical and assisted living needs are either unavailable or inaccessible. An applicant cannot request a deferral from removal on the basis of an undocumented and unproven risk and then complain that the decision-maker failed to consider the asserted barriers to resettlement.

[9] Here the evidence of Ms. Jodlowska’s health status was fairly non-specific, at least in terms of her capacity for independent living. There was no doubt that she benefited from the care provided by her children and it was likely that she would need some form of assistance in Poland. But the primary obligation to look after Ms. Jodlowska rests with her family, or alternatively, with the state. In the absence of any evidence that Ms. Jodlowska’s family or the Polish authorities were unable or unwilling to financially support her resettlement it was not unreasonable for the Officer to expect that one or the other would do so. I can identify no error made by the Officer in his treatment of this issue. The Applicant simply failed to prove that her needs cannot be met in Poland.

[10] All of Ms. Jodlowska's remaining concerns would involve the reweighing of evidence. It goes without saying that that is not the function of the Court on judicial review.

[11] Whether or not there was a plausible excuse for Ms. Jodlowska's failure to file a timely H&C application, the fact remains that the determination of that application was not imminent. It is also settled law and accepted by the Officer that the H&C application could be dealt with on the merits notwithstanding Ms. Jodlowska's removal to Poland. Her change of residency would not terminate the family relationships that were at the core of her claim to relief; and if her situation in Poland turned out to be as dire as she predicted the H&C application could be supplemented and enhanced. There is no identifiable error in connection with the Officer's assessment of this issue.

[12] The Officer similarly did not err by discounting the evidence of possible discrimination in Poland. It was speculative to assume that Ms. Jodlowska's health care needs would not be addressed because she is Roma. The Officer also correctly noted that his authority was extremely limited and was not a substitute for the other avenues of relief she had previously pursued. Indeed the underlying premise to this application is that a removal officer has a legal duty to consider all manner of circumstances and concerns when dealing with a deferral request. This is not the case: see *Baron v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 81, [2009] FCJ no 314, and *Doman v Canada (Minister of Citizenship and Immigration)*, 2012 FC 435, [2012] FCJ no 496.

[13] For the foregoing reasons, this application is dismissed.

[14] Neither party proposed a certified question and no issue of general importance arises from these reasons.

**JUDGMENT**

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

"R.L. Barnes"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2801-12

**STYLE OF CAUSE:** JODLOWSKA v MPSEP

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** November 20, 2012

**REASONS FOR JUDGMENT:** BARNES J.

**DATED:** December 4, 2012

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