Federal Court  Cour fédérale

Date: 20161020

Docket: IMM-740-16

Citation: 2016 FC 1169

Ottawa, Ontario, October 20, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

BENITA TALOSIG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Talosig, is a citizen of the Philippines who has worked in Canada as a live-in caregiver since 2010. She is married with two children. Her spouse, Edgar and their children reside in the Philippines.

[2] In October 2013, Ms. Talosig submitted an application for permanent residence on behalf of herself and her family. In June 2014, the respondent advised her by letter that additional documentation was required. Among the documents Ms. Talosig was required to provide was a police clearance certificate for Edgar from the Philippines National Bureau of Investigation [NBI]. The June 2014 letter described the form and content of the certificate being sought and advised that, should the NBI certificate contain a "No Criminal Record" annotation, Ms. Talosig had to provide: (1) a written explanation from the NBI; (2) Edgar's written explanation of the circumstances surrounding the cases listed in the NBI written explanation; and (3) related court documents.

[1] The applicant submitted the requested documents including the NBI certificate. The NBI certificate contained the annotation "No Criminal Record". Ms. Talosig did not provide written explanations for the "No Criminal Record" annotation. As a result, the respondent sent two additional letters in March 2015. Those letters contained different requests for further information. Ms. Talosig did respond providing a new NBI certificate, but again, she did not produce the explanations for the annotation on Edgar's NBI certificate.

[2] Recognizing that Ms. Talosig may have been confused by the two different letters sent in March 2015 the respondent again wrote to her in September 2015 requesting explanations specifically on the "No Criminal Record" annotation on Edgar's NBI certificate. The correspondence also advised her that a failure to provide the documentation or an explanation as to why it cannot be provided may result in the refusal of her application. Ms. Talosig responded by way of letter in September 2015 in which she stated that: (1) she did not know what

explanation to provide as the NBI certificate states “No Criminal Record”; and (2) that, as this issue is holding up the processing of her application, she “decided to please go ahead and process my application and my children (Erwin Talosig and Eljean Talosig) separately from my husband’s (Edgar Talosig) application” as she wants her children to arrive as soon as possible.

[3] On February 3, 2016, the respondent advised Ms. Talosig that she did not meet the requirements for immigration to Canada as she had failed to produce the documentation requested in respect of Edgar’s NBI certificate. Ms. Talosig asks this Court to set aside the decision and refer the matter to another Officer for redetermination. Ms. Talosig argues that the process was procedurally unfair. I agree.

[4] Ms. Talosig submits that there were a number of breaches of procedural fairness. However, the only issue I need to address is whether the failure of the respondent to address Ms. Talosig’s request for clarification and separate processing of Edgar’s application prior to rendering a decision was procedurally unfair.

II. Standard of Review

[5] The respondent argues that the issues engaged in this case relate solely to the reasonableness of the decision and submits that the decision was reasonable in all of the circumstances. I do not agree. The issue engaged here is the manner in which the respondent reached its decision, a question of procedural fairness to which this Court owes the decision-maker no deference ((*Sinnathamby v Canada (Citizenship and Immigration)*, 2011 FC 1421 at

para 20 citing *Canada (Attorney General) v Sketchley*, 2005 FCA 404 at paras 51 -55 . See also: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

III. Analysis

A. *Did the respondent act in a procedurally unfair manner in rendering a final decision without addressing Ms. Talosig's requests for clarification and separate processing of her spouse's application?*

[6] The respondent submits that Ms. Talosig was repeatedly informed that further documentation was required as a result of the "No Criminal Record" annotation on Edgar's NBI certificate. The respondent also notes that Ms. Talosig was advised of the consequences of not providing this documentation or an explanation as to why it could not be provided. The respondent acknowledges that Ms. Talosig provided an explanation for not providing the documentation in her letter dated September 30, 2015, but notes that the explanation simply expressed her opinion and was not responsive to the requirement to produce the documentation or provide an explanation. I cannot agree.

[7] The content of the duty of fairness is driven by the circumstances (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 79 citing *Knight v Indian Head School Division No. 19*, [1990] 1 SCR 653 at p. 682, *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 21 and *Moreau‑Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at paras 74 and 75). It is necessary to consider the circumstances in this case.

[8] The applicant was seeking permanent residency as a member of the live-in caregiver class. She entered Canada in 2010 and completed the work period required to allow her to apply for permanent residency. The purpose of the live-in caregiver class program is to facilitate the attainment of permanent residence status for foreign domestic workers, workers who have often provided valuable services within Canadian society (*Bernardez v Canada (Minister of Citizenship and Immigration)* (1995), 101 FTR 203). When the negative decision was rendered, Ms. Talosig's application had been in process for over two years. Throughout that processing period, Ms. Talosig had promptly, albeit incompletely, responded to requests for additional documentation and information in support of her application. I accept that the respondent had clearly set out, in prior correspondence and in the September 2015 letter, the requirement for documentation explaining the NBI certificate annotation or the need for Ms. Talosig to provide an explanation as to why that documentation could not be provided.

[9] This is not a situation where Ms. Talosig ignored the request, instead she promptly responded, directly addressing the request for further documentation or an explanation by stating she "did not know what explanation to provide". While she expressed her opinion, that opinion did not detract from the fact that she clearly advised the respondent she did not know what explanation she was to provide beyond the fact that there was no criminal record. She also requested that the application for Edgar be dealt with separately.

[10] In the circumstances of this case, I am of the opinion the respondent was required to provide a response to Ms. Talosig addressing the questions raised in her September 30, 2015

letter before rendering a final decision on her application. The failure to do so undermined the fairness of the process and constitutes a reviewable error.

IV. Conclusion

[11] For the reasons set out above, the application is allowed.

[12] The parties did not identify a question of general importance and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted the matter is returned for redetermination by a different decision-maker. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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