

Federal Court



Cour fédérale

Date: 20171109

Docket: IMM-317-17

Citation: 2017 FC 1025

Ottawa, Ontario, November 09, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

JESSICA ANABEL ADELA LAZO GESITE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] In 2008, the Applicant came to Canada from the Philippines as a temporary worker and was employed until 2015, after which she could not renew her work permit. She applied for permanent resident status in Canada on humanitarian and compassionate [H&C] grounds. Her H&C application was denied. She claims that the H&C Officer [the Officer] failed to properly consider her circumstances as the sole financial provider for her family in the Philippines. For the reasons that follow, this judicial review is dismissed.

I. Background

[2] The Applicant is a citizen of the Philippines who came to Canada in 2008 on a 24 month work permit. She received a second permit in September 2013. An extension of that permit was denied on July 8, 2015.

[3] Between 2008 and 2015, the Applicant worked at various jobs. She was involved in her church and did translation work for Edmonton Immigration Services. She has not worked since 2015 as she does not have a work permit. She states that she is the sole breadwinner for her family because of her spouse's disability and she claims that she must remain in Canada to support her family in the Philippines. She says that there is a lack of employment opportunities for her in the Philippines as an older worker.

[4] Her H&C application was denied on January 9, 2017.

II. H&C Decision

[5] In weighing the various H&C factors, the Officer noted that the Applicant was somewhat established in Canada. The Officer observed that the Applicant had been unemployed for 18 months and had accumulated debt. The Officer noted that all of the Applicant's family ties are in the Philippines.

[6] The Officer acknowledged the Applicant's assertion that she needs to support her family, however the Officer ultimately concluded that considering the temporary nature of the original

work permit, along with the Applicant's education, skills, and work experience in the Philippines, she would be able to obtain employment in the Philippines.

III. Issues

[7] The Applicant essentially raises two issues:

- A. Did the Officer apply the correct test for H&C relief?
- B. Is the decision reasonable?

IV. Standard of Review

[8] The Officer's choice of the proper legal test for an H&C application is correctness: *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 27 [*Marshall*]; *Gomez Valenzuela v Canada (Citizenship and Immigration)*, 2016 FC 603 at para 19.

[9] The standard of review for the fact based findings in an H&C application is reasonableness (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18 [*Kisana*]).

V. Analysis

A. *Did the Officer apply the correct test for H&C relief?*

[10] The Applicant argues that the Officer failed to properly apply the correct test for H&C relief because the Officer did not ask whether the hardship that would be faced by the Applicant would be “unusual, undeserved or disproportionate.” The Applicant argues that this is an error.

[11] In *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 33 [*Kanhasamy*], the Supreme Court of Canada held that in assessing H&C applications, officers should “consider and give weight to all relevant humanitarian and compassionate considerations in a particular case.” *Kanhasamy* “changed the law” regarding H&C applications by holding that officers should no longer measure an Applicant’s situation against the standard of “unusual, undeserved, or disproportionate hardship,” as noted in the *Guidelines* for H&C officers (*Marshall*, at para 7). As noted in *Kanhasamy* at para 31, while these words may be helpful as descriptors, they do not overtake the “equitable underlying purpose of the humanitarian and compassionate relief application process.”

[12] Here I am satisfied that the Officer applied the correct test when considering the H&C relief. The Officer conducted a holistic assessment of the Applicant’s situation, noting the relevant factors weighing in favor and weighing against H&C relief. The Officer did not narrow the analysis to “hardship” but rather considered all relevant factors advanced by the Applicant. This is in keeping with *Kanhasamy*, and therefore the Officer did not err in the applicable test.

B. *Is the decision reasonable?*

[13] The Applicant argues that the education and well-being of her children is dependent upon her ability to earn Canadian wages. She argues that her children will have to quit school without her Canadian income. She also notes that she is in debt, and claims that she will not be able to find work in the Philippines because employers there are hesitant to hire older workers. She argues that the Officer failed to reasonably consider these factors.

[14] The Officer concludes that there was no evidence that the Applicant would be unable to find a job in the Philippines due to her age. Further, there was no objective country condition evidence on the specific issue of older workers in the Philippines being unable to obtain employment. The Officer as well took particular note of the Applicant's breadth of previous work experience in the Philippines.

[15] With respect to the best interests of the child [BIOC] analysis regarding the Applicant's two children, the Officer notes that the analysis generally only applies to children under the age of 18. As such, the Applicant's son, who was over 18 at the time of the application, is not considered. The Applicant made no argument as to why the overage child should be included in the BIOC analysis (see *Norbert v Canada (Citizenship and Immigration)*, 2014 FC 409 at paras 37-38).

[16] The Officer noted that there was little evidence to demonstrate that the Applicant's daughter would have to quit school in absence of the Applicant's Canadian income. Accordingly this fact was not sufficient to warrant H&C relief.

[17] While the Applicant produced some evidence of establishment in Canada, the Officer noted that the Applicant has greater ties to the Philippines, where her family resides. This factor reasonably weighed against her application.

[18] In my view, the Applicant raises no reviewable error concerning the Officer's weighing of the H&C factors and the evidence. It is not the role of this Court on judicial review to reweigh the factors and evidence considered by the Officer (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[19] Overall, because it is the Applicant's onus to demonstrate why the Officer's exceptional H&C discretion should be exercised, her failure to lead sufficient evidence is fatal. In *Kisana*, at para 43, the Federal Court of Appeal noted that it is not the Officer's responsibility to intentionally seek out evidence which might support the Applicant's case. In *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 8, the Federal Court of Appeal further noted that if Applicants fail to raise pertinent facts to their application, they do so at their own peril.

[20] Based upon this law, the H&C Officer here conducted a global and reasonable assessment of the Applicant's H&C application in light of the evidence offered. Accordingly, the decision is reasonable and there is no basis for this Court to intervene.

JUDGMENT in IMM-317-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review of the Officer's decision is dismissed.
2. No serious question of general importance is certified.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-317-17

STYLE OF CAUSE: JESSICA ANABEL ADELA LAZO GESITE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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