Federal Court Cour fédérale

Date: 20180822

Docket: IMM-3376-17

Citation: 2018 FC 851

Ottawa, Ontario, August 22, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

NADINE NICOLE MARIE DARLING

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Nadine Nicole Marie Darling (the "Applicant") seeks judicial review of the decision of an Officer (the "Officer") refusing her application for permanent residence in Canada as a member of the "Spouse or Common Law Partner in Canada Class" on the grounds that she is not a member of the family class, within the scope of the *Immigration and Refugee Protection Act* , S.C. 2001,c. 27 (the "Act") and the *Immigration and Refugee Protection Regulations*, SOR/ 2002-227 (the "Regulations").

[2] The Applicant is a citizen of Jamaica. She married her spouse, a Canadian citizen, on October 5, 2013. The present application was made in respect of the Applicant and her then minor daughter who was born on March 29, 1999.

[3] The Applicant and her husband were interviewed by the Officer on July 12, 2017. They were questioned about the history of their relationship, their employment and daily activities, among other things.

[4] In the decision, the Officer expressed the view that the Applicant and her husband were not in a genuine marriage and the Applicant is "not considered a spouse within the meaning of Section 4 of the Regulations".

[5] In her application for judicial review, the Applicant argues that the Officer committed a reviewable error by failing to consider the totality of family relationships, including the best interests of the then-minor child and how those interests would be affected if the sponsorship application were refused.

[6] The decision of the Officer is reviewable on the standard of reasonableness; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[7] According to the decision in *Dunsmuir*, *supra*, the reasonableness standard requires a decision to be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes which are defensible upon the facts and the law.

[8] The mere presence of children in a family is not determinative of the genuineness of a marriage. Most frequently, submissions about the best interests of children arise in the context of the exercise of discretion on humanitarian and compassionate ("H & C") grounds, pursuant to subsection 25 (1) of the Act. Nonetheless, in its decision in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, [2015] 3 S.C.R. 909, the Supreme Court of Canada instructed that the best interests of a child should be recognized as a significant factor.

[9] The Officer was aware of the existence of the daughter, as appears from the interview notes.

[10] However, it is not apparent from the Officer's reasons that the best interests of the child were taken into account.

[11] In these circumstances, the decision does not meet the standard of reasonableness and the application for judicial review will be granted.

[12] There is no question for certification arising.

JUDGMENT for IMM-3376-17

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the decision is set aside and the matter remitted to a different Officer for redetermination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3376-17
STYLE OF CAUSE:	NADINE NICOLE MARIE DARLING v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 29, 2018
JUDGMENT AND REASONS:	HENEGHAN J.
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APPEARANCES:

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Nina Chandy	FOR THE RESPONDENT

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