

Federal Court



Cour fédérale

Date: 20190827

Docket: IMM-1342-18

Citation: 2019 FC 1101

Ottawa, Ontario, August 27, 2019

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**LAURA MARY DOUGLAS
CAMERON SAMUEL DUMBRECK**

Applicants

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Douglas applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] to set aside a decision made on March 15, 2018 by a reviewing Visa Officer [Officer] who refused her re-application to change the conditions of the temporary resident permit [TRP] previously issued to her and to her minor son [Decision].

[2] Ms. Douglas asks that the Decision be quashed and returned for redetermination by a different officer.

II. **Background**

[3] The Applicant, Ms. Douglas, is a 29-year-old single mother whose co-applicant is her nine-year-old son, Cameron. Ms. Douglas came to Canada in March 2009 from Scotland where she was born. Cameron, who was 19 days old at the time, accompanied her.

[4] Ms. Douglas arrived as a dependent of her father who had obtained a work permit. The whole family – mother, father, five children and one grandchild – arrived together. They settled in the Ottawa area where a number of relatives already lived. Shortly after arriving, the parents applied for permanent residence for the entire family.

[5] Unfortunately, the family's application was sent back twice, unprocessed, as a result of errors. By the time the application package was able to be processed it was November 2011 and Ms. Douglas no longer qualified as a dependent because she was then 22 years old.

[6] The entire family, other than Ms. Douglas and Cameron, became permanent residents of Canada on February 12, 2014. Ms. Douglas and Cameron retained status as temporary residents.

[7] Ms. Douglas applied for permanent residence under the Canadian Experience Class in early 2014 based on employment positions she held since May 2012. The application was denied on March 7, 2015 when it was determined, based on the description of her duties, that the employment letter describing her work experience did not prove the eligibility requirements.

[8] Ms. Douglas then approached her Member of Parliament for assistance and was able to secure a Temporary Resident Permit (TRP) and Work Permit for herself as well as a TRP and Study Permit for Cameron who by that time was six years old and attending school. Those permits ran from May 20, 2015 to May 13, 2017.

[9] Having obtained temporary residence, Ms. Douglas once again applied for permanent residence as she had accumulated more than one year of skilled work experience. The new Express Entry system had begun as of January 1, 2015. As Ms. Douglas did not have post-secondary school credits, she no longer received points for her education. She was therefore unable to obtain a point total sufficient in the re-configured Comprehensive Ranking System to receive an “Invitation to Apply” for permanent residence.

[10] Knowing that her TRP would expire on May 13, 2017, Ms. Douglas applied on March 20, 2017 to renew her TRP and Work Permit as well as Cameron’s permits. On September 19, 2017 Ms. Cameron was advised her renewal applications were refused. She immediately stopped work but did not leave Canada.

[11] With the assistance of counsel, Ms. Douglas re-applied on November 13, 2017 for a change to the conditions of the TRPs for herself and Cameron. This application was refused.

[12] For the reasons that follow, I am persuaded that the Decision is unreasonable and re-determination is required.

III. **Relevant legislation**

[13] The legislation governing issuance of a TRP is subsection 24(1) of the *IRPA*:

Temporary resident permit

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

Permis de séjour temporaire

24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

[14] Relevant to the present application is Mr. Justice Shore's explanation of the objective of section 24 of the *IRPA*, which is found at paragraph 22 of *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 [*Farhat*]:

The objective of section 24 of *IRPA* is to soften the sometimes harsh consequences of the strict application of *IRPA* which surfaces in cases where there may be “compelling reasons” to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with *IRPA*. Basically, the TRPs allow officers to respond to exceptional circumstances while meeting Canada's social, humanitarian, and economic commitments.

[15] As discussed in the analysis section which follows, the Ministry has established guidelines to assist Visa Officers with the application of section 24. The guidelines set out risk assessment factors to be considered, together with a non-exhaustive list of examples which are designed to illustrate the scope and spirit in which the Officer's discretion to issue a TRP should be applied.

IV. **Submissions to the Officer**

[16] In her submissions to the Officer, Ms. Douglas put forward a number of factors for the Officer to assess:

- she and her son are part of a close-knit family, with whom they reside; her parents consider Ms. Douglas and her son, Cameron, to be dependents;
- they also have a large extended family of 31 aunts, uncles and cousins and their partners and children, all of whom live close by in the Ottawa area;
- Cameron has never known any other life than in Canada as he was only 19 days old when he arrived with Ms. Douglas, her parents and four siblings;
- Cameron is well integrated, with many friends and supportive relatives; he has attended the same school since 2003;
- as a single mother, Ms. Douglas needs the support of her family to raise Cameron and it has enabled her to pursue a career;
- removing them to the United Kingdom, which would separate them from their family, would be devastating for Ms. Douglas and Cameron;
- in Scotland, Cameron would have no family and no home; Ms. Douglas would not be able to provide for Cameron or pursue a career;
- removal would detrimentally affect Cameron's development and well-being as he currently has many positive influences;
- prior to losing her work permit on expiry of the TRP, Ms. Douglas was meaningfully employed and was making an economic contribution to Canada, working as a supervisor at a bistro which wished to have her continue.

[17] The submissions to the Officer also set out that there was no history of criminality or of medical concerns, which are factors to be considered in the guidelines. While she has been permitted to do so, Ms. Douglas has worked the entire time she has lived in Canada and has contributed to the economy of Canada. She has accumulated savings in excess of \$20,000.

V. **The Decision**

[18] The GCMS notes of the Officer on March 15, 2018 serve as the reasons for the Decision. The notes acknowledge the family's entry to Canada on March 4, 2009 and that Ms. Douglas and

her son were denied permanent residency on March 23, 2012. The notes next set out that “[c]lients' inadmissibility is over stay” and that they are requesting a two-year TRP and Work Permit [WP] for Ms. Douglas and a TRP and Study Permit [SP] for Cameron.

[19] The Officer acknowledges that a TRP was refused on September 19, 2017 at which time Ms. Douglas was advised to leave Canada immediately. The note continues with “she admits on her current application that she ceased working when her documents were refused, but she did not leave Canada.”

[20] The Officer states in the notes that the immediate family of Ms. Douglas all became permanent residents in February 2014, so her support systems are all here in Canada.

[21] The notes then say that they have not provided any information that the client has “any other hindrances that would make her incapable of leaving and regularizing her status along with her son.”

[22] The notes conclude with the statement that “I have considered the application for a temporary resident permit, and all submissions in their entirety.” Then, the determinative finding is set out:

Based on the consideration that there is a mechanism in place available for the clients to regularize their status by leaving Canada, and re-entering as a temporary resident. I am of the opinion that a TRP is not justified in this circumstance.

VI. **Issue and standard of review**

[23] The only issue in this application is whether the Decision is reasonable.

[24] The parties and the Court agree that the standard of review of the Officer's decision is reasonableness: *Mousa v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358 at paragraph 8 [*Mousa*].

[25] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*].

[26] The Officer, sitting as an administrative tribunal, is not required to consider and comment in their reasons upon every issue raised by the parties. The issue for the reviewing court is whether the decision when viewed as a whole in the context of the record, is reasonable: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16 [*Nfld Nurses*].

[27] Moreover, if the reasons “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met”: *Nfld Nurses* at paragraph 16. [Emphasis added.]

VII. Analysis

[28] An Officer has broad discretion to assess and weigh relevant factors when considering a TRP application. That discretion is not unlimited in scope. It is coupled with a duty to consider the relevant circumstances and submissions provided by an applicant. At a minimum, when an

officer determines a TRP application they must demonstrate a clear reasoning process: *Mousa* at paragraphs 9 and 10.

[29] To assist officers with the application of the provisions of section 24, the Minister has published guidelines. As is well known, guidelines are not determinative, rather they provide, as the word implies, guidance: *Alvarez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 667 at paragraph 35.

A. *Guideline Factors and Criteria that an Officer is to Consider*

[30] The Minister has published specific assessment criteria and factors that an officer is to consider when evaluating an application for a TRP. The factors, set out in the Ministry's *Overseas Processing Manual – Temporary Resident Permits, OP 20*, [OP 20] which an Officer must consider are:

- the factors that make the person's presence in Canada necessary (e.g. family ties, job qualifications, economic contribution, temporary attendance at an event);
- the intention of the legislation (e.g. protecting public health or the health care system or the security of Canada or Canadians).

[31] In addition, OP 20 indicates that an assessment may involve these factors, which were raised by Ms. Douglas in her submissions to the Officer:

- the essential purpose of the person's presence in Canada;
- pertinent family composition, both in the home country and in Canada;
- the tangible or intangible benefits which may accrue to the person concerned and to others.

[32] A TRP analysis involves weighing a range of factors related to the interest of the individual to remain in Canada and balancing those factors against any threats that the person may pose to the health care or security of Canada.

B. *The Officer failed to engage with the Submissions*

[33] The Officer appears to have determined the re-application on the basis that Ms. Douglas did not leave Canada at the expiry of her TRP. It was mentioned three times in the short reasons.

[34] The Officer did acknowledge that a consideration put forward by Ms. Douglas was family reunification and that all her support systems are in Canada.

[35] Those statements were not otherwise examined, weighed or balanced.

[36] The submissions to the Officer included extensive commentary, supported by affidavit evidence and a letter from the mother of Ms. Douglas attesting to the close-knit nature of the family. Reference was made to the fact that there is no family left in Scotland and that Ms. Douglas has been able to establish a career only because of the support and assistance of her family.

[37] While the Officer acknowledged that family re-unification was a consideration, the submissions as to why it was important to the TRP application were dismissed because Ms. Douglas did not leave at the end of her stay. That was summed up with the Officer's statement that Ms. Douglas had not provided any information that she had "any other hindrances that would make her incapable of leaving and regularizing her status along with her son."

[38] From the reasons given in the GCMS notes, I am unable to understand how being uprooted from a tight-knit family with the love and support of 31 close family members was weighed and balanced. I am also unable to understand why that evidence was found to be wanting, how it was weighed or whether it was balanced against the inadmissibility of Ms. Douglas.

[39] It is not clear whether the Officer actually turned their mind to what returning Ms. Douglas and her young son to a country where they have no relatives would mean to nine-year old Cameron. The submissions were clear that in Scotland there would be no family support and no employment prospects for Ms. Douglas.

[40] The only apparent reason for such a determination is that Ms. Douglas, after her last TRP was rejected, did not immediately leave Canada. Within two months, she hired counsel and applied for the TRP that is under review.

[41] The overwhelming evidence is that Ms. Douglas has been trying to regularize her status in Canada since she first arrived as a minor with her parents. All her family received permanent residency status; but for the errors in the original application which delayed its processing, there is no doubt that Ms. Douglas would also have received such status. Subsequently, changes in the regulations affected other applications made by Ms. Douglas.

[42] When assessing the best interests of Cameron, the Officer failed to acknowledge, discuss or weigh the significant personal circumstances of Ms. Douglas and the best interests of her young son as put forward in her submissions. The only reference to Cameron's best interests is

found in the GCMS notes for the prior application, in which there is the statement that “it is in the best interest of the child to remain in the care of his mother, the primary care giver.”

[43] That statement flies in the face of the evidence that Cameron lives with his grandparents and his mother and her siblings. It ignores the evidence that he is well integrated into his school and the only community he has known since the age of 19 days. It ignores the evidence that Ms. Douglas has no family left in Scotland and that she would not be able to find employment and care for Cameron on her own.

[44] Most importantly, the reasons provided by the Officer do not engage with the submissions in any meaningful way and show no evidence of assessing the submissions or applying the factors in the guidelines.

[45] In addition to her parents and siblings, Ms. Douglas has four aunts, four uncles, thirteen cousins, their partners and children, all of whom reside in the Ottawa area. It was submitted to the Officer that this extended family is a significant factor in her life and in Cameron’s life.

[46] Specifically, Ms. Douglas provided an affidavit setting out that her son has never known another life other than in Canada; she and he enjoy and benefit from the support of her extended family and, she does not know how she would be able to provide for her son and pursue a career without that support. She has no family in Scotland, which she left when she was age 19.

[47] The Officer’s consideration of Cameron’s best interests are limited:

Representative submissions indicate that the primary reason that the client is requesting a TRP is for family reunification. Her immediate family all became PRs on February, 2014, so the

client's support systems are all here in Canada. They have not provided any information that the client has any other hindrances that would make her incapable of leaving and regularizing her status along with her son.

[48] There is no recognition at all by the Officer that the question of the best interests of Cameron is to be considered as part of the analysis of whether to grant the TRP.

[49] In *César Nguesso v Canada (Citizenship and Immigration)*, 2015 FC 880 [Nguesso] Madam Justice Bédard in examining a refusal to issue a TRP explained at paragraph 105 that the best interests of a child are an important factor:

It must be kept in mind that section 24 of the *IRPA* gives a highly discretionary power to the Minister and does not set out a list of specific factors to consider, unlike section 25 [. . .] However, the best interests of one or more children could certainly be among the circumstances raised in support of a TRP application and, in some cases, the failure to address the best interests of the children at issue could be seen as an error of law (*Ali*, at paras 12-13).

[50] In *Nguesso*, Madam Justice Bédard found that the best interests of the children of the Applicant had been considered. She identified that the decision maker showed consideration of the interests of the children, their emotional ties with the Applicant, the separation and the effect that a refusal to issue a TRP would have on them.

[51] There is no analysis of Cameron's best interests. The GCMS notes are bereft of any mention of the submissions made with respect to Cameron's best interests.

[52] The Minister submits that the Officer did consider Cameron's BIOC in the TRP application that was denied on September 19, 2017. The GCMS notes for that date are extremely brief. There is a reference to Cameron's best interests "it is in the best interest of the child to

remain with his mother, the primary care giver.” There is no explanation as to why it is in Cameron’s best interest.

[53] The submissions to the Officer articulate and support with evidence that returning Cameron to Scotland, a place he does not know, means leaving his large network of supportive relatives behind. His mother, who was only 19 years old when she left Scotland, will be forced to start over without her extended family. Ms. Douglas has no connections in Scotland and no prospects of employment. While it nonetheless might possibly be in the best interests of Cameron and his mother to not allow them to remain in Canada, there is no indication that the Officer turned their mind to that central question.

VIII. **Conclusion**

[54] The Officer stated that they had considered the application for a temporary resident permit, and all the submissions in their entirety. The Officer failed to show any reasoning process to support that statement.

[55] The Officer failed to demonstrate a clear reasoning process, a requirement as mentioned in *Mousa*.

[56] The circumstances of Ms. Douglas and her son are at a minimum *prima facie* compelling. Yet, the Officer seems to have fixated on the inadmissibility of Ms. Douglas and her failure to leave. As mentioned by Justice Shore in *Farhat*, it is possible under section 24 to allow a foreign national to remain in Canada despite inadmissibility.

[57] On the facts of this case, the failure of the Officer to engage with the submissions to consider and weigh the circumstances of Ms. Douglas and Cameron is a reviewable error. The underlying record contains corroborative documents, in support of the submissions.

[58] There is no weighing or balancing of factors. Indeed, the factors are barely noted and are not articulated.

[59] The only reference appears to be that no “other hindrances” were put forward that would make Ms. Douglas incapable of leaving. Had the Officer performed an assessment of Cameron’s best interests, that missing piece of the puzzle may well have been found.

[60] The Officer seems to have fundamentally misunderstood that they had the capacity to allow the TRP notwithstanding the failure of Ms. Douglas and Cameron to leave Canada. As stated in *Farhat*, the TRP application allows the Officer “to respond to exceptional circumstances while meeting Canada’s social, humanitarian, and economic commitments” as set out in OP 20.

[61] Considering the reasons as a whole and reviewing the underlying record, I am not able to discern the reasoning process of the Officer, nor why on the facts and law, they arrived at the determination that a TRP ought not to be issued. The result is that it is impossible to determine whether the outcome falls within the range of possible, acceptable outcomes based on the facts and law.

[62] The Decision is set aside. This matter is returned for redetermination by another Officer.

[63] No costs are awarded.

[64] There is no serious question of general importance arising on these facts.

JUDGMENT in IMM-1342-18

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. The decision is set aside and the matter is returned for re-determination by another Officer.
3. No costs are awarded.
4. There is no question for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1342-18

STYLE OF CAUSE: LAURA MARY DOUGLAS, CAMERON SAMUEL
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APPEARANCES:

Jacqueline J. Bonisteel FOR THE APPLICANTS

Jennifer S. Bond FOR THE RESPONDENT

SOLICITORS OF RECORD:

Corporate Immigration Law Firm FOR THE APPLICANTS
Barristers and Solicitors
Ottawa, Ontario

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario