Federal Court Cour fédérale

Date: 20230516

Docket: IMM-7182-22

Citation: 2023 FC 691

Ottawa, Ontario, May 16, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

JOY OMONIGHO EZAMEGBE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Ottawa, Ontario on May 16, 2023)

[1] Ms. Ezamegbe applied for permanent residence based on humanitarian and compassionate [H&C] grounds. Her application was denied. She then asked the H&C officer to reconsider their decision, because she had new evidence to submit. The officer denied the request for reconsideration. Ms. Ezamegbe is now seeking judicial review of this denial.

[2] The Minister issued guidelines regarding the reconsideration of negative H&C decisions. Like most reconsideration processes, there are two steps to this process. First, the officer must decide whether the circumstances warrant reconsideration of the initial decision. These circumstances include a breach of procedural fairness, a clerical error, new evidence and the passage of time. If reconsideration is warranted, the officer must, in a second step, decide the matter anew, taking into account any new evidence submitted by the applicant.

[3] On judicial review, my role is not to decide myself whether Ms. Ezamegbe's H&C application should be reconsidered. Rather, I must assess whether the officer's decision not to do so was reasonable.

[4] Although they were presented differently in the written submissions and at the hearing, Ms. Ezamegbe's submissions revolve around the four following issues: (1) inadequacy of reasons; (2) failure to consider relevant evidence; (3) confusion between the two steps of the process; (4) failure to consider the reliability and materiality of the new evidence.

[5] With respect to the first issue, the nature of a reconsideration request is such that the officer was not required to provide lengthy reasons. Although the substance of these reasons fits in a single paragraph, they allow the Court to understand why the decision was made. They were adequate.

[6] With respect to the second issue, Ms. Ezamegbe is essentially asking me to reweigh the factors assessed by the officer and to come to a different conclusion. I cannot do so, because the officer's analysis of the factors is reasonable.

[7] Ms. Ezamegbe takes issue with the officer's characterization of her son's recent autism diagnosis as a "new issue." She argues that this is related to her son's best interests, which were very much at issue in the original application. While I acknowledge that the diagnosis broadly relates to the child's best interests, I see nothing unreasonable in the officer's finding that it raises a new issue best addressed in a new application.

[8] As to the other evidence buttressing Ms. Ezamegbe's request to reconsider, the officer noted that there was no explanation as to why it was not provided earlier or that the reconsideration process was not a means to provide counter-arguments to the initial decision. While these reasons are succinct, I am satisfied that the officer was alive to the nature of the new evidence, but found that they did not warrant reopening the application. This finding was open to the officer.

[9] Third, Ms. Ezamegbe argues that the officer confused the two steps of the analysis and engaged with the merits of the decision despite declining to reconsider it. I disagree. The officer's reasons are brief and pertain to the factors relevant to the first step of the process. Nothing suggests that the officer engaged in a review of the merits, contrary to what happened in *XY v Canada (Citizenship and Immigration)*, 2022 FC 1318. Rather, the officer stayed within the confines of the first step of the process.

[10] Fourth, Ms. Ezamegbe argues that the officer failed to assess whether her new evidence was material and reliable. This submission, however, is based on a misapprehension of the Minister's policy.

[11] The policy distinguishes between evidence of facts that arose after the initial decision was rendered and evidence that would have been available before the decision. In the first case, it invites officers to ask themselves whether the new evidence "would be more appropriately considered in the context of a new application." In the second case, officers are asked to "consider why it was not submitted at the time of the original application." In both cases, officers are also directed to assess whether the new evidence is material and reliable.

[12] However, I do not read the policy as requiring officers to consider materiality and reliability if they are of the view that the new evidence should be considered in the context of a new application or that there is no satisfactory explanation for not being brought earlier. The officer reasonably treated the test as being conjunctive. Accordingly, there is no need to assess materiality and reliability if the issue must be considered in a new application.

[13] Lastly, Ms. Ezamegbe sought to recast the above submissions in terms of the officer fettering their discretion or failing to afford her procedural fairness. I see no basis for these arguments.

[14] For these reasons, the application for judicial review is dismissed.

JUDGMENT in IMM-7182-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7182-22
STYLE OF CAUSE:	JOY OMONIGHO EZAMEGBE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
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