Federal Court  Cour fédérale

Date: 20120504

Docket: IMM-4236-11

Citation: 2012 FC 542

Ottawa, Ontario, May 4, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ROXANNE ADELAINE MILLETTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision dated 17 May 2011 (Decision) which denied the Applicant's request for permanent residence on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the Act.

BACKGROUND

[2] The Applicant is 39 years old and a citizen of Grenada. She fled Grenada for Canada on 2 August 1995 because she feared for her life as a result of an abusive relationship. She now lives with relatives in Canada.

[3] The Applicant first filed an application to remain in Canada on H&C grounds in September 1998, but she says her former counsel did not forward her documentation and fee to Citizenship and Immigration Canada (CIC). The Respondent refused this first H&C application on 31 July 2006.

[4] In January 2008, the Applicant filed a refugee claim based on her fear of returning to Grenada because her former boyfriend, who she said had abused her, lived there. In on 21 January 2010, the Refugee Protection Division of the Immigration and Refugee Board (RPD) found the Applicant was not a Convention refugee or a person in need or protection. The RPD refused the Applicant's refugee claim because of a lack of credible and trustworthy evidence to demonstrate that she was a victim of violence from her former boyfriend and that she feared returning to Grenada.

[5] On 3 September 2009, the Applicant applied a second time for permanent residence on H&C grounds under subsection 25(1) of the Act. For this application, the Applicant relied on her close relationships to family members residing in Canada, her employment in Canada, and her length of residence in Canada to demonstrate establishment. She said that she would experience disproportionate hardship if she was required to return to Grenada. She pointed to her lengthy stay in Canada, her age, the cramped accommodations she would share in Grenada, the shame of being

deported, the financial assistance she provides to family in Grenada, and her lack of familiarity and employment opportunities there.

DECISION UNDER REVIEW

[6] The Officer noted that although he was not bound by the earlier negative refugee determination made by the RPD, he gave it considerable weight in this application. The Officer also said that he conducted his own independent research on country conditions in Grenada using the United States, Department of State, Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices, 2010 – Grenada" (April 8, 2011) (DOS Report). The Officer noted the DOS Report indicates that, while violence against women continues to be a serious concern in Grenada, the government has taken steps to address it. He found there was insufficient evidence to show that the Applicant's former boyfriend was interested in harming her today, since she had not lived in Grenada for more than 15 years. Also, the Officer found that, if she were to have problems with her former boyfriend, the DOS Report indicated that she could seek assistance from the authorities in Grenada.

[7] The Officer further found the Applicant would not face unusual and underserved or disproportionate hardship upon returning to Grenada or due to her establishment and the length of time she has spent in Canada as it is expected that during the refugee claim process claimants will establish themselves to a certain degree.

[8] The Officer accepted that the Applicant had developed relationships with family in Canada, but found that her separation from her family would not amount to hardship as the Applicant could continue to contact her family by phone and/or letters and apply for an immigrant visa from abroad.

He also noted the Applicant sends money to family in Grenada, but found that she has a demonstrated ability to adjust and adapt to change. He also found her family in Grenada would be able to support her if she returned there.

[9] Having weighed all of the evidence before him, the Officer concluded that the Applicant had not satisfied him that she will experience unusual and undeserved or disproportionate hardship if she is required to return to Grenada and apply for permanent residence through the regular process. Accordingly, the Officer denied the Applicant's request.

STATUTORY PROVISIONS

[10] The following provisions of the Act are applicable in these proceedings:

Application before entering Canada	**Visa et documents**
11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
[…]	[…]
Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25. (1) The Minister must, on request of a foreign national in	**25.** (1) Le ministre doit, sur demande d'un étranger se

Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

ISSUES

[11] The Applicant raises the following issues in this case:

a. Whether the Officer erred by relying on extrinsic evidence;

b. Whether the Officer's assessment of the H&C factors was reasonable.

STANDARD OF REVIEW

[12] The Supreme Court of Canada in *Dunsmuir v New Brunswick* 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[13] With respect to the first issue, whether or not the Officer relied on extrinsic evidence without giving notice to the Applicant is an issue of procedural fairness which implicates the Applicants opportunity to respond. In *Worthington v Canada (Minister of Citizenship and Immigration)* 2008 FC 626, at paragraphs 42 to 45, Justice John O'Keefe held that this issue is reviewable on the correctness standard. The Supreme Court of Canada held in *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)* 2003 SCC 29 at paragraph 100, "it is for the courts, not the Minister, to provide the legal answer to procedural fairness questions." Further, the Federal Court of Appeal in *Sketchley v Canada (Attorney General)* 2005 FCA 404 at paragraph 53 held that the "procedural fairness element is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances, or has breached this duty."

[14] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, the Supreme Court of Canada held that when reviewing an H&C decision, "considerable deference should be accorded to immigration Officers exercising the powers conferred by the legislation, given the fact-specific nature of the inquiry, its role within the statutory scheme as an exception, the fact that the decision-maker is the Minister, and the considerable discretion evidenced by the statutory language" (paragraph 62). Justice Michael Phelan followed this approach in *Thandal v Canada (Minister of Citizenship and Immigration)*, 2008 FC 489, at paragraph 7. The standard of review on the second issue is reasonableness.

[15] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable

outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

Breach of Procedural Fairness

[16] The Applicant argues that the Officer breached her right to procedural fairness when he relied extensively on the DOS Report without giving her an opportunity to comment on it. He used the DOS Report to support his finding that upon her return to Grenada she will be able to avail herself of help from the authorities if she has problems with her former boyfriend.

[17] The Applicant notes that CIC contacted her by letter dated 23 September 2010 and asked her to make further submissions before a decision was made on her application. However, the DOS Report was published on 8 April 2011, well after the Applicant made submissions in October 2010, and this report was never disclosed to her.

[18] The Applicant relies on *Chen v Canada (Minister of Citizenship and Immigration)* 2002 FCT 266 at paragraph 33:

> Fairness […] will not require the disclosure of non-extrinsic evidence, such as general country conditions reports, unless it was made available after the applicant filed her submissions and it satisfies the other criteria articulated in that case.

[19] The Applicant also points to CIC's manual *IP 5 - Immigration Applications in Canada made on Humanitarian and Compassionate Grounds* (IP-5 Guide). At page 70, the IP-5 Guide says that, where officers rely on extrinsic evidence in making an H&C determination, the information must be shared with the affected party. The Applicant says the DOS Report is extrinsic evidence because it does not originate from her and is information she did not have access to or was not aware would be used in the Decision.

[20] The Applicant also says fairness dictates that applicants must have knowledge of the case they must meet. In this case, the Officer was required to present the DOS Report to her to allow her an opportunity to respond. The Applicant relies on *Dasent v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 1902; *Muliadi v Canada (Minister of Citizenship and Immigration)*, [1986] 2 FC 205 (FCA); *Cornea v Canada (Minister of Citizenship and Immigration)* 2003 FC 972; *Rukmangathan v Canada (Minister of Citizenship and Immigration)* 2004 FC 284; *Pathmanathan v Canada (Minister of Citizenship and Immigration)* 2009 FC 885; *Gunaratnam v Canada (Minister of Citizenship and Immigration)* 2011 FC 122; *Hassani v Canada (Minister of Citizenship and Immigration)* 2006 FC 1283; *Torres v Canada (Minister of Citizenship and Immigration)* 2011 FC 818.

H&C Assessment

[21] The Applicant also says that the Decision is unreasonable because it was made without regard to the facts. The Officer erred when assessing the Applicant's establishment in Canada from 15 years of continuous residence here. He wrote that

> Although the applicant lived in Canada for a significant time period, I am not satisfied that the applicant has become so established to the point where it would cause her unusual and underserved or disproportionate hardship to leave Canada and seek an immigrant visa in the normal manner. I note that a person who is in Canada making a refugee claim is afforded the tools such as employment and student authorizations which would allow them to be self-sufficient and to integrate into Canadian community. Since the refugee process takes several years to run its course, it is expected that a certain level of establishment would take place during that time. As such, I do not give significant weight to the applicant's length of time or establishment in Canada.

[22] The Officer failed to appreciate the fact that she only initiated a refugee claim in January 2008, after she had already been here for thirteen years. Any tools she used to establish herself were self-acquired and independent of her refugee claim. By not considering or giving weight to the first 13 years of establishment in Canada before her refugee claim, the Officer failed to properly consider her degree of establishment and to properly assess her hardship. The Applicant relies on *Raudales v Canada (Minister of Citizenship and Immigration)* 2003 FCT 385; *Jamrich v Canada (Minister of Citizenship and Immigration)* 2003 FCT 804.

[23] The Officer did not address all of the relevant positive establishment factors in her application. He failed to address her educational upgrading, letters of support, employment history and finances. This failure renders the Decision unreasonable. See *Amer v Canada (Minister of Citizenship and Immigration)* 2009 FC 713 at paragraphs 13 to 14. While the Officer is presumed to have considered all the evidence, he committed a reviewable error by not referring to important evidence (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) at paragraph 17).

[24] Further, the Officer did not assess the Applicant's hardship properly and in accordance with the Act and the IP-5 Guide. The Officer said the following:

> I understand the [A]pplicant's desire to remain close to her family in Canada but she has not demonstrated that having to comply with legislative requirements is unusual and undeserved or disproportionate hardship. Reunification with his [*sic*] family can be obtained by requesting an immigrant visa from abroad.

[25] There are no provisions in the Act under which the Applicant can obtain an immigrant visa from abroad. She would not qualify as a member of the Family Class because her relationships with her sister and niece in Canada are not recognized under that class. The Officer did not consider the objectives of the Act, one of which is family reunification and relationships in Canada.

[26] The Applicant says she submitted evidence of the hardship she would experience from separation from her sister and niece in Canada. As in *Husain v Canada (Minister of Citizenship and Immigration)* 2011 FC 451 – where the officer failed to consider the possibility of the applicant's family being reunited in Canada – the Officer failed to appreciate the evidence she presented to show that her circumstances favour reunification in Canada in light of their close relationship for 15 years.

[27] The Applicant concludes that the Officer made too many errors in the Decision that were central to the issues of this case (see *Katalayi v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1494 (TD).

The Respondent

No Breach of Procedural Fairness

[28] The Respondent says the importance of a decision to an affected individual is only one of the relevant factors used to determine the content of the duty of fairness in a given context. *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461 (FCA) is the leading case on the content of the duty of fairness in relation to a decision of an immigration officer. *Mancia* says at paragraph 27 that, where an officer relies on extrinsic evidence on general country conditions that is publicly available, but that only became available and accessible after an applicant made his or her submissions, fairness requires disclosure by the officer only where the documents "are novel and significant and where they evidence changes in the general country conditions that may affect the decision".

[29] The Applicant has not provided any evidence suggesting that the information in the DOS Report had not been published in other sources available to the Applicant prior to her October 2010 submissions. The Applicant has not demonstrated that the amendments to the Grenadian domestic violence legislation, referred to in the DOS Report, amount to a significant change in the context of her personal circumstances. Following *Mancia*, the duty of fairness did not require the Officer to disclose the DOS Report to the Applicant. Hence, there was no breach of procedural fairness.

[30] The Respondent notes that the Officer found the Applicant had not provided evidence to show her former boyfriend is interested in harming her today. Even if the DOS Report evidenced a significant change in country conditions in Grenada with respect to cases of domestic violence, the report would not have affected the Officer's Decision.

Decision is Reasonable

[31] The Applicant has failed to identify a reviewable error in the Decision. For the Officer to grant an exemption on H&C grounds, the Applicant had to show that, in relation to others who are being asked to leave Canada, her personal circumstances are such that unusual and undeserved or disproportionate hardship would result if she were required to leave (see *Singh v Canada (Minister of Citizenship and Immigration)* 2009 FC 11 at paragraphs 2, 11, 18, 38). Unusual hardship will generally be hardship that is not addressed or anticipated by the Act or the *Immigration and Refugee Protection Regulations* SOR/2002-227, and refers to circumstances beyond an applicant's control (*Singh*, above, at paragraphs 19 to 20).

[32] The Respondent also notes that the Applicant has a "heavy burden to discharge in order to satisfy the Court that a rejection of a claim under section 25 was unlawful" (*Mikhno v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 386 at paragraph 25). In this case, the Officer reasonably determined there was insufficient evidence that the Applicant's personal circumstances would cause her to suffer hardship if she were required to return to Grenada. The Officer acknowledged the evidence showing the Applicant's relationship with her family in Canada, but found that the Applicant's mother, father and four siblings live in Grenada and that her family there would help her to adjust.

[33] The Officer considered the evidence the Applicant submitted to show her establishment, but it was not compelling. She relied on her work experience, but this experience amounted only to her working in Canada intermittently between 1995 and 2008 without a work permit. She cannot be allowed to rely on her illegal work in Canada to show her establishment. See *Serda v Canada (Minister of Citizenship and Immigration)* 2006 FC 356 at paragraph 21.

[34] To ground H&C relief, the alleged hardship suffered by an applicant must be more than the hardship "which is inherent in being asked to leave after one has been in place for a period of time" (*Irimie v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1906 (QL) at paragraph 12). The Respondent further notes that simply because an applicant for H&C relief must leave friends and family in Canada is not necessarily hardship that warrants an H&C exemption. Leaving family and friends is a predictable consequence of the risk taken by staying in Canada without landing.

[35] The Officer did not err when he found the Applicant could apply for a visa from Grenada if she wanted to be reunited with her family members in Canada. An H&C determination is not an additional mechanism for selecting permanent residents, and the Officer was not required to determine if the Applicant is admissible under other grounds (*Jung v Canada (Minister of Citizenship and Immigration)* 2009 FC 678 at paragraphs 45 and 46).

ANALYSIS

[36] There was no obligation on the Officer to disclose to the Applicant that he was relying upon the 2011 US DOS Report and, even if such an obligation existed, it would not be material in this case because the core finding of the Decision on risk is that the Applicant

> has provided insufficient objective evidence to establish that her former boyfriend, Chris is still interested in harming her today, fifteen years following her departure from Canada.

[37] The reference to the protections available to the Applicant in Granada is an alternative finding:

> Nonetheless, if the applicant encounters problems with Chris or anyone else she can seek the assistance of the police or the judicial system in her country.

[38] I also agree with the Respondent that, in *Mancia*, the Court of Appeal held that where an officer relies on extrinsic evidence on general country conditions that is publicly available, but that only becomes available and accessible after an applicant has made his or her submissions, fairness requires disclosure by the officer only where the documents "are novel and significant and where they evidence changes in the general country conditions that may affect the decision." That is not the situation here.

[39] In this case, the Applicant last made submissions in October 2010. The 2011 version of the yearly DOS Report was published on 8 April 2011 and the Officer's decision on the H&C application was rendered on 17 May 2011. The Officer cited the report in the decision and found that the documentary material showed that "the government of Granada is committed to protecting the rights of victims of violence." I agree with the Respondent that the Applicant has not provided any evidence to the Court suggesting that the information in the DOS Report had not been published in other sources available to her prior to her October 2010 submissions. Nor has the Applicant adduced any evidence or made any arguments as to how the information in the DOS Report can be said to demonstrate a change in the general country conditions in Granada. I agree with the Respondent that the DOS Report does not evidence such a change. While the Report references certain amendments to the Grenadian domestic violence legislation, the Applicant has failed to demonstrate that those amendments constitute a significant change in the context of her personal circumstances. As a result, as per the test set out in *Mancia*, it is my view that the duty of fairness did not require the disclosure of the DOS Report to the Applicant.

[40] As regards establishment, there was no need for the officer to refer to all of the evidence before reaching her conclusion. In *Ozdemir v Canada (Minister of Citizenship and Immigration)* 2001 FCA 331 at paragraph 11, the Federal Court of Appeal provided the following guidance on point:

> In this case, the new evidence was not of sufficient importance or probative value that the duty of fairness required the PCDO to deal with it expressly in her reasons. Further, it would be inappropriate to require PCDOs, as administrative officers, to give as detailed reasons for their decisions as may be expected of an administrative tribunal that renders its decisions after an adjudicative hearing. In our opinion, the reasons given by the PCDO adequately explain the basis of her decision and do not support an inference that she failed to consider all the material before her.

[41] As the Decision makes clear, the Officer was aware that the Applicant had been in Canada for over 15 years, and he specifically deals with the years since her failed refugee claim. The Applicant cannot expect to profit from the earlier years when she lived and worked here illegally. It would mean that someone who manages to remain here illegally would be better placed than someone who has respected the system. As Justice Nadon pointed out in *Tartchinska v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 373 (FC) at paragraphs 21 and 22:

> More importantly, the Guidelines certainly do not suggest that an applicant must pursue self-sufficiency at all cost and without regard to the means. I therefore disagree with the Applicants' argument that "[i]t is irrelevant whether self-sufficiency is pursued with or without a work permit." In my opinion, the source of one's self-sufficiency is very relevant; otherwise, anyone could claim an exemption on the basis of self-sufficiency even if that self-sufficiency derived from illegal activities. I appreciate that in this case the Applicants worked honestly, albeit illegally. Nonetheless, the Applicants knowingly attempted to circumvent the system when they chose to continue working without authorization. Indeed, despite being told during their first interview that they were not authorized to work and that they should cease, there was no indication that the Applicants had given up their employment at the time of the second interview. Moreover, their lawyer had cautioned them about the risks of

> working without a work permit as well as on the ostensible benefit of showing self-sufficiency (regardless of its source), and they chose to remain in Canada and work illegally.
>
> I understand that the Applicants hoped that accumulating time in Canada despite a departure order against them might be looked on favourably insofar as they could demonstrate that they have adapted well to this country. In my view, however, applicants cannot and should not be "rewarded" for accumulating time in Canada, when in fact, they have no legal right to do so. In a similar vein, self-sufficiency should be pursued legally, and an applicant should not be able to invoke his or her illegal actions to subsequently claim a benefit such as a Ministerial exemption. Finally, I take note of the obvious: the purpose of the exemption, in this case, was to exempt the Applicants from the requirement of applying for status from abroad, not to exempt them from other statutory provisions such as the requirement of a valid work permit.

[42] As regards the two-year period following the Applicant's failed refugee claim, there is simply nothing exceptional in the record that conflicts with, or which could impact, the Officer's conclusion so as to require special mention. The Applicant has submitted no evidence as to why her establishment during this period was in any way exceptional.

[43] As regards the adequacy of reasons, there is nothing in the Decision that would render it unreasonable within the principles set out by the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62 at paragraphs 12 to 16:

> It is important to emphasize the Court's endorsement of Professor Dyzenhaus's observation that the notion of deference to administrative tribunal decision-making requires "a respectful attention to the reasons offered or which could be offered in support of a decision". In his cited article, Professor Dyzenhaus explains how reasonableness applies to reasons as follows:
>
> > "Reasonable" means here that the reasons do in fact or in principle support the conclusion reached. That is, even if the reasons in fact given do not seem

> wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them. For if it is right that among the reasons for deference are the appointment of the tribunal and not the court as the front line adjudicator, the tribunal's proximity to the dispute, its expertise, etc, then it is also the case that its decision should be presumed to be correct even if its reasons are in some respects defective. [Emphasis added.]
>
> (David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in Michael Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 304)

See also David Mullan, "*Dunsmuir v. New Brunswick*, Standard of Review and Procedural Fairness for Public Servants: Let's Try Again!" (2008), 21 *C.J.A.L.P.* 117, at p. 136; David Phillip Jones, Q.C., and Anne S. de Villars, Q.C., *Principles of Administrative Law* (5th ed. 2009), at p. 380; and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 63.

This, I think, is the context for understanding what the Court meant in *Dunsmuir* when it called for "justification, transparency and intelligibility". To me, it represents a respectful appreciation that a wide range of specialized decision-makers routinely render decisions in their respective spheres of expertise, using concepts and language often unique to their areas and rendering [page715] decisions that are often counter-intuitive to a generalist. That was the basis for this Court's new direction in *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227, where Dickson J. urged restraint in assessing the decisions of specialized administrative tribunals. This decision oriented the Court towards granting greater deference to tribunals, shown in *Dunsmuir*'s conclusion that tribunals should "have a margin of appreciation within the range of acceptable and rational solutions" (para. 47).

Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses - one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-

> leaf), at ss.12: 5330 and 12: 5510). It is a more organic exercise - the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).
>
> In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.
>
> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, 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.

[44] In relation to family ties, once again, given the evidence and submissions before the Officer, I cannot say that anything material was overlooked.

[45] The Officer came to the reasonable determination that there was insufficient evidence that the Applicant's personal circumstances – including her relationship with her sister, niece and other Canadian relatives – would cause her to suffer unusual and undeserved or disproportionate hardship if she were required to return to Granada.

[46] The Officer acknowledged the Applicant's evidence on the closeness of her relationship with her family members who reside in Canada. However, the Officer also found that the Applicant's mother, father and four of her siblings live in Granada. The Officer reasonably determined that there was insufficient evidence that the Applicant's family in Granada would not provide her with the support she might require in making the adjustment to life in that country.

[47] This Court has repeatedly held that the alleged hardship suffered by an applicant must be more than the hardship which is inherent in being asked to leave after one has been in place for a period of time. That an applicant must leave friends and family is not necessarily hardship warranting an H&C exemption; rather, it is a predictable consequence of the risk taken by staying in Canada without landing.

[48] As regards the Officer's remark that "Reunification with his [*sic*] family can be obtained by requesting an immigrant visa from abroad," the view of this Court is that an H&C application is not an additional mechanism for selecting permanent residents for immigrating to Canada for those who do not otherwise qualify. For example, the words of Justice Max Teitelbaum in *Jung*, above, at paragraphs 41 to 46, are equally applicable to this Applicant's situation:

> The Applicant submits that the Officer erred in determining that Ms. Jung could present a claim for permanent residence from Korea. However, the Applicant notes that Ms. Jung would not be eligible to apply for permanent residence under any class.
>
> The Applicant does not have the required occupational experience and education to seek immigration in the Skilled Worker Category, nor does she have the assets to qualify for the Entrepreneur and Investors Class. Finally, Ms. Jung would not qualify in the Family Class either, because there is no spouse evident.
>
> This application is the last opportunity for the Applicant to seek Permanent Residence in Canada. Therefore, the Officer's finding

> that Ms. Jung could apply from Korea would appear to be incorrect.
>
> Applications for Permanent Residence as a general rule are made from outside Canada. One of the exceptions is when an application is exempted from this requirement due to compassionate or humanitarian considerations. The Respondent submits that the Officer's decision is reasonable and in accordance with precedent with regard to Ms. Jung's application.
>
> The Respondent submits that the Applicant's argument misconstrues the nature of the H&C process. The Respondent states that an H&C application is not an additional mechanism for selecting perspective permanent residents, nor is it a mechanism for immigrating to Canada for those who do not qualify otherwise: *Irimie v. Canada (M.C.I.)*, [2000] F.C.J. 1906. This would seriously undermine the immigration system.
>
> I agree with the Respondent that the Officer is not required nor should be required to determine whether the Applicant is admissible under any grounds for refugee, immigration or permanent residence status. The Officer is tasked with determining whether there are sufficient H&C grounds for an exemption from applying outside of Canada for permanent residence.

[49] All in all, I can find no reviewable error with this Decision. It is completely within the *Dunsmuir* range based on the facts.

[50] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-4236-11
STYLE OF CAUSE:	**ROXANNE ADELAINE MILLETTE**
	- and -
	THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 15, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	May 4, 2012

APPEARANCES:

Alesha A. Green	**APPLICANT**
Jessica Norman	**RESPONDENT**

SOLICITORS OF RECORD:

The Law Office of Alesha A. Green Barrister & Solicitor Toronto, Ontario	**APPLICANT**
Myles J. Kirvan, Q.C. Deputy Attorney General of Canada	**RESPONDENT**