

Federal Court



Cour fédérale

Date: 20120528

Docket: IMM-7285-11

Citation: 2012 FC 647

Toronto, Ontario, May 28, 2012

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

VALARIE VALCINA ARCHIBALD

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of an Immigration Officer [the Officer] dated July 13, 2011 in which the Officer refused the applicant's request for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] The applicant Valarie Valcina Archibald is a citizen of Saint Vincent born on September 27, 1975. She came to Canada on a visitor's visa, arriving on August 11, 2002 and remained here without status after the visa expired.

[3] On June 2, 2006, she gave birth to a son. The child's father is not involved in his life. She and her son live with her cousin and her cousin's family, with all three adults in the household contributing to the care of all of the children.

[4] On November 29, 2010, she made an H&C application based on her establishment in Canada, the hardship if she returns to Saint Vincent, her relationship with her cousin's family in Canada, and the best interest of her son. That application was refused on July 13, 2011.

[5] The Officer found insufficient evidence of hardship to warrant H&C relief.

[6] The Officer considered the interests of the applicant's son, but found insufficient evidence that relocating to Saint Vincent would cause hardship given the child's young age and the presence of several of the applicant's family members in Saint Vincent. The Officer also considered the evidence of the applicant's establishment in Canada but gave it little weight because the applicant's lengthy stay in Canada was within her control and because she waited more than eight years before making any attempt to obtain status to remain here.

[7] The Officer rejected her argument that she had nowhere to live in Saint Vincent, as the applicant did not provide any evidence to show that she could not find a residence there for her and her son.

[8] Finally, the Officer considered the applicant's relationship with her cousin's family. The Officer acknowledged that some hardship will result from the applicant's departure, but found that it was no more than the hardship that normally results when family members relocate to another country. The Officer further noted that the applicant's parents and five siblings live in Saint Vincent. The Officer therefore refused the H&C application.

[9] I am unable to accept the applicant's argument that the Officer applied the wrong guidelines and failed to consider her *de facto* family members who are in Canada. Although the Officer may not have included a separate heading titled "*De facto* family members" in the decision, it is clear from the reasons for the decision that she considered the applicant's family members in Canada. Further, the applicant's H&C application states that her cousin's home is "chaotic and loud" and that, although she does not complain, "she is being used by her own family members" and is being forced to pay an unreasonable share of the household expenses and is "expected" to babysit her cousin's children in her spare time. Given that these allegations are found in the H&C application, it is difficult to fault the Officer for not putting more emphasis on the applicant's Canadian family members.

[10] The application for judicial review is therefore dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7285-11

STYLE OF CAUSE: *Valerie Valcina Archibald v The Minister of Citizenship and Immigration*

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 24, 2012

REASONS FOR JUDGMENT AND JUDGMENT: TREMBLAY-LAMER J.

DATED: May 28, 2012

APPEARANCES:

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