THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV 2018-01144

In the matter of an application by Mercedes Cristina Ramlochan for Judicial Review under part 56 of the Civil Proceedings Rules 1998 as amended and the Judicial Review Act Chapter 7:08

BETWEEN

Mercedes Cristina Ramlochan

Claimant

And

The Chief Immigration Officer

Defendant

Before: The Honourable Madam Justice Eleanor Donaldson-Honeywell

Delivered on: March 15, 2019

Appearances

Ms. Shalini Sankar and Ms. Risa Rajnath, Attorney-at-Law for the Claimant

Ms. Niquelle Nelson Granville, Ms. Laura Persad, Ms. Anala Mohan and

Ms. Candice Alexander, Attorneys-at-Law for the Defendant

Judgement

A. Introduction

1. The Claimant applied for judicial review of certain alleged decisions of the Defendant regarding immigration requirements for the Claimant's minor children. Her application for leave for judicial review was granted on 27 April, 2018. By Fixed Date Claim filed on May 10, 2018, the Claimant seeks:

    a) A declaration that the decision of the Defendant dated 26 March, 2018 to compel the Claimant's two minor children YC born on [Redacted] being eight years of age and IC born on [Redacted] being seven years of age to leave Trinidad and Tobago in order for their status to be regularized is unlawful illegal and of no effect.

    b) A declaration that the decision of the Defendant dated 26 March 2018 to compel the Claimant's two minor children YC born on [Redacted] being eight years of age and IC born on [Redacted] being seven years of age to leave Trinidad and Tobago in order for their status to be regularized without holding a special enquiry is in breach of Section (4)(b), 4(d), 5(2)(e) and 5(2)(h) of the Constitution of Trinidad and Tobago.

    c) A declaration that the decision of the Defendant dated 26 March, 2018 to stop processing the Claimant's Permanent Residency Application until her two minor children leave the jurisdiction is unlawful, illegal and of no effect.

    d) A declaration that the decision of the Defendant to not provide the minor children YC born on [Redacted] being eight years of age and IC born on [Redacted] being seven years of age with an extension for leave to remain in Trinidad and Tobago until their mother the Claimant herein having applied for Permanent Residency and having custody of the said children herein has her Permanent Residency Application determined is unlawful, illegal and of no effect.

e) A declaration that the decision made by letter on 26 March, 2018 was made on the basis of alleged bias, the said decision being sent to the Claimant's husband and not the Claimant and as such the said decision is unlawful, illegal and of no effect.

f) A declaration that the decision and/or action of the Defendant to not continue to provide the minor children with an extension for leave to remain in Trinidad and Tobago causing the said children to be denied access to an education as they are unable to enrol in school in the interim is unlawful, illegal and of no effect.

g) A declaration that the decision and/or action of the Defendant to give instructions on 26 March, 2018 for the Claimant to return on 8 April, 2018 such date being a Sunday to apply for an extension for leave to remain in Trinidad and Tobago until her application for Permanent Residency is determined is unlawful, illegal and of no effect.

h) An order of certiorari quashing the said decisions.

i) An order that the decision made by the Defendant is in breach of the Claimant's legitimate expectation.

j) An order that the said decisions are ultra vires and an abuse of power.

k) A declaration that the decisions made by the Defendant amount to a failure to observe the conditions and/or procedures required by law.

l) A declaration that the decisions of the Defendant is an exercise of power in a manner that is so unreasonable that no reasonable person could have so exercised that power.

m) A declaration that the Defendant failed to consider relevant matters.

n) Damages.

o) Interest.

p) Costs.

q) Such further and/or other relief as the court may deem fit.

2. The Claimant challenges the following alleged decisions of the Defendant:

a) The decision of the Defendant dated 26 March, 2018 to compel the Claimant's two minor children YC born on [Redacted] being eight years of age and IC born on [Redacted] being seven years of age to leave Trinidad and Tobago in order for their status to be regularized;
b) The decision of the Defendant to stop processing the Claimant's Permanent Residency Application until her two minor children leave the jurisdiction;
c) The decision of the Defendant to not provide the minor children YC born on [Redacted] being eight years of age and IC born on [Redacted] being seven years of age with an extension of leave to remain in Trinidad and Tobago until their mother the Claimant herein having applied for Permanent Residency and having custody of the said children herein has her Permanent Residency Application determined;
d) The decision and/or action of the Defendant to not continue to provide the minor children with an extension for leave to remain in Trinidad and Tobago causing the said children to be denied access to an education as they are unable to enrol in school in the interim; and
e) The decision and/or action of the Defendant to give instructions on 26 March, 2018 for the Claimant to return on 8 April, 2018 such date being a Sunday to apply for an extension for leave to remain in Trinidad and Tobago until her application for Permanent Residency is determined.

3. The Defendant's evidence in response to the Claimant is to be found in the affidavits of Mr. Kern Penco, Acting Deputy Chief Immigration Officer, Mr. Shameel Nabbie, Immigration Officer IV and Ms. Geeta Harrypersad Bhimlal, Immigration Officer II. The Claimant then filed a further affidavit in Reply. The Claimant and Defendant filed legal submissions in accordance with initial directions and extensions of time granted up to March 1, 2019.

B. Factual Background

4. The Claimant arrived in Trinidad and Tobago on 28 November, 2014. The Claimant married a citizen of Trinidad and Tobago Mr. Richard Ray Ramlochan on 14 May, 2015. The Claimant's minor children entered the country on 19 August 2015 and were granted entry certificates until 26 October, 2015. The affidavit of Mr. Joel Penco on behalf of the Defendant avers that no further extensions to remain in the country are on record for the two minor children. The Claimant applied for Permanent Residence on 26 January, 2016. Full legal custody and care of the minor children of the Claimant was awarded to the Claimant and Mr. Ramlochan on 14 December, 2017.

5. By letter dated 13 September, 2017 the Claimant was invited to the first interview in relation to her application for permanent residence on 12 March, 2018. The Claimant alleges that a phone call was made to an individual about whom her husband had made a previous report involving bribery and that the result of this call was that she was told she was required to pay bonds for her two children and in order to do so her children must leave the jurisdiction by 26 March, 2018. Subsequently, the Claimant claims she received a phone call from an Immigration Official requiring her to attend the Department on 21 March, 2018 where she was orally informed that the Minister of National Security had made a decision to allow the children to stay in the jurisdiction without any need for bonds to be paid. Thereafter a letter dated 26 March, 2018 was issued by the Defendant to the Claimant's spouse stating that owing to the fact that the entry certificates of the minor children had expired on 26 October, 2015, they would be required to depart the country and return in order to continue processing the Claimant's application for permanent residence. The Claimant then filed an application for leave for judicial review of this decision.

6. Thereafter, the Claimant was invited to an interview on 8 April, 2018. This being a Sunday, the Claimant attended the Immigration Office on 6 April, 2018 and her attendance was recorded. The Claimant and her spouse were then invited to an interview relative to her application on 24 April 2018 by letter dated 9 April, 2018. In this letter several documents were requested to be produced. On 23 April 2018 the Claimant's attorney-at-law wrote a letter to the Defendant putting them on notice of the present matter having been filed on 16 April, 2018. The Claimant also expressed that her spouse's passport would have to be returned for court proceedings and that if this could not be facilitated, another date should be issued for the appointment. The Defendant responded on 23 April, 2018 with a new date of appointment – 2 July, 2018, and again on 2 July, 2018 with a further postponement to 7 September, 2018.

C. Issues

7. The issues to be determined relate to the decisions challenged by the Claimant. These decisions are addressed separately herein as follows:
    a) The decision to compel the Claimant's two minor children to leave Trinidad and Tobago in order for their status to be regularized & the decision to not provide the minor children with an extension for leave to remain in Trinidad and Tobago until the Claimant has her Permanent Residency Application determined;
    b) The decision to stop processing the Claimant's Permanent Residency Application until her two minor children leave the jurisdiction;
    c) The decision and/or action to not continue to provide the minor children with an extension for leave to remain in Trinidad and Tobago causing the said children to be denied access to an education as they are unable to enrol in school in the interim; and
    d) The decision and/or action of the Defendant to give instructions on 26 March, 2018 for the Claimant to return on 8 April, 2018 such date being a Sunday to apply for an extension for leave to remain in Trinidad and Tobago until her application for Permanent Residency is determined.

D. Law and Analysis

The decision of the Defendant dated 26 March, 2018 to cause the Applicant's two minor children to leave Trinidad and Tobago in order for their status to be regularised & the decision and/or action of the Defendant not to provide the minor children of the Claimant with an extension for leave to remain in Trinidad and Tobago until determination of the application for Permanent Residency.

8. The Claimant contends that her application for Permanent Residency was made as the principal applicant and her children's application should have been processed with hers with no further criteria to be met. She refers to the **Immigration Manual Volume 1: Guidelines on Policies and Procedures for Immigration Officers 2008 Edition, pg 108**. She submits that because of this, a decision to provide an extension of time to the Claimant but not her children was illegal and unlawful.

9. The Defendant submits, however, that it is unarguable that dependants who were not legally in the country would be included in the application of a principal without at least adhering to the requirements of permission to stay in the country. The Defendant relies here on the fact that the minor children had not been granted further extensions to remain in the country since the issuance of their entry certificates.

10. The Defendant argues also that the Manual referred to by the Claimant contains guidelines for conduct only and not strict legal requirements. The Defendant refers to page 14, paragraphs 1 and 4 and page 15 of the Manual which indicate that the manual is an advisory document, has no standing in law and does not remove the flexibility often needed in dealing with complex, unusual or unforeseen situations.

11. The guidelines, it appears, may inform what is reasonable for an Immigration official to consider but do not bind the Defendant in the exercise of its discretion. Therefore, it is untenable for the Claimant to contend that derogation from the Manual is unlawful, illegal or ultra vires.

12. It is further submitted by the Claimant that there is no good reason why the minor children were not afforded continued extensions of time until the application for Permanent Residency of the Claimant as "the principal applicant" was processed.

13. The Claimant has not shown any authority for her apparent assumption that the minor children should automatically receive extensions to remain in the country based on the Claimant's application for permanent residence.

14. The Claimant's contention that exhibit "M.C.R. 6" of her affidavit shows that the minor children were granted extensions until 17 March, 2016 is refuted by the Defendant who submits that these are merely application forms and do not show the grant of any extension by a stamp or otherwise. It is pointed out by the Defendant that the Claimant has been unable to show extension stamps on the passports of the minor children. It is also of note that the application forms contain endorsements from the relevant immigration officials that landing deposits were payable on behalf of the minor children.

15. The Claimant also submits under this head that as provided by **Section 6 of the Immigration Act, Chap. 18:01**, it is the Minister and not the Defendant who has the power to make the decisions on whether or not to grant extensions to minors of a principal applicant for Permanent Residency. The Claimant suggests that the decision to suspend extensions of time was made without collaborating with the Minister of National Security.

16. However, the Defendant cites **Section 48 of the Immigration Act** which provides that the Minister may authorise his Permanent Secretary or the Chief Immigration Officer to perform and exercise any functions required to be exercised by him or her. Further, the Defendant cites an order dated 1 February, 1986 by which the Minister of National Security authorized the Chief Immigration Officer to declare when a person has ceased to be a permitted entrant. These provisions make it clear that the Defendant has the authority to declare that a person is no longer a permitted entrant.

17. Under this head, the Claimant also raises the ground of legitimate expectation, stating that the Defendant acted in breach of her legitimate expectation based upon a settled practice not to require bonds to be paid for minor children. The Claimant also argues here that because she had been liaising with the Minister, the Defendant had a duty to act fairly and reasonably which includes a "duty to take reasonable steps to acquaint oneself with the relevant information to ensure the Minister makes a proper decision."

18. As cited by the Defendant, it has been established in **Council of Civil Service Unions v Minister for the Civil Service [1984] 3 All ER 935** that:
"A legitimate or reasonable expectation may arise either from ***an express promise given on behalf of a public authority*** *or from the* ***existence of a regular practice which the claimant can reasonably expect to continue****."* [emphasis added]

19. The Defendant highlights, however, that since the first attendance of the Claimant on the date of expiry of the minor children's entry certificates at the Immigration Office, she was informed of the need to pay bonds. The Claimant has not shown any further evidence of a settled practice nor an express promise not to require bonds for minor children aside from an indication by one Mr. Nabbie, Immigration Technical Support Officer. In fact, both Mr. Penco and Ms. Bhimlal contradict this allegation of a settled practice not to require bonds. Mr. Nabbie, although admitting the statement in his affidavit, states that he was expressing an opinion and was not in a position to make such a decision.

20. As held in the **Western Fish Products Ltd v Penwith District Council [1981] 2 All ER 204** decision cited by the Defendant, the Defendant should not be considered to be bound by the words of Mr. Nabbie as there was no basis upon which the Claimant could have assumed the he could make a binding decision for the Defendant. The Claimant had already been informed of the requirement to pay bonds at the time the statement was made, Mr. Nabbie was not attached to the Immigration Division and therefore he did not have the required actual or ostensible authority to make any such binding decision.

21. The Claimant suggests that the addressing of the letter to the Claimant's husband informing of the decision relating to the minor children is evidence of "alleged bias" due to the fact that his "only link" was in relation to the bribery report being made by him. The evidence from Mr. Penco is that Mr. Ramlochan requested that correspondence be addressed to him. It is clear, however, that Mr. Ramlochan does have joint legal care and custody of the children and therefore is linked to the status of the children in that way.

22. Finally, the Claimant submits under this head that the Defendant's decision was unreasonable as it failed to take relevant considerations into account, namely that the children are minors and cannot leave the country unattended, that previous extensions were granted with no issue and that there was an indication from the Minister that no bonds were payable for the children. It is unclear why the assumption is being made by the Claimant that the children must leave the country unattended. Nothing prevents the Claimant's spouse or other relative from accompanying the children.

23. Further, there has been no evidence produced in support of the Minister's oral indication. If it were the case that the Minister, indeed, wished to exercise his discretion in this matter, a letter indicating his position could easily have been requested and produced. In addition, the Claimant has not shown any documentary evidence of extensions of time

being granted to the minor children aside from the entry certificate which allowed the minor children to remain in the country until 26 October, 2015.

24. The Claimant has therefore failed to show that the decisions of the Defendant (i) to cause the Applicant's two minor children to leave Trinidad and Tobago in order for their status to be regularised; and (ii) not to provide the minor children of the Claimant with an extension for leave to remain in Trinidad and Tobago until determination of her application for Permanent Residency are unlawful, in breach of a legitimate expectation or unreasonable.

The decision by the Defendant to stop processing the Claimant's Permanent Residency Application until her minor children leave the jurisdiction.

25. In the letter of 26 March, 2018 sent by the Defendant it was also indicated that the minor children were required to depart and return as a prerequisite to continue processing of the application of the Claimant. This decision appears to have been waived as the Claimant was invited to the first interview after the filing of the present claim. The Defendant set out at paragraph 52 of submissions the efforts outlined in Mr. Penco's affidavit regarding the scheduling of the meeting with the Claimant on her application. There remains therefore nothing to decide under this issue.

Denial of access to an education of the minor children

26. The Defendant led evidence, in the affidavit of Kern Penco, that no application for student permits was made for the minor children. The minor children were, however, enrolled at the [Redacted] Private School. The Claimant claims she was unaware of the requirement to apply for student permits.

27. The Claimant submits that the **Immigration Manual Volume 1: Guidelines on Policies and Procedures for Immigration Officers 2008 Edition, pg. 90** only requires persons aged 16 and over to apply for student permits. However, the Manual provides at C3.11.2 that persons over 16 may apply for specified areas of study and further provides at C3.11.3 that dependants of persons awaiting Permanent Residence, inter alia, are eligible for Student Permits. It is instructive that directly below the section referred to by the Claimant there is a provision that the subject of student visas is still under review. Further, it states that the guidelines are merely explanatory and have not yet been approved. Read as a whole the Manual does not support the Claimant's submission.

28. The Claimant submits at paragraph 26 of the submissions that to prevent a child from continuing his education by refusing him permission to remain "might dissuade that citizen from exercising the rights to freedom of movement which is a breach of the fundamental Constitutional rights". The Claimant further cites the Equal Opportunity Act, Chap. 22:03 and Section 7 of the Education Act, 39:01. The Claimant argues this section prohibits the denial of any child from entry into a public school on any grounds. However, the section specifically prohibits exclusion based on certain grounds, namely religious persuasion, race, social status and language. This does not apply in the present case as the refusal to allow the minor children into a public school is on the basis that their immigration status has not yet been regularised and that no student permit has been applied for or granted.

29. The Claimant submits that based upon the Universal Declaration of Human Rights which recognises a right to education, all children including non-nationals should be afforded the opportunity to enrol in a public government school "once the criteria set forth in the immigration guidelines are fulfilled".

30. The Claimant in their submissions at paragraph 32 appears to acknowledge that a process of vetting is required. The Claimant refers to criteria outlined in **Section 9(5)(c) of the**

Immigration Regulations for issuance of a student permit, notably, without citing the section. It provides the following:

"The Chief Immigration Officer may, upon being satisfied as to the bona fides of the educational or training establishment, ***issue a student's permit*** *if—*

(i) the person seeking to enter and remain in Trinidad and Tobago has been accepted as a student by such establishment;

(ii) there is adequate accommodation for the student at such establishment;

(iii) no local student has been displaced; and

(iv) the person seeking to enter and remain in Trinidad and Tobago does not belong to a prohibited class." [emphasis added]

31. In the present case, the Claimant, by accepting the criteria to be examined by the Immigration Division, appears to accept that a student permit is required. It is patent that certain processes are required to be followed, including regularisation of the children's statuses and applications for student permits. Only through such a process would the Immigration Division be in a position to ascertain the factors set out in the Regulations above.

32. The Claimant has set out these factors in her submissions as though they have been proven already and as though the Court would be in a position to assess them in order to make a determination on whether the children should be permitted to attend any public school. There has been no evidence placed before this court on these factors to allow it to make such a determination. In particular, no evidence was led as to whether there is adequate accommodation at a particular public school and whether any local student will be displaced. Further, it is clear that this is a determination within the remit of the Immigration Division and that the Claimant has admitted that she had not made the proper application.

The Decision and/or action of the Defendant to give instructions for the Applicant to return on 8 April, 2018, a Sunday to apply for an extension for leave to remain in Trinidad and Tobago until her application for Permanent Residency is determined

33. The Claimant has submitted that this action was procedurally improper. However, the Defendant argues that it never intended to unreasonably deny the Claimant an extension of time. This, the Defendant says, can be seen from the further grant of a two-week extension on 9 April, 2018 as well as the acknowledgment of her attendance on the 6 April, 2018. The circumstances as outlined are not sufficient to show any unreasonableness on the part of the Defendant that merits a determination in favour of the Claimant as to the relief Claimed. This is so because the situation was properly addressed on the first working day after the proposed meeting date.

Claim for Damages

34. The Claimant, citing **Section 8(4) of Judicial Review Act, Chap. 7:08,** submits that she ought to be awarded damages as relief for bias, irregularity and illegality in the decisions taken by the Defendant.

35. However, the Claimant has failed to prove that any of the decisions challenged in this application are unlawful, unreasonable or in breach of a legitimate expectation. Therefore an award of damages does not arise. In any event, the Claimant has not proven the conditions necessary for a claim of damages in judicial review, namely a parallel remedy arising from the same matter in which the Claimant could have been awarded damages or proof of actual pecuniary loss – **Josephine Millette v Sherman McNicolls CA No. 155 of 1995; The Minister of Energy and Energy Affairs v Adesh Maharaj; Prakash Maharaj CA S-231 of 2014**.

E. Conclusion

36. The Claimant has failed to show that any of the alleged decisions and/or actions of the Defendant are unlawful, unreasonable or in breach of a legitimate expectation, in particular:

    a) The decision of the Defendant to require the minor children to leave and return in order to regularise their status has not been shown to be unlawful as the Immigration Guidelines referred to are clearly expressed to be merely a guide.

    b) This decision has also not been proven to be in breach of any legitimate expectation as the Claimant has not shown any evidence of a settled practice, nor has she shown that the statement made by Mr. Nabbie could be taken as an express promise that could reasonably be expected to be relied upon as binding upon the Defendant.

    c) This decision has also not been shown to be unreasonable as all the considerations outlined by the Claimant that she submits should have been taken into account are either not relevant or have not been proven to be true.

    d) The decision of the Defendant to stop processing the Claimant's application for Permanent Residency until her children leave the country clearly has not been followed by the Defendant as seen by the scheduling of interviews with the Claimant and nothing therefore remains to be decided on this point.

    e) The denial of access to education submitted by the Claimant to be caused by decision of the Defendant not to grant further extensions to the minor children has not been borne out due to the failure of the Claimant herself to apply through the regular process for the requisite student permit.

    f) The decision of the Defendant to schedule the date of the Claimant's interview on a Sunday has not been shown to be a part of any unreasonableness or bias on the part of the Defendant as seen from the Defendant's conduct in acknowledging her presence on the working day before the date of the interview and subsequent rescheduling of the interview on the day after.

37. In conclusion, my finding is that the Claimant's application for judicial review is without merit.

38. **It is hereby ordered that**

    a) The Claim is dismissed.

    b) The Claimant is to pay the Defendant's costs in an amount to be assessed by the Registrar if not agreed.

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Eleanor Joye Donaldson-Honeywell
Judge

Assisted by Christie Borely JRC 1