Federal Court  Cour fédérale

Date: 20150316

Docket: IMM-7101-13

Citation: 2015 FC 331

Ottawa, Ontario, March 16, 2015

PRESENT: The Honourable Mr. Justice S. Noël

BETWEEN:

USAMA WADIE MATTA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application by Usama Wadie Matta [the Applicant] for leave and judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board, dated September 16, 2013, rejecting the Applicant's removal order appeal.

II. Facts

[2] The Applicant is a 50 years old citizen of Egypt.

[3] He applied to come to Canada as an entrepreneur in 1998. His application was accepted and he was granted permanent residency status on January 14, 2001 on terms and conditions. The terms and conditions essentially required the Applicant to operate a business in Canada that would make a contribution to the economy and employ one or more Canadians.

[4] In March 2006, the Applicant submitted an application to remove his terms and conditions for landing. He was subsequently referred to an admissibility hearing. CIC subsequently issued a section 44 report on April 26, 2007, alleging that the Applicant had not complied with the terms and conditions of his landing.

[5] A hearing was held before the Immigration Division [ID] on February 19, 2010. On April 23, 2010, the ID determined that the Applicant had failed to comply with his conditions of landing as an entrepreneur. A deportation order was made against the Applicant in Toronto, Ontario pursuant to subsection 41(b) of IRPA.

[6] A first hearing was held before the IAD on June 13, 2013, but was postponed at the request of the Applicant's counsel. Counsel for the Applicant submitted that his client was agitated because of his need for a liver transplant. A second hearing took place on September 16,

2013. On that same day, the IAD dismissed the Applicant's appeal of the ID decision. This is the decision under review.

III. Immigration Division Decision

[7] The Applicant was subject to an admissibility hearing before the ID where he testified under oath that he was unaware of the terms and conditions of his landing. His testimony was rejected by the ID for four reasons: (1) he must have been aware of the requirements pertaining to the entrepreneur class status as he is the one who made the application; (2) the visa officer's notes indicate that he was aware of the conditions; (3) because he received his permanent resident visa six months prior to migrating to Canada, he had enough time to review the documents; (4) the Applicant's name and signature are on the Record of Landing, thus attesting that he accepted and understood the terms and conditions imposed on him as an entrepreneur. The Applicant was found inadmissible to Canada.

IV. Impugned Decision

[8] The IAD first wrote that the appeal is only concerned with the Applicant's request for special relief on humanitarian and compassionate grounds. The Applicant does not challenge the legal validity of the Departure Order.

[9] The IAD then addressed the Applicant's credibility. It concluded that the Applicant had been dishonest in his affirmation that he was never informed of the terms and conditions attached to his landing. The IAD also stated that the Applicant failed to comply with the conditions of his

landing and avoided contacting CIC until five years after he was landed. The IAD afforded high weight to these considerations.

[10] In terms of the Applicant's establishment in Canada, the IAD accepted that he has been a permanent resident for over a decade, but that his wife and daughter reside in Egypt and that he frequently travelled to Egypt over the years. The Applicant has family in Canada, owns property in Canada and has never resorted to social assistance in Canada. The IAD therefore treated the establishment factor as "mildly positive" (AR page 10 at para 20). The Applicant has not, however, established that his family in Canada would suffer substantial hardship if he was to return to Egypt.

[11] The IAD then turned to the hardship factors in Egypt. Based on the evidence provided, the IAD was not satisfied that the Applicant would not be able to support himself or access health care resources in Egypt. As for the Applicant's alleged fears of persecution as a Coptic Christian, no country conditions were provided to this effect and the Applicant's wife, also a Christian, has refused to come to Canada and continues to be employed in Egypt. The Applicant's fears on this point are therefore unsupported. Lastly, the Applicant's daughter is in Egypt, in the custody of her mother. The situation in this regards seems stable enough that the Applicant never tried to sponsor her to Canada.

[12] According to the IAD, taken together, all these factors were insufficient to support granting humanitarian and compassionate relief. The appeal was therefore dismissed.

V. Parties' Submissions

[13] The Applicant first submits that the IAD erred by not considering and addressing in its decision the fact that the Applicant suffered from cirrhosis of the liver, that he was on the waiting list to be scheduled for a liver transplant in Canada and that he would not obtain medical treatment in Egypt. The Respondent retorts that the Applicant admitted that he never looked into whether or not he could receive the necessary medical treatment in Egypt.

[14] Second, the Applicant submits that he was denied a fair hearing. Given the opportunity, the Applicant could have adduced additional evidence relevant to his case, as it relates to (1) the situation in Egypt for Coptic Christians, (2) to the unavailability of medical treatment related to a liver transplant in Egypt and (3) to the hardship him and his family in Canada would suffer if required to leave Canada. The Applicant submits that his section 7 *Charter* rights are engaged. The Respondent responds that the Applicant never requested to submit additional evidence after the hearing and that the onus was on the Applicant at all times to demonstrate why he should be allowed to remain in Canada. There is therefore no breach of natural justice in this matter.

VI. Issues

[15] The Applicant submits the following issues:

1. Did the IAD render an unreasonable decision by ignoring, disregarding or misconstruing the evidence?

2. Was the decision unfair in that the IAD should have afforded the Applicant with an opportunity to provide supporting documentation?

[16] The Respondent simply submits that there is no arguable issue of law upon which the proposed application for judicial review might succeed.

[17] I have read the parties' submissions and respective records and I frame the issues as follow:

1. Was the Applicant given a fair hearing?

2. Is the IAD decision reasonable?

VII. Standard of Review

[18] Whether the Applicant was given a fair hearing is a question of procedural fairness. The standard of correctness thus applies (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 129; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). No deference is thus afforded to the IAD decision.

[19] Whether the IAD decision is reasonable in this matter is a question of mixed facts and law. The reasonableness standard applies. This Court shall only intervene if it concludes that the decision is unreasonable, and falls outside the "range of possible, acceptable outcomes which are

defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 47).

VIII. Analysis

A. *Was the Applicant given a fair hearing?*

[20] The Applicant argues that he was denied a fair hearing because the IAD should have given him the opportunity to provide more information in support of his appeal prior to the IAD rendering its decision. This argument does not hold. As the IAD states in its decision (AR page 8 at para 10), the onus is on the Applicant to establish that he should be permitted to stay in Canada (*Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at paras 57 and 90; *Krishnan v Canada (Minister of Citizenship and Immigration)*, 2005 FC 517 at para 18). The Applicant simply did not meet his onus before the IAD.

[21] Indeed, on the first hearing of June 13, 2013, the IAD agreed to postpone the hearing because of the health situation of the Applicant, even though the IAD was suspicious that his was a delaying tactic (Certified Tribunal Record [CTR] page 578). The second hearing took place three months later, on September 16, 2013. The Applicant therefore had three additional months to submit any information supporting any humanitarian and compassionate factors. Moreover, the ID decision was rendered on April 23, 2010 [AR page 78] and the Applicant filed his appeal in that same year. The first hearing before the IAD took place on June 13, 2013. The Applicant had more than enough time to prepare his appeal and provide information supporting his case. On the first hearing before the IAD, the IAD stated:

> [W]ell, this -- this appeal was filed in 2010, I mean, there's plenty of time to prepare for the hearing and to provide information regarding all of the potential humanitarian and compassionate concerns (AR page 505).

Even with the IAD raising the lack of documentation at the first hearing, no other information was provided three months later at the second hearing. The lack of documentation was also raised by the IAD at the second hearing (AR page 556). There is therefore no breach of procedural fairness.

[22] The Applicant's argument regarding the lack of assistance from his former counsel also does not hold. His former counsel represented the Applicant before the ID and before both hearings before the IAD. If the Applicant was dissatisfied by his counsel's legal advice, he had plenty of time to seek assistance from another counsel. Moreover, the Applicant bears the consequences that flow from his choice of counsel. "[T]he failure of counsel, freely chosen by a client, cannot, in any but the most extraordinary case, result in an overturning of a decision on appeal or judicial review" (*Huynh v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 642, 65 FTR 11 at para 23). The Applicant has not provided any evidence to establish the "exact dimensions of the problem" regarding his counsel (*Balazs v Canada (Minister of Citizenship and Immigration)*, 2012 FC 596 at para 11; *Shirwa v Canada (Minister of Employment and Immigration)*, [1994] 2 FC 51 at para 12). The Applicant was therefore provided with a fair hearing and the intervention of this Court is not warranted.

[23] Lastly, the Applicant was given the opportunity to call witnesses, but declined to do so, even when a witness was present in the room, and no other documents were presented by the

Applicant to supplement his Appeal Record (AR page 7 at para 7). The intervention of the Court is not warranted.

B. *Is the IAD decision reasonable?*

[24] The Applicant's main argument is that the IAD failed to mention in its decision that he suffered from cirrhosis of the liver. However, the law states that a tribunal does not necessarily have to address "all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] SCJ No. 62 at para 16; see also *Kaur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1165 at paras 27-33). In the case at bar, there is no basis for this Court to interfere with the IAD decision (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 53; *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at paras 45-49). Indeed, before the IAD, on both hearings, the Applicant's health condition was addressed and the Tribunal Record did contain information regarding the Applicant's health situation namely confirming that he suffers from a liver condition and that his prognosis is poor in the absence of a liver transplant (TR at page 524). The IAD's concern pertained to the availability of treatment for the Applicant in Egypt, if he were to return. This was discussed at the second hearing. When questioned by the IAD and his counsel, the Applicant simply answered that he was unaware of the situation in Egypt regarding liver transplant. Therefore, contrary to the Applicant's argument, the IAD did address his health condition, among all the other humanitarian and compassionate factors submitted in its decision at paragraphs 22-23. The Applicant did not provide sufficient information for the IAD to render a decision favouring the

Applicant. The IAD decision is therefore reasonable and falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. The same can be said about the lack of documentation about the Coptic Christians in Egypt and the fact that the Applicant decided not to submit any material on this matter. The evidence also shows that the Applicant travels twice a year to Egypt without any problems and no evidence was submitted that would show that his wife and daughter were prosecuted because of their religion. The intervention of this Court is not warranted.

IX. Conclusion

[25] The IAD decision is reasonable. The Applicant was giving a fair hearing where he was properly heard. The IAD decision is reasonable and addressed all the relevant issues of the Applicant's situation. There is no need for this Court to intervene.

[26] The parties were invited to submit questions for certification, but none were proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance will be certified.

"Simon Noël"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	USAMA WADIE MATTA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

Matthew Jeffery	FOR THE APPLICANT
Bernard Assan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Matthew Jeffery Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT