Federal Court  Cour fédérale

Date: 20150710

Docket: IMM-8404-14

Citation: 2015 FC 850

Ottawa, Ontario, July 10, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

FARID AZZIZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a negative decision in respect to the Applicant's application for permanent residence on humanitarian and compassionate grounds [H&C].

II. Factual Background

[2] The Applicant, Farid, is a six-year-old child who was born in Casablanca. He has resided all his life in Morocco with his parents, who are citizens of both Canada and Morocco.

[3] On two occasions, the Applicant's parents sought to obtain Canadian citizenship for their son by virtue of paragraph 3(1)(*b*) of the *Citizenship Act*, RCS 1985, c C-29, which proved unsuccessful because a genetic link between the Applicant's parents and the Applicant was not successfully demonstrated.

[4] Judicial review of the refusal of the Applicant's first citizenship application was dismissed by Justice Luc Martineau of this Court in *Azziz v Canada (Minister of Citizenship and Immigration)*, 2010 FC 663 [*Azziz*], on June 17, 2010. The second refusal for citizenship, dated November 29, 2012, was not challenged before the Federal Court.

[5] The Applicant's parents subsequently applied to sponsor the Applicant as a member of the family class, which was refused in October 2014 on the ground that the Applicant did not meet the definition of a "dependent child" provided in Regulation 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[6] As a result, the Applicant filed a permanent residence application on H&C grounds, whereby the best interests of the child and the hardship suffered by the Applicant and his family as a result of the family's separation were pleaded.

[7] On October 31, 2014, a visa officer at the Embassy of Canada in Rabat, Morocco, rejected the Applicant's application for permanent residence on H&C grounds.

III. Legislative Provisions

[8] Subsection 25(1) of the IRPA provides as follows:

Humanitarian and compassionate considerations – request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, 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.	**25**. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, 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.

IV. Analysis

[9] It is settled law that the standard of review of a visa officer's determination of an H&C application is that of reasonableness (*Hamida v Canada (Minister of Citizenship and Immigration)*, 2014 FC 998 at para 36; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2013 FC 802 at para 10, aff'd 2014 FCA 113 at para 18; *Kisana v Canada (Minister of Citizenship and Immigration)*, [2009] FCJ 713 at para 18 [*Kisana*]), whereas issues of procedural fairness attract the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79).

[10] Moreover, the best interests of a child are a question of fact which attracts the standard of reasonableness (*Williams v Canada (Minister of Citizenship and Immigration)*, 2012 FC 166 at para 18).

[11] The determinative issue is whether the officer's decision refusing to grant the Applicant permanent residence on the basis of the exemption provided in subsection 25(1) of the IRPA is reasonable.

[12] The H&C decision-making process provided in subsection 25(1) of the IRPA, which is highly discretionary in nature, is intended to provide exceptional relief from the requirements of the IRPA. Such an avenue aims to lessen the sometimes harsh consequences of the strict application of the IRPA, in exceptional cases (*Nguyen v Canada (Minister of Citizenship and*

Immigration), 2010 FC 133 at para 2; *Gill v Canada (Minister of Citizenship and Immigration)*, 2012 FC 835 at para 23).

[13] In its assessment, the officer must be "alert, alive and sensitive" to the best interests of the children affected by a decision, although this factor is not, in and of itself, determinative of the outcome of an application (*Kolosovs v Canada (Minister of Citizenship and Immigration)*, [2008] FCJ 211 at para 8; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] SCJ 39 at para 75).

[14] In its decision, the officer bases his findings pertaining to H&C factors on the following observations:

i. The Applicant is living in his natural environment and is surrounded by his parents and other family members in Morocco;
ii. The Applicant goes to school in Morocco;
iii. According to the medical statements provided, the Applicant is in very good health;
iv. The Applicant's father did not satisfactorily establish that he maintains permanent residence in Canada. The evidence rather suggests that he lives in Morocco with his spouse and the Applicant;
v. The Applicant would not suffer prejudice by continuing to reside in Morocco with his immediate family.

(Visa officer's decision dated October 31, 2014, Certified Tribunal Record, at p 142)

[15] The Court notes that the Applicant provided little evidence demonstrating unusual, undeserved or disproportionate hardship for the Applicant and his family members. The Applicant alleges that he suffers hardship as a result of his family separation and that the officer erred in finding that the Applicant's father did not reside in Canada; however, a declaration certificate dated June 3, 2014, indicates that both the Applicant's parents have lived together with the Applicant in Morocco since the Applicant's birth in March 2009 (Certificat d'engagement à Sidi Rahal Chatai, Certified Tribunal Record, at p 256).

[16] The Applicant's contention that the officer should have more thoroughly considered the lack of parental status of the Applicant's parents in relation to the Applicant cannot be retained in light of the inconclusive nature of the evidence provided in support of the Applicant's H&C application.

[17] Indeed, the issues pertaining to whether the Applicant's parents are his biological or *de facto* parents are not determinative factors in the present application, particularly in the absence of clear and convincing evidence put before the H&C officer in support of their contentions. These issues have, in any event, been settled in law in *Azziz*, above:

> [69] It must be remembered in this case that the Moroccan birth certificate and the Moroccan passport seem to have been issued by the authorities merely on the basis of the statements of the presumptive parents to the effect that they are the natural parents of the child, statements that the consular officer and the analyst could question based on the file as a whole.
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> [70] Even in this Court, the applicants have not produced credible material evidence concerning Ms. Mesbahi's presumptive delivery, other than a certificate provided by the midwife. No person who attended the birth, including the presumptive mother, provided an affidavit confirming the truthfulness and accuracy of the entries in the Moroccan act of civil status. Nor is there any

> evidence in the court record explaining how the applicants obtained a birth certificate and a passport for the child from the Moroccan authorities. In short, we have absolutely no information on how the child's birth was reported and who reported it. Like the Canadian authorities, this Court has serious doubts about the truthfulness and accuracy of the information mentioned in the semi-authentic documents produced by the applicants.
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> [71] In this case, the respondent is not contesting the birth of the child in Morocco on the date entered on his birth certificate. What is problematic is the parentage between the child and one of the presumptive parents. Once Mr. Azziz stated that the child had been conceived following *in vitro* fertilization, it was perfectly legitimate to investigate further.
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> (*Azziz*, above at paras 69-71)
>
> [Emphasis added.]

[18] Finally, the Court cannot adhere to the Applicant's submissions that the officer breached his duty of procedural fairness, as these submissions do not find anchorage in the evidence.

[19] First, the onus lies with the Applicant to provide sufficient evidence in support of his application and the officer does not have a duty to highlight weakness in an application or to request further submissions to remedy shortcomings in the evidence (*Kisana*, above at para 45).

[20] In the case at hand, the officer's conclusion hinges on the insufficiency of evidence provided rather than on questions of credibility. In such a case, the Applicant does not possess the right to an interview or a hearing.

[21] The Court finds that the Applicant had a meaningful opportunity to present his case fully and fairly.

[22] Second, the Court deems the officer's reasons sufficient. In determining the reasonableness of the RPD's decisions, the Court is required to consider the RPD's reasons "together with the outcome", serving "the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14; *Juncaj v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1183 at para 5; *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 48 [*Dunsmuir*]).

[23] In the case at hand, the officer's reasons allow the Court to comprehend the causality between the officer's decision and reasons and the evidentiary record, permitting the Court to determine that the officer's conclusion falls within the range of acceptable outcomes as per *Dunsmuir*, above.

V. Conclusion

[24] The Court recognizes that the Applicant's parents wish to live in Canada with the Applicant and to raise their son in an environment which is more favorable to their child's security and development.

[25] Nevertheless, the Court finds that the officer's conclusion, that the Applicant failed to meet his burden of demonstrating sufficient H&C grounds justifying the granting of an exemption for obtaining permanent residence, is reasonable.

[26] As a result, the application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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