Federal Court Cour fédérale

Date: 20160921

Docket: IMM-74-16

Citation: 2016 FC 1070

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 21, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

EDISON VEIZAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

(judgment delivered from the bench)

I. <u>Background</u>

> [13] Section 18 of the IRPR provides two rehabilitation scenarios: (i) a person is deemed to have been rehabilitated if more than 10 years have elapsed since the sentence was completed; or (ii) a person can convince the Minister of his rehabilitation if more than five years have elapsed since the time that the sentence has been completed, by submitting the documents required and by paying the fees stipulated in paragraph 309(b) of the IRPR. The applicant never submitted an application to the Minister to

> convince him of his rehabilitation: he did not present the documents required and did not pay the fees for processing his application.
>
> [17] Given that the officer had no duty to consider the applicant's alleged rehabilitation, I find that his decision is reasonable.
>
> (*Pena v. Canada (Citizenship and Immigration)*, 2015 FC 1310)

II. Introduction

[1] This is an application for leave and for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA) against an immigration officer's decision dated December 14, 2015, denying the applicant's application for permanent residence as a member of the spouse or common-law partner in Canada class.

III. Facts

[2] The applicant, Edison Veizaj (age 33), is a citizen of Albania.

[3] The applicant was previously married. His spouse and two children still live in Greece, where he used to live.

[4] In his affidavit, the applicant states that he arrived in Canada in December 2011, although the officer's notes in the Global Case Management System (GCMS) indicate that he arrived in Canada on March 13, 2012.

[5] The applicant filed a refugee claim in April 2012 that was denied in March 2014. On January 28, 2014 the applicant married a Colombian citizen, who was a permanent resident of Canada. He subsequently applied for permanent residence as a member of the spouse or common-law partner in Canada class.

[6] In a decision dated December 14, 2015, an officer denied the application for permanent residence because the applicant is inadmissible on grounds of criminality under paragraph 36(2)(*b*) of the IRPA. The officer determined that he had reasonable grounds to believe that, in March 2010, the applicant was convicted of an offence in Greece, which, if committed in Canada, would constitute an impaired driving offence under section 253 of the *Criminal Code*, RSC 1985, c. C-46.

IV. Positions of the Parties

[7] In the context of this judicial review, the applicant argues that the officer erred by not taking into consideration all the evidence on file. Furthermore, the applicant argues that the officer failed to use his discretionary power, specifically in failing to consider the applicant's rehabilitation, humanitarian and compassionate considerations, or the circumstances surrounding his offence in Greece.

[8] The respondent maintains that the officer's decision was reasonable because he properly found that the applicant was inadmissible in Canada under paragraph 36(2)(*b*) of the IRPA and subparagraph 36(2)(*e*)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (RIPR). The respondent argues that the officer was not required to consider the applicant's

rehabilitation because he did not apply for approval of rehabilitation under paragraph 36(3)(*c*) of the IRPA, as he had not paid the fees required for processing his application under the terms of subsection 309(b) of the IRPR. Moreover, the applicant could not have applied because he was not within the prescribed period for filing an application under sections 17 and 18 of the IRPR. The evidence, uncontested by the applicant, shows that he was fined 10 euros and his driver's licence was suspended for three months. According to the officer's notes in the GCMS, the applicant paid his fine on August 25, 2015.

V. Analysis

[9] Considering that the role of this Court in the context of judicial review is not to reweigh the evidence (*Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 SCR 339, 2009 SCC 12, at paragraph 61), the only issue in the present case is to determine if the officer's decision not to take into account humanitarian and compassionate considerations is reasonable.

[10] For the reasons that follow, the application for judicial review is dismissed.

[11] The Court agrees with the respondent that the officer was not required to consider the applicant's rehabilitation, given that no such application had been filed. Subsection 309(b) of the IRPR states that a foreign national, who is inadmissible within the meaning of paragraph 36(2)(*b*) of the IRPA must pay $200 to submit an application for approval of rehabilitation under paragraph 36(3)(*c*) of the IRPA. Moreover, since the fine was not paid until August 25, 2015, that is when his sentence was completed. Therefore, the applicant cannot avail himself of the rehabilitation measures provided in sections 17 and 18 of the IRPR. The officer was not required

to take into account the applicant's rehabilitation (Pena v. Canada (Citizenship and Immigration), 2015 FC 1310).

[12] As for humanitarian and compassionate considerations, the officer was not required to take them into account because this is not an application based on humanitarian and compassionate considerations under subsection 25(1) of the IRPA (*Pizarro Gutierrez v. Canada (Citizenship and Immigration)*, 2013 FC 623, at paragraph 40; *Farenas v. Canada (Citizenship and Immigration)*, 2011 FC 660, at paragraphs 29-33; *Rafat v. Canada (Citizenship and Immigration)*, 2010 FC 702).

[13] Also, the Court notes that the applicant checked "NO" in question 6(b) on form IMM-5669, *Schedule A – Background / Declaration*, which asks if the principal applicant has ever been convicted of, or is currently charged with, on trial for, or party to a crime or offence, or subject of any criminal proceedings in any other country.

[14] Furthermore, the IP8 *Spouse or Common-law Partner in Canada Class* Citizenship and Immigration Canada manual states that an application on humanitarian and compassionate grounds under subsection 25(1) of the IRPA may be included in a permanent residence application in respect of a member of the Spouse or Common-law Partner class. Nothing in the applicant's file indicates that this type of application was submitted or that the applicant is not contesting a decision made in that regard in the context of this judicial review.

VI. Conclusion

[15] For the reasons set out above, the Court denies the applicant's application for judicial review.

JUDGMENT

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

There is no question of importance to certify.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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