Federal Court  Cour fédérale

Date: 20170413

Docket: IMM-4612-16

Citation: 2017 FC 366

Ottawa, Ontario, April 13, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ISMAIL ABDIKADIR MUSE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Ismail Abdikadir Muse, is a Convention refugee from Somalia who came to Canada with his mother in July 2000 when he was ten (10) years old. He has a long history of criminal convictions which began in 2005 as a young offender, the most recent being in relation to two (2) offences committed in January and February 2015. In 2008, the Applicant

was diagnosed with schizophrenia and continues to receive on-going care through a Community Treatment Order. In addition to his medical issues, the Applicant has addiction issues.

[2] On September 12, 2011, a member of the Immigration Division issued a deportation order against the Applicant on grounds of serious criminality pursuant to paragraph 36(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], after the Applicant was convicted of one count of breaking and entering a dwelling house on May 4, 2010 and one count of robbery on March 16, 2011. Both are indictable offences punishable by a maximum term of imprisonment for life pursuant to paragraphs 344(1)(*b*), 348(1)(*b*) and 348(1)(*d*) of the *Criminal Code*.

[3] The Applicant exercised his right to appeal the deportation order before the Immigration Appeal Division [IAD]. The legal validity of the removal order was not challenged. Instead, he sought special relief from the removal order based on humanitarian and compassionate [H&C] grounds pursuant to paragraph 67(1)(*c*) and subsection 68(1) of the IRPA. The IAD dismissed the appeal on October 14, 2016, concluding that the Applicant had not met his burden of persuading the IAD that he should not be removed from Canada.

[4] The Applicant seeks judicial review of the IAD's decision. The Applicant raises three (3) issues: (1) the IAD improperly discounted the strong impact his girlfriend had on his prospects for rehabilitation; (2) the IAD made a speculative finding unsupported by the evidence; and, (3) the IAD made a determinative error of fact.

II. Analysis

[5] It is well-established that the decision of the IAD to grant or to withhold relief based on H&C considerations is discretionary and involves an assessment of facts or mixed fact and law. Its findings are to be reviewed on the standard of reasonableness and are subject to considerable deference by this Court (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 52, 53 and 57 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Dunne v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 835 at para 2).

[6] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and law (*Khosa* at para 59; *Dunsmuir* at para 47).

[7] The Applicant submits that the IAD improperly discounted the positive impact his girlfriend was having on his prospects for rehabilitation. The Applicant argues that since they began dating in July 2015, he has turned his life around. His girlfriend is responsible for making sure that he attends all his appointments and for his participation and attendance in a weekly program for persons with both mental and addiction issues, despite a psychiatrist's opinion in 2015 that the Applicant would be incapable of attending such a program because of his illness. He has stopped taking drugs and he has had no new criminal charges. The Applicant argues that the IAD's reasons do not refer to any of this evidence even though the Applicant's girlfriend was found to be credible and well-meaning.

[8] The Court is not persuaded by the Applicant's argument.

[9] The IAD found that while the Applicant's girlfriend sounded sincere in her concern for the Applicant, she would be no more successful than the Applicant's mother in preventing the Applicant from committing further offences. The IAD observed that she appeared to be a vulnerable young woman because of her own personal circumstances. The IAD also noted that she did not appear to be very sophisticated as she did not know where and on what continent the Applicant was born, nor that a deportation order had been issued against him.

[10] While the IAD's choice of language in referring to the Applicant's girlfriend as "unsophisticated" may have been insensitive, a review of her testimony supports the IAD's findings that she was uninformed of a number of crucial facts relating to the Applicant's personal situation and circumstances. For example, she did not know the name of the Applicant's doctor even though she testified that she accompanied the Applicant to his appointments (p 972-974 of the Certified Tribunal Record [CTR]), didn't know if the Applicant had ever smoked crack (p 974 of the CTR), when he came to Canada (p 975 of the CTR), where he was born (p 980 of the CTR), his exact birthdate (p 978, 980 of the CTR), the Applicant's street name (p 987 of the CTR) or whether he had finished school (p 987 of the CTR). She testified that she knew he had some immigration conditions to follow and that he was under a removal order from Canada but did not know that he was under a deportation order (p 981-982 of the CTR).

[11] The IAD's finding that the Applicant's girlfriend would not be successful in preventing the Applicant from committing further offences is also reasonable in light of the psychiatric

reports on file which demonstrate that his attendance at medical appointments did not significantly improve after the Applicant met his girlfriend. This Court notes that in his 2016 report, the Applicant's psychiatrist mentioned that the Applicant "often misses appointments" with him. He also stated that although the Applicant comes "voluntarily" for his injections, he is usually "off by a few days to a week".

[12] As this Court has stated on a number of occasions, it is not the role of this Court to reweigh the evidence. The IAD had the benefit of the testimony of the Applicant, his girlfriend and the Applicant's mother and it is presumed to have considered all the evidence on the record. Its findings are both reasonable and supported by the record.

[13] The Applicant further contends that the IAD made a speculative finding that is unsupported by the evidence. In August 2015, the Applicant was given a suspended sentence and placed on probation for eighteen (18) months after being convicted of theft for stealing a watch from a jewelry store in January 2015. The Applicant submits that when the IAD concluded that "certainly, the theft […] does not appear to have been committed while the appellant was in a psychotic state" and that it was "obviously premeditated", the IAD ignored the expert psychiatric evidence on the record and cast itself as an expert on whether the Applicant was in a psychotic state at the time he committed this crime.

[14] The Court disagrees. The IAD's comments regarding the Applicant's psychotic state when he stole the watch in January 2015 must be read in their proper context. In discussing the likelihood of the Applicant committing further offences, the IAD acknowledged that the

Applicant's criminal behaviour is in part due to his mental illness. The IAD explicitly referred to three (3) reports from the Applicant's psychiatrist and provided a good overview of the Applicant's condition and problems. In referring to the 2014 report, the IAD noted that the Applicant's psychiatrist mentioned that while the Applicant's illness and lack of treatment contributed to his offending, this was not the only factor as the Applicant was likely robbing to support his drug habit. The IAD further observed that one month after stealing the watch, the Applicant was charged with possession of cocaine for the purpose of trafficking and stated that the offence had also likely been committed to support the Applicant's drug habit.

[15] Looking carefully at the record, the Court finds that the IAD's assertion regarding the Applicant's mental state at the time he committed the theft of the watch is reasonable. The 2015 and 2016 psychiatrist reports both indicate that the Applicant's mental state has remained fairly stable since his release from the hospital in May 2014 and that while he has had difficulty getting himself to scheduled appointments, he was generally compliant with his medication. Moreover, the Applicant's psychiatrist explicitly indicated in his 2015 report that the Applicant's outstanding drug charges suggested that he was still using drugs and that this would provide some explanation for the allegation of theft.

[16] The last issue raised by the Applicant in his written submissions relates to the existence of a curfew. He argues that the IAD erred in stating that the Applicant "could not even comply with a simple condition like respecting a curfew from 10:00 p.m. to 6:00 a.m.". It was the Applicant's contention that he was not under a curfew. However, at the hearing, the Applicant conceded that the IAD was likely referring to a past curfew imposed on the Applicant as a result

of his earlier convictions, as it appears in a 2012 police narrative found in the record, and which the Applicant had breached.

[17] Overall, the Court finds that it was open to the IAD, in the exercise of its discretion, to conclude that the Applicant had not demonstrated sufficient H&C considerations to warrant special relief (*Chung v Canada (Citizenship and Immigration)*, 2017 FCA 68 at para 27). The IAD's conclusion was reasonable and its decision falls within the range of possible, acceptable outcomes which are defensible in light of the facts and law (*Khosa* at para 59; *Dunsmuir* at para 47).

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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