Federal Court  Cour fédérale

Date: 20170727

Docket: IMM-801-17

Citation: 2017 FC 730

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, July 27, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

PAVITTAR SINGH SANDHU
NINDERJIT KAUR
DILRAJ SINGH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The case law is clear that the duration of an applicant's stay in Canada is not in itself sufficient to warrant an exemption from the Act on humanitarian and compassionate grounds (*Mbau Mpula v. Canada (Citizenship and Immigration)*, 2007 FC 456, at paragraph 30 [*Mbau*

Mpula]). Although the applicants provided proof of their employment in Canada, to which the officer gave a certain amount of positive weight, those factors alone are insufficient to demonstrate that the applicants' removal from Canada would cause them unusual or disproportionate hardship that would justify an exemption from the Act (*Irimie v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16640 (FC), [2000] FCJ No. 1906, 10 Imm LR (3d) 206, at paragraph 20 [*Irimie*]).

[2] The burden is always on the applicants to provide evidence to demonstrate the humanitarian and compassionate grounds that warrant an exemption from the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for an application for permanent residence, a burden they did not discharge (*Khader v. Canada (Citizenship and Immigration)*, 2013 FC 315, at paragraph 49 [*Khader*]; *Chowdhury v. Canada (Citizenship and Immigration)*, 2012 FC 943, at paragraph 16 [*Chowdhury*]).

II. Nature of the matter

[3] This is an application for judicial review under subsection 72(1) of the IRPA of a decision dated January 31, 2017, in which an officer of Immigration, Refugees and Citizenship Canada [IRCC or the Department] refused an application by the applicants for an exemption for humanitarian and compassionate considerations under subsection 25(1) of the IRPA to submit their application for permanent residence from within Canada.

III. Facts

[4] The applicants are citizens of India. The principal applicant, Pavittar Singh Sandhu, is 60 years old. His spouse, Ninderjit Kaur, is 49 years old. Their son, Dilraj Singh, is 19 years old. The applicants also have an elder son, who remained in India.

[5] According to the decision, and recognizing that there is confusion regarding dates based on the principal applicant's statements, the female applicant and their son arrived in Canada using false identities in 2004 and claimed refugee protection in May 2004. That claim was denied in May 2005. The principal applicant arrived in Canada in 2005 or 2006, also using a false identity, and filed a separate refugee claim in July 2006, which was denied in November 2008.

[6] In 2012, the applicants' initial application for an exemption on humanitarian and compassionate grounds was rejected, and the Federal Court dismissed the application for leave concerning that decision in 2013.

[7] In 2012, the applicants' request for a pre-removal risk assessment was denied.

[8] On June 8, 2015, the applicants filed a second application for exemption from the obligation to submit their permanent residence application from outside Canada based on humanitarian and compassionate considerations. On January 31, 2017, an IRCC officer denied the application, and that decision is the subject of this judicial review.

IV. Decision

[9] On January 31, 2017, an immigration officer from the Department found that the applicants had not submitted sufficient humanitarian and compassionate considerations to warrant an exemption from the requirements set out in the Act for permanent residence applications.

[10] The officer first examined the applicants' degree of establishment in Canada, viewing as positive the fact that they had entered the workforce and accumulated savings. She placed some weight on these positive elements, noting that they were not determinative factors in themselves, since immigrants are generally expected to be financially independent. As for the applicants' social network in Canada, the officer noted their volunteer involvement in their religious community and the ties that they had developed in Canadian society. However, she was not convinced that these ties to Canada were stronger than their ties to India, particularly given that the applicants' elder son remained in India. The officer did not place significant weight on the applicants' establishment in Canada.

[11] The officer went on to analyze the best interests of the applicants' child, now a young adult. She noted that the applicants had not submitted any proof of relationship. Moreover, the applicants did not submit any documents to show that they would be unable to meet their child's needs if they were to return to India and did not demonstrate that returning to India would be detrimental to them. Based on the school reports submitted, the officer noted that the applicants' son had experienced difficulties with motivation and attitude. The officer noted that he had

obtained a work permit in Canada, but no evidence was submitted regarding his current occupation (work or school) and his efforts to be financially stable. However, the officer stated that she was satisfied that he developed ties to Canadian society, without being convinced that they are stronger than his ties to India. She noted the allegations that he suffers from depression and adjustment problems as a result of the uncertainty of their situation in Canada, although no evidence was submitted in that regard or to show that he could not receive adequate treatment or have family support if he were to return to India. The officer therefore gave little weight to the best interests of the child.

[12] The officer completed her analysis by examining the risks and adverse conditions in India. She found that the applicants had not submitted any evidence to support their allegations of fear of persecution, arbitrary detention and extortion. The officer consulted objective documentation on the situation in India, and particularly on the return of unsuccessful refugee claimants. Since the applicants did not demonstrate that they were wanted for crimes or that they were at risk of being arrested if they were to return to India, the officer placed no weight on their allegations. The officer also considered the difficult economic conditions in India. She concluded that, although the economic situation is far from ideal, that is the reality for the entire population, and the applicants had not demonstrated any specific, personal risk. The officer noted that the applicants had acquired skills in Canada that would be transferable to India and that they had savings and family in India, which would help them cope with the hardship associated with their return. Therefore, the officer gave little weight to this factor.

V. Issue

[13] This case raises the following issue: was the officer's decision to deny the application for humanitarian and compassionate considerations reasonable?

[14] An officer's decision to grant or deny the exemption set out in subsection 25(1) of the IRPA is a discretionary decision that is reviewable on the standard of reasonableness. The Court must show great deference in reviewing decisions made by officers in this regard.

VI. Relevant provisions

[15] Subsection 25(1) of the IRPA sets out exemptions for humanitarian and compassionate considerations:

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	**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,

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.	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.

VII. Analysis

[16] For the following reasons, the Court dismisses this judicial review.

A. *Submissions of the applicants*

[17] The applicants argue that the officer erred by considering them not to be established in Canada when they have been here for more than 10 years and that she incorrectly weighed the extent of the ties they had built to Canada against their ties to India, in addition to suggesting that the applicants could find work in similar fields if they were to return to India.

[18] The officer allegedly also erred in examining the best interests of the applicants' child, in that she did not understand his emotional needs and incorrectly concluded that he still had ties to India (meaning with his older brother and his parents' family), when he had only lived in that country for a few months when he was just seven years old. She also allegedly ignored issues related to his future and his integration and distorted the fact that the applicants have savings by

determining that they would be able to use them if they were to return to India (*Lauture v. Canada (Citizenship and Immigration)*, 2015 FC 336, at paragraph 26 [*Lauture*]).

[19] Lastly, when examining the difficult economic situation in India, the officer allegedly incorrectly analyzed the difficulties justifying the applicants' application based on humanitarian and compassionate considerations. She allegedly confused the requirements in section 97 of the IRPA that a personal risk be demonstrated and those in subsection 25(1) of the IRPA, based on the applicants' personal circumstances and the hardship caused by their removal from Canada (*Lauture*, above, at paragraphs 30–31).

B. *Submissions of the respondent*

[20] On the contrary, the respondent argues that the officer's decision is reasonable and that it was made after she had assessed and weighed all humanitarian and compassionate considerations raised by the applicants, which were insufficient to warrant an exemption from the Act. The respondent thus alleges that the officer was required to consider the applicants' overall situation, which includes their ties to Canada, as well as their ties to India. The respondent also notes that the officer assessed the best interests of the applicants' child, noting that he is now a young adult, that he would be with his parents, and that he would be supported in his return to India. Lastly, the respondent argues that the officer was correct in concluding that, with regard to the difficult economic situation in India, there is no specific, personal risk to the applicants that would warrant granting an exemption to the Act (*Lalane v. Canada (Citizenship and Immigration)*, 2009 FC 6, at paragraph 1).

C. *Analysis*

[21] In this case, the Court finds that the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law and that its intervention is not warranted (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 47). The applicants did not demonstrate any error or omission allegedly committed by the officer, and it is not this Court's role to reweigh the evidence. The officer considered all the evidence the applicants submitted: the duration of their stay in Canada, the jobs they hold, the ties they had developed to the country, the best interests of their son and the hardship they would face if they had to return to India.

[22] The case law clearly establishes that the duration of an applicant's stay in Canada is not sufficient in itself to justify an exemption from the Act for humanitarian and compassionate considerations (*Mbau Mpula*, above, at paragraph 30). Although the applicants provided proof of their employment in Canada, to which the officer gave some positive weight, those factors alone were insufficient to demonstrate that removal of the applicants from Canada would cause them unusual or disproportionate hardship that would justify an exemption from the Act (*Irimie*, above, at paragraph 20).

[23] It would also be false to claim that the officer was not alert, alive and sensitive to the best interests of the applicants' son, because she considered this factor, which was submitted even though he is an adult, and she examined all the applicants' arguments concerning their son (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at

paragraphs 74–75). In doing so, she considered the child's overall situation, as required by the Supreme Court (*Kanthasamy v. Canada (Citizenship and Immigration)*, [2015] 3 SCR 909, 2015 SCC 61, at paragraph 45 [*Kanthasamy*]). It should also be noted that the Supreme Court set out the relevant factors for officers to consider based on the *Minister's Guidelines*:

> [40] Where, as here, the legislation specifically directs that the best interests of a child who is "directly affected" be considered, those interests are a singularly significant focus and perspective: *A.C.*, at paras. 80-81. The Minister's Guidelines set out relevant considerations for this inquiry:
>
> > Generally, factors relating to a child's emotional, social, cultural and physical welfare should be taken into account when raised. Some examples of factors that applicants may raise include but are not limited to:
> >
> > - the age of the child;
> > - the level of dependency between the child and the [humanitarian and compassionate] applicant or the child and their sponsor;
> > - the degree of the child's establishment in Canada;
> > - the child's links to the country in relation to which the [humanitarian and compassionate] assessment is being considered;
> > - the conditions of that country and the potential impact on the child;
> > - medical issues or special needs the child may have;
> > - the impact to the child's education; and
> > - matters related to the child's gender.
>
> (*Inland Processing*, s. 5.12)
>
> [Emphasis of the Court]
>
> (*Kanthasamy*, above, at paragraph 40.)

[24] The Court therefore rejects the applicants' argument that the officer allegedly erred by considering the ties that remained between the applicants and their family in India, regarding both their level of establishment and the best interests of their son.

[25] Lastly, the Court is of the view that the officer conducted an in-depth examination of the political and economic situation the applicants would face if they were to return to India. She had access to objective documentation and analyzed the arguments submitted by the applicants. In light of the evidence that was available to the officer, her conclusion that they would not face any specific danger is reasonable.

[26] The burden is always on the applicants to provide evidence to demonstrate the humanitarian and compassionate considerations in support of an exemption from the IRPA in relation to permanent residence, a burden that they did not discharge (*Khader*, above, at paragraph 49; *Chowdhury*, above, at paragraph 16).

[27] The reasons in support of the officer's decision are justified, transparent, and intelligible. The decision is therefore reasonable, and there is no need for the Court to intervene.

VIII. Conclusion

[28] For these reasons, the application for judicial review is dismissed.

JUDGMENT in IMM-801-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. There are no questions of general importance to be certified. The style of cause is amended to reflect the correct respondent, namely the Minister of Citizenship and Immigration.

"Michel M.J. Shore"
Judge

Certified true translation
This 10th day of October 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-801-17
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