Federal Court  Cour fédérale

Date: 20171101

Docket: IMM-1345-17

Citation: 2017 FC 979

Ottawa, Ontario, November 1, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

VADIM SCENIOV

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Sceniov's application for permanent residence under the Spouse or Common-Law Partner in Canada Class was denied as his sponsor was found to be in default of a previous sponsorship undertaking. He was directed to report for removal from Canada in March 2017. His request for a deferral was refused, and it is that decision that is now before the Court on judicial review.

[2] Mr. Sceniov submits that the decision of the Inland Enforcement Officer to refuse his deferral request was unreasonable as the Officer: (1) misapprehended the circumstances relating to the status of his permanent residence application; (2) undervalued the hardship removal would impose on him and his family; and (3) failed to properly assess the best interests of the children. The respondent submits that the Officer's discretion to grant the deferral request was limited, that the sponsorship application had been terminated a year earlier, that the Officer considered the children's short term interests and that the hardship assessment was reasonable.

[3] The application raises the following issue:

> Was the Officer's decision not to defer removal from Canada unreasonable because the officer:
>
> i. Misapprehended the circumstances relating to the status of the sponsorship application? or
>
> ii. Ignored or failed to properly assess evidence in assessing hardship?

[4] Having considered the tribunal record, and the written and oral submissions of the parties I am unable to conclude that the intervention of this Court is warranted. The Officer's decision was reasonable for the reasons that follow.

II. Background

[5] Mr. Sceniov is a citizen of Moldova. He arrived in Canada in 2008 and initiated a refugee claim. He married his spouse in March 2011. In May 2012 he withdrew his refugee claim, choosing instead to pursue an in-land spousal sponsorship application.

[6] His spouse was approved as a sponsor in August 2012, and Mr. Sceniov received stage 1 approval to apply for permanent residency.

[7] In January 2016 the respondent sent a letter to Mr. Sceniov's spouse advising her that she may not be eligible to sponsor Mr. Sceniov as there was information indicating she had defaulted on a previous undertaking. The January 2016 letter advised that she had 30 days to make any submissions and that her ineligibility may result in the application being refused.

[8] In February 2016 the respondent advised Mr. Sceniov by letter that his application had been refused as he did not have a valid sponsor. That letter was sent to the same address as the January 2016 letter but was returned to the respondent marked "moved/return to sender address unknown."

[9] In March 2016 the respondent sent a third letter addressed to Mr. Sceniov stating the spousal application had been transferred from the respondent's Vegreville office to the respondent's Etobicoke office.

[10] Mr. Sceniov's representative subsequently submitted an Access to Information and Privacy [ATIP] request concerning the sponsorship application. The response, received in April 2016, included the February 2016 letter refusing the application.

[11] Mr. Sceniov was notified in June 2016 that he was eligible for a Pre-Removal Risk Assessment [PRRA] and he filed a PRRA application the following month. A negative PRRA

decision issued in December 2016, and was communicated to Mr. Sceniov in person on February 5, 2017. On March 1, 2017 Mr. Sceniov was directed to report for removal on March 26, 2017. On February 28, 2017 Mr. Sceniov submitted payment to address his wife's default on the previous sponsorship undertaking.

[12] Mr. Sceniov requested his removal be deferred. He submitted that confusion existed as to the status of his spousal sponsorship application: correspondence subsequent to the February 2016 refusal notification suggested the application was still active and time was required to confirm the application's status, or to allow the applicant to re-file if the application had been terminated. The deferral request also identified issues of family hardship that would result from removal.

[13] In refusing the deferral request, the Officer was not persuaded by submissions concerning confusion about whether the permanent resident application had been terminated, noting that Mr. Sceniov was responsible for providing the respondent with a current mailing address. In addressing hardship the Officer noted it was beyond the authority of a deferral Officer to perform an adjunct Humanitarian and Compassionate evaluation, that a deferral of removal is intended to address temporary practical impediments to removal and is not meant to be a long term reprieve.

[14] The Officer considered the circumstances of the children involved, addressed Mr. Sceniov's contribution to the family and considered the health challenges of his wife, her father and her grandmother. The Officer concluded that these grounds alone did not warrant deferral,

and dismissed the suggestion that Mr. Sceniov's separation from his family could become indefinite if he were not authorized to return to Canada as speculative.

III. Standard of Review

[15] Deferral decisions are reviewed by this Court against a standard of reasonableness (*Baron v Canada (Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 25 [*Baron*]). In assessing the reasonableness of an enforcement Officer's decision the Court is required to consider whether the decision is justified, transparent and intelligible and whether it falls within the range of possible acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

[16] The *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] requires that removal orders be enforced as soon as possible (IRPA s 48(2)). As a result a deferral Officer's discretion to defer removal is very limited (*Baron* at para 51*)*.

A. *Did the Officer misapprehend the circumstances relating to the status of the sponsorship application?*

[17] Mr. Sceniov submits that the March 2016 letter was the last piece of correspondence in respect of the application and the Officer's decision incorrectly states that the February 2016 refusal letter was the "final letter" sent. This erroneous factual finding and the Officer's failure to

consider the confusion the March 2016 letter caused renders the decision unreasonable. I disagree.

[18] The decision reflects that the Officer was aware that the February 8, 2016 letter had been returned to the respondent and that the March 22, 2016 letter had been sent. However the Officer notes that Mr. Sceniov was responsible for keeping "mailing and residential addresses (which I note are different) up to date with CBSA, IRCC and any other institution." It is in this context that the Officer refers to the February 8, 2016 letter refusing the sponsorship application as the final letter. This statement is neither erroneous nor inconsistent with the facts and circumstances.

[19] Mr. Sceniov relies on *Gurshomov v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1212 [*Gurshomov*] to argue that confusion as to the status of the sponsorship is a relevant consideration an enforcement Officer must address. While I do not disagree, in this case the Officer reasonably concluded there was no confusion as to the status of the application.

[20] The facts in *Gurshomov* differ significantly from those here. In *Gusrshomov* there was ample evidence of confusion—experienced by both the applicant and the respondent—as to the status of an H&C application. In addition the applicant in *Gusrshomov* immediately initiated a new H&C application after learning that the initial H&C had been dismissed over a year earlier.

[21] In this case the Officer acknowledged the submissions alleging numerous errors on the part of the respondent but concluded that the refusal decision contained in the "final letter" dated

8 February, 2016 had been communicated. While submissions were made to the effect that the March 22, 2016 letter led to confusion, there was ample information in the record to support the Officer's conclusion that this was not the case: (1) Mr. Sceniov's wife was informed by letter dated February 8, 2016 that she was ineligible to sponsor her husband and that a final decision was to be communicated to him; (2) in April 2016 Mr. Sceniov's representative become aware of and was in possession of a copy of the refusal letter; (3) Mr. Sceniov's wife, in a letter advocating for the deferral of removal justifies the deferral on the grounds that it will allow her "to submit my sponsorship application urgently."; and (4) Mr. Sceniov's mother-in-law also refers to a "sponsorship application my daughter… is going to submit urgently." I am therefore unable to conclude that the Officer misapprehended the circumstances relating to the status of the sponsorship application.

B. *Did the Officer ignore or fail to properly assess evidence of hardship?*

[22] It is argued that the Officer failed to address the hardship that removal would cause Mr. Sceniov and his family, and ignored the family's financial situation, the poor health of other family members and the best interests of the children [BIOC]. With respect to the children he argues the circumstances are exceptional as two of the three children have special needs and he is not only a caregiver but also the family's breadwinner.

[23] The assessment of a child's best interests in the deferral context differs from that which arises in the context of an H&C application. In the deferral context an Officer is not required to carry out a comprehensive BIOC analysis but must be alert, alive and sensitive to the child's short term best interests (*Uthayakumar v Canada (Public Safety and Emergency Preparedness)*

2007 FC 998 at para 12; *Pegito London v Canada (Citizenship and Immigration)*, 2015 FC 942 at paras 16 and 17 [*London*]).

[24] In this case the Officer acknowledged the children's circumstances, including the medical issues the two younger children suffer from and their special needs. The Officer also acknowledged the role of Mr. Sceniov in supporting the children financially, emotionally and physically. The Officer acknowledged that Mr. Sceniov's departure would impact the children but also noted that the children would remain in the care of their mother and would continue to have access to educational, medical and social services.

[25] Mr. Sceniov argues that this analysis diminished his role in the family and, relying on *London*, that the Officer failed to acknowledge the absence of adequate provisions for the children's care in his absence. I am unpersuaded. The children's circumstances were canvassed and the Officer was alive and sensitive to the impact of removal on the children. Mr. Sceniov's role in caring for the children was considered, but unlike the situation in *London* where the "deferral request confirmed his responsibility as the primary caregiver to the three children" (*London* at para 18), Mr. Sceniov was not the primary caregiver for the children. Rather he is described by both his wife and his mother-in-law as an important member of the family and as someone who helps with the children. In fact the discussion of his role in assisting with the more elderly members of his wife's family is much more detailed than is the description of his role in respect of the children. In indicating that the children would remain in the care of their mother the Officer did, on the facts in this case, address provisions for their care and adequately addressed their short term best interests.

[26] Similarly it was not unreasonable for the Officer to conclude that the hardship of separation as identified in the deferral application was an inherent consequence of the removal process and did not rise to the level that would justify the deferral of his removal.

V. Conclusion

[27] The application is denied. The parties have not proposed a question of general importance for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Cemone Morlese	FOR THE APPLICANT
Leanne Briscoe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cemone Morlese Lawyer Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT