Federal Court  Cour fédérale

Date: 20171214

Docket: IMM-1652-17

Citation: 2017 FC 1148

Ottawa, Ontario, December 14, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

KURTIS OMERO DOUGLAS

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] Mr. Douglas brings this application seeking judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a Canada Border Services Agency [CBSA] Inland Enforcement Officer's [Officer] decision dated April 11, 2017, refusing his request for deferral of removal to Jamaica.

[2] For the reasons set out below, and having considered the Officer's decision in the context of the record as a whole, I have concluded that the decision is lacking in transparency and intelligibility as it relates to the short term impact of removal on the children involved. The application is granted.

I. Background

[3] Mr. Douglas is a Jamaican citizen who arrived in Canada in June 2012 using a false name and fraudulent documents. Since arriving in Canada he has married. He and his wife have a child who was born in 2016. Mr. Douglas also treats his wife's child from a prior relationship, born in 2012, as his own child.

[4] In March 2013 the Canada Border Services Agency [CBSA] became aware of Mr. Douglas' true identity and also learned that he had been deported from the United States to Jamaica in 2012 following a robbery conviction. He was found to be inadmissible to Canada based on foreign criminality under para 36(1)(b) of the IRPA. He was arrested and detained by CBSA based on his criminal inadmissibility and misrepresentation. A deportation order issued, and Mr. Douglas waived his right to a Pre-Removal Risk Assessment.

[5] The travel documentation required to remove Mr. Douglas to Jamaica was not obtained until October 2015. In December 2015 Mr. Douglas was charged with offences arising from the unauthorized possession and use of credit cards and identity documents. Shortly thereafter he submitted an application for permanent residence in the "In Canada Spousal Class".

[6] In January 2017 Mr. Douglas was convicted on the 2015 charges. He received a conditional discharge. In March 2017 steps were initiated to enforce the removal order. On March 21, 2017 Mr. Douglas submitted a Humanitarian and Compassionate application to be considered with the spousal sponsorship application.

[7] On March 30, 2017 Mr. Douglas sought a deferral of the removal on the basis that: (1) he had a pending in-Canada permanent residence application under the spousal class; (2) he would face risk in Jamaica; and (3) his removal would cause hardship on his family and would not be in the best interests of his children. The Officer denied the deferral request on April 11, 2017.

II. Issues

[8] Mr. Douglas has submitted that the Officer: (1) fettered his or her discretion by focusing on the imminence of a decision in respect of the application for in Canada spousal sponsorship as opposed to the timeliness of the application; (2) engaged in speculation in finding that the separation resulting from removal need not be complete or permanent; (3) erred in considering risk in Jamaica; and (4) applied the wrong legal test in assessing the best interests of the children. The respondent has identified the reasonableness of the decision as the sole issue that arises.

[9] The sole issue that need be addressed in considering the application is, as the respondent has submitted, reasonableness.

III. Standard of Review

[10] The decision of an inland enforcement officer under IRPA section 48 is to be reviewed against a standard of reasonableness (*Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 43). A court should only intervene where a decision fails to reflect the elements of justification, intelligibility and transparency in the decision-making process, or the decision falls outside the range of reasonable possible outcomes based on the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

[11] It is not disputed that pursuant to section 48 of IRPA an enforcement officer has only a limited discretion to defer removal (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paras 49–51). Despite the limited and narrow discretion to be exercised, an officer's decision must nonetheless reflect the elements of transparency and intelligibility in light of the record as a whole.

[12] In this case the submissions and evidence before the Officer indicated: (1) Mr. Douglas is currently employed; (2) he is the sole source of financial support for the family; (3) he is the named tenant on the family apartment; (4) his wife is enrolled in a full time two-year education program that is being funded through a student loan program; (5) her attendance in the education program is facilitated by Mr. Douglas' ability to drop the children at school and daycare; (6) that other family members do not have a car and are not close enough to assist with the children; (7) Mr. Douglas' removal would require his wife to cease her studies but her indebtedness under the

student loan program would remain; and (8) the family may be required to give up their current accommodations if Mr. Douglas were removed.

[13] The Officer summarized this evidence and did not take issue with it:

> I note that counsel submits that Mr. Douglas' spouse relies upon him for emotional and financial support. I note that the submissions indicate that Mr. Douglas actively participates in raising both children and that he is the sole breadwinner in the family. I note it is stated that the spouse is currently a full time student.

[14] The Officer then noted that separation and relocation are "an inherent part of the removal process" and further states that the impacts can be lessened on the spouse and children through overseas visits and the initiation of a spousal sponsorship application from outside Canada. The Officer similarly concludes that the continued presence of the children's mother, her access to family members and her ability to access social support programs and public agencies will be sufficient to address the children's separation from the father. The Officer concludes that deferral of the removal order is not appropriate in the circumstances. However, in reaching these conclusions the Officer simply fails to engage in a consideration of the evidence.

[15] In some cases it may be sufficient for an officer to simply summarize the evidence. This is not one of those cases. The evidence, on its face, is not consistent with the conclusions the Officer has reached. For example: (1) it is not readily apparent how the Officer concluded that family separation can be mitigated by overseas travel given the financial circumstances of the family; (2) it is not at all apparent that the Canadian spouse will be eligible to sponsor Mr. Douglas from outside of Canada, a conclusion the Officer reaches without the benefit of any

supporting analysis; (3) the interests of the children are premised on the support of relatives in Canada however the evidence indicates those relatives do not live close by; and (4) the Officer does not address the impact of the potential loss of the family accommodations on the short term interests of the children.

[16] In this case, the Officer's failure to meaningfully address the evidence renders the decision unreasonable.

[17] The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is returned for redetermination by another decision-maker.

3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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