Federal Court  Cour fédérale

Date: 20180227

Docket: IMM-2994-17

Citation: 2018 FC 221

Ottawa, Ontario, February 27, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

ESKENDER FUAD IBRAHIM

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, who is from Ethiopia, seeks judicial review of the June 13, 2017 decision of the Immigration Appeal Division [IAD] upholding a removal order issued against him for misrepresentation under s.40 of the *Immigration and Refugee Protection Act* [IRPA]. The IAD concluded that there were insufficient humanitarian and compassionate [H&C] considerations to warrant an exercise of discretion in this matter.

I. Background

[2] The Applicant is from the Oromo clan in Ethiopia. In 1999, because of unrest in Ethiopia, he left to live in Kenya.

[3] In January 2008, the Applicant met his wife in Kenya. The Applicant`s wife is from the Midgan clan, which is considered an "outcast group" and of lower status than the Oromo. The Midgan clan have no outward difference in appearance and the Applicant's wife spoke the Oromo language and lived among Oromo people in Kenya.

[4] In March 2008 the Applicant and his wife married in Kenya and had two children.

[5] In 2008 the Applicant's father started the process to sponsor the Applicant to come to Canada.

[6] In 2011 the Applicant obtained his visa from a Canadian visa post in Nairobi. At the time of obtaining his visa he did not indicate that his marital status changed or that he had two children.

[7] One week after his interview at the visa office in Nairobi, the Applicant had a friend send a letter dated March 8, 2011 to the Canadian High Commission, Visa Section in Nairobi indicating his changed marital status. The visa office received the letter on March 11, 2011.

[8] The Applicant entered Canada on March 9, 2011. Upon entry when asked, he advised that he had children but he did not disclose his marriage.

[9] On July 18, 2016, the Applicant was declared inadmissible to Canada and ordered removed due to a misrepresentation under s.40(1)(a) of the IRPA by the Immigration Division.

II. Decision Under Review

[10] The IAD concluded that the removal order was legally valid. On this judicial review the Applicant does not challenge that finding.

[11] With respect to the H&C considerations the IAD noted that it was bound to apply the factors laid out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (Imm App Board) modified for misrepresentation cases by *Canada (Citizenship and Immigration) v Deol*, 2009 FC 990.

[12] The IAD concluded that the misrepresentation was serious as the Applicant was sponsored to Canada as a dependent family member of his father. At the time of being sponsored, if he was married, he would not have been eligible. The IAD noted that it should have been known to the Applicant throughout the sponsorship process that he was required to notify Canadian officials of his wife and children. The IAD found that the Applicant was aware of this obligation since he arranged for the letter to be delivered. The IAD concluded that the Applicant failed to disclose this information prior to his departure because he knew it would jeopardize his immigration to Canada.

[13] With respect to his marriage to someone from an "outcast" clan, the IAD acknowledged that the marriage between clans could impact the Applicant's family situation in Ethiopia. However, the IAD concluded that there was no evidence that the couple experienced any discrimination after their marriage in Kenya. The IAD also noted that the Applicant's wife chose to leave Kenya and return to Ethiopia with the children, to be near her family. Further the IAD noted that the Applicant invited family and friends to be at his IAD hearing, but did not tell them in advance that he married a Midgan woman. The IAD concluded that this "makes little sense," given the risk asserted by the Applicant. The IAD concluded that the Applicant overstated or exaggerated the risks he would face in Ethiopia as a result of his mixed clan marriage as there was no reason that his wife's background would become public.

[14] On the establishment factor, the IAD noted that the Applicant had only been in Canada for six years and that his level of establishment was a "marginally positive" factor. The IAD noted his work and volunteer efforts in Canada. The IAD refused to assign any positive weight to the Applicant's support letters from friends and supporters in Canada because the Applicant did not tell them he married a Midgan woman, and because his bonds with his immediate family in Canada were strained.

[15] On the conditions in Kenya and Ethiopia, the IAD noted the civil unrest in Ethiopia. However it concluded that there was no evidence that the government targeted Oromo people. Further the IAD concluded that there was no information that the civil unrest was affecting the Applicant's wife and children directly. The IAD noted that while the Applicant had not been in Ethiopia for many years, he had support systems in place to reintegrate.

[16] Finally, the IAD considered the best interests of the children [BIOC]. The Applicant testified that his children would be better off if he were to remain employed in Canada and be able to financially support them. However, the IAD noted that it was difficult for the children to be without their father. The IAD noted that while it might be in the financial BIOC for the Applicant to remain in Canada, his physical presence was a more important BIOC consideration.

[17] The IAD concluded that there were insufficient H&C factors to warrant special relief.

III. Preliminary Issue

[18] The parties submit that the style of cause should be amended to note the Minister of Public Safety and Emergency Preparedness as the Respondent. I agree and it will be amended accordingly.

IV. Standard of Review

[19] The parties agree that the standard of review is reasonableness.

V. Issues

[20] The Applicant raises the following issues:

A. Was the mixed clan marriage properly considered?

B. Risk on Return to Ethiopia

C. BIOC

VI. Analysis

A. *Was the mixed clan marriage properly considered?*

[21] The Applicant argues that the IAD erred in its assessment of the evidence with respect to the risks because of his mixed clan marriage. He argues that his marriage is socially taboo and culturally unacceptable. This was supported with evidence from his own family. He argues that if he returns to Ethiopia this may become known and therefore he and his family are at risk.

[22] The IAD considered the evidence which indicates that while people in Ethiopia may be inclined to inquire into the background of individuals, such questions usually occurs at the time of marriage. Here, as the Applicant and his wife have been married for many years, the IAD determined that this was not a valid concern. Furthermore, the Applicant's wife left Kenya and returned to Ethiopia to be near her family. The IAD also noted a lack of distinguishing features that show the Applicant's wife is Midgan.

[23] The IAD found that there was no evidence that the wife's status had become known, and even if it did, the IAD found that the Applicant exaggerated the negative consequences of such discovery. The IAD noted that the Applicant and his wife lived among the Oromo in Kenya with no issues.

[24] These conclusions are all reasonable in light of the record. The onus is on the Applicant to offer evidence in support of the claims made (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5). Here the IAD considered the evidence offered and

reasonably applied that evidence to the circumstances. The IAD findings are owed deference (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 57-58; *Sivapatham v Canada (Citizenship and Immigration)*, 2016 FC 721 at para 12).

[25] It was reasonable for the IAD to conclude that the Applicant's evidence "lacked specificity and was not conclusive" on the simple fact of being in a mixed clan marriage would result in discrimination (*Iamkhong v Canada (Citizenship and Immigration)*, 2011 FC 355 at para 53 [*Iamkhong*]).

B. *Risk on Return to Ethiopia*

[26] The Applicant argued that documentary evidence demonstrates that he would face hardship as an Oromo person in Ethiopia.

[27] The IAD considered the country condition evidence and noted that the evidence showed that attacks on those of the Oromo clan were limited to those who were *considered* to be dissenting voices, namely, students, artists and opposition leaders. Here there was no evidence that the Applicant met any of those profiles. The IAD therefore concluded that the Applicant failed to show how the general country conditions information with regard to risk applied to him.

[28] For the same reasons as above, this was a reasonable conclusion for the IAD to reach (*Iamkhong*, at para 53).

C. *BIOC*

[29] The Applicant argues that the IAD conclusion on the BIOC is unreasonable as there is uncontested evidence the he is the sole financial provider for his children. He argues that the finding of the IAD that his physical presence with his children should be weighed more heavily than his financial support is at odds with *Kanthasamy v Canada (Citizenship and Immigration),* 2015 SCC 61.

[30] The IAD concluded that the BIOC was a positive factor, and militated in favour of the Applicant's remaining in Canada, but the factor was not a compelling one. It drew this conclusion on the basis of the fact that while the Applicant is the sole breadwinner in Canada for his family, the children would benefit from their father's presence. Further with respect to the Applicant's financial support of the family, the IAD noted that there was no evidence that he could not work in Ethiopia.

[31] Although the best interests of affected children are important, they are not determinative (*Kisana v Canada (Citizenship and Immigration),* 2009 FCA 189 at para 24. It is not for this Court on review to reweigh the various factors in the H&C analysis, and the weight put on those factors.

[32] Although the Applicant argues that the IAD failed to consider the humanitarian crisis for children in Ethiopia, minimal evidence was put to the IAD on that issue as it relates specifically to the Applicant's children, and so the IAD cannot be faulted for not making it a determinative

consideration in the analysis (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FCR 164 at paras 10-11).

[33] The Applicant is asking this Court to put *more* weight on the BIOC, even after the IAD considered it a positive factor. This is not the Court's role.

VII. Conclusion

[34] Overall the IAD weighed the factors before it and determined that the evidence was lacking to grant H&C relief in these circumstances. The IAD decision is justified, transparent and intelligible and therefore reasonable.

[35] Overall, the IAD weighed the evidence before it and concluded that the evidence was not sufficient to warrant a grant of H&C relief. This is a reasonable conclusion when considered against the mixed evidence on the record, and it falls within the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 11-12).

JUDGMENT in IMM-2994-17

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to name the Minister of Public Safety and Emergency Preparedness as the Respondent;
2. The judicial review is dismissed; and
3. No question is certified.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2994-17
STYLE OF CAUSE:	ESKENDER FUAD IBRAHIM v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
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