Federal Court  Cour fédérale

Date: 20180516

Docket: IMM-4563-17

Citation: 2018 FC 516

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 16, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

JARNAIL SINGH BHINDER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Jarnail Singh Bhinder, is seeking judicial review of the decision of an Immigration Officer [the Officer], dated October 6, 2017, denying his application for permanent residence on humanitarian and compassionate grounds [H&C application] under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant is a citizen of India. He left his home country in 1997 for the United States, where he filed a claim for refugee protection. His claim was denied in 2002, as well as his appeal in 2003.

[3] On June 1, 2008, the applicant came to Canada and filed a claim for refugee protection on July 9, 2008. He claims he had been detained and tortured by police and the army because of his political opinions. On November 24, 2010, the Refugee Protection Division [RPD] denied him refugee status because of his lack of credibility and the existence of an internal flight alternative. The applicant filed an application for leave and for judicial review, which this Court dismissed on December 21, 2010.

[4] On April 13, 2011, the applicant applied for a pre-removal risk assessment [PRRA]. His application was denied on May 30, 2011; his application for leave and for judicial review was also dismissed on October 26, 2011.

[5] The applicant filed an H&C application on April 12, 2017. On October 6, 2017, the Officer denied the application on the grounds that the evidence the applicant presented was insufficient to establish the existence of humanitarian and compassionate grounds that would justify granting an exemption from the requirements of the Act.

[6] The applicant criticizes the Officer for having: (1) applied the wrong test for interpreting subsection 25(1) of the IRPA by doubly applying sections 96 and 97 of the IRPA on the notion of an internal flight alternative; (2) provided an unreasonable interpretation of the provisions of

the IRPA by requiring the applicant to submit, in addition to psychological, medical and psychiatric reports, additional evidence demonstrating that he would be unable to continue receiving any form of medication or treatment if he were to return to India; (3) ignored medical reports by failing to address the repercussions his removal from Canada to India would have on his health; and (4) fettered his discretion by failing to consider the specific circumstances of his case and performing a fragmented analysis of the factors advanced.

[7] For the reasons set out below, the Court finds that this application for judicial review must be dismissed.

II. Analysis

A. *Standard of review*

[8] It is well established that the applicable standard of review for an immigration officer's decision as to whether or not to grant an exemption on humanitarian and compassionate grounds is reasonableness. The decision is highly discretionary and raises questions of mixed fact and law, calling for deference from this Court (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraphs 10, 44 [*Kanthasamy*]; *Kisana v. Canada (Citizenship and Immigration)*, 2009 FCA 189 at paragraph 18).

[9] Where the reasonableness standard applies, this Court's role is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law." If "the process and the outcome fit comfortably with the principles of

justification, transparency and intelligibility," it is not for the Court to replace the outcome with one that would be preferable (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 59 [*Khosa*]).

[10] It is also established that the burden of presenting and proving the facts on which the H&C application is based is on the applicant (*Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paragraphs 5, 8 [*Owusu*]).

[11] The applicant argues that the selection of the appropriate legal test against which to assess the facts of an H&C application is reviewable on the standard of correctness. For the purposes of this case, the Court considers it unnecessary to determine the applicable standard of review because it finds that the Officer did not commit a reviewable error in assessing the adverse conditions the applicant could encounter if he were to return to India.

B. *Application of the wrong legal test*

[12] The applicant criticizes the Officer for having applied the wrong legal test to assess adverse conditions for the purposes of subsection 25(1) of the IRPA by importing the factors considered pursuant to sections 96 and 97 of the IRPA. In this regard, the applicant is basing his argument on two (2) paragraphs in the decision where the Officer referenced the notion of internal flight. In the first paragraph, the Officer notes that the RPD did not find the applicant to be credible, did not believe his story, and concluded that there was an internal flight alternative elsewhere in India. In the second paragraph, the Officer notes that the applicant did not present

any evidence indicating that he could not relocate to internal flight cities. The applicant claims that these references show that the Officer [TRANSLATION] "obscured the real issue, which consisted of evaluating whether the applicant would face difficulties upon returning to his home country that would justify an exemption."

[13] The Court finds that the Officer's statements must be considered in their context. In his assessment of the adverse conditions alleged by the applicant, the Officer first examined the applicant's statement that he still fears for his life because militants and terrorists are still active in India. In summarizing the remedies the applicant has sought since arriving in Canada, the Officer said that the applicant had made a claim for refugee protection upon arriving in Canada. The Officer also mentioned that the claim had been rejected because of a lack of credibility and the existence of an internal flight alternative. He continued by saying that the applicant's application for leave and for judicial review against that decision and his PRRA application were dismissed.

[14] Aware of the limitations of his analysis, the Officer reiterated that an H&C application is not a platform for appealing RPD decisions. The Officer then examined the evidence the applicant submitted and observed that the applicant provided no evidence to support his allegations of fear or to establish that he would not be able to relocate to cities that could represent internal flight alternatives. The Officer concluded that the applicant had not discharged his burden of establishing how the adverse conditions he describes in India could affect him, thus justifying an exemption. The Officer continued his analysis by examining the other difficulties alleged by the applicant, related to his ties in Canada and in India and his medical condition.

[15] The Court finds that, when the Officer's decision is read as a whole, the reference to an internal flight alternative does not lead to the finding that he applied the wrong test for evaluating the H&C application.

C. *The applicant's medical condition*

[16] In particular, the applicant criticizes the Officer for requiring him to provide additional evidence to demonstrate that he would be unable to continue receiving any form of medication or treatment if he were to return to India, despite the psychological diagnoses established by healthcare professionals. As a result, the Officer apparently minimized the difficulties he could experience just from the anxiety of returning to India, contrary to the teachings of the Supreme Court of Canada in *Kanthasamy*.

[17] The applicant also argues that the Officer unduly fettered his discretion by failing to consider the specific circumstances of his case, and rather limited his approach to a fragmented analysis of the factors advanced. He contends that the fact that none of the factors on its own seems to have earned significant weight demonstrates that the analysis violated the criteria of flexibility, compassion and equity set out in *Kanthasamy* (at paragraphs 29-32). According to the applicant, the Officer did not consider his health condition when assessing his employment history or the time he spent in Canada to assess the impacts his return to India could have on his health condition.

[18] The Court cannot accept the applicant's arguments.

[19] Contrary to the applicant's claims, the Officer does not focus only on the fact that he did not provide evidence to demonstrate that he would be unable to continue receiving treatment and medication if he were to return. On the contrary, it appears from the decision that the Officer extensively considered the medical evidence the applicant submitted.

[20] The Officer first examined the medical evidence the applicant submitted in his assessment of the applicant's establishment factor. The applicant claims that his medical condition has prevented him from working most of the time since his arrival in Canada. After reviewing the various reports, the Officer noted that they do not satisfactorily establish that the applicant's medical condition resulted in him being unable to integrate into the workforce in a meaningful way during the nine (9) years he has spent in Canada.

[21] The Officer also considered the applicant's medical condition in the context of his analysis of the alleged adverse conditions. The Officer reviewed in chronological order the four (4) reports prepared by healthcare professionals that describe the applicant's various health problems and noted that the reports indicate that the applicant has an anxiety disorder with panic attacks, post-traumatic stress and a moderate anxiety‑depressive condition. The Officer also acknowledged that the obligation to leave Canada would cause the applicant anxiety.

[22] However, the Officer noted that the most recent reports indicate that the applicant's condition is in partial remission and is improving with the current medication and treatment. It was in that context that the Officer stated there was a lack of evidence and information in the

record demonstrating that the applicant would be unable to continue receiving any form of medication or treatment if he were to return to India.

[23] The Officer's analysis did not end there. He observed that the reports from healthcare professionals date back to 2015, while the applicant filed the H&C application in April 2017. On that basis, the Officer found that he could not give significant weight to the applicant's health condition.

[24] It is true that the most recent medical report states that the applicant is vulnerable and at high risk of experiencing [TRANSLATION] "symptoms related to PTSD [post-traumatic stress] exacerbated by certain situations." However, the Court notes that the report does not specify the nature of these situations.

[25] Considering that the most recent reports state that the applicant's health condition is improving on medication and that there is no evidence in the record regarding changes in his health condition since 2015, the Officer's decision to give less weight to this factor is reasonable. It is important to recall that the burden is on the applicant to prove the facts underlying the H&C application (*Owusu* at paragraphs 5, 8).

[26] Moreover, the Court cannot accept the applicant's argument that the Officer deviated from the approach set out by the Supreme Court of Canada in *Kanthasamy*. A review of the record indicates that the Officer considered all the facts alleged and relevant factors advanced by the applicant. In addition, the Officer reasonably weighed the applicant's specific circumstances

in finding, in the exercise of his discretion, that there were no grounds for granting an exemption for humanitarian and compassionate considerations.

[27] The applicant would have preferred that the Officer give more weight to his medical condition in assessing his H&C application. However, it is not for the Court to reassess and weigh the evidence to reach a conclusion that would be favourable for him (*Khosa* at paragraph 59). Furthermore, the applicant did not demonstrate that the decision does not fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" and that it is not justified in a manner that satisfies the criteria of transparency and intelligibility within the decision-making process (*Dunsmuir* at paragraph 47).

[28] For all of these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court believes that this case does not raise any.

JUDGMENT in IMM-4563-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No questions of general importance were certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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