Federal Court  Cour fédérale

Date: 20181130

Docket: IMM-917-18

Citation: 2018 FC 1205

Ottawa, Ontario, November 30, 2018

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ABDUL GHAFOOR ADEL,
MARIAM ADEL
AND
SARAH HASSAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of a senior immigration officer [Officer] from Immigration, Refugees and Citizenship Canada, dated February 9, 2018. The

Officer refused the Applicants' application for permanent residency from within Canada based on humanitarian and compassionate [H&C] grounds, filed under subsection 25(1) of the IRPA.

II. Facts

[2] The Principal Applicant, Abdul Ghafoor Adel, is a 52-year-old citizen of Denmark. His wife and daughter are also citizens of Denmark and are included in the present H&C application. The Principal Applicant and his wife have four other children, one of whom was born in Canada on October 9, 2008, and two of whom are permanent residents of Canada. One of the Principal Applicant's children currently resides in Denmark, while the rest of them remain in Canada.

[3] The Principal Applicant is originally from Afghanistan. He left his country and travelled to Lebanon where he eventually met his wife in the 1980's. After the Principal Applicant's refugee claim was accepted, the family moved to Denmark in 1994.

[4] The family was well established in Denmark; the children attended school and their parents started a new business. The Applicants claimed that there had been a growing intolerance towards Muslims in the Danish society and, therefore, decided to leave the country. On October 31, 2007, the Applicants entered Canada. On January 16, 2008, the Principal Applicant filed for asylum in Canada, and it was denied. On December 29, 2011, the Applicants applied for a Pre-Removal-Risk-Assessment [PRRA] and their application was refused.

[5] On December 30, 2011, the Applicants submitted an H&C application, which was later refused. On February 16, 2017, the Applicants presented a second H&C application.

III. Impugned Decision

[6] On February 9, 2018, the Officer refused the Applicants' second application for permanent residence from within Canada on H&C grounds. It is this H&C decision that is the subject of the present application for judicial review.

[7] In his reasons for decision, the Officer began by stating that the onus is on the Applicants to satisfy the decision maker that the granting of a permanent resident status from outside Canada or an exemption under subsection 25(1) of the IRPA is justified by H&C considerations.

A. *Establishment in Canada*

[8] The Officer gave little weight to the Applicants' establishment in Canada. The Officer noted that the Principal Applicant and his spouse have shown to be "economically productive" in Canada. After reviewing the evidence provided by the Principal Applicant (such as balance sheets of the company and Income Tax returns), the Officer noted that the Principal Applicant and his wife had been running their own fast food restaurant in Calgary, called "Majaz Mediterranean Cuisine" since 2009. The Officer then addressed the Applicants' involvement in the community and noted that they volunteered at the Alkawthar Community Centre of Calgary and are members of the Aga Khan Shia Ismaili congregation. The Officer accepted the family's positive establishment in Canada, however, noted that the family has "received due process through the Canadian refugee determination program and therefore, a degree of establishment is expected to take place."

[9] After reviewing the Applicants' file, the Officer noted that a previous H&C application filed by the Applicants had been rejected in December 2011. The Officer determined that:

> [t]he applicants have continued to accumulate time in Canada by their own volition without having the legal right to do so. The applicants are the subject of enforceable removal order and continued to assume their establishment efforts being fully cognizant that their immigration status was uncertain and that removal from Canada could become an eventuality.

B. *Familial Relationships*

[10] The Officer noted that the Principal Applicant's parents, as well as siblings, are Canadian citizens who remain in Canada. Two of the Principal Applicant's adult children are already permanent residents of Canada. While being well aware that family reunification is one of the objectives of the IRPA, the Officer noted that Counsel for the Applicants stated in the H&C submissions that the two adult children continued to rely on their parents for emotional and financial support. Consequently, the Officer was not satisfied that the two adult children would remain in Canada if their parents returned to Denmark. Moreover, the Officer mentioned that the Applicants have another adult child that currently lives in Denmark. The Officer concluded that:

> While not a substitute for a physical presence, regular contact could be realized through various means of telecommunication. Inevitably, deportation would cause some psychological and emotional upset for the applicants and their family members. Although unfortunate, I find the separation from family members that would ensue for the applicants to be an inherent consequence of removal from Canada after having lived in the country for a lengthy period of time without status.

C. *Best interests of any children directly affected*

[11] The Officer noted that two minor children (one of whom is a citizen of Canada) were affected by the present H&C application. Counsel for the Applicants submitted that the Canadian child would be granted a temporary status in Denmark if she accompanied her parents to Denmark; thus not be able to have access to neither school nor healthcare right away. The Officer found that there was no objective evidence in support of this statement.

[12] The Officer acknowledged that both children are well integrated in Canada and have participated in extra-curricular activities. They are also "well-adjusted to the school environment and are progressing well". After considering Counsel's submissions and the evidence on file, the Officer concluded that it is nonetheless "reasonable to expect that continued education would be made available to them in Denmark". The Officer was satisfied that the children would be able to adjust a new school in Denmark and that their parents would be able to support them financially, emotionally and during their relocation in Denmark.

D. *Factors in country of origin*

[13] The Applicants claimed that, if returned to Denmark, they would face discrimination in Danish society. The Applicants submitted evidence demonstrating the growing intolerance towards Muslims in Denmark. After reviewing the adverse country conditions, the Officer found that there was insufficient objective evidence before him to establish that the Applicants would be socially or economically disadvantaged due to their religion. The Officer noted that the Applicants lived in Denmark from 1994 until 2007 before entering Canada. Considering that the

Principal Applicant and his spouse both found "gainful employment" in Denmark and that their children attended school in Denmark, the Officer was not convinced that the Applicants "faced serious restrictions on their right to earn a livelihood or access educational facilities". The Officer found that:

> [t]he applicants have not demonstrated any consequences of a substantially prejudicial nature against them that have precluded their participation and integration in social, political or economic life in Denmark that would rise to a level that would warrant relief through a statutory exemption permitted by an application of this nature.

E. *Conclusion*

[14] After examining all the factors and evidence presented, the Officer was not satisfied that applying for permanent residence from abroad would result in undue hardship for the Applicants to grant the requested exemption under subsection 25(1) of the IRPA.

IV. Issue

[15] The Court finds that the sole issue to be determined in the present matter is whether the Officer's decision is reasonable. In their written submissions, both parties submitted that the standard of review to be applied to an H&C decision is reasonableness (*Webb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1060 at para 5; *Da Silva v Canada (Citizenship and Immigration)*, 2011 FC 347 at para 14); however, in oral argument, counsel for the Applicants submitted that the correctness standard applied. The Court determines that the reasonableness standard applies. Therefore, the Court should not intervene with an H&C officer's findings if they are intelligible, transparent, justifiable, and fall 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 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

V. Relevant Provision

[16] Subsection 25(1) of the IRPA states:

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 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	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, 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.

child directly affected.

VI. Analysis

[17] For the following reasons, the application for judicial review is dismissed.

[18] The issue to be determined in the present matter is whether the H&C Officer's decision is reasonable.

[19] The Applicants argued that the Officer erred by providing vague and insufficient reasons related to the family's establishment in Canada. They contend that the Officer had a duty to address the reasons that led him to the decision that the family's degree of establishment in Canada would not cause unusual and undeserved or disproportionate hardship to justify an H&C exemption (*Asad v Canada (Citizenship and Immigration)*, 2017 FC 924 at para 12 [*Asad*]; *Baco v Canada (Citizenship and Immigration)*, 2017 FC 924 at para 18). Instead, the Officer simply determined that "a degree of establishment is expected to take place". The Applicants also argued that the Officer failed to consider the family's financial investment of approximately $200,000 in acquiring the fast food restaurant in Calgary.

[20] The Respondent, on the other hand, submitted that "[a]dequacy of reasons is not a stand-alone basis for quashing a decision" *(Osorio Diaz v Canada (Citizenship and Immigration)*, 2015 FC 373 at para 15 [*Osorio Diaz*]).

[21] The Court does not accept the Applicants' submissions regarding the insufficiency of reasons given by the Officer related to the family's establishment in Canada. In his reasons for decision, the Officer explained why he decided to give little weight to the assessment of the Applicants' establishment in Canada before determining that "a degree of establishment is expected to take place".

> While I accept and commend the applicants' positive steps in establishing themselves in Canada, I note they have received due process through the Canadian refugee determination program and therefore, a degree of establishment is expected to take place.

[22] Moreover, the Officer presented a number of other factors related to the issue of establishment. The Officer pointed out to evidence on file that he considered to be in favour of the Applicants (i.e., Applicants' "communal integration" and "efforts to be self-sufficient and economically productive").

> This is the applicants' second H&C application; the first was refused in December 2011. The applicants have continued to accumulate time in Canada by their own volition without having the legal right to do so. The applicants are the subject of enforceable removal orders and continued to assume their establishment efforts being fully cognizant that their immigration status was uncertain and that removal from Canada could become an eventuality.

[23] It is clear that the Officer's reasons are in conformity with his findings on establishment. The reasons are presented in such a way that allow the reviewing Court to understand why the decision was made (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). "The applicant may have wished for more explanation and a different result, but this explanation is sufficient in the context of the decision as a whole." (*Asad* at para 20). The Court finds no reviewable error in the assessment of the

Applicants' degree of establishment in Canada. The Officer exercised his authority to determine that establishment was "expected" given the Applicants' personal situation.

[24] The Applicants next argued that the Officer made an erroneous finding by determining that the whole family should leave Canada, when the Officer himself acknowledged that family reunification is one of the primary objectives of the IRPA. Nonetheless, the Officer concluded that he was not satisfied that the adult children will stay in Canada if their parents returned to Denmark. Finally, it is argued that two of the adult children, who previously obtained permanent residency in Canada, would lose their status if returned to Denmark. According to the Applicants, the Officer failed to consider this hardship.

[25] The Applicants further argued that the Officer was not sensitive towards the best interest of the children which "must be 'well identified and defined' and examined 'with a great deal of attention' in light of all the evidence" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 39).

[26] The Court disagrees with both submissions from the Applicants and finds that the Officer conducted a proper analysis. The Officer weighed all the factors and concluded that it was in the best interest of the two minor children to remain with their parents because they are wholly dependent on them. It is also clear that the Officer considered the other children's best interests and personal situation. While the Officer did not indicate his reasons in the section pertaining to the assessment of the best interests of the children, he did under the familial relationship section and noted that the two adult children were permanent residents of Canada. The Officer also

considered the importance of family reunification as set out in the IRPA, however, concluded that it was in all of the children's best interests to be with their parents.

> I am mindful that family reunification is but one of the objectives of the *IRPA*. In viewing submitted photographs and reading attached letters, I can appreciate how close knit the family is. However, I am not satisfied that the adult children would remain behind in Canada and thereby live apart from their parents given counsel's statements regarding their continuing reliance on them for emotional and financial support. While both adult children do not wish to return to Denmark, it is noted that the applicants have another adult child, Nadia, who continues to reside in Denmark.

[27] The Applicants argued that the Officer made a general finding on the country conditions in Denmark, "without addressing independent contradictory evidence". In *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 83 ACWS (3d) 264 at paragraph 17, it is submitted that "the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact 'without regard to the evidence'".

[28] The Respondent, on the other hand, mainly argued that the Applicants are simply in a disagreement with the Officer's findings and, thereby, cannot indirectly ask this Court to reweigh the evidence. According to the Respondent, the H&C decision, taken as a whole, is reasonable.

[29] The Court agrees with the Respondent's position. After reviewing the entire evidence on file, the Officer did not find that there was sufficient objective evidence "to establish that the applicants would, on balance, experience any social or economic disadvantage as a result of their religion". Based on the subjective evidence, the Applicants did not experience any form of discrimination from the Danish society for being Muslims. The children attended school in

Denmark and the Principal Applicant and his spouse did not have any difficulty obtaining gainful employment in Denmark.

[30] The Court concludes that it was within the Officer's jurisdiction not to warrant the Applicants the requested exemption under subsection 25(1) of the IRPA. It is well established that "it is not the role of this Court to substitute its own opinion and weighing of the evidence for that of the Officer" (*Osorio Diaz* at para 16).

[31] For the above reasons, the Court concludes that the H&C decision is reasonable and falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir* at para 47). There is no reason for this Court to intervene in the present matter.

VII. Conclusion

[32] The application for judicial review is dismissed. No question of general importance will be certified.

JUDGMENT in IMM-917-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of general importance for certification.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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