

Federal Court



Cour fédérale

Date: 20190909

Docket: IMM-1476-19

Citation: 2019 FC 1151

Vancouver, British Columbia, September 9, 2019

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

RAM PARKASH MAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Mal, a permanent resident of Canada, has become inadmissible by reason of a criminal conviction for sexual assault. He is now seeking judicial review of a decision of the Immigration Appeal Division [IAD] that dismissed his request for relief on humanitarian and compassionate [H&C] considerations. The IAD found that the H&C grounds invoked by Mr. Mal were not sufficient to warrant special relief, given the seriousness of his offence.

[2] I am dismissing Mr. Mal's application, because he has not persuaded me that the IAD's decision is unreasonable.

[3] Mr. Mal is a citizen of India and became a permanent resident of Canada in 2008. He is now 67 years old. He has no criminal record apart from the offence that gives rise to these proceedings. After a trial, he was convicted of sexual assault on a young woman he met at a SkyTrain station. He was given a suspended sentence and 18 months' probation. Nevertheless, the IAD found that the offence was serious, as it was a "random predatory attack on a stranger in public," and gave strong negative weight to this factor in its H&C assessment.

[4] Mr. Mal submits that the IAD improperly disregarded the length of his sentence, thus ignoring the Supreme Court's jurisprudence in *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50, [2017] 2 SCR 289 [*Tran*], to the effect that suspended sentences are indicative of less serious criminality.

[5] Of course, *Tran* deals with the interpretation of section 36 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, which defines the categories of offences that give rise to inadmissibility. Mr. Mal does not dispute his inadmissibility. *Tran*, however, does not circumscribe the discretion of the IAD in assessing H&C factors.

[6] In this case, Mr. Mal did not file the reasons of the sentencing judge before the IAD, so we do not know what factors led the judge to impose a lenient sentence. Moreover, Mr. Mal testified before the IAD about the circumstances of the offence and about the fact that he had not

yet complied with the condition of his probation order requiring him to undergo therapy. That evidence was not before the sentencing judge. The IAD was entitled to consider all the evidence before it and was not bound by what one could infer from the fact that Mr. Mal was given a lenient sentence.

[7] In particular, in his testimony before the IAD, Mr. Mal gave an account of the offence that differs substantially from the one that is found in the police report filed in evidence. While the report states that Mr. Mal initiated the conversation with the victim on the station platform, Mr. Mal twice insisted that it was the reverse. Mr. Mal then said: “she boarded the same train which I went at, so she sat next to me and she did, you know, touch me inappropriately, and so did I.” When questioned about his trial and conviction, Mr. Mal recognized that the judge did not accept his version of the facts.

[8] In its assessment of remorse, the IAD was entitled to consider that Mr. Mal put forward an account of the facts that had been rejected by the judge and that, in doing so, he was attempting to blame the victim. It could also consider the fact that Mr. Mal pleaded not guilty and that he sought to reduce the number of therapy sessions he would be required to attend. Given the evidence, the IAD’s assessment of the seriousness of the offence and of Mr. Mal’s lack of genuine remorse was reasonable.

[9] Mr. Mal also submits that the IAD did not properly assess his establishment in Canada, the degree of support he receives from his family here, the hardship he would face upon removal to India and the best interests of the children affected. In this regard, the role of this Court is to

ensure that its decision was reasonable, not to reweigh the factors assessed by the IAD. I find that the IAD's assessment of these factors was reasonable.

[10] In particular, it was reasonable to consider the interests of Mr. Mal's grandchildren in Canada and in India, and the fact that he is not the primary caregiver of his Canadian grandchildren.

[11] The IAD also commented about the failure of Mr. Mal's family to attend the hearing, and drew a negative inference about his family's level of support. Although I recognize this is a delicate matter, I note that Mr. Mal provided only a letter of support from his daughter, but not from his wife, nor from his son who lives in Canada. I also note that his explanation for his family's absence evolved in the course of the hearing. Once again, the IAD's assessment is reasonable.

[12] As a result, Mr. Mal's application for judicial review will be dismissed.

JUDGMENT in IMM-1476-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1476-19

STYLE OF CAUSE: RAM PARKASH MAL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: SEPTEMBER 9, 2019

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