Federal Court  Cour fédérale

Date: 20191112

Docket: IMM-5135-18

Citation: 2019 FC 1410

St. John's, Newfoundland and Labrador, November 12, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DEMILADE KAYODE OLADELE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Demilade Kayode Oladele (the "Applicant") seeks judicial review of the decision made by a Delegate (the "Delegate") of the Minister of Citizenship and Immigration (the "Respondent") refusing his application for permanent residence on Humanitarian and Compassionate ("H&C") grounds pursuant to subsection 25 (1) of the *Immigration and Refugee Protection Act*, 2001, c.27 (the "Act").

[2] The Applicant is a citizen of Nigeria. He entered Canada on October 24, 2005 and sought protection as a refugee. He was subsequently found to be inadmissible by the Immigration and Refugee Board, Immigration Division (the "ID"), pursuant to paragraphs 35 (1)(a) and 37 (1)(a) of the Act. The basis of the inadmissibility finding was his involvement with the Neo Black Movement of Africa (the "NBMA").

[3] The Applicant pursued various remedies over the years under the Act, including a spousal application for status in Canada. That application was unsuccessful.

[4] The Applicant made an H&C application in 2011. That application was denied in 2016 but upon an application for judicial review, the negative decision was set aside; see the decision in *Oladele v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 851.

[5] Ultimately, the 2011 H&C application was redetermined and refused, in a decision made on October 11, 2018. That negative decision is the subject of the within application for judicial review.

[6] The Delegate reviewed the inadmissibility finding in light of the subsequent decision of the Supreme Court of Canada in *Ezokola v. Canada (Citizenship and Immigration)*, [2013] 2 S.C.R. 678 and concluded that the prior findings of the ID would not support a finding of inadmissibility under the test in *Ezokola, supra*. However, he determined that there was no basis to reverse the inadmissibility finding.

[7] The Delegate said that H&C factors were considered, including the interests of the Applicant's children, his prior establishment in Canada, the physical and emotional challenges faced by his wife, as well as the family's financial difficulties.

[8] The Applicant raises three main arguments. First, he submits that the Delegate wrongfully fettered his discretion by overemphasizing the choices made by the Applicant's family, as contributing to their financial troubles, rather than fairly considering H&C factors.

[9] The Applicant further argues that the Delegate did not consider all of the evidence submitted, including the evidence about country conditions in Nigeria. As well, he submits that the Delegate made an unreasonable demand for additional corroborating evidence, including medical records, recent lifestyle details, and communication records.

[10] The Respondent argues that the Delegate reasonably assessed the evidence submitted and reached a reasonable conclusion.

[11] The first issue for consideration is the applicable standard of review.

[12] The exercise of a discretion is usually reviewable on the standard of reasonableness; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 53.

[13] An H&C decision, on the merits, is reviewable on the standard of reasonableness; see the decision in *Kisana v. Canada (Minister of Citizenship and Immigration)*, [2010] 1 F.C.R. 360 (F.C.A).

[14] According to the decision in *Dunsmuir, supra*, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[15] Upon considering the materials submitted to the Delegate and the submissions of the parties, I am not persuaded that the decision meets the applicable standard of reasonableness.

[16] In my opinion, the Delegate did not reasonably consider the evidence of the country conditions that was submitted by the Applicant. This evidence was voluminous, that is more than one thousand pages. The Delegate treated this evidence in a cursory manner.

[17] I agree with the Applicant's argument that the request for corroborating evidence was unreasonable. In that regard, I refer to the comments of Justice Brown in the decision *Navaratnam v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 244 at paragraph 9 as follows:

> [9] However, the Officer found that the new evidence filed by the Applicant for the PRRA, namely a police report and a letter by the Applicant's father regarding threats following his departure for Canada, did not lead to a different conclusion than that of the RPD. The Officer rejected and thereafter ignored both the father's letter and the police report from Sri Lanka. The Officer gave three reasons for rejecting both the father's letter and the police report. The Court's comments follow each:

> (1) the letter was rejected because of several matters the Officer wanted information on, including police progress in the matter, no threatening visits since the date of the letter, why other than not paying ransom the perpetrators of the threatening visits are interested in the Applicant, lack of corroboration of the visits, the letter's failure to specifically identify the perpetrators, and an explanation of how the perpetrators would kill the Applicant if they did not know where he was;
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> Court comment: Several errors are made in the assessment of the letter and police report. It is well established that a demand for documentary corroboration is not warranted without valid grounds to do so, which were absent in this case: *Ahortor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 705; *Zheng v Canada (Minister of Citizenship and Immigration)*, [2007] FCJ No 1267. It is an error to focus exclusively on what is not submitted in documents and fail to undertake any meaningful analysis of written testimony, as happened here: *Botros v Canada (Minister of Citizenship and Immigration)*, [2013] FCJ No 1124 [*Botros*] and cases cited therein. It is an error to dismiss evidence (as the Officer appears to have done) based on the fact that other evidence would have been more desirable: *Botros*; *Mui v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1020. …
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> [Emphasis in original]

[18] It is not necessary to address the other arguments raised by the Applicant.

[19] In the result, the application for judicial review is allowed, the decision is set aside and the matter is remitted to another delegate for determination.

[20] There is no question for certification arising.

JUDGMENT IN IMM-5135-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Delegate is set aside and the matter is remitted to another delegate for determination. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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