Federal Court Cour fédérale

Date: 20220331

Docket: IMM-2643-21

Citation: 2022 FC 448

Ottawa, Ontario, March 31, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

IRTIZA HUSSAIN QADRI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Irtiza Hussain Qadri, is a 34-year-old citizen of Pakistan who became a permanent resident of Canada in January 2001, along with his parents, a few days before his 13th birthday. Since then, Mr. Qadri has spent little time in Canada; he returned to live in Pakistan with his parents in 2003 and returned to Canada six years later, in 2009, at the age of 21, for a period of three years, during which time he rented an apartment in Montreal, studied, worked, registered a company and bought an apartment in Toronto with his brother.

In 2012, Mr. Qadri returned to Pakistan to care for his ailing mother, who had been diagnosed with stage two pulmonary sarcoidosis, and has returned to Canada only twice since then: for two months between December 2014 and February 2015 and for four months between November 2017 and March 2018 simply to renew his permanent resident card, which was expiring. In both cases, Mr. Qadri's stay was only temporary, and after returning to Pakistan in March 2018, he waited a year before applying for a travel document in April 2019 to return to Canada.

[2] At the time of his application for a travel document, Mr. Qadri admitted to not meeting the residency requirements under section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], over the last five years and sought relief on humanitarian and compassionate [H&C] grounds. On November 21, 2019, his request was denied; an immigration officer from the Embassy of Canada in Abu Dhabi determined that Mr. Qadri lost his permanent resident status by not complying with his residency obligations under section 28 of the Act and that his personal circumstances did not include H&C considerations that would warrant the relief that he sought. On March 20, 2021, the Immigration Appeal Division [IAD] dismissed Mr. Qadri's appeal, finding insufficient H&C grounds to justify the retention of his permanent resident status. The panel found that Mr. Qadri's narrative lacked details and precision, and it dismissed his appeal on the grounds that: (1) Mr. Qadri has had little establishment in Canada since he turned 18 years old; (2) his seven-year absence cannot be sufficiently explained by his mother's illness; (3) Mr. Qadri made choices that extended his stay in Pakistan and made no attempt to return to Canada permanently; (4) there is little hardship associated with Mr. Qadri's loss of permanent residence, and (5), the best interests of his son weigh in favour of him staying

with his family in Pakistan. Mr. Qadri now seeks judicial review of that decision on the grounds that the IAD failed to properly consider his request for relief on H&C grounds.

[3] I am not persuaded that the decision of the IAD is unreasonable. Mr. Qadri's reliance upon this Court's decision in *Osagie v Canada (Citizenship and Immigration)*, 2018 FC 978 [*Osagie*], in support of the proposition that it was unreasonable for the IAD to question why only Mr. Qadri and not his siblings or father was available to care of his sick mother, is misplaced. In *Osagie*, Mr. Justice Ahmed quite rightly found that it was unreasonable for the IAD to discount the applicant's assertion of having to remain outside Canada because he was the only one amongst his siblings who was able to properly care for his aging parents; in *Osagie*, evidence was submitted that the applicant was the eldest son, and in his culture, he was therefore the sibling responsible for caring for the parents. In addition, the fact that Mr. Osagie was a medical doctor placed him in the best position to deal with this father's deteriorating health. That is not the case here. The only evidence provided by Mr. Qadri to justify why he was the only one amongst his siblings and his father who could care for his mother for seven years was that his father, who was initially recovering from heart surgery, had to work out of town between 2012 and 2017, and that his siblings lived abroad: his brother lived in Toronto and his sister lived in the United Arab Emirates.

[4] The IAD took no issue with the fact that Mr. Qadri's mother was ill and required assistance, however, it determined that there was no evidence with respect to: how the disease progressed over time; if and when the mother's independence improved and if her needs changed; why Mr. Qadri's presence was needed for seven years and why he was the only one

capable of caring for his mother for so long; and whether alternative care arrangements were at least seriously considered so as to allow Mr. Qadri to return to Canada.

[5] Mr. Qadri argues that this Court's decision in *Osagie* stands for the proposition that immigration officers should not be concerned with issues between siblings and that it was unreasonable in this case for the immigration officer, and the IAD, to question why the other siblings were not stepping up and taking on their share of responsibilities regarding their mother. I do not agree that *Osagie* goes quite that far. The troubling issue in *Osagie* was the IAD's analysis of the applicant's obligations to care for his aging parents. The IAD determined that Mr. Osagie had many siblings in Nigeria who could have provided such care in his place and simply assumed that his siblings were able to care for their aging parents. In addition, the evidence in *Osagie* did establish why Mr. Osagie took it upon himself to care for his parents; in the applicant's "culture the eldest son is responsible for caring for the parents, and his siblings were either too young or financially insecure to care for them." In addition, the fact that Mr. Osagie was a medical doctor made it particularly appropriate for him to take on the responsibilities of caring for his parents because of his father's critical health condition. As stated by Mr. Justice Ahmed, "[d]espite this evidence, the IAD simply asserted that one of the other siblings could have played this role and commented that '[i]mmigrating to a new country includes making difficult choices.'" Such is not the case here; at no point did the IAD simply assume that Mr. Qadri's siblings or his father could care for his mother, and more importantly, nowhere in the evidence was there any kind of a "hook", a reason why it was Mr. Qadri rather than anyone else who should have to care for his mother while remaining out of the country for seven years.

[6] In fact, the IAD found that Mr. Qadri actually made his departure from Canada more permanent when he married in Pakistan. The IAD was not impressed by Mr. Qadri's argument that he was "coerced" by his parents to marry his wife in 2016, a woman who had no status in Canada and was not interested in coming to live in Canada until only recently – this factor along with the fact that Mr. Qadri had made no real attempt to return to Canada for 13 years were found to weigh strongly, in the opinion of the IAD, against granting special relief. In addition, the IAD gave very little weight to Mr. Qadri's establishment factors as he had spent only six months of the last five years in Canada, and only neutral weight to the hardship factor as no substantive evidence was provided on this issue; Mr. Qadri's wife and his entire family live in Pakistan, except for his brother and a few cousins, who live in Canada. As to the best interests of Mr. Qadri's young son, the IAD found that neither he nor his mother had status in Canada and that if Mr. Qadri lost his permanent resident status, there would be no change to the young boy's situation as he would continue to live with his family, where his best interests lay.

[7] With the standard of review being one of reasonableness (*Arefian v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 739 at paras 19-21; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17), and with the determination of the existence of H&C grounds in the context of residency obligations under section 28 of the Act attracting a high degree of deference in favour of the IAD (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 4), I have not been persuaded of any aspect of the IAD's determination in this case being unreasonable. I therefore dismiss the present application for judicial review.

JUDGMENT in IMM-2643-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There is no question for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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