

Date: 20080227

Docket: IMM-1894-07

Citation: 2008 FC 259

Toronto, Ontario, February 27, 2008

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

LENFORD AUGUSTUS RICHARDS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Lenford Richards seeks judicial review of a negative decision in relation to his application for a humanitarian and compassionate exemption, asserting that the H&C officer erred in relation to her assessment of the best interests of Mr. Richards' son. Mr. Richards also alleges that the officer gave undue weight to his criminal record, and further, that the officer applied the wrong test in assessing the risk component of the application.

[2] For the reasons that follow, I find that the officer did not err in her assessment of the application. As a consequence, the application for judicial review will be dismissed.

Standard of Review

[3] The general standard of review governing decisions of immigration officers in relation to H&C applications is that of reasonableness *simpliciter*: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

[4] That is, the decision must be able to withstand a “somewhat probing examination”: *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748.

[5] In assessing a decision against the reasonableness standard, a reviewing Court should look at the reasons taken as a whole, and not subject every element of the reasoning to a separate test of reasonableness. The question for the Court should be whether there is some line of analysis that could reasonably lead the decision maker to the conclusion that it reached, based upon the evidence before it: see *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247.

[6] With respect to Mr. Richards’ argument that the officer’s reasons were inadequate, questions as to the sufficiency of reasons raise issues of procedural fairness. Issues of procedural fairness are decided against a standard of correctness: *Fetherston v. Canada (Attorney General)*, 2005 FCA 111.

[7] Finally, Mr. Richards' argument that the H&C officer applied the wrong test in assessing the risk component of his application involves a question of law, and as such is also reviewable against the standard of correctness.

Best Interests of Mr. Richards' Son

[8] Mr. Richards submits that the officer erred in her assessment of the best interests of his son by drawing inferences that were not supported by the evidence.

[9] In particular, he argues that the evidence before the officer did not support the finding that Mr. Richards' mother could care for Mr. Richards' son, if Mr. Richards were removed from Canada, given the letter from the child's doctor to the effect that it would be "overwhelming" for the grandmother to have to care for the child on her own.

[10] A review of the record discloses that while the child has had some significant behavioural problems, the situation has stabilized in the two years since the doctor's letter relied upon by Mr. Richards was written.

[11] Moreover, it is evident from the record that the grandmother has been the child's primary caregiver for most of his life, and has cared for the child during the times that Mr. Richards was in custody.

[12] In the circumstances, Mr. Richards has not persuaded me that the officer's finding regarding the grandmother's ability to care for Mr. Richards' son was unreasonable.

[13] Moreover, the officer provided clear reasons explaining why she came to this conclusion, noting both the improvement in the child's condition, and the fact that the child would be remaining with his primary caregiver.

Mr. Richards' Criminal Record

[14] Mr. Richards also argues that the officer erred in placing undue weight on his criminal record. It is not for this Court sitting on judicial review to reweigh the factors presented by an H&C application – that is the responsibility of the officer.

[15] Moreover, a review of the officer's reasons discloses that while Mr. Richards' criminal record was certainly referred to, the officer conducted a lengthy and detailed review of the factors relied upon by Mr. Richards to support his application, balancing the positive and negative factors in arriving at her conclusion.

The Risk Analysis

[16] Finally, Mr. Richards argues that the H&C officer applied the wrong test in assessing the risk component of his application. According to Mr. Richards, the officer simply reassessed Mr. Richards' unsuccessful Pre-removal Risk Assessment in light of the tests set out in section 96 and

97 of the *Immigration and Refugee Protection Act*, rather than applying the hardship test applicable to applications under section 25 of *IRPA*.

[17] A review of the officer's reasons does not bear this out. While reference was made to Mr. Richards' PRRA decision in the reasons, the officer clearly understood that the test to be applied in relation to the risk component of an H&C application is that of unusual, undeserved or disproportionate hardship. Moreover, a review of the officer's analysis confirms that this was the test that she applied.

Conclusion

[18] The officer carefully considered Mr. Richards' application for a humanitarian and compassionate exemption, and provided a clear and well-reasoned explanation for her decision not to grant that exemption. As a consequence, the application for judicial review is dismissed.

Certification

[19] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1894-07

STYLE OF CAUSE: *LENFORD AUGUSTUS RICHARDS v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION*

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 26, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** MACTAVISH J.

DATED: February 27, 2008

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