Federal Court  Cour fédérale

Date: 20091020

Docket: IMM-1358-09

Citation: 2009 FC 1062

Toronto, Ontario, October 20, 2009

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

NOMESHWAR SINGH, BARUNDAI SINGH, JEETATMI VINDIYA SINGH, HEETASMIN SHIVANI SINGH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision dated February 17, 2009, wherein the officer refused the applicants' application for an exemption on humanitarian and compassionate ("H&C") grounds.

[2] The four applicants are a family consisting of Nomeshwar Singh and Barundai Singh and their two adult daughters, Jeetatmi Singh and Heetasmin Singh; all citizens of Guyana. They entered Canada on December 29, 2002, as visitors. On January 8, 2003, they made claims for refugee protection. On April 22, 2004 the Immigration and Refugee Board determined that the applicants were not Convention Refugees, nor were they persons in need of protection. A leave application was denied by this Court on October 6, 2004.

[3] The family's H & C application was received on May 20, 2005. Their submissions addressed establishment in Canada, family ties in this country and risk factors for returning Indo-Guyanese. The decision, made by an officer who had previously rendered a negative pre-removal risk assessment (PRRA), found that the evidence of risk was general in nature and insufficient to constitute an unusual, undeserved or disproportionate hardship. While the applicants had demonstrated a certain level of establishment, the officer was not satisfied that severing the ties to Canada would have such a significant negative impact so as to satisfy the hardship test.

ISSUES:

[4] The applicants contend that the officer erred in failing to consider the best interests of the elderly mothers of the two principal applicants, that the officer erred in applying the PRRA test to an H & C application, erred in making a finding about the risk factors without conducting an interview and failed to consider evidence of establishment.

ANALYSIS:

[5] The officer's factual analysis is central to his or her role as a trier of fact. As such, these findings are to be given significant deference by the reviewing Court. The officer's findings should stand unless the reasoning process was flawed and the resulting decision falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, at paragraph 47.

[6] Given the discretionary nature of H&C decisions, there might be more than one reasonable outcome. However, as long as the process adopted by the officer and its outcome fits comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing Court to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12, at paragraph 59).

[7] Contrary to the applicants' submissions, Mr. Singh's credibility with respect to country conditions in Guyana was not questioned in the determination of hardship. The officer acknowledged the seriousness of crime in Guyana and considered all of the materials submitted together with reports prepared by the Board in determining whether potential risk to the applicants, as returning Indo-Guyanese, might constitute undue hardship. That the officer did not invite the principal applicant to submit further evidence did not violate procedural fairness. Credibility was not a factor in this case and an oral hearing to discuss the evidence as provided by section 167 of the *Immigration and Refugee Protection Regulations* was not called for: *Lai v. Canada (Minister of Citizenship and Immigration)* (F.C.), 2007 FC 361, [2007] F.C.J. No. 476.

[8] The applicants have failed to point to any evidence of risk that may have been overlooked by the officer. Nor did the officer apply the PRRA test as opposed to that required for an H & C determination. It is clear from the decision that the officer addressed the risk factors in the context of the hardship test.

[9] I am satisfied that the best interests of Mr. and Mrs. Singh's elderly mothers were not overlooked. The information before the officer was that the parents resided with other family members who enjoyed status in this country. There was no evidence that they would lack for care or filial support if the applicants were unable to remain in Canada. The officer was sensitive and alert to the reality that physical separation of the family members would be difficult. It is understandable that the extended family would prefer that the applicants remained here but that is not a consideration that rises to the level of undue hardship, absent some additional evidence that the impact would be unusual, undeserved or disproportionate.

[10] With respect to the officer's assessment of the evidence of establishment, the applicants rely on the recent decision of Madam Justice Elizabeth Heneghan in *Nuria Ben Amer v. Canada (Minister of Citizenship and Immigration)* 2009 FC 713, [2009] F.C.J. No. 878. In that case, Justice Heneghan found that the officer had committed a reviewable error in finding that the applicant's establishment was no more than would be expected of a person who has been in Canada for several years without status: see also *Jamrich v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 804 (F.C.T.D.), [2003] F.C.J. No. 1076; *Raudales v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 385 (F.C.T.D.), [2003] F.C.J. No. 532.

[11] In *Ben Amer*, *Jamrich* and *Raudales* the assessment of establishment was made without adequate reference to the particular circumstances of the applicant. That is not the case here. The officer carefully reviewed the significant evidence of establishment. It was not necessary for the officer to expressly refer to matters such as the applicants' bank accounts and credit cards, as was suggested in argument.

[12] After engaging in an extensive review of the evidence and having considered all of the application's information as a whole, including country conditions, it was reasonable for the officer to find that the applicants' personal circumstances were such that the requirement of having to obtain a permanent resident visa from outside of Canada did not constitute unusual, undeserved or disproportionate hardship. This decision applied the proper threshold applicable in the H & C context and falls within the range of possible, acceptable outcomes defensible in respect of the facts and the law.

[13] Neither party proposed questions of general importance for certification.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application for judicial review is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1358-09
STYLE OF CAUSE:	NOMESHWAR SINGH, BARUNDAI SINGH, JEETATMI VINDIYA SINGH, HEETASMIN SHIVANI SINGH v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
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REASONS FOR JUDGMENT AND JUDGMENT:	Mosley J.
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