Federal Court  Cour fédérale

Date: 20101027

Docket: IMM-975-10

Citation: 2010 FC 1055

Ottawa, Ontario, October 27, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

PARMINDER KAUR SIDHU

Applicant

and

THE MINISTER OF IMMIGRATION AND CITIZENSHIP

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Parminder Kaur Sidhu wished to sponsor her mother, Ms. Harjit Kaur Dhillon, a citizen of India, to become a permanent resident of Canada. In 1998, Ms. Dhillon was deported from Canada after making a false refugee claim. Given her immigration history, Ms. Dhillon cannot come back to Canada without an authorization to return to Canada (ARC).

[2] A visa officer denied Ms. Dhillon's request for an ARC. Ms. Sidhu appealed that decision to the Immigration Appeal Division (IAD). The IAD dismissed the appeal finding that the visa officer

had made no error of law, and that Ms. Sidhu had not established that an ARC was merited on humanitarian and compassionate grounds.

[3] Ms. Sidhu argues that the IAD made errors of fact and law, and arrived at an unreasonable conclusion. She asks me to overturn the IAD's decision and order a new hearing. I can find no basis for overturning the IAD's decision and must, therefore, dismiss this application for judicial review.

[4] The issues are:

1. Did the IAD make an error of fact?
2. Did the IAD make an error of law?
3. Was the IAD's conclusion unreasonable?

II. Factual Background

[5] Ms. Dhillon came to Canada as a visitor in 1997. She made a refugee claim soon after her arrival. She applied for and received social assistance, contrary to an earlier undertaking.

[6] Ms. Dhillon's refugee claim was based on an allegation that she needed protection from state authorities in India who were looking for her son. She claimed to have been arrested and released only after paying a bribe. A panel of the Immigration and Refugee Board denied her claim; this Court denied leave to seek judicial review. Ms. Dhillon now concedes that her refugee claim was based on false allegations.

[7] After her refugee claim was denied, Ms. Dhillon was subject to a departure order. As she failed to leave Canada in a timely way, that departure order became a deportation order. According to the *Immigration and Refugee Protection Act* (IRPA), a person in Ms. Dhillon's circumstances must obtain an ARC before returning to Canada (R.S.C. 2001, c. 27, s. 52(1)).

[8] Ms. Dhillon requested an ARC from a visa officer. The officer interviewed Ms. Dhillon, and found that she had presented insufficient evidence to support her allegation of hardship, and that her description of her personal circumstances was not credible. The officer also had concerns that Ms. Dhillon might again rely on social assistance in Canada.

III. The IAD's Decision

[9] The IAD began by noting the various principles that animate the Canadian immigration system, such as family reunification, fair and efficient procedures, successful integration of permanent residents, and the mutual obligations shouldered by new immigrants and Canadians.

[10] The IAD then considered whether the officer's decision was legally valid. In brief reasons, the IAD concluded that the officer's decision was reasonable considering the evidence before him.

[11] The IAD went on to consider whether the appeal should be allowed on the basis of humanitarian and compassionate grounds that would warrant special relief. The IAD heard evidence

directly from Ms. Dhillon and Ms. Sidhu and found that neither presented reliable or trustworthy evidence.

[12] The IAD recounted the details surrounding Ms. Dhillon's false refugee claim and her reliance on social assistance while previously in Canada. It concluded from that evidence that Ms. Dhillon's original intention was to stay in Canada permanently and that her conduct challenged the integrity of Canada's immigration system. It regarded her conduct as serious and inconsistent with a request for special relief.

[13] The IAD went on to discuss Ms. Dhillon's personal circumstances, noting that she has family members both in India and in Canada. She has three grandchildren in Canada and four in India. Accordingly, the interests of the various children affected by the IAD's decision were "mixed". The IAD noted that when Ms. Sidhu and her family visited India in 2003, little of that time was spent with Ms. Dhillon. Overall, the IAD found that family reunification was not a "compelling basis for special relief".

[14] In conclusion, the IAD found that Ms. Sidhu had not established that there were sufficient humanitarian and compassionate circumstances to warrant special relief for Ms. Dhillon.

IV. Issue One – Did the IAD make an error of fact?

[15] Ms. Sidhu argues that the IAD made a serious factual error when it stated, near the beginning of its analysis, that “the only real issue on appeal was special relief”. Ms. Sidhu submits that the IAD appeared to overlook her arguments about the legal validity of the officer’s decision.

[16] This argument is not borne out by the IAD’s decision or Ms. Sidhu’s submissions to the IAD. The IAD’s impugned statement is set out under the heading “Legal Validity”. It follows the IAD’s summary of Ms. Sidhu’s submissions regarding the legal validity of the officer’s decision and precedes its analysis of the officer’s reasons. Clearly, the IAD did not overlook the issue of legal validity.

[17] In addition, the IAD’s statement was an accurate characterization of Ms.Sidhu’s submissions. Counsel stated that Ms. Sidhu was “challenging the interpretation of s. 52 even though the focus will be on the exercise of discretionary powers”. Further, she assured the Board that the appeal was being “made pursuant to section 63(1) and the appellant is requesting the Board to invoke its equitable jurisdiction pursuant to subsection (c) – 67(c) of the Act”. Paragraph 67(1)(*c*) of IRPA relates to humanitarian and compassionate relief.

[18] I cannot conclude that the IAD made any error of fact when it stated that the “only real issue” before it was special relief.

[19] Ms. Sidhu also argues that the IAD erred when it described there being “barriers” to Ms. Dhillon’s admission to Canada. She equates “barriers” to inadmissibility grounds under IRPA.

Reading the IAD's terminology in context, it was clearly referring to grounds for refusing an ARC, not inadmissibility grounds.

[20] Ms. Sidhu also maintains that the IAD erred when it stated that Ms. Dhillon had been ordered removed from Canada "as a result of a fraudulent refugee claim". The IAD's terminology might not have been entirely apt. It might have been better to say that Ms. Dhillon had been removed "after having made a false refugee claim". In any case, nothing of substance turns on the IAD's language.

V. Issue Two – Did the IAD make an error of law?

[21] Ms. Sidhu argues that the IAD erred in law when it concluded that the visa officer's decision was legally valid. She maintains that the officer and, in turn, the IAD must take account of all of the circumstances of the case when deciding whether an ARC should issue.

[22] I see nothing in either the officer's or the Board's reasons to indicate that Ms. Dhillon's circumstances were not taken into account. The officer responded to the submissions that had been made to him and specified the concerns that gave rise to his decision. Similarly, the IAD reviewed the evidence and concluded that the officer had reasonable and valid concerns justifying a refusal.

[23] It is also worth noting, as mentioned above, that the main thrust of Ms. Sidhu's submissions to the IAD was directed at the potential humanitarian and compassionate grounds for granting an

ARC. In that light, the IAD's analysis of the less strenuously argued point about the legal validity of the officer's decision was appropriate and sufficient.

VI. Issue Three – Was the IAD's conclusion unreasonable?

[24] Ms. Sidhu submits that the IAD erred by relying on a concern about the possibility of Ms. Dhillon's relying on social assistance if she came back to Canada. She suggests that this is not possible given the existence of a sponsorship agreement requiring her to support her mother for 10 years. If she should fail to honour that agreement, the Minister has remedies available under IRPA to enforce it. The IAD's reliance on an irrelevant consideration resulted, she says, in an unreasonable conclusion.

[25] The question of possible reliance on social assistance in future was cited by the visa officer. The IAD did not refer to it. The only reference to social assistance in the IAD's reasons was in relation to Ms. Dhillon's earlier time in Canada, and was factually correct. As I read it, it was simply one of many factors that caused the IAD to dismiss the appeal. I can see no basis for an argument that the conclusion was unreasonable in light of the evidence.

VII. Conclusion and Disposition

[26] I cannot conclude that the IAD erred in fact or law. Nor can I find a basis on which to conclude that the IAD's decision was unreasonable. In my view, its decision fell within the range of possible, acceptable outcomes based on the facts and the law. As such, I must dismiss this

application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT IS that:

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"James W. O'Reilly"
Judge

Annex

Immigration and Refugee Protection Act, R.S.C. 2001, c. 27	*Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, ch. 27
No return without prescribed authorization	No return without prescribed authorization
52. (1) If a removal order has been enforced, the foreign national shall not return to Canada, unless authorized by an officer or in other prescribed circumstances.	**52.** (1) If a removal order has been enforced, the foreign national shall not return to Canada, unless authorized by an officer or in other prescribed circumstances.
Right to appeal — visa refusal of family class	Droit d'appel : visa
63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	**63. (**1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.
Appeal allowed	Fondement de l'appel
67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, (a) the decision appealed is wrong in law or fact or mixed law and fact; (b) a principle of natural justice has not been observed; or (c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	**67.** (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé : a) la décision attaquée est erronée en droit, en fait ou en droit et en fait; b) il y a eu manquement à un principe de justice naturelle; c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

FEDERAL COURT

SOLICITORS OF RECORD

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