Federal Court  Cour fédérale

Date: 20110526

Docket: IMM-6212-10

Citation: 2011 FC 594

Ottawa, Ontario, this 26th day of May 2011

Before: **The Honourable Mr. Justice Pinard**

BETWEEN:

JOHN LIE LIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of an Officer from Citizenship and Immigration Canada (the "Officer"), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, by John Lie Lim (the "applicant"). The Officer refused the applicant's application from within Canada for permanent residence on humanitarian and compassionate grounds.

[2] Before arriving in Canada, the applicant applied for and was refused a Temporary Resident Visa in New York on May 25, 2006. He allegedly entered Canada on foot on July 8, 2006 at an unsupervised border crossing, and he claimed refugee status in Etobicoke, Ontario on July 25, 2006. His claim was refused and his application for leave to review to the Federal Court was denied on May 26, 2009. The applicant submitted a request for an exemption from the immigrant visa requirements on humanitarian and compassionate (H&C) grounds on April 22, 2009.

[3] Prior to his arrival, the applicant lived in the United States from 1991 to 1996 and from 1997 to 2006, both times as a refugee claimant. Both applications were rejected. In 1996 he returned briefly to Indonesia and in 2006 he came to Canada.

[4] The applicant alleges that the Indonesian government will have revoked his citizenship due to his long absence from the country, rendering him stateless. He is a Christian and ethnically Chinese. He has no family ties remaining in Indonesia. He has learned to read, write and speak in English.

[5] Since his arrival in Canada, the applicant has been working as a part-time custodian of the church of which he is a member, Walmer Road Baptist Church in Toronto.

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[6] The Officer determined that there were no humanitarian and compassionate grounds in this case that would justify the granting of permanent residence from within Canada. The removal order made against the applicant was therefore enforceable.

[7] The applicant raises the following issues:

a. Did the Officer err by failing to consider the evidence from the applicant's therapist?
b. Did the Officer err regarding the persecution faced by Christians in Indonesia?
c. Did the Officer err in his conclusions regarding the applicant's ability to regain his Indonesian citizenship?

[8] The standard of review applicable to an Officer's analysis of an H&C application is that of reasonableness, according to Justice Russel Zinn in *Gelaw et al. v. Minister of Citizenship and Immigration*, 2010 FC 1120 at para 14. The Officer's decision should therefore be accorded deference.

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A. *Evidence of the therapist*

[9] The applicant submits that the Officer erred in ignoring the evidence of Elaine Lenehan, the applicant's social worker and therapist who submitted that his anxiety had recently increased. The therapist noted that in other cases where an individual has a history of not being wanted, there can be deep experiences of anxiety, despair, hopelessness, rejection, and suicide ideation. The therapist submitted that the traumas experienced by the applicant would amount to undue hardship were he to be made to leave Canada.

[10] The respondent notes that at page 7 of the decision, the Officer explicitly notes the existence of “letters describing the volunteer activities [the applicant] had participated in and the impact his departure from Canada would have on him and the community”. The respondent argues that though the letter from Ms. Lenehan was not referred to individually, this statement shows that it was read and taken into account.

[11] I agree with the respondent that the Officer’s reference to letters describing the impact the applicant’s departure from Canada would have on him includes the letter from Ms. Lenehan. While the letter shows that the applicant will suffer some hardship if he leaves Canada, the jurisprudence shows that such emotional hardship does not necessarily amount to unusual or disproportionate hardship. Hardship which is inherent in having to leave Canada after living here for a while is not enough to constitute unusual and undeserved or disproportionate hardship (*Uddin v. Minister of Citizenship and Immigration*, 2002 FCT 937 at para 22; *Irimie v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1906 at para 26). In *Irimie*, Justice Denis Pelletier noted that the H&C process “is not designed to eliminate hardship; it is designed to provide relief from unusual, undeserved or disproportionate hardship”.

[12] Given that H&C considerations are the exception to the general rule that applicants must apply for permanent residence from outside of the country (*Serda v. Minister of Citizenship and Immigration*, 2006 FC 356 at para 20), and that the Officer has discretion in assessing the application, I do not think that the Officer’s decision that the evidence, including all of the letters submitted, did not prove that the applicant would suffer undue hardship, is unreasonable.

B. *Religious persecution in Indonesia*

[13] The applicant contends that the Officer failed to consider whether it is undue hardship for the applicant to practice his faith, which is clearly deep, given all the support letters from his fellow churchgoers in both the United States and Canada, in an environment where it is admitted that violence against Christians remains. The applicant argues that the Officer considered this issue from the point of view of a risk assessment, rather than from whether it would constitute undue hardship for this, vulnerable, applicant to practice his faith in the face of ongoing violence. The applicant argues that impairments to practicing one's religion freely can amount to persecution, let alone undue hardship. The applicant argues that the mere fact that there is less religious violence than before is irrelevant.

[14] The respondent contends that the Officer clearly examined the documentary evidence relating to religious freedom and persecution in Indonesia and found that the government generally respects constitutional protections of religious freedom (page 8 of the decision).

[15] I agree with the respondent. The Officer did examine the documentary evidence submitted by the applicant. The Officer concluded that the government respects religious freedom and is making progress in halting sectarian violence. The Officer did not merely find "less" religious violence than before, as the applicant argues, but found that within the last two years, with the exception of one incident, there was no evidence of violence or discrimination of such a nature as to affect the applicant. In light of this finding, which was based on the documentary evidence, in my view the Officer's decision was reasonably open to him.

C. *Indonesian citizenship*

[16] The applicant submits that affidavits submitted by him and by Leslie Topping show that the process of regaining his Indonesian citizenship would be complicated and very long. The applicant takes issue with the fact that the Indonesian consulate asked to see his Refugee and H&C documents, and argues that the Officer should have considered that the only way for the applicant to regain his citizenship was to comply with an unlawful request by the Indonesian government.

[17] The respondent repeats the Officer's finding that there is no evidence that the consular officer was correct in stating that the application process would take "very long" or that the applicant would have to submit his Canadian immigration documents in support of his request. The respondent submits that it was reasonably open to the Officer to rely on the letter of the law rather than on the statements of an individual officer.

[18] I agree that it was open to the Officer to find that the application process would not take "very long" considering that the law requires a decision within three months by the Minister. I am troubled by the consular officer's assertion, as laid out in the affidavits, that the Indonesian government required the Refugee and H&C documents in order to see what claims the applicant had made against the government of Indonesia. However, the Officer noted in the decision that the most recent affidavit from the applicant's designated representative stated that there appears to be no basis in the Indonesian citizenship law for this requirement. Given this evidence, I find that it was reasonably open to the Officer to conclude that this would not be required of the applicant, and therefore that he would not face undue hardship in the attempt to regain his citizenship, such an attempt having yet to be made formally.

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[19] For the above-mentioned reasons, the application for judicial review is dismissed. I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of a decision of an Officer from Citizenship and Immigration Canada, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, refusing the applicant's application from within Canada for permanent residence on humanitarian and compassionate grounds is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-6212-10
STYLE OF CAUSE:	JOHN LIE LIM v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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Mr. Ian Hicks	FOR THE RESPONDENT

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