Federal Court

Cour fédérale

Date: 20111109

Docket: IMM-2112-11

Citation: 2011 FC 1292

Toronto, Ontario, November 9, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

MICHAEL OLUSEGUN OLAOPA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] Michael Olusegun Olaopa seeks judicial review of a decision refusing his application for permanent residence from within Canada on humanitarian and compassionate grounds. He argues that the H&C officer's reasons were insufficient, that he ignored evidence and that he failed to properly consider the best interests of Mr. Olaopa's children. Mr. Olaopa further submits that the issue of risk was not properly dealt with.

[2] For the reasons that follow, I am not persuaded that the H&C officer erred as alleged. As a consequence, Mr. Olaopa's application for judicial review will be dismissed.

Background

[3] Mr. Olaopa is a citizen of Nigeria who came to Canada in 2001. In 2003, his claim for refugee protection was rejected on credibility grounds and leave to judicially review this decision was denied by this Court. A negative Pre-removal Risk Assessment [PRRA] was issued on January 15, 2010.

[4] In 2006, Mr. Olaopa married a Nigerian citizen living in Canada. At the time of the H&C decision, the couple had three Canadian-born sons, who were born between 2004 and 2009. A fourth child has since been born.

[5] Mr. Olaopa has been economically self-sufficient since his arrival in Canada, and is the sole financial provider for his family. He has upgraded his skills and has worked as a support worker for the developmentally disabled since 2006. He is also very active in his church and his community.

[6] Mr. Olaopa submitted his initial H&C application in April of 2003 and filed additional updated submissions on a number of occasions after that. A decision was finally rendered in relation to the application in 2010.

The Risk Component of the H&C Decision

[7] Mr. Olaopa based his application for H&C relief in part on allegations that he faced a risk to his life in Nigeria as a result of his Christian religious beliefs and his former membership in the Yoruba tribe. These were the same claims that had been advanced before the Refugee Protection Division.

[8] The risk component of Mr. Olaopa's H&C application was assessed by a PRRA officer, who noted that the serious inconsistencies and omissions in Mr. Olaopa's evidence before the Refugee Protection Division had led to it rejecting his claim as not credible. The PRRA officer observed that the risk portion of Mr. Olaopa's H&C application was based on essentially the same allegations, and that Mr. Olaopa had not addressed the negative credibility findings made by the Refugee Protection Division.

[9] While recognizing that he was not bound by the Refugee Protection Division's findings, the PRRA officer nevertheless chose to give these findings considerable weight. This he was entitled to do.

[10] The PRRA officer then examined the country condition information before him at some length before concluding that although there was religious and ethnic tension in Nigeria, Christians and Yorubas are able to live peacefully in the south-west of the country. The officer further noted that Mr. Olaopa had been living outside of Nigeria for some eight years, and that he had not shown that anyone would be interested in harming him should he return to Nigeria.

[11] The PRRA officer’s risk opinion was provided to Mr. Olaopa and to his representative, and both were afforded the opportunity to make submissions as to any errors or omissions in the report. They chose not to avail themselves of this opportunity.

[12] Mr. Olaopa now submits that the PRRA officer erred by using the tests for persecution and risk to life under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*] in assessing the question of risk, rather than examining the issue as one of hardship. He submits that the H&C officer in turn erred by relying on the risk opinion, without explicitly acknowledging that different standards are applicable in the PRRA and H&C contexts.

[13] However, it is clear from a review of the risk opinion as a whole that the PRRA officer understood that the opinion was being offered in the context of an H&C application and not for the purposes of a Pre-removal Risk Assessment. Nowhere in the opinion does the PRRA officer refer to either section 96 or 97 of *IRPA*, nor does he refer to the tests that have to be satisfied in those contexts. Rather the PRRA officer carried out a factual inquiry based upon the evidence before him in order to determine whether or not Mr. Olaopa was at risk in Nigeria, concluding that he would not be not at risk if he were to return to the south-west of the country.

[14] It is also clear that in evaluating Mr. Olaopa’s application for an H&C exemption, the H&C officer understood the test to be applied in the context of an application for an H&C exemption. The officer examined the risk opinion, and found that the evidence provided had been adequately considered and that the risk opinion was reasonable. This led the H&C officer to conclude that Mr.

Olaopa would not face personal risk or hardship that would be unusual, undeserved or disproportionate should he return to live in south-western Nigeria.

[15] The H&C officer's conclusion that a return to south-western Nigeria would not amount to disproportionate hardship for Mr. Olaopa or his family was reasonable. The risk opinion determined that religious and ethnic violence was a problem in the northern parts of Nigeria. Mr. Olaopa's family had previously resided in the south-western part of the country.

[16] In light of my conclusion on the merits of this argument, I do not need to address the respondent's submission with respect to the failure of Mr. Olaopa to identify this issue in either his Notice of Application or in his original Memorandum of Fact and Law. Nor do I need to address the respondent's argument that by failing to respond when he was afforded the opportunity to comment on the risk opinion, Mr. Olaopa should be deemed to have waived his right to object to it.

The Best Interests of Mr. Olaopa's Children

[17] Mr. Olaopa also asserts that the H&C officer erred by failing to properly evaluate the best interests of his children. In particular, Mr. Olaopa says that the H&C officer failed to consider the interests of the three Canadian-born children in light of the risks they might face in Nigeria.

[18] I am not persuaded that the officer erred as alleged.

[19] The onus was on Mr. Olaopa to support his application with relevant information as it related to the best interests of his children: *Owusu v. Canada (Minister of Citizenship and*

Immigration), 2004 FCA 38, [2004] F.C.J. No. 158 at para. 5. The reasonableness of an officer's decision must be assessed in light of the evidence submitted with the application: *Zambrano v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 481, [2008] F.C.J. No. 601 at para. 68.

[20] While Mr. Olaopa made fleeting references to his family in his H&C submissions, little if any information was provided about the children, beyond the fact that the oldest child was a fan of the Toronto Maple Leafs. The only submission specifically addressing the interests of his children concerned the lack of nurturing they would experience if their mother were removed from Canada. Moreover, Mr. Olaopa did not make any specific submissions addressing the degree of risk his children might face in Nigeria.

[21] As the Federal Court of Appeal observed in *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2002] F.C.J. No. 1687 at para. 5, immigration officers are presumed to know that living in Canada can afford many opportunities to a child that may not be available in the child's country of origin. The task of the officer is thus to assess the degree of hardship that is likely to result from the removal of the child from Canada, and then to balance that hardship against other factors that might mitigate the consequences of removal: see also *Ruiz v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1175, [2009] F.C.J. No. 1474 at para. 31.

[22] In this case the officer did just that, considering the limited information that Mr. Olaopa had submitted and explaining clearly why it was in the children's interests to remain with their parents, regardless of where the family had to live.

Ignoring Evidence and Insufficiency of Reasons

[23] Mr. Olaopa submits that the H&C officer erred by ignoring the narrative provided in support of his application and in choosing to give little weight to letters of support from certain individuals. He also says that the reasons given by the officer for discounting this evidence were insufficient.

[24] I am not persuaded that the H&C officer ignored Mr. Olaopa's narrative (an issue that I note was not raised in either of Mr. Olaopa's memoranda of fact and law). While the document is not specifically referenced in the reasons, a decision-maker is presumed to have considered all of the evidence before him or her. Moreover, there is specific reference to information contained in the narrative in the officer's reasons, making it clear that the officer had indeed reviewed the document in question.

[25] Insofar as the treatment accorded to the letters of support is concerned, it is up to the officer to decide the weight to be attributed to evidence. The officer explained why he chose to give the documents little weight and that explanation was not unreasonable. More fundamentally, however, the information contained in the letters regarding Mr. Olaopa's employment, his contribution to his church and his volunteer activities was not in dispute. The officer accepted that Mr. Olaopa was gainfully employed and that he had contributed to his church and to his community.

Conclusion

[26] In *Irimie v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1906, 10 Imm. L.R. (3d) 206, Justice Pelletier stated that:

> I return to my observation that the evidence suggests that the applicants would be a welcome addition to the Canadian community. Unfortunately, that is not the test. To make it the test is to make the H & C process an *ex post facto* screening device which supplants the screening process contained in the *Immigration Act* and Regulations. This would encourage gambling on refugee claims in the belief that if someone can stay in Canada long enough to demonstrate that they are the kind of persons Canada wants, they will be allowed to stay. The H & C process is not designed to eliminate hardship; it is designed to provide relief from unusual, undeserved or disproportionate hardship. There is no doubt that the refusal of the applicants' H & C application will cause hardship but, given the circumstances of the applicants' presence in Canada and the state of the record, it is not unusual, undeserved or disproportionate hardship.

The same may be said about this case.

[27] Having failed to persuade me that the H&C officer committed a reviewable error, the application for judicial review is dismissed.

Certification

[28] Mr. Olaopa proposes the following question for certification:

> Within the context of an H&C application when the risk component analysis is outsourced to a PRRA officer, does the H&C officer have an obligation to examine the reasonableness of the PRRA officer's decision and evaluate the risk factors in light of the best interests of the children?

[29] I am not persuaded that this is an appropriate question for certification. The question would not be dispositive of this case as the H&C officer did examine the reasonableness of the PRRA

officer's risk opinion. Moreover, the law regarding the evaluation of the best interests of children is well-settled, and no new issue 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

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