

Federal Court



Cour fédérale

Date: 20130114

Docket: IMM-3017-12

Citation: 2013 FC 29

Ottawa, Ontario, January 14, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SURIJPAUL JAGERNAUTH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2003, Mr Surijpaul Jagernauth fled to Canada from Guyana on a false passport after being robbed and assaulted. He believes he was targeted because he was regarded as comparatively well-off, given that all of his immediate family members live in and are citizens of Canada.

[2] Mr Jagnauth applied for refugee protection but was turned down because his claim was not based on any of the grounds recognized in the Refugee Convention. Further, his fear was based on a generalized threat of being a victim of crime, not a personalized risk. He also applied for a pre-removal risk assessment (PRRA) and an exemption based on humanitarian and compassionate grounds (H&C). An immigration officer dismissed both of those applications, too.

[3] In this application for judicial review, Mr Jagnauth challenges the H&C decision, arguing that the officer made a number of errors and arrived at an unreasonable conclusion. He also contends that the officer treated him unfairly. He asks me to quash the officer's decision and order another officer to reconsider his application.

[4] I agree that the officer made errors that rendered his conclusion unreasonable. I must, therefore, allow this application for judicial review. In light of my conclusion, I need not deal with Mr Jagnauth's argument on unfairness.

II. The officer's decision

[5] The officer found that a number of factors should be weighed in Mr Jagnauth's favour, some more heavily than others:

- violent crime is a serious problem in Guyana, especially for those perceived to be wealthy, including persons who have lived abroad; however, this is not a personalized risk and state protection is available;

- ethnic tensions exist between the Afro-Guyanese and the Indo-Guyanese, although these have abated in recent years;
- Mr Jagernauth has a good employment record in Canada, and has integrated into the community; and
- Mr Jagernauth's family in Canada relies on him, but they would manage without him, as they did when the family was separated from 1996 to 2003.

[6] The officer accepted that leaving Canada would be difficult for Mr Jagernauth. On the other hand, his extended family could assist him in integrating back into life in Guyana.

[7] The only negative factor in Mr Jagernauth's application was his use of a false passport to enter Canada in 2003. The officer considered this factor "significant".

[8] Overall, the officer concluded that the evidence was insufficient to demonstrate that Mr Jagernauth's removal from Canada would cause undue, undeserved and disproportionate hardship.

III. Was the officer's conclusion unreasonable?

[9] Mr Jagernauth points to a number of problems with the officer's decision:

[10] First, the officer accepted that Mr Jagernauth had been the victim of several violent crimes, yet concluded that returning to Guyana would not cause him hardship because state protection is available.

[11] Second, the officer concluded that Mr Jagernauth's extended family could assist him on his return, but there was no evidence of other family members remaining in Guyana.

[12] Third, the officer concluded that Mr Jagernauth's parents lived independently without his assistance from 1996 to 2003. However, there was evidence that his father's health has declined significantly since then and that another separation would be stressful for him.

[13] Fourth, the officer exaggerated the significance of Mr Jagernauth's reliance on a false passport to escape mistreatment in Guyana. Refugee claimants are often forced to use irregular travel documents; no negative inference should have been drawn from that (*Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587).

[14] I agree with Mr Jagernauth that the officer erred in each of these areas, which led to an unreasonable conclusion. I will deal with each of Mr Jagernauth's concerns.

[15] The officer found that Mr Jagernauth had been victimized before and would probably be targeted again. At the same time, since state protection is available, returning to Guyana would cause him little hardship. There are two problems with this analysis. The first is the officer's conclusion that the probability of being a victim of crime does not amount to a hardship. The second

is that the officer imported the conclusion on state protection from the PRRA decision. While that may not in itself be impermissible, the PRRA decision recognized that the police did not respond adequately when Mr Jagernauth reported crimes to them. While the PRRA decision went on to mention that Guyana is a democracy and has a civilian police force, it also acknowledged that crime rates are high and the police are perceived to be corrupt.

[16] The Minister cited to me cases where the Court has concluded that an applicant generally must show more than just a generalized risk of criminality on an H&C: *Paul v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1300; *Ramotar v Canada (Minister of Citizenship and Immigration)*, 2009 FC 362; and *Chand v Canada (Minister of Citizenship and Immigration)*, 2009 FC 964. However, these cases do not state that a risk of being victimized cannot be considered a hardship. For example, Justice Judith Snider explicitly stated in *Paul* that “a generalized risk can lead to a determination that a person would suffer unusual, undeserved or disproportionate hardship” (at para 8, emphasis in original). In addition, Mr Jagernauth has shown something more – that he has already been victimized and that state protection was not forthcoming. In my view, the officer failed to consider the potential hardship to Mr Jagernauth arising from criminality.

[17] In his written narrative, Mr Jagernauth mentioned that he visited his aunts in Georgetown in 1999. His immigration file also indicated that he lived with an aunt in Guyana in 2001. However, more recent evidence in the record showed that he no longer has any close relatives in Guyana. The officer did not take account of that evidence.

[18] The officer referred to a doctor's note that mentions Mr Jagernauth's father's history of heart disease. But the note also mentions that the father had an angioplasty in 2002, so it is not accurate to say that Mr Jagernauth's parents managed well without him from 1996 to 2003. It was only in 2002 that the father's dependency on the family became an issue. Mr Jagernauth arrived in Canada the following year and has been the principal provider of assistance and support since then. In my view, the officer failed to take account of the hardship on the family if Mr Jagernauth were removed.

[19] Mr Jagernauth explained that he tried to immigrate to Canada by regular means but was turned down twice. He had not been able to accompany the rest of the family because he was beyond the age of a "dependent child" at the time they emigrated. Therefore, feeling endangered in Guyana, he resorted to the use of a false passport to escape. This Court has acknowledged that refugee claimants sometimes have to rely on false documents and that this fact is a "peripheral" matter (*Rasheed*, at para 18). Of course, the weight, if any, to be given to this piece of evidence will vary. Here, Mr Jagernauth's claim to have been the victim of serious violent crimes was accepted on his refugee claim, in his PRRA, and even by the H&C officer. In these circumstances, while it was open to the officer to consider it a negative factor, it is not clear why its significance was so great as to eclipse the several positive factors in Mr Jagernauth's favour.

[20] Taking these issues as a whole, I find that the officer's decision was unreasonable as it falls outside the range of defensible outcomes based on the facts and the law.

IV. Conclusion and Disposition

[21] In my view, the officer reached an unreasonable conclusion in light of the evidence. I must, therefore, allow this application for judicial review and order another officer to reconsider Mr Jagernauth's application. Counsel for Mr Jagernauth requested that I issue directions to the Minister along the following lines:

- (i) Mr Jagernauth should be allowed to return to Canada pending the redetermination of his H&C application, or
- (ii) that the H&C should be reassessed within 60 days and, if approved in principle, Mr Jagernauth should be allowed to return to Canada pending the secondary phase of processing.

[22] The Minister objects to my issuing any specific directions, noting that directions should be issued only in rare cases: *Rafuse v Canada (Pension Appeals Board)*, 2002 FCA 31, at para 14. Further, directions should not be given where the matter in dispute is essentially factual. While the Federal Court of Appeal in *Rafuse* was dealing with a direction that amounted to a directed verdict, I accept that directions that effectively predetermine the outcome of a matter referred back to a decision-maker for reconsideration should be issued sparingly. For that reason, I will not issue the proposed direction (i). As for direction (ii), I will also decline to issue it. Mr Jagernauth will have another opportunity to make submissions on his H&C, and can provide information about his current difficulties in Guyana and request permission to return to Canada. While I would not impose

a deadline on the reconsideration of Mr Jagermath's application, I am prepared to direct that a review of his application be expedited.

[23] 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 allowed. The matter is referred back to another officer for reconsideration on an expedited basis.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3017-12

STYLE OF CAUSE: SURIJPAUL JAGERNAUTH
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 28, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: January 14, 2013

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