Federal Court  Cour fédérale

Date: 20130626

Docket: IMM-7680-12

Citation: 2013 FC 713

Ottawa, Ontario, June 26, 2013

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

MAURICIO ANDRES URIBE MENESES

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGECY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision by a Canada Border Service Agency enforcement officer (Officer) who refused to defer the applicant's removal from Canada. While there are aspects of the decision which are troubling, they do not amount to an error. The application for judicial review will therefore be dismissed.

[2] The applicant is a citizen of Chile. In 2009, he entered Canada on a work permit but was found to have violated its terms and conditions. The applicant met his common-law spouse, a Canadian, in March of 2010. They began living together in October of that year. The applicant applied for permanent residence under the spouse or common law partner in Canada class. The applicant received a negative Pre-Removal Risk Assessment (PRRA) on July 3, 2012, and was directed to report for removal on August 6, 2012. He requested that the Officer defer his removal pending the assessment of his outstanding inland sponsorship application in light of the best interests of his wife's two children.

[3] The applicable standard of review is reasonableness: *Baron v Canada (Minister of Public Safety & Emergency Preparedness)*, 2009 FCA 81, para 25. This Court will only intervene if the decision falls outside of the "range of possible, acceptable outcomes which are defensible in respect of the facts and law": Dun*smuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, para 47.

[4] Subsection 48(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 then provided that a removal order must be enforced "as soon as is reasonably practicable."

[5] An enforcement officer's discretion to defer removal is limited and should be exercised only in respect of circumstances directly applicable to removal: *Wang v Canada (Minister of Citizenship and Immigration)*, [2001] 3 FC 682; *Baron*, para 51. Circumstances that may justify a deferral include illness, other impediments to travel, safety concerns, children's school years and pending births and deaths: *Baron*, paras 49-51.

[6] The applicant has not identified any error in the decision. The Officer appreciated that she had limited discretion to defer removal, but determined that the hardship faced by the applicant and his family did not rise to the level which justifies a deferral. Most of the considerations raised here as justification for a deferral are more appropriate considerations in an application for humanitarian and compassionate (H&C) relief. They do not fall within the *Baron* and *Wang* criteria.

[7] The applicant has raised two primary arguments. The first is the statement of the Officer that there was no evidence that the applicant would be separated from his spouse indefinitely, or that his spouse and children would not be able to visit him in Chile. The later factor does not withstand scrutiny, given the evidence of his spouse's low income. It is self-evident that purchasing return air tickets to Chile for a family of three is unrealistic in her circumstances. This said, I do not consider the issue to have a material bearing on the question of deferral of removal, although it would be material to an H&C determination.

[8] Turning to the second item of concern, the Officer's observation that there was no evidence that the separation would be indefinite, this is clearly an error in the exercise of discretion. There is no requirement that the separation be permanent. I am satisfied, however, that reading the decision as a whole, the Officer did not fetter her discretion; indeed, the Officer concludes later that while the separation will cause hardship, it will be no more than temporary. Reading the decision as a whole, I do not believe that the Officer assessed the request against a standard of permanent separation.

[9] The Officer does not address the fact that removal will mean that the months spent waiting for stage 1 approval will evaporate and that the applicant will be required to re-commence his

spousal application as an out-of-Canada applicant. This too is a factor that bears on the H&C case, rather than the exercise of discretion by a removals officer.

[10] The Officer considered the pending sponsorship application and found that a decision was not imminent. The applicant applied for sponsorship two months after receiving his call-in notice, on January 10, 2012, outside of the period where he would receive an automatic stay. The expected processing time was approximately 11 months for the first stage of the assessment.

[11] A pending in-Canada spousal application may only justify deferral if a decision appears to be imminent: *Ramirez v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 706, paras 17, 18. The Officer considered the expected processing times and determined that there was insufficient evidence to conclude that a decision was imminent.

[12] The Officer considered the applicant's separation from his wife and the economic hardship she may experience without his support. The Officer concluded that she may be able to visit him in Chile and may be able to sponsor him for permanent residence from abroad. With regards to economic hardship, the applicant's wife is employed and would be entitled to social assistance in Canada should she require it. The Officer considered the argument that she may become homeless to be speculative and unsupported by the evidence.

[13] Finally, the Officer considered the best interests of the affected children. The children will continue living with their mother, who will help them adjust to the applicant's absence. The Officer considered the young boy's difficulties in school, but concluded that there was no evidence that the

applicant assisted him with schoolwork. The Officer was not required to undertake a substantive review of the best interests of the affected children: *Baron*, paras 49-51.

[14] In the circumstances, I consider the analysis to be sufficient.

[15] The Officer reasonably concluded that the applicant's circumstances are not such that his removal falls within the circumstances contemplated by *Wang* and *Baron*. The application for judicial review is therefore dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7680-12
STYLE OF CAUSE:	**MAURICIO ANDRES URIBE MENESES v MINISTER OF PUBLIC SAFETY AND EMERGECY PREPAREDNESS**
PLACE OF HEARING:	Toronto, ON
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REASONS FOR JUDGMENT AND JUDGMENT:	RENNIE J.
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APPEARANCES:

D. Clifford Luyt	FOR THE APPLICANT
Alex Kam	FOR THE RESPONDENT

SOLICITORS OF RECORD:

D. Clifford Luyt Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney, Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT