Federal Court  Cour fédérale

Date: 20130627

Docket: IMM-10882-12

Citation: 2013 FC 725

Ottawa, Ontario, June 27, 2013

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

BAQAR MIRZA

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant brings this judicial review to set aside a decision of the Immigration Appeal Division (IAD) refusing leave to appeal from an exclusion order on humanitarian and compassionate (H&C) grounds. Despite counsel's able submissions, I see no basis on which the decision, when viewed as whole as it must, can be set aside. This application is therefore dismissed.

Background

[2] The applicant is a citizen of Pakistan who applied to immigrate to Canada as a skilled worker in 1998. At that time he had no dependants. The applicant married in 2000 and had his first child in 2001. He landed in Canada in 2003 and did not, on the advice of a consultant, declare the change in his family status. Since then, he has had two more children.

[3] In 2006 he applied to sponsor his wife and children as members of the family class. They were found ineligible for sponsorship in accordance with paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 because the applicant did not disclose them as part of his original application for permanent residence. The applicant was subsequently found to be inadmissible to Canada for misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). He applied to the IAD for discretionary relief from the exclusion order based on H&C considerations, pursuant to sections 67 and 68 of the *IRPA*.

[4] The IAD considered the relevant H&C factors but determined that they did not warrant allowing the appeal or granting a stay. In reaching this conclusion the IAD noted that:

a. The misrepresentation was not inadvertent. The applicant had been advised by a consultant not to disclose his family.
b. The applicant expressed remorse but his remorse was more in respect of the consequences of deportation rather than the impact of his misrepresentation on the immigration system.

c. The applicant had lived in Canada full time since 2005, studying and working in the oil and gas industry. These positive factors were considered offset by the fact that he has little by way of assets or other attachments to Canada and his significant debt.

d. The applicant is a well-known and respected member of the local Muslim community however he remains connected to Pakistan by virtue of his immediate family there.

e. The applicant was employed as an engineer before leaving Pakistan and left this position on good terms with his employer.

f. The applicant's children study at a private British school and participate in extra-curricular activities in Pakistan. The applicant intends for them to come to Canada for post-secondary school.

Issue

[5] The issue for this judicial review is whether the IAD fairly considered and weighed the applicant's establishment in Canada. The standard of review of that decision is reasonableness. The IAD has the discretion to determine what constitutes H&C considerations and the sufficiency of such considerations in any particular case: *Khosa v Canada (MCI)*, 2009 SCC 12, [2009] 1 SCR 339, paras 57-58, 61-63. In considering the reasons for a decision, the Supreme Court of Canada has recently emphasized that reasons are to be read as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34, para 54 and that resort may be had to the record to fill in gaps or *lacunae* in the analysis where the answer is readily apparent from the record: *Alberta (Information and Privacy Commissioner) v Alberta Teachers Association*, 2011 SCC 61, [2011] 3 SCR 654.

Analysis

[6] The applicant advances two arguments. The first argument is that the IAD erred in off-setting the positive factors of establishment, including the applicant's community ties, education and employment record, against his debt and lack of tangible assets. The foundation of the second argument lies in an admitted error by the Member as to the dates in which the applicant lived in Canada. It is contended that this error coloured the Member's overall appreciation of the establishment factors.

[7] Turning to the first argument, it is within the discretion of the IAD to consider that the lack of assets weighs against establishment. However, the applicant contends that the Member gave this disproportionate weight and then discounted other relevant factors. The Member failed as well to parse the debts and to look at the reason why they were incurred. They were in respect of student loans ($20,000) and a new vehicle ($40,000). The applicant submits that his debts were reasonable to incur and that a student loan is often viewed as an investment.

[8] While I agree with the applicant that the Member ought to have examined the nature of the debts and considered why they were incurred, the failure to do so did not affect the decision. There are two reasons for this conclusion.

[9] First, the Member noted that the applicant had no tangible assets such as a house or other property. The debts, regardless of their origins, were but one aspect of the overall financial situation. Put otherwise, as I understand the reasons, the debts were not held against the applicant;

rather, they were simply *indicia* of a lack of establishment. Had the Member concluded that the existence of the debts, *per se*, was a negative factor, then I agree with the applicant that it would have been incumbent on the Member to inquire as to the reason they were incurred and to balance them against other factors.

[10] Second, financial considerations were but one of a number of factors considered by the Member, including the applicant's connection to the community, his age on landing and the location of his immediate and extended family. In this regard the Member also noted that the decision not to disclose the existence of his wife and child was strategic, not inadvertent; that he had been gainfully employed in Pakistan and would likely be able to find work on return given his increased experience and education; that his wife and children reside in Pakistan; that his parents reside in Pakistan; that he has two sisters in Pakistan, a brother in Holland, and a sister and brother-in-law in Toronto. The Member concluded that his relationships with his siblings would not be substantially disrupted if he were to leave Canada, and they did not, in and of themselves, suggest a degree of establishment in Canada.

[11] When situated in the broader context of all the factors relevant to establishment, the debts were not given disproportionate weight or otherwise tipped the balance in a closely considered weighing of relevant criteria.

[12] I turn to the second error.

[13] The Member clearly erred in appreciating an element of the evidence. The applicant arrived in Canada on January 14, 2003 and returned to Pakistan in December, 2003. He returned to Canada in 2005. In several places in her reasons, the Member characterizes his first stay in Canada as "a few weeks" and as "a brief time". It was not. The applicant was in Canada for close to a year.

[14] This error has to be situated in the context of other findings made by the Member. She concluded as well that "… the applicant did not intend to take up residence in Canada upon being granted permanent resident status," noting that the applicant maintained his employment in Pakistan and waited three years after his initial landing in January 2003 before applying to sponsor his family. The Member concluded that he did not take up full time residence in Canada until his return in 2005. The record, correctly interpreted, indicates that the applicant was in Canada for 11 months, then absent for a year. Given this finding, the error in calculating the time he was in Canada prior to 2005 is immaterial.

[15] The applicant also submits that the IAD failed to take into account the significant length of time that the applicant spent in Canada, since arriving in 2005. However, the IAD acknowledged that the applicant has lived full time in Canada since 2005.

[16] The IAD conducted a detailed analysis of the applicant's circumstances and assessed them against the relevant criteria. The decision was not predicated on any single factor, nor was any factor omitted. The fact that the applicant had debt was not determinative. While the applicant correctly notes the error in the date of his first departure from Canada, when that error is situated in light of the other findings of fact, and in particular the finding that he only took up full time

residence in 2005, it does not upset the reasonableness of the decision. The reasons, in principle, support the conclusion reached: *Newfoundland and Labrador Nurses Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62, [2011] 3 SCR 708, paras 12-18.

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-10882-12
STYLE OF CAUSE:	**BAQAR MIRZA v MINISTER OF PUBLIC SAFETY AND EMERGECY PREPAREDNESS**
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	June 24, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	RENNIE J.
DATED:	June 27, 2013

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