Federal Court  Cour fédérale

Date: 20131024

Docket: IMM-1502-13

Citation: 2013 FC 1075

Ottawa, Ontario, October 24, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SINGH, AMAN (A.K.A. AMANJOT KOONER)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Fraud is fraud and misrepresentation is misrepresentation. The Applicant is the recipient of his parents' acts as well as his very own in respect of illegal acts to Canada's immigration legislation (reference is made to the Federal Court of Appeal decision, penned by Justice Robert Décary, in *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125, [2002] 4 FC 358).

II. Introduction

[2] The Applicant seeks a judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision of an Immigration Officer, dated November 6, 2012, refusing the Applicant's application for permanent residence on humanitarian and compassionate grounds [H&C] pursuant to section 25 of the *IRPA*.

II. Background

[3] The Applicant, Mr. Amanjot Kooner, is a citizen of India, born in Jalandhar in 1986.

[4] The Applicant arrived to Canada with his parents on June 23, 2000. On July 8, 2000, both of his parents made refugee claims using false identities, presenting themselves as widowers. They also sought refugee status for the Applicant under the name "Aman Singh".

[5] On May 23, 2001, the Applicant and his mother were granted refugee status. Two years later, the Applicant's father's refugee claim was refused.

[6] The Applicant's mother proceeded to marry his father in a fictitious wedding ceremony in order to sponsor him.

[7] In 2003, an anonymous letter was submitted to Immigration Canada revealing the family's true story. Immigration Canada began an investigation.

[8] In 2007, the Applicant was confronted by immigration authorities regarding his family's immigration scheme.

[9] On October 18, 2010, the Applicant and his mother's refugee status were vacated by the Refugee Protection Division of the Immigration and Refugee Board, thereby nullifying their permanent resident status. The Applicant's mother's sponsorship application for his father was consequently refused.

[10] On March 2, 2011, the Applicant filed his H&C application.

[11] On January 18, 2012, the Applicant filed an application for a Pre-Removal Risk Assessment [PRRA].

[12] On March 3, 2012, the Applicant married a Canadian citizen named Navdeep Saini. It is noted by the Court that a letter appears in the file emanating from a Ms. Sonia Archambault which specified that the Applicant started dating her on January 23, 2011. Interestingly, however, as part of his H&C application, the Applicant, himself, submitted this letter, dated three days later (January 26, 2011), from this woman, Ms. Sonia Archambault, which states that she and the Applicant are in a loving and happy relationship, and are planning to get together in the near future.

[13] On November 6, 2012, the Officer refused the Applicant's H&C and PRRA applications.

III. Decision under Review

[14] In her decision, the Officer assessed the allegations raised by the Applicant regarding his establishment in Canada and the hardship he would face if returned to his country of origin.

[15] With regard to his establishment, the Officer recognized that the Applicant had demonstrated a considerable degree of social and economic establishment in Canada; however, the Officer found that these factors alone could not constitute sufficient H&C grounds to merit an exemption of the requirements of the *IRPA*. The Officer noted that the Applicant's establishment had been acquired entirely under false pretences. This was a significant factor that the Officer determined seriously negated the degree of establishment of the Applicant in Canada.

[16] The Officer also concluded that the Applicant had not provided any evidence to demonstrate that he would suffer unusual and undeserved or disproportionate hardship if required to return to India. She noted that relocation and severing ties with family and employment was a hardship faced by many people forced to leave Canada, and was not unusual and undeserved or disproportionate, in and of itself.

[17] The Officer also found that there was insufficient evidence on file to determine how the adverse conditions in the Applicant's country of origin would cause him unusual and underserved or disproportionate hardship.

[18] Based on these factors, the Officer rejected the Applicant's H&C application.

IV. Issues

[19] (1) Did the Officer fail to properly assess the Applicant's establishment in Canada?

(2) Did the Officer err in assessing the hardship the Applicant would face if returned to India?

V. Relevant Legislative Provisions

[20] The following legislative provision of the *IRPA* is relevant:

25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25.** (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

VI. Position of the Parties

[21] The Applicant submits that the Officer did not give enough weight to the presence of his spouse and sponsorship application in Canada, his degree of establishment and the disproportionate hardship he would face upon removal. The Applicant also submits that the Officer gave excessive importance to his misrepresentation, which he contends he should not be held responsible for as he was a minor at the time he arrived to Canada.

[22] The Respondent submits that the Applicant's arguments merely reflect his disagreement with the Officer's assessment of his establishment in Canada and does not demonstrate that the Officer's decision is unreasonable.

[23] The Respondent affirms that the Officer took into account the positive establishment factors of the Applicant, but when balanced with other factors, did not justify granting him an exemption to the law.

[24] The Respondent also submits that the Officer reasonably concluded that the country conditions in India would not be unusual and undeserved or disproportionate in the Applicant's particular circumstances. The Applicant provided no evidence to demonstrate how he would be personally affected by the adverse conditions in India. Moreover, the Respondent notes that the Applicant would be returning to India with valid travel documents and he did not have the profile of a person who would typically be at risk of harm upon re-entry.

VIII. Analysis

Standard of Review

[25] The standard of review applicable to a decision relating to an H&C application is that of reasonableness (*Ramirez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1404, 304 FTR 136; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360).

[26] A heavy burden rests on an applicant to satisfy the Court that a decision under section 25 requires its intervention (*Mikhno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 386; *Cuthbert v Canada (Minister of Citizenship and Immigration)*, 2012 FC 470, 408 FTR 173).

(1) Did the Officer fail to properly assess the Applicant's establishment in Canada?

[27] The Court is of the view that the Officer's assessment of the Applicant's establishment is reasonable. The Officer considered all of the positive factors of the Applicant's H&C application, including his establishment; however, these factors were simply found to be insufficient to outweigh the significant negative factor of the Applicant's misrepresentation with regard to his identity. The Applicant in this case, as in the case of *Moore v Canada (Minister of Citizenship and Immigration)*, 2011 FC 550, did not come to the Court with clean hands. He and his parents used a false identity to support their refugee claim when they arrived in Canada. The Applicant's real identity has still not been clearly or definitively established by Canadian authorities.

[28] As stated in *Moore*, above, an applicant's misrepresentation on a central element such as identity can be taken into account by an officer when rendering a decision. This position has been

reaffirmed by this Court in a number of decisions, including *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, 309 DLR (4th) 411 (at para 64), *Ebebe v Canada (Minister of Citizenship and Immigration)*, 2009 FC 936 (at para 21) and *Legault*, above. In *Legault*, Justice Décary summarized the law on this point:

> [19] In short, the *Immigration Act* and the Canadian immigration policy are founded on the idea that whoever comes to Canada with the intention of settling must be of good faith and comply to the letter with the requirements both in form and substance of the Act. Whoever enters Canada illegally contributes to falsifying the immigration plan and policy and gives himself priority over those who do respect the requirements of the Act. The Minister, who is responsible for the application of the policy and the Act, is definitely authorised to refuse the exception requested by a person who has established the existence of humanitarian and compassionate grounds, if he believes, for example, that the circumstances surrounding his entry and stay in Canada discredit him or create a precedent susceptible of encouraging illegal entry in Canada. … [Emphasis added].

[29] In *Shallow v Canada (Minister of Citizenship and Immigration)*, 2012 FC 749, 410 FTR 314 this Court further found:

> [8] ... merely managing to evade deportation for a lengthy period of time through various procedures and protections available through the immigration process ought not to enhance an applicant's "right" to remain in Canada on H&C grounds. In this case, the Applicants' stay in Canada was of their own choosing. They could have returned to St. Vincent at any time and chose not to.
>
> [9] For this factor [establishment] to weigh in favour of an applicant, much more than simple residence in Canada must be demonstrated. And, it must always be remembered that the focus is on the hardship to the Applicants on applying for permanent residence from their country of origin as is required by s. 11 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Unless the establishment in Canada is both exceptional in nature and not of the applicant's own choosing, this will not normally be a factor that weighs in favour of the applicants. At best, this factor will usually be neutral. On this question, the Officer did not err. [Emphasis added].

[30] Contrary to the Applicant's position, the Officer was entitled to give little or no weight to the Applicant's degree of establishment in Canada as he misrepresented himself to gain entry in order to remain in Canada.

[31] It is important to note that, although the Applicant was a minor (age 13) when he first arrived to Canada, he continued to mislead Canadian authorities well into his adulthood. The Court cannot accept the Applicant's argument that his decision to remain in Canada illegally was exceptional and not of his own choosing simply because his entry into Canada was orchestrated by his parents in his youth. Once the Applicant reached the age of majority, the decision to remain illegally in Canada became reasonably within his control. The Applicant chose to continue living in Canada, knowing he was without legal status. There is no evidence that he has taken any steps to rectify this situation (Certified Tribunal Record [CTR] at p 7).

[32] The Court, therefore, finds that the Officer's decision to give more weight to the Applicant's misrepresentation over other elements was completely reasonable. Her reasons were transparent, justifiable and intelligible and well within the range of acceptable outcomes based on the limited evidence before her. It is not for this Court to re-weigh that evidence simply because the Applicant is unsatisfied with the weight that was given to it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35).

[33] The Court agrees with the Applicant that establishment is an important factor that must be considered in an H&C application; however, it is not the determining factor, nor does it outweigh all

other factors (*Irimie v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1906 at para 20 (QL/Lexis) (Fed TD)).

(2) Did the Officer err in assessing the hardship the Applicant would face if returned to India?

[34] Section 25 of the *IRPA* is an exceptional provision. It allows an exemption only where an applicant can prove that he or she would face unusual and undeserved or disproportionate hardship if he or she was required to file an application for permanent residence from his or her country of origin. In the H&C context, it is the applicant who has the burden of providing evidence to establish such hardship.

[35] In the present case, there is no doubt that the refusal of the Applicant's H&C application will cause him some degree of hardship; however, given the circumstances of the Applicant's presence in Canada and the limited evidence provided regarding the hardship he would endure if returned to India, the Court does not find that the Officer erred in determining that his removal from Canada would not cause unusual and undeserved or disproportionate hardship.

[36] A stated in *Irimie*, above, it must be remembered that the H&C process is not designed to eliminate all hardship; it is designed to provide relief from unusual and undeserved or disproportionate hardship. This Court has repeatedly declared that leaving behind friends, family, employment or a residence is not necessarily enough to justify the exercise of discretion by an officer (*Irimie*, above, at para 12; reference is also made to *Mayburov v Canada (Minister of Citizenship and Immigration)* (2000), 183 FTR 280, [2000] FCJ No 953 (QL/Lexis) (FCTD)).

[37] Based on the evidence before her, the Officer acted reasonably in concluding that the Applicant's situation was no different than that which is inherent of being asked to leave one's environment after a long period of time. The Officer recognized that the Applicant would be leaving behind his loved ones and his employment; however, she did not consider these circumstances would bring hardship that would be enough to justify the exercise of her discretion. The Applicant provided no evidence to demonstrate how his personal circumstances would lead to such hardship.

[38] The Court also finds that the Officer reasonably concluded that the Applicant would not suffer unusual and undeserved or disproportionate hardship in India. Again, the onus was on the Applicant to substantiate his allegations with respect to the hardship he would personally face and to demonstrate how the country's conditions would cause such hardship. Without any evidence allowing her to "gauge the conditions that exist in India and their possible and particular impact on [the Applicant]" (CTR at p 8) [emphasis added], the Officer could not be expected to identify an unusual or disproportionate hardship in the Applicant's circumstance.

[39] Contrary to the Applicant's allegation on this point, the Officer did use the correct standard to assess the Applicant's hardship. This Court has previously addressed similar allegations in the context of an H&C application in *Webb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1060, 417 FTR 306 and found:

> [17] … A determination of disproportionate hardship requires the evaluation of personal circumstances. The officer was simply not convinced that the general conditions of St. Vincent and the Grenadines would constitute unusual and undeserved or disproportionate hardship. That was a finding reasonably open to the officer on the evidence. She found that the applicant produced insufficient evidence that he would be personally affected by the conditions. This does not demonstrate that the officer applied the incorrect test. [Emphasis added].

(Reference is also made to *Tarafder v Canada (Minister of Citizenship and Immigration)*, 2013 FC 817)

[40] In the present case, it is clear that the Officer carefully examined the documentary evidence on the general conditions in India; she found that it had human rights problems, widespread corruption and impunity, an overburdened judiciary and continuing military insurgency; however, due to a lack of evidence, the Officer could not satisfy herself that these conditions applied to the Applicant personally or that the hardship relating to the country conditions would be unusual and underserved or disproportionate in his particular circumstances (CTR at p 8).

[41] In light of the foregoing, the Court finds that the Officer did not commit a reviewable error. The hardship resulting from prospective risk in India was appropriately dealt with by the Officer and supported by the evidence. The Applicant did not raise any substantive arguments as to how the country conditions in India would cause him personally unusual and undeserved or disproportionate hardship.

VII. Conclusion

[42] For all of the above reasons, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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