Federal Court  Cour fédérale

Date: 20140108

Docket: IMM-12827-12

Citation: 2014 FC 18

Ottawa, Ontario, this 8th day of January 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

PETER GREENE

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision made by an Immigration Officer (the "officer") on November 27, 2012. The applicant, Mr. Peter Greene, sought a remedy under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act"). Subsection 25(1) reads as follows:

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 or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada 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, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada 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.

[2] In this case, the applicant is inadmissible because of a criminal conviction (driving under the influence) he received in the United Kingdom a few years ago. He is not eligible for rehabilitation until September 2015.

[3] The applicant married a Canadian citizen on July 2, 2011. They returned to Canada shortly after the wedding, which took place in Ireland, and the applicant wishes to become a permanent resident, qualifying as a "member of the spouse in Canada class". His application under section 25 of the Act is for the purpose of being allowed to make his application for permanent residence in spite of the fact that he has not yet been rehabilitated. Accordingly, he is still inadmissible but, in view of the circumstances, believes that the inadmissibility should be lifted on humanitarian and compassionate grounds.

[4] It is not disputed that the relationship between the applicant and his wife is genuine. Rather, the officer simply stated that he was not convinced that there was undue and undeserved or

disproportionate hardship in this case. The better articulation of the reasons is found in the GCMS notes which are part of the tribunal's record. The paragraph reads:

> Reviewed file and, in particular, submissions from rep dated 03Apr2012, 24May2012, 23Jul2012 and 06Sep2012. Reasons cited for H&C consideration include: - economic hardship if subject were forced to leave Canada - establishment in Canada - strong tie to Canadian spouse - low risk to Canada if allowed to remain I find that the information provided is insufficient to prove that a refusal would result in undue and underserved or disproportionate hardship. Subject has been allowed to enter and remain in Canada on the strength of a temporary resident permit. Has been issued a work permit that allows him to support himself and his wife. Appears from the information provided by the rep, the conviction for the DUI in the U.K. was rendered on 16Sep2008 and the sentence included a 24 month driving disqualification. The sentence was completed 16Sep2010, according to the rep. Subject appears to be eligible to apply for crim rehab on 16Sep2015. Until then, he can remain and work in Canada on the documents currently held. His situation is neither undue and undeserved nor is it disproportionate. The situation that resulted in his conviction was within his control. Request for an A25 waiver for the criminality is hereby refused. Subject has been advised by letter of refusal and requirement to renew/extend his TP and WP. Appears subject may be currently outside Canada to visit his ailing father in Ireland. His whereabouts have not been confirmed.

[5] It seems to me that the single issue in this case is whether the decision made by the officer is reasonable in the circumstances. The applicant has sought to make the argument that the adequacy of the reasons given is a stand-alone ground for the Court to intervene. However, that kind of argument is in my view not available anymore since the decision of the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland and Labrador Nurses' Union*]. I believe that the Court puts to rest that notion. At paragraph 14 of the decision one can read:

> [14] Read as a whole, I do not see *Dunsmuir* [*v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190] as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a

> decision, or as advocating that a reviewing court undertake two discrete analyses – one for the reasons and a separate one for the result […]. It is a more organic exercise – the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes.

[6] It is certainly not expected that decision-makers will provide chapter and verse in the reasons that they give for the decision that they have made. It seems to me, however, that the test is to be found at the end of paragraph 16 in *Newfoundland and Labrador Nurses' Union*:

> [16] . . . In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[7] I do not wish to substitute myself for the decision-maker in making a determination that the applicant should have received the benefit of section 25 of the Act. However, I need to be satisfied that the decision made falls within the range of acceptable outcomes. In the case at hand, indeed, I did try to supplement the reasons in order to understand the decision reached.

[8] The best that can be done is to say that the decision-maker listed the arguments raised by the applicant and decided to find them insufficient in view of the fact that a temporary resident permit had already been issued to the applicant. As we know, that kind of a permit is very much uncertain. Not only can it be revoked, but its renewal is always the subject of a discretionary decision.

Subsection 24(1) of the Act reads:

24. (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues	**24.** (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le

a temporary resident permit, which may be cancelled at any time.	justifient, un permis de séjour temporaire – titre révocable en tout temps.

[9] There is no indication in the decision why such a permit can be a substitute to the remedy of section 25. Indeed, the very uncertainty that comes with the temporary resident permit cannot replace the remedy of section 25 which is of course much more permanent.

[10] The jurisdiction of the officer was to decide if the humanitarian and compassionate grounds submitted by the applicant were sufficient to warrant a remedy under section 25 of the Act. In choosing to rely on a temporary remedy, the officer did not exercise the jurisdiction given by law. At the very least, the officer did not explain why the grounds do not suffice. The reasons read with the outcome do not show that the decision falls within the range of possible outcomes.

[11] It is not my purpose to suggest that the discretion of the officer ought to have been exercised in favour of the applicant in this case. It is for the officer to make the determination. However, the law requires that I understand why the remedy was not granted and simply suggesting that a temporary remedy, which is in and of itself very uncertain, is an adequate substitute does not, in my view, satisfy the test. The jurisdiction under section 25 was not exercised. There is nothing that I have been able to find in the reasons offered by the officer to determine whether the conclusion to deny is within the range of acceptable outcomes.

[12] As a result, the judicial review of the decision of the officer of November 27, 2012 is granted. The matter is to be remitted to a different officer for the purpose of proceeding to a new determination. The parties agreed that there is no question for certification. I agree.

JUDGMENT

THIS COURT ADJUDGES that the application for judicial review is allowed. The decision made by an Immigration Officer of Citizenship and Immigration Canada on November 27, 2012 is quashed and the matter is remitted to a different officer for the purpose of proceeding to a new hearing and determination.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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