Federal Court  **Cour fédérale**

Date: 20140228

Docket: IMM-2430-13

Citation: 2014 FC 195

Ottawa, Ontario, this 28th day of February 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

Daniel Felipe VARGAS CABRERA

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Leave was granted by a judge of this Court to commence an application for judicial review of the decision of the Visa Section of the Embassy of Canada in Bogota, Colombia, dated March 1, 2013. This judicial review application is made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act").

Preliminary matter

[2] On its face, the application for leave and for judicial review is with respect to the application for humanitarian and compassionate considerations, pursuant to subsection 25(1) of the Act. However, the respondent originally sought to strike out the application for leave and for judicial review, arguing that the applicant was in fact challenging the decision to deny spousal sponsorship for permanent resident status as a member of the family class. Paragraph 72(2)(*a*) of the Act provides that an application for judicial review is not made until any right of appeal that may be provided by the Act is exhausted. In the case at hand, the denial of sponsorship is subject to a right of appeal in accordance with subsection 63(1) of the Act. Indeed the applicant's sponsor launched such an appeal on March 18, 2013.

[3] A judge of this Court ordered on July 3, 2013 that the issue be decided on the merits by the presiding judge, should leave for judicial review be granted. Such was the case and therefore that preliminary issue would have been before me.

[4] However, the appeal pursuant to section 63 of the Act was abandoned on January 14, 2014. What would have been before the Immigration Appeal Division, had the appeal been pursued, was whether or not the relationship between the sponsor and the applicant is genuine. That issue, which was not before this Court in the first place, appears now to have been settled through the appeal's withdrawal. Hence, the difficulty with having a judicial review pursuant to paragraph 72(2)(*a*), at the same time as an appeal is underway, pursuant to section 63, has disappeared.

[5] What is left before this Court is the contention that a visa ought to have been issued on the basis of humanitarian and compassionate [H&C] grounds raised by the applicant.

Facts

[6] The facts of this case are straightforward. Mr. Daniel Felipe Vargas Cabrera, the applicant, is a Colombian citizen born in 1981. He had been living outside of Colombia since the age of 14. He lived in the United States until 2007, at which point he came to Canada and sought refugee status. His claim was rejected in 2008. He was deported to his country of nationality on May 21, 2011.

[7] It seems that the applicant and his would-be-sponsor, Helena Stolearova, started a relationship around 2009. They claimed to have a common-law relationship, out of which a child was born. Furthermore, Ms. Stolearova was already the mother of a 13-year-old son. The couple's daughter was born in February 2012, after the applicant had been deported to Colombia.

Standard of review

[8] It is common ground that the judicial review of a refusal by a visa officer is governed by the standard of review of reasonableness. These decisions are discretionary and meant to provide relief from unusual and underserved or disproportionate hardship.

Analysis

[9] The case for the applicant boils down to this. The applicant has assumed the role as *de facto* father to the son of the would-be sponsor during the period they lived together in Canada; he

contributes financially to the family unit; he now is the father of a two-year-old daughter and the best interests of the children command that he be allowed to join the family as a permanent resident in Canada. The challenge to the visa officer centered on the adequacy of reasons, given the lack of comment on significant evidence and not showing sufficiently that the officer was alert, alive and sensitive to the needs of the children.

[10] In spite of recognizing that the standard of review in this case is one of reasonableness, the applicant argued his case as if it was rather a standard of correctness that applied in the circumstances. He takes issue with the appreciation of the evidence made by the visa officer, seemingly to suggest that this Court should take a different view. However, such is not the standard and the burden on the applicant was rather to satisfy the requirements of paragraph 47 in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[11] The adequacy of reasons, or lack thereof, is not enough for a court to quash the decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*,

2011 SCC 62, [2011] 3 SCR 708 at paragraph 14). Furthermore, there is no need to require that the reasons include all of the arguments, jurisprudence or other details. The test, at the end of the day, is that which is found at the end of paragraph 16 in the *Newfoundland and Labrador Nurses' Union* case:

> . . . 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.

[12] My examination of the reasons given in order to deny the application under section 25 of the Act made me conclude that the visa officer addressed the issues raised in an appropriate fashion. That the applicant would disagree with the appreciation of the evidence is not surprising. However, much more than disagreeing was needed in order to discharge the burden of showing that the decision is unreasonable. Quite clearly, the visa officer was alert and alive to the needs of the children, but he found that this was not sufficient. I see no reason why this Court would not defer to that decision and the applicant has not made a convincing demonstration that the decision was unreasonable.

[13] In my estimation, the evidence adduced by the applicant on his H&C application falls substantially short of the mark. The presence of children is not sufficient. The visa officer was alert, alive and sensitive to their best interests. However, being alert, alive and sensitive to the best interests of children does not mean that they must prevail (*Legault v Canada (Minister of Citizenship and Immigration*), 2002 FCA 125, [2002] 4 FC 358). In this case, there was ample evidence to support the conclusion reached by the visa officer. I would dismiss the judicial review application in this case.

[14] The parties did not raise a serious question of general importance for certification. I agree that there is none.

JUDGMENT

The application for judicial review of the decision rendered on March 1, 2013 by the Visa Section of the Embassy of Canada in Bogota, Colombia, is dismissed.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2430-13
STYLE OF CAUSE:	Daniel Felipe VARGAS CABRERA And THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	FEBRUARY 20, 2014
REASONS FOR JUDGMENT AND JUDGMENT:	ROY J.
DATED:	FEBRUARY 28, 2014

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