

Federal Court



Cour fédérale

Date: 20120123

**Docket: IMM-2934-11
IMM-2938-11**

Citation: 2012 FC 90

Ottawa, Ontario, January 23, 2012

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

DARIUSZ SLIWA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Dariusz Sliwa is a 36 year old Polish citizen who has been in Canada since he was 15. During his time in Canada, Mr. Sliwa accumulated a significant criminal record which led to the loss of his permanent resident status. He now seeks judicial review of decisions refusing his applications for a humanitarian and compassionate [H&C] exemption and for a Temporary Residence Permit [TRP].

[2] For the reasons that follow, I am satisfied that the decisions made in relation to Mr. Sliwa's H&C and TRP applications were reasonable. As a result, his applications for judicial review will be dismissed.

The H&C Application

[3] The reasons provided by the H&C officer in this case are lengthy, detailed and thoughtful. The officer carefully balanced Mr. Sliwa's lengthy criminal record (which includes two convictions for violent crimes) against factors including his long-time residence in Canada, his family support in this country, his mental health problems and his efforts to overcome his addictions. The officer also considered the best interests of Mr. Sliwa's two children.

[4] Mr. Sliwa says that his family support in Canada is essential to his recovery from both his mental illness and his addictions to drugs and alcohol. According to Mr. Sliwa, the H&C officer misunderstood the scope of the support network available to him in Canada, and the role that family support plays in his recovery.

[5] Mr. Sliwa also argues that the officer ignored correctional reports prepared in relation to his release from prison. Mr. Sliwa says that these reports demonstrate that the decision to release him from prison was based upon the support that he has from his family.

[6] I agree that the correctional reports identify Mr. Sliwa's family support as a positive factor which was important to his release plan. However, these documents also show that the reason that Mr. Sliwa was released from prison was because he reached his statutory release date. It is also

evident from the reports that correctional officials understood that Mr. Sliwa was under a valid deportation order and that he might well be sent back to Poland.

[7] However, a review of the reasons discloses that the officer was well aware of the benefits of having the support of a family network for those fighting addictions or living with mental illness. Indeed, the officer's reasons make specific reference to the evidence in this regard.

[8] Moreover, the importance of this aspect of Mr. Sliwa's H&C application was clearly recognized by the officer, who commenced the analysis of this aspect of the application with the words "[a]bove all" before proceeding to examine the issue of family support and rehabilitation.

[9] The officer further erred, Mr. Sliwa says, by focusing only on the support offered to him by his wife and ignoring the support provided by Mr. Sliwa's parents, siblings and 14 year old daughter, all of whom are here in Canada.

[10] While it was reasonable to focus on the support provided to Mr. Sliwa by his wife, the officer did not ignore the support provided by other members of his family. The officer acknowledged that Mr. Sliwa has extended family in Canada who are prepared to support him in his recovery. Indeed, these individuals were identified in the reasons by name, and reference was made to letters of support provided by family members.

[11] The officer noted that Mr. Sliwa could continue to have frequent contact with, and receive support from his extended family from Poland. The officer also recognized that this would not be a

complete substitute for direct, in-person contact and stated that he or she took this factor into account in assessing Mr. Sliwa's application.

[12] Mr. Sliwa also argues that it was unreasonable for the officer to expect Mr. Sliwa's wife, who is a Canadian citizen, to have to move to Poland to support him in his recovery. The officer notes that Mr. Sliwa's wife was born in Poland and that she could likely return there if she wanted to do so. The officer further observed that insufficient information had been provided to demonstrate that the family could not relocate to Poland, should Mr. Sliwa be required to leave Canada.

[13] The officer did not conclude that Mr. Sliwa's wife would have to move to Poland. Instead, the officer found that this was an option that was open to her, and that there was not enough evidence before him or her to show that Mr. Sliwa's wife could not relocate with her husband if she wanted to do so. Mr. Sliwa has not demonstrated that the officer disregarded any important information in coming to this conclusion or that the officer's observations were unreasonable.

[14] I also do not accept Mr. Sliwa's argument that the officer erred by ignoring his ongoing need for prescription medication to treat his bipolar disorder. The officer explicitly addressed this point, observing that "[i]nsufficient evidence was provided [t]o demonstrate that the medications that the client requires to treat his medical conditions would not be readily available in Poland and that his removal would negatively impact his ability to acquire the proper medications if needed". Mr. Sliwa has not identified any evidence that was overlooked by the officer in this regard.

[15] I am not persuaded that the officer ignored evidence or otherwise erred in finding that there was no evidence that Mr. Sliwa would be unable to find employment in Poland, considering his skills and experience. Mr. Sliwa has worked for many years installing dry-wall, and there was no evidence before the officer that he could not practice his trade in Poland.

[16] Mr. Sliwa has also not persuaded me that the officer failed to conduct a proper assessment of the best interests of his 14 year old daughter, or that the officer was not “alert, alive and sensitive” to the child’s need for physical contact and affection from her father.

[17] The officer specifically referenced a letter written by the child, in which she discusses her relationship with her father and her desire to have him stay in Canada. The officer discussed the child’s circumstances in detail, including the fact that the child lived with her mother, and that her visits with her father had been limited since her parents had separated several years before.

[18] The officer acknowledged that it is generally in a child’s best interests to have access to both of her biological parents, noting that “significant weight” was being given to the fact that Mr. Sliwa’s daughter was in Canada. The officer also explicitly recognized that Mr. Sliwa’s ability to spend time with his daughter “would be greatly reduced should he relocate to Europe”. However, the officer observed that there were alternative ways in which Mr. Sliwa could maintain his relationship with his daughter, including communications via Skype.

[19] What Mr. Sliwa really takes issue with is the relative weight that the officer attached to the positive and negative factors in his case. However, that is a matter for the officer to decide. As was

noted earlier, the officer's reasons in this case were thorough and comprehensive and were responsive to the submissions made by Mr. Sliwa.

[20] The officer acknowledged the factors militating against the granting of an H&C exemption, as well as those in favour of granting such relief. The officer carefully weighed the competing factors and came to what was clearly a reasonable conclusion.

[21] The officer also turned his or her mind to Mr. Sliwa's alternate request for a Temporary Residence Permit. In addition to the factors already discussed, the officer noted the seriousness of Mr. Sliwa's most recent crimes, and the relatively short period of his rehabilitation compared to his lengthy history of problems with addictions and the law. The officer concluded that the circumstances did not warrant a TRP to overcome Mr. Sliwa's criminal inadmissibility. Mr. Sliwa has not demonstrated the existence of a reviewable error in this regard.

Conclusion

[22] For these reasons, the application for judicial review is dismissed.

Certification

[23] Mr. Sliwa suggested that if my decision turns on the ability of Mr. Sliwa's wife to accompany him to Poland, a question may arise as to "whether it was discriminatory to ask a Canadian citizen not born in Canada to relocate to avoid the hardship her husband would suffer".

[24] In my view, this is not an appropriate question for certification. Not only does my decision not turn on the issue, the officer did not ask Mr. Sliwa's wife to relocate to Poland, but simply acknowledged that this might be a possibility.

[25] The respondent suggested that a question may arise as to what being "alert, alive and sensitive" to a child's needs should entail. I am also not persuaded that this is an appropriate question for certification.

[26] There is ample Federal Court of Appeal jurisprudence addressing the general principles governing what is required in assessing the best interests of children: see, for example, *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 F.C. 555, and *Legault v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 358; 212 D.L.R. (4th) 139. The respondent has not identified any new issue raised by this case that requires further consideration by the Federal Court of Appeal.

JUDGMENT

THIS COURT ORDERS AND ADJUGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2934-11 and IMM-2938-11

STYLE OF CAUSE: DARIUSZ SLIWA v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 19, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** MACTAVISH J.

DATED: January 23, 2012

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