Federal Court  Cour fédérale

Date: 20141016

Docket: IMM-3601-13

Citation: 2014 FC 983

Ottawa, Ontario, October 16, 2014

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

NAVDEEP SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant challenges the legality of a decision by a Senior Immigration Officer [Officer], dated February 15, 2013, to refuse the applicant's application for an exemption of out-of-country requirements on humanitarian and compassionate [H&C] grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] The applicant submitted his H&C application on November 1st, 2012. The applicant is a citizen of India who first arrived in Canada on a work permit in 2006. He worked for Raja Electric for a year. His work permit was not renewed but his visitor status was extended multiple times until April 2012 when another extension was refused. While living in Canada, he married his current wife, who had permanent residence status in Canada. The applicant has two Canadian children with his wife who applied to sponsor him, but the sponsorship application was refused on the basis that his wife was reported under subsection 44(1) of the Act. A removal order was issued by the Immigration Division of the Immigration and Refugee Board. At the time of the H&C application, the applicant's wife's appeal had not been heard by the Immigration Appeal Division [IAD].

[3] In refusing the H&C application, the Officer first found that the evidence did not show that the applicant had successfully established in Canada. He had only worked for a year out of the six when he was in Canada; there was evidence that the couple had money (around $32,000) in their bank accounts, but no information as to where that income came from; there was no information regarding the applicant's involvement within the community; no letters of reference or support; and no information regarding the applicant's involvement with his children. The Officer also found that the best interest of the children did not justify accepting the application. He considered the fact that the children were very young and their greatest influence would no doubt be their parents and concluded they would be accustomed to the Indian culture, language and food. He also noted that the applicant had family in India that could help in the care and nurture of the children and that the applicant had many years of experience as an electrician in India, and concluded that the applicant would still be in a position to provide for his children.

The Officer also considered the applicant's wife's appeal to the IAD and noted that if the application was successful, the wife could sponsor the applicant – while if the wife was removed to India, the applicant would be reunited with his wife upon return to India. The IAD ultimately dismissed her appeal. I was also informed at the hearing of the present application by applicant's counsel that three judicial review applications related to the decisions (interlocutory and final) made by the IAD have been set down for hearing in the week of October 15, 2014.

[4] The applicant submits that the Officer breached procedural fairness and that the Officer's decision is unreasonable. The standard of review for the first question is correctness as it is an issue of procedural fairness, while the merit of the Officer's assessment is governed by reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Leonce v Canada (Citizenship and Immigration)*, 2011 FC 831).

[5] On the first issue, the applicant submits that the Officer breached procedural fairness by making a decision in the absence of an explanation from the applicant on issues of significant importance. The applicant recognizes that an oral interview is not always warranted in H&C cases but that it was in this case because of the various concerns the Officer had. The applicant relies on *Duka v Canada (Citizenship and Immigration)*, 2010 FC 1071 at para 13 which states that:

> [W]hile it is generally recognized that an H&C applicant has no legitimate expectation that he or she will be interviewed (*Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 F.C.R. 635 at paragraph 8), an oral interview may have been required where the impugned decision is based on an adverse credibility finding, otherwise such finding cannot withstand judicial scrutiny (*Doumbouya v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1186, 325 F.T.R. 186 (Eng.) at

> paragraph 74; *Alwan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 37 at paragraph 16).

[6] The applicant argues that the Officer's decision shows that he had doubts about the applicant's credibility, but that he hid credibility findings behind evidentiary assessments. The respondent replies that the onus is on the applicant to justify his application: there is no obligation upon an officer to request additional submissions if the evidence presented is not sufficient and all the Officer does is assess the adequacy of the evidence (*Qiu v Canada (Citizenship and Immigration)*, 2012 FC 859 at para 16). The respondent further argues that there is nothing in the decision that would support the applicant's argument that the Officer made veiled credibility findings. The Officer simply stated the gaps in the evidence.

[7] I agree with the respondent. The Officer did not breach procedural fairness by not giving the applicant a further opportunity to make submissions. There are numerous gaps in the evidence, for example, the lack of explanation for the bank deposits; the total absence of evidence with respect to the wife having been employed and the applicant being the primary caregiver of the children while the wife was working (when she was not on maternity leave); the lack of reference or support letters. I am satisfied that nothing in the impugned decision shows that the Officer made veiled credibility findings. The Officer had no obligation to give an opportunity to the applicant to fill the gaps he left in his application.

[8] As indicated by this Court in *Nicayenzi v Canada (Citizenship and Immigration)*, 2014 FC 595 at para 16:

> Lack of evidence or omission of relevant information in support of a humanitarian and compassionate application is at the peril of the

> applicant (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5, [2004[FCJ No 158 (QL)). This means that the decision-maker is under no duty to assist applicants in discharging the burden of making their case or to highlight the cases' weaknesses and request further submissions to allow applicants to overcome them. In other words, the decision-maker is under no duty to make further inquiries so as to discover evidence that might be favourable to the case put forward by an applicant (*Kisana* [*v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189] at paras 43 to 45).

[9] The applicant further argues that the Officer's decision is unreasonable, mainly because his inferences are not supported by the evidence.

[10] On the question of establishment in Canada, the applicant argues that the Officer focused only on the elements that cast doubt on the application and ignored the positive factors, including the fact that he had been employed for one year, that he looked after his children, that he had sound financial management and a good civil record. The applicant argues that the Officer could have known from the application that the money deposits from employment insurance came for the wife because she was on maternity leave. The applicant also argues that the Officer failed to take into consideration the length of time spent in Canada by the applicant, and the fact that the applicant has never gone on social assistance or committed a crime. The applicant also takes issue with the Officer's formulation that the applicant had failed to successfully establish in Canada. The respondent replies that the Officer's assessment was reasonable. With regards to his work history, the Officer did consider that the applicant had worked one year and that he did not have a work permit since then. The Officer also correctly stated that there was no information about the sources of income. In the absence of clear evidence, it was not self-evident that the Employment Insurance deposits alleged by the applicant would be for the wife's maternity leave.

[11] I find that the applicant's reproaches are unsubstantiated. The Officer took into consideration all of the evidence that was in front of him. Nowhere in the application was the source of the income explained and nowhere did it say the wife received employment insurance while on maternity leave. In addition, nowhere in the application did it say that the applicant was taking care of his children. The evidence in front of the Officer showed that the applicant had worked one year and that he and his wife had some unexplained sources of income. It did not show the applicant's involvement within the community or his involvement with his children. Based on the information available to him, it was reasonable for the Officer to conclude that the applicant had not shown a meaningful degree of establishment.

[12] On the question of the best interest of the children, the applicant argues that the Officer's remark regarding the fact that the children would be accustomed to the Indian culture, language and food is speculative, if not prejudicial and stereotypical. The applicant also argues that the Officer's finding that the applicant could provide for his wife and children if he returned to India and that he had family that could assist was highly speculative and not supported by the evidence. The applicant concludes that the Officer's failure to adequately identify the best interest of the children and his conclusion that their best interest would be better protected in India and not be affected by the applicant's removal were unreasonable. On the other hand, the respondent argues that the Officer's findings that the children would be accustomed to Indian culture and that the family in India would provide nurture and care were rational presumptions.

[13] In my opinion, it was reasonable for the Officer to consider that young children born to two Indian parents would be accustomed to Indian culture and that the applicant who had

previously worked for numerous years as an electrician in India could resume that employment and provide for his children. It was also reasonable for the Officer to conclude that the applicant's family in India could provide nurture and care to the children. There were no undue inferences. All the inferences made by the Officer are based on common sense and logic (see *Singh v Canada (Citizenship and Immigration)*, 2009 FC 11 at paras 39 to 44). Moreover, in the application for H&C, the applicant does not state any specific interest of the children that should be taken into consideration except for the fact that they are fully entitled to all rights, privileges and benefits of being Canadian and that due to the limited earning capacities of the applicant, they would face deplorable living conditions and an uncertain future in India. This is not enough to render the Officer's determinations unreasonable.

[14] In conclusion, the Officer fully considered the evidence in front of him, both with regards to the applicant's establishment in Canada and with regards to the best interest of the children. His decision is justified and intelligible, and is a possible and acceptable outcome. The applicants have not shown that the decision was unreasonable or that there was a breach of procedural fairness. Even if the applicant strongly disagrees with the result, this does not constitute a legal ground to set aside the impugned decision, as this is not an appeal but a judicial review.

[15] The present application must fail. Counsel have not proposed a question of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3601-13
STYLE OF CAUSE:	NAVDEEP SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 9, 2014
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	OCTOBER 16, 2014

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