Federal Court  Cour fédérale

Date: 20150612

Docket: IMM-8298-14

Citation: 2015 FC 745

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 12, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ROBERT IMANIRAGUHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preliminary comments

[1] "The determination of whether the evidence presented meets the legal burden will depend very much on the weight given to the evidence that has been presented," as Justice Russell W.

Zinn wrote in *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 24 [*Ferguson*].

[2] The Court finds that the officer reasonably weighed the applicant's particular circumstances with respect to his degree of establishment in Canada before concluding that there was insufficient hardship to warrant the application of subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. As Justice Johanne Gauthier stated in *Wazid v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1415 at para 4 [*Wazid*] :

> [14] While establishment in Canada is acknowledged as a relevant factor in assessing an H&C application, this Court has on numerous occasions stated that it is to be evaluated through the lens of "unusual, undeserved or disproportionate hardship" (see *Legault*, above). The practical implications of this are described as follows by Justice Michel Shore in *Hanzai v. Canada (Minister of Employment and Immigration)*, 2006 FC 1108 at paragraph 22:
>
> > This Court has repeatedly held that the hardship suffered by the applicant must be more than mere inconvenience or the predictable costs associated with leaving Canada, such as selling a house or a car, leaving a job or family or friends. (*Irimie*, above, at paragraphs 12 and 17; *Mayburov v. Canada* (*Minister of Citizenship and Immigration*), [2000] F.C.J. No. 953 (QL), at paragraph 7; *Lee v. Canada* (*Minister of Citizenship and Immigration*), 2001 FCT 7, [2001] F.C.J. No. 139 (QL), at paragraph 14.)

II. Introduction

[3] The applicant is seeking judicial review of a decision of an Immigration Officer at Citizenship and Immigration Canada, dated November 24, 2014, refusing his application for

permanent residence from outside Canada on humanitarian and compassionate grounds, under the IRPA.

III. Facts

[4] The applicant is a Rwandan citizen of Hutu origin.

[5] The applicant alleges that he is targeted by the Rwandan government as a member of the political opposition.

[6] On May 31, 2013, the Refugee Protection Division rejected the applicant's claim for refugee protection, concluding that he was neither a refugee within the meaning of section 96 of the IRPA, nor a person in need of protection under subsection 97(1) of the IRPA.

[7] On April 10, 2014, the Federal Court dismissed the application for judicial review of that decision (*Imaniraguha v Canada (Minister of Citizenship and Immigration)*, 2014 FC 349).

[8] On November 24, 2014, the immigration officer rejected the application for an exemption from the requirement to apply for permanent residence from outside Canada made by the applicant under subsection 25(1) of the IRPA.

IV. Analysis

[9] The applicable standard of review for decisions involving humanitarian and compassionate grounds is reasonableness (*Hamida v Canada (Minister of Citizenship and Immigration)*, 2014 FC 998 at para 36; *Mikhno v Canada (Minister of Citizenship and Immigration)*, [2010] AFC 583 at para 21; *Kisana v Canada (Minister of Citizenship and Immigration)*, [2009] AFC 713 at para 18).

[10] Subsection 25(1) of the IRPA, reproduced below, confers upon the Minister and his or her delegates discretion to waive certain requirements under the IRPA on humanitarian and compassionate grounds:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
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	**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

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.	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.

[11] The onus is on the applicant to adduce sufficient evidence on which to support his or her application (*Owusu v Canada (Minister of Citizenship and Immigration)*, [2004] FCJ 158 at para 5).

[12] Following an in-depth review of the officer's decision and the entire record that was before him, the Court finds that its intervention is not required. The analysis of the evidence carried out by the officer, which falls within his expertise, corresponds to the required criteria of transparency, intelligibility and justification (*Dunsmuir v New Brunswick*, [2008] ACS 9 at para 47).

[13] First, in his reasons the officer considered the factors related to the applicant's degree of establishment in Canada. Among other things, the officer assessed the evidence adduced by the applicant with respect to friendship, employment, education and religious affiliation, including his relationship with his girlfriend and his four adopted children.

[14] The officer concluded that these factors would not cause unusual and undeserved, or disproportionate hardship to the applicant by reason of his establishment in Canada.

[15] "The determination of whether the evidence presented meets the legal burden will depend very much on the weight given to the evidence that has been presented," as Justice Zinn stated in *Ferguson*, above, at para 24.

[16] The Court finds that the officer reasonably weighed the applicant's particular circumstances regarding his degree of establishment in Canada before concluding that there was insufficient hardship to warrant the application of subsection 25(1) of the IRPA. As Justice Gauthier stated in *Wazid*, above, at para 4) :

> [14] While establishment in Canada is acknowledged as a relevant factor in assessing an H&C application, this Court has on numerous occasions stated that it is to be evaluated through the lens of "unusual, undeserved or disproportionate hardship" (see *Legault*, above). The practical implications of this are described as follows by Justice Michel Shore in *Hanzai v. Canada (Minister of Employment and Immigration)*, 2006 FC 1108 at paragraph 22:
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> > This Court has repeatedly held that the hardship suffered by the applicant must be more than mere inconvenience or the predictable costs associated with leaving Canada, such as selling a house or a car, leaving a job or family or friends. (*Irimie*, above, at paragraphs 12 and 17; *Mayburov v. Canada* (*Minister of Citizenship and Immigration*), [2000] F.C.J. No. 953 (QL), at paragraph 7; *Lee v. Canada* (*Minister of Citizenship and Immigration*), 2001 FCT 7, [2001] F.C.J. No. 139 (QL), at paragraph 14.)

[17] In addition, the officer assigned little weight to the fact that the applicant had remained in Canada since February 2011. Such a finding is reasonable having regard to the fact that the applicant's years of establishment resulted from the ordinary working of the immigration and refugee legislation (*Mooker v Canada (Minister of Citizenship and Immigration)*, [2008] FCJ 713 at para 34).

[18] With respect to the adverse country conditions in Rwanda and risks alleged by the applicant as a supporter of an opposition political party, the Court considers the officer's analysis to be reasonable based on the evidence, which does not provide grounds for humanitarian and compassionate relief. This is supported by a contextual reading of the evidence specifically cited with regard to country conditions in order to gain an overall view of the objective evidence.

[19] In his reasons, the officer examined the documentary evidence on country conditions in Rwanda. First, the officer examined evidence regarding the high unemployment rate and found that the applicant's situation was different from that of the general population due to his academic and professional training and in light of the fact that he had worked in the Rwandan public service prior to leaving for Canada.

[20] Furthermore, the officer considered the evidence on inter-ethnic tensions which persist in Rwanda. The evidence shows that Hutus may be discriminated against in terms of employment in the public service and senior government positions. However, the law requires equal treatment for all and there are mechanisms to counter discrimination. In addition, the officer observed that Hutus (84 to 85 % of the population), who are the majority in Rwanda, are not identified in the documentary evidence as being a marginalized group.

[21] The Court is of the view that it was reasonable for the officer, in light of his analysis and reasons, to find that the hardship cited by the applicant by reason of his Hutu ethnicity and the socioeconomic conditions in Rwanda was not sufficiently demonstrated.

[22] It is well-settled that applicants under subsection 25(1) of the IRPA must show a link between the evidence of hardship and their individual situations (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 48 [*Kanthasamy*]).

[23] With this in mind, in the absence of evidence showing that unusual and undeserved hardship would affect the applicant "personally and directly" it was reasonable for the officer to find that there were insufficient humanitarian and compassionate grounds to warrant the application of subsection 25(1) of the IRPA (*Nicayenzi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 595 at para 31; *Kanthasamy*, above, at para 48).

V. Conclusion

[24] In view of the foregoing, the Court dismisses the applicant's judicial review application.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. There is no question of importance to be certified.

"Michel M.J. Shore"

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Annick Legault	FOR THE APPLICANT
Christine Bernard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Me Annick Legault Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT