Federal Court  Cour fédérale

Date: 20160829

Docket: IMM-485-16

Citation: 2016 FC 979

Ottawa, Ontario, August 29, 2016

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

HARIKARAN SELVARATNAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Selvaratnam's application to sponsor his father, mother, brother and sisters in Sri Lanka for permanent residence in Canada was refused because a visa officer was not satisfied that his father is admissible to Canada. An appeal to the Immigration Appeal Division [IAD] on the decision and on a request for special relief was dismissed.

[2] The visa officer's concerns regarding the admissibility of the Applicant's father rested on inconsistencies between family history declared by the Applicant and that which the father declared. Given that the family lived in an area of the country that had previously been controlled by the Liberation Tigers of Tamil Eelam [LTTE], these inconsistencies led the officer to find that he or she was satisfied that the father was not inadmissible.

[3] The Applicant has been living in Canada since 2003 when he was granted Convention refugee status. He also has a brother living in Canada, and they reside together.

[4] When processing the application, the visa officer noted that in his refugee claim, the Applicant had noted that his father had been taken away and beaten by Sri Lankan security forces on more than one occasion. No mention of that was made by his father in his application. The IAD noted that "he was specifically asked if he or any family members listed in the application had ever been detained, incarcerated or put in jail" and he had checked the "No" box.

[5] In light of this inconsistency, and an inconsistency regarding the father's residence and business, the officer asked the father for further clarification:

> In this application you have declared that you have never been detained. Your son has declared to us that you have. You are required to provide full details (when, by who, for how long, why) of any detainments no matter how short they may have been. Further, you were earlier requested to provide details concerning your activities. The response you provided us was unacceptable. You told us that you were buying and selling and running a small shop. You have declared that this is the only activity you have engaged in from 1976 to the present day. According to the residence history you have provided and the history provided by your son, this is impossible. You are required to provide a full and accurate history of your activities that includes a detailed

> description of each activity, the time each activity started and stopped (dates) and the location in which the activity took place.

[6] The father provided a cursory response:

> It is correct that I have never been detained but in some occasions I was taken in by the security forces for questioning. I was released after questioning.
>
> It is also correct that I was engaged in buying and selling local products and vegetables in my small shop since 1976, and upto [*sic*] now.

[7] The hearing before the IAD was a hearing *de novo*. The Applicant testified in person and his father testified by teleconference. The IAD notes that the Applicant testified that his father was taken away and beaten by security forces on two or three occasions, and he provided a detailed summary of his father's activities from 1976 onwards. The IAD notes in its decision that the father testified that the Sri Lankan authorities had asked him to come in for questioning once, but he made no reference to ever being held or beaten by them. He did mention, for the first time, being taken by the LTTE on three or four occasions and being held for about two days. Moreover, he indicated that he had lived in Colombo for periods of time, a fact that conflicted with his son's evidence and other evidence on file.

[8] The IAD observed that "at the conclusion of the hearing, the evidence of the appellant's father's personal history was even more unclear than when we began."

[9] The Applicant submits that at least two errors were made by the IAD.

[10] First, he submits that the inadmissibility finding flowed from a finding that the Applicant and his brother gave conflicting accounts in their respective Personal Information Forms [PIF] to that given by their father as to whether and by whom their father had been detained. The Applicant blames any confusion on the overseas consultant his father retained.

[11] I agree with the Minister when he submits that "applicants are responsible for the information they provide to immigration authorities, which must be complete and accurate." It is for that very reason that applicants are required to attest that the information provided is full and complete.

[12] In any event, aside from the discrepancy with the evidence the father provided in his written application and his response to the officer, there is his further evidence he gave by teleconference to the IAD. On that occasion he claimed for the first time to having been detained by the LTTE, something never mentioned by either son. Moreover, his evidence and his son's evidence differ significantly as to the father being detained by the authorities. The Applicant testified that he witnessed security service personnel taking his father away two or three times, whereas his father said he had been detained only once which he stated resulted in him going into hiding.

[13] Next, there was a discrepancy about where the father lived. The Applicant testified that his father never lived in Colombo whereas the father said that he lived there from 2007 until war's end in 2009. In addition, the father provided conflicting evince as to whether his children were living with him in Colombo or not.

[14] In my view, these differences and inconsistencies were more than sufficient for the IAD to conclude that it, like the visa officer, was unable to determine with any degree of assurance the father's personal history in Sri Lanka.

[15] The Applicant submits that the "circumstances cried out for a personal interview by the officer" but none was held. He claims this was a denial of natural justice and the IAD ought to have seen that. Even if I were to agree with the Applicant, the IAD held a hearing *de novo* and did in fact examine both the Applicant and his father. Far from clarifying matters, more discrepancies became apparent. There was nothing in the IAD process that warrants upsetting its decision.

[16] Second, the Applicant submits that the IAD's analysis of the humanitarian and compassionate [H&C] considerations was deficient. In particular he objects to the finding that "the applicants do not appear to be experiencing any deprivation in Sri Lanka. They are living together in their home country where hostilities have now largely subsided."

[17] The Applicant notes that originally the application was refused due to his failure to meet the necessary financial income requirement to sponsor his family. At that time it was found that there existed sufficient H&C considerations to overcome the financial inadmissibility.

[18] I concur with the Respondent that the H&C considerations found in waiving the financial requirement was made prior to the issues relating to the inadmissibility of the Applicant's father and that H&C considerations cannot be determined and weighed in a vacuum. In the

circumstances as found here regarding the uncertainty as to the father's admissibility, strong H&C evidence would be required to admit someone who might otherwise be inadmissible to Canada on H&C grounds.

[19] Lastly, the Applicant submits that the officer failed to consider the best interests of the children [BIOC] and that the "IAD's finding concerning the best interests of the children is unclear."

[20] The IAD's finding in this regard is as follows: "There was no evidence that it would be in the best interest of any child to grant special relief."

[21] The submission made by the Applicant was that failing to permit this application on H&C grounds would result in the permanent split of this family, and further, that two of the three children would have then become too old to sponsor.

[22] The submission made regarding the BIOC was brief and accordingly, the decision on this point reflects that brevity: See *Persaud v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1133, 13 Imm LR (4th) 76. The onus is on the Applicant to provide the basis on which a BIOC consideration would result in a positive result and here, the principal submission made was not one that was specific to the individual children. Rather, it was a general submission applicable in most every case about reunification of the family members. As such, I am unable to find that the IAD's decision on BIOC was unreasonable.

[23] As a consequence and for these reasons above, I do not find that the IAD's decision on relief for special circumstances was unreasonable.

[24] For these reasons, the application is dismissed. No question was proposed to be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

John O. Grant	FOR THE APPLICANT
Nicole Rahaman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John O. Grant Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT