Federal Court  Cour fédérale

Date: 20161207

Docket: IMM-1989-16

Citation: 2016 FC 1350

Ottawa, Ontario, December 7, 2016

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

JOGINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Application

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Applicant [Mr. Singh], seeks to set aside the decision of a Senior Immigration Officer [Officer], dated April 13, 2016 [Decision], which refused his application for permanent residence on humanitarian and compassionate grounds. For the reasons that follow, the application is dismissed.

II. **Overview**

[2] Mr. Singh is a national of India who came to Canada on May 6, 2009, on a temporary resident visa and received a work permit as a cabinetmaker. His status and work permit were renewed several times. His most recent work permit expired November 28, 2014. He applied for permanent resident status on July 13, 2016, under subsection 25(1) of the *IRPA* on the grounds of his establishment in Canada and the best interests of his two children in India. His wife, parents and siblings also live in India.

[3] In rejecting the application, the Officer considered Mr. Singh's establishment in Canada, the potential hardship in India that he raised and the best interests of his children. The Officer acknowledged Mr. Singh was gainfully employed until November 2014. He had also saved $10,000 and volunteered his time at his Gurdwara. The Officer noted, however, that Mr. Singh provided insufficient evidence of how he had supported himself since November 2014 and how his connections to his community would be affected if he were required to leave Canada.

[4] Mr. Singh submitted to the Officer that he would be "a misfit" in India and would be "devastated" should he have to leave Canada. He also said that he would be unable to find employment in India. The Officer acknowledged that Mr. Singh would experience a period of adjustment on return to India, but was satisfied that it would not be significant enough to warrant a humanitarian and compassionate exemption. The Officer remarked that Mr. Singh's family members in India would provide love and support during any period of readjustment. The Officer rejected Mr. Singh's claims that he would be unable to find employment in India, as his significant work experience before he left India coupled with the work experience he has gained

in Canada and his improved comprehension of English, would help him find employment in India.

[5] The Officer considered the best interests of Mr. Singh's children. Mr. Singh had submitted that his children were waiting to be reunited with him in Canada and his inability to find employment in India would cause his children extreme hardship. The Officer determined that there was not sufficient evidence that the children would be affected if Mr. Singh was refused permanent residence, particularly given their current life in India, his prior work experience in India and the fact that Mr. Singh has not been employed in Canada since November 2014.

III. **Issues and Positions of the Parties**

[6] Counsel for Mr. Singh argued that the issues are: (1) whether the Officer erred with respect to her analysis of establishment; and (2) whether she erred with respect to her overall subsection 25(1) analysis.

[7] The standard of review for a decision made by an officer under subsection 25(1) of the *IRPA* is reasonableness: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44. A decision is reasonable if the decision-making process is justified, transparent and intelligible and if the resulting decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[8] Counsel for Mr. Singh argues that two paragraphs of the reasons deal with the issue of establishment and one paragraph deals with the best interests of the child. She says there is no real analysis in the paragraphs, just a series of statements and conclusions. Counsel also submits that the reasons are so deficient that the Decision is not reasonable. Relying on *Dunsmuir*, she says a lack of proper reasons is a lack of process which leads to a decision that is not justified, intelligible or transparent.

[9] Counsel for the Respondent asks the Court to keep in mind the basic principle that a humanitarian and compassionate exemption is exceptional relief—the process is not meant to be an alternative to the normal immigration streams. She also argues that the Officer's reasons simply respond to the factors put before her by Mr. Singh's consultant, which is not improper. She submits there were no exceptional circumstances identified on Mr. Singh's behalf.

IV. **Analysis**

A. *Mr. Singh's Establishment in Canada*

[10] Counsel for Mr. Singh relies on *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 [*Lauture*] to argue that the Officer inappropriately discounted disruption to his life in Canada by examining whether he could create a similar level of establishment in India. She points to jurisprudence where an applicant's establishment in Canada was improperly used as evidence that the applicant could re-create their level of establishment after removal from Canada. Counsel submits the proper analysis is set out in *Lauture* and in *Sebbe v The Minister of Citizenship and Immigration*, 2012 FC 813 [*Sebbe*], where Mr. Justice Zinn held at paragraph 21 that:

> . . . what is required is an analysis and assessment of the degree of establishment of these applicants and how it weighs in favour of granting an exemption. . . . The Officer must also examine whether the disruption of that establishment weighs in favour of granting the exemption.

[11] However, unlike *Lauture* and *Sebbe,* the reason the Officer considered Mr. Singh's ability to establish himself in India was not to use his establishment in Canada against him. The analysis was in direct response to Mr. Singh's submission that he would be devastated and unable to find work in India and, as a result, his children would suffer.

[12] I also note that *Lauture*, *Sebbe* and other similar cases addressing this argument dealt with applicants who had an exceptional or very high level of establishment in Canada. In *Lauture* the officer had found that the applicants' "engagement in society is remarkable." That is not the case with Mr. Singh. He has been in Canada for seven years, trying to build a life so he could bring his family, who have remained in India, to Canada. He has done well although he has not been employed since late November 2014. The submissions made to the Officer include the request that she exercise her discretion to grant the application "so that [Mr. Singh] can build his future and live happily into this land of opportunities". There are also submissions about disruption to his life in that he has sleepless nights and is anxious and worried at the prospect of being required to return to India. Mr. Singh is said to be a young and promising candidate who wants to get reunited with his family. The Officer found that while Mr. Singh has demonstrated a degree of establishment in Canada it is not to such a degree that he would face hardship if he was not granted a humanitarian and compassionate exemption.

[13] In *Kanthasamy*, the Supreme Court re-established what is important when considering the exercise of discretion under subsection 25(1) of the *IRPA*. Madam Justice Abella found, at paragraph 25, that what warrants relief will vary depending on the facts and context of the case. She said, "officers must substantively consider and weigh *all* the relevant facts and factors before them" [emphasis in original]. In this case, the Respondent stresses that the Officer did respond to and consider the factors put before her by Mr. Singh's consultant. They simply were not sufficient to move his case to the exceptional category warranting humanitarian and compassionate relief.

[14] Overall, the submissions made to the Officer by Mr. Singh's consultant stressed what an asset he would be to Canada and that he has worked diligently to prove his merit trying to build a new future for himself and his family. Very little was put forward to substantiate Mr. Singh's claim that he would be "devastated" and "a reverse decision will affect Mr. Singh and his family psychologically, financially, emotionally and socially" if he were to be returned to India. The Officer looked at this allegation of hardship and found that Mr. Singh's significant family connections in India, including his spouse, two children, parents and siblings, would be able to help him readjust to life in India if the need arose. The Officer also found his prior work experience in India and his newly acquired skills including his improved English would help him find employment in India.

[15] It is well recognized that a certain degree of hardship is inherent when being asked to leave after being in Canada for a period of time; that is not necessarily enough to justify the exercise of discretion under subsection 25(1): *Ahmad v Canada (Citizenship and Immigration),*

2008 FC 646 at para 49. The reasons provided by the Officer for finding Mr. Singh's assertions insufficient are clear. Mr. Singh put forward no evidence regarding the absence of employment prospects in India. At the same time, he has family support in India to assist with his re-integration. Mr. Singh did submit a letter from his former employer in Canada which indicated he would "prefer to re-hire him in the future, if he gets his Permanent Residency in Canada." There was no evidence of whether he even attempted to find work in India before declaring that he would be unable to do so. As he was relying on that statement to grant him humanitarian and compassionate relief, the lack of any evidence in support was fatal.

B. *Was the Officer's Overall Subsection 25(1) Analysis in Error?*

[16] Mr. Singh has submitted that the Officer did not provide adequate reasons. He alleges a series of statements were followed by conclusions with no analysis. My review of the Decision shows that the Officer did provide reasons for each conclusion. The reasons simply follow the conclusion rather than precede it. For example, after the Officer said there was not sufficient evidence that the best interests of the children would be affected by the outcome of the application, she noted the children currently attend school in India, live with their mother and have family close by and that Mr. Singh provided no other details to show how their interests would be affected.

[17] Counsel for Mr. Singh also argues that the Officer's analysis was deficient because it often baldly asserted that there was insufficient evidence to substantiate each allegation. A boilerplate approach to humanitarian and compassionate reasons has been rejected in *Velazquez Sanchez v Canada (Citizenship and Immigration)*, 2012 FC 1009 at paragraph 19 [*Velazquez*

Sanchez]. Counsel does not merely argue that this absence of analysis makes the Decision unreasonable. Rather she argues that insufficient reasons when rejecting a humanitarian and compassionate application is a fundamental breach of natural justice and can itself give grounds to overturn that decision.

[18] Such a view is contrary to the holding in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*]. In that case, the Supreme Court found that where procedural fairness imposes a duty on a decision-maker to give reasons, the inadequacy of those reasons is not a breach of natural justice. Instead, the sufficiency of the reasons forms a part of the reasonableness standard of review.

[19] Counsel for Mr. Singh argues, in effect, that *Newfoundland Nurses* has been overturned or distinguished by *Velazquez Sanchez*, a decision that came out later. In her memorandum, she argues that "the principles of [*Newfoundland Nurses*], are simply not applicable in the context of [humanitarian and compassionate] applications in particular, and immigration law in general," and that this view is buttressed by *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 [*Komolafe*].

[20] The Minister submits that counsel for Mr. Singh put forward this precise argument in *Momtaz v Canada (Citizenship and Immigration)*, 2015 FC 362 [*Momtaz*], where it was considered and rejected by this Court. Counsel for Mr. Singh in reply says Mr. Justice Russell in *Momtaz* concluded that ultimately, everything depends on the particular decision under review.

[21] Counsel for Mr. Singh did make the same arguments in *Momtaz* regarding *Velazquez Sanchez* and *Newfoundland Nurses*. In *Momtaz*, the only issue before the Court was whether the decision failed to provide adequate reasons. Mr. Justice Russell in his analysis pointed out that *Velazquez Sanchez* is not inconsistent with *Newfoundland Nurses* as the record before the Court on judicial review of a humanitarian and compassionate decision is sufficient to allow the Court to exercise its review function. The Court receives the decision and reasons, the submissions and documentary evidence that were submitted in support of the application and any other evidence the decision-maker considered. Mr. Justice Russell also noted that *Newfoundland Nurses* has been applied many times by this Court in reviewing humanitarian and compassionate decisions.

[22] Mr. Singh's reliance on *Komolafe*, is misplaced. It does not apply to these facts. Mr. Justice Rennie in *Komolafe* was considering a decision that was simply a form letter with no contemporaneous notes to explain the reasoning process for issuing the letter. In finding the decision to be unreasonable, Mr. Justice Rennie indicated that *Newfoundland Nurses* did not allow a Court to provide reasons that were not given nor to guess what findings might have been made by the tribunal. Rather, *Newfoundland Nurses* allows a court to "connect the dots" where the direction of a decision is readily apparent. However, where there are no dots, the Court should not speculate as to what a tribunal might have been thinking. In my view, the reasons provided by the Officer in Mr. Singh's case discuss and substantiate the conclusions, connecting the dots. Given the lack of evidence submitted by Mr. Singh to support his application, the Officer would have had to speculate in order to find support for his various statements.

[23] I have carefully reviewed the Decision. While it is brief, it addresses each of the areas put forward in Mr. Singh's submissions to the Officer. Overall, the Officer determined there was not sufficient evidence submitted to enable her to draw the conclusions sought by Mr. Singh. For example, the Officer found that Mr. Singh failed to show how his connections to his community in Canada would be affected if he had to leave Canada. Nor did he submit evidence of how he had supported himself since November 2014. That was important as Mr. Singh alleged that his children would suffer because he would not be able to find work in India. The Officer noted he had provided "insufficient information with respect to how his unemployment status in Canada has affected his children's best interest."

[24] Regarding the best interest of the children, the Officer found that the only information in the application about Mr. Singh's children was that they attended school in India, lived with their mother and had extended family close by. Mr. Singh provided no details as to how his children's interests would be affected if he was returned to India other than his claim that he would not be able to find employment. The Officer examined that submission and rejected it for the reasons already mentioned.

V. **Conclusion**

[25] The analysis by the Officer responds directly to the original submissions made on Mr. Singh's behalf by his consultant. In large part, those submissions revolved around his being a "promising candidate who wants to be reunited with his family" and his objective of making a "new and worthwhile life for himself and his family" in Canada. The submissions did not address what it was about Mr. Singh's application that would justify the exceptional relief he

sought under subsection 25(1). A review of the record shows that the Officer considered and analyzed the submissions made by Mr. Singh. It is not for the Officer to guess what other factors might exist to support Mr. Singh's application.

[26] There is enough detail in the Decision to understand how and why the Officer arrived at the conclusion that a humanitarian and compassionate exemption was not warranted. In that respect, the process was intelligible, justified and transparent. While Mr. Singh would have preferred a different outcome, the outcome falls within the range of possible, acceptable outcomes defensible on the facts before the Officer and the law which has evolved under subsection 25(1) of the *IRPA*. The Decision is reasonable.

[27] The application is dismissed.

[28] Neither party suggested a serious question of general importance for certification and one does not exist on these facts.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No serious question of general importance is certified.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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