Federal Court  Cour fédérale

Date: 20170127

Docket: IMM-2719-16

Citation: 2017 FC 107

Ottawa, Ontario, January 27, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

YING QIANG TANG

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In May 2006, Ying Qiang Tang came to Canada from China, through a spousal sponsorship application, and obtained permanent resident status the same month. In 2015, Mr. Tang was found to be inadmissible to Canada because of misrepresentation. He seeks review of a decision of the Immigration Appeal Division [IAD] who found that he did not establish sufficient humanitarian and compassionate [H&C] grounds to remain in Canada. He argues that the IAD made errors in considering the best interests of his two year old Canadian born child [BIOC] and

gave inordinate weight to the misstatements of his financial status on the application forms prepared to allow him to sponsor his mother and his sister to come to Canada.

[2] For the reasons that follow, I disagree that the IAD made any errors and this judicial review is dismissed.

I. Background

[3] Mr. Tang came to Canada in 2006 when he was sponsored by his former spouse. They divorced in July 2007.

[4] In October 2007, with the assistance of an immigration consultant, Mr. Tang prepared sponsorship applications for his mother and sister. They came to Canada and were granted permanent resident status in January 2013.

[5] In 2012, Mr. Tang began dating another woman and they had a child in August 2014. The child is a Canadian citizen. Mr. Tang and the mother of his child stopped seeing each other and Mr. Tang assumed primary care of their child.

[6] In 2015, Mr. Tang was found to be inadmissible to Canada for misrepresentation pursuant to s. 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] as a result of misrepresenting his income and employment experience in the sponsorship application he submitted to sponsor his mother and sister.

[7] Mr. Tang appealed his removal order to the IAD on H&C grounds (s. 67(1) (c) *IRPA).*

[8] In its analysis of the H&C factors, the IAD noted as positive factors that Mr. Tang had been in Canada for 10 years and was employed. However, the IAD did note there was limited evidence of assets or social attachments. The IAD also considered that Mr. Tang had primary responsibility for his two year old son and that the child's mother appeared to have little involvement in his care. Ultimately, the IAD concluded that the best interests of the child and the H&C considerations did not outweigh the finding of misrepresentation.

II. Issues

[9] Mr. Tang raises 2 main arguments which can be framed as follows:

A. Were the misrepresentations given too much weight by the IAD?

B. Did the IAD make errors in the BIOC analysis?

III. Standard of Review

[10] The standard to review the IAD's decision not to grant relief on H&C grounds is the reasonableness standard (*Uddin v Canada (Citizenship and Immigration)*, 2016 FC 314; *Tian v Canada (Citizenship and Immigration)* at para 19, 2011 FC 1148 at paras 18-19; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 58-59).

[11] The Applicant argues that the standard of review with respect to the BIOC analysis is correctness. However, the Supreme Court of Canada [SCC] in *Kanthasamy v Canada*

(Citizenship and Immigration), 2015 SCC 61 [*Kanthasamy*] applied the reasonableness standard. Further jurisprudence from this Court supports the application of a reasonableness standard of review when the issue is whether the correct legal test has been applied to the H&C considerations (see *Roshan v Canada (Citizenship and Immigration)*, 2016 FC 1308).

A. *Were the misrepresentations given too much weight by the IAD?*

[12] Mr. Tang argues that the IAD placed undue weight on the financial misrepresentation on his family sponsorship application forms. He argues that his financial misstatements are at the lower end of the misrepresentation spectrum and do not amount to "serious misrepresentation".

[13] The IAD found that the misrepresentation of his employment status and income level was serious, because it undermined the integrity of the immigration system and had direct bearing on the success of his sponsorship applications. The purpose of the misrepresentation was to increase his income to the minimum required to qualify as a sponsor. Mr. Tang did not dispute this allegation.

[14] The IAD also rejected Mr. Tang's assertion that he was a victim of the immigration consultant. This argument fails to acknowledge that Mr. Tang signed the forms and attested to the truth of the contents. Further, the IAD found that Mr. Tang did not demonstrate any remorse for his conduct.

[15] The IAD considered the factors outlined in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 to determine whether "sufficient humanitarian and

compassionate considerations warrant special relief in light of all the circumstances of the case." However, the IAD found that Mr. Tang failed to provide sufficient evidence. For instance, there was "limited evidence" of his establishment in Canada, "uncertain circumstances" and "no evidence" about the impact on his mother and sister if he is removed to China. The IAD also noted "limited and wholly insufficient documentary evidence" that his son was unwanted by his mother, no "credible evidence" regarding country conditions which would impact the child, and finally, no "credible evidence of obstacles preventing him from taking his child to China with him."

[16] The Federal Court of Appeal in *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, notes at para 5 that applicants have "the burden of adducing proof of any claim on which the H&C application relies". Therefore, if an "applicant provides no evidence to support the claim, the officer may conclude that it is baseless."

[17] Here, the IAD found that Mr. Tang failed to submit sufficient evidence to support his claim for special relief on H&C grounds. This is a reasonable conclusion.

B. *Did the IAD make errors in the BIOC analysis?*

[18] Mr. Tang argues that the IAD erred in its BIOC analysis. He argues that the IAD did not give appropriate consideration to the best interests of his Canadian born son, and he argues that the IAD failed to follow the direction outlined by the SCC in *Kanthasamy*.

[19] In *Kanthasamy*, the SCC notes that decision-makers are to weigh all the relevant facts before them, and they are not to apply the notion of "unusual and undeserved or disproportionate hardship" as thresholds for relief. In *Kanthasamy*, Justice Abella states as follows at para 25:

> What *does* warrant relief will clearly vary depending on the facts and context of the case, but officers making humanitarian and compassionate determinations must substantively consider and weigh *all* the relevant facts and factors before them: *Baker*, at paras. 74-75.

[20] Here, the IAD considered the H&C factors against the BIOC analysis and assessed all the evidence of hardship as broadly as possible. The IAD noted that Mr. Tang claims to be the primary caregiver of the child as the child's mother is not able to care for him because of her health. However, the IAD noted that in post hearing evidence, the mother of the child provided inconsistent and limited corroborating evidence to determine the actual custody, care and living arrangements of the child.

[21] The IAD considered Mr. Tang's claim that he could not take the child to China with him because of health and safety concerns. However, the IAD found that Mr. Tang did not provide any credible evidence regarding country conditions. Mr. Tang takes issue with the IAD's reference to "undue adverse impact", however on review of the context of the use of this phrase, it is clear that the IAD was referring to the fact that Mr. Tang failed to provide any evidence to demonstrate how his removal would cause particular hardship on his child. The IAD found that Mr. Tang only provided "limited and wholly insufficient documentary evidence to corroborate" various assertions he made about his child. He also failed to provide evidence as to what safety and health concerns prevented him from bringing his child to China. Finally, the IAD found that

there did not appear to be any obstacles to prevent Mr. Tang from taking the child to China with him.

[22] Although the best interests of the child are important, those factors are not determinative. It was reasonable for the IAD to conclude that here the BIOC did not outweigh the negative factors from the misrepresentation. As it was stated by the Federal Court of Appeal in *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 24:

> an applicant is not entitled to an affirmative result on an H&C application simply because the best interests of a child favour that result. It will more often than not be in the best interests of the child to reside with his or her parents in Canada, but this is but one factor that must be weighed together with all other relevant factors. It is not for the courts to reweigh the factors considered by an H&C officer.

[23] Here, the Officer did not set "unusual and undeserved or disproportionate hardship" as a threshold. Rather, the Officer considered the factors, but concluded that there was a lack of evidence to determine that the BIOC weighed in favor of granting relief on H&C grounds.

[24] Mr. Tang was essentially arguing that requiring his son to leave Canada was sufficient evidence in itself. However, as the SCC reiterated in *Kanthasamy* at para 23:

> There will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1): see *Rizvi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 463, at para. 13 (CanLII); *Irimie v. Canada (Minister of Citizenship and Immigration)* (2000), 10 Imm. L.R. 206; (F.C.T.D), at para. 12. Nor was s. 25(1) intended to be an alternative immigration scheme: House of Commons, Standing Committee on Citizenship and Immigration, *Evidence*, No. 19, 3rd Sess., 40th Parl., May 27, 2010, at 15:40

> (Peter MacDougall); see also *Evidence*, No. 3, 1st Sess., 37th Parl., March 13, 2001, at 9:55 to 10:00 (Joan Atkinson).

[25] Here, the IAD did not ignore any evidence, and the IAD explained why the evidence was insufficient. The IAD did not err in its BIOC analysis.

IV. Conclusion

[26] Overall in its H&C analysis, the IAD weighed the factors before it and determined that the evidence was lacking in order for it to grant relief on H&C grounds. The decision is justified, transparent and intelligible. The IAD decision is reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review of the IAD decision is dismissed.

2. No serious question of general importance is certified.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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