Federal Court  Cour fédérale

Date: 20170607

Docket: IMM-4592-16

Citation: 2017 FC 558

Vancouver, British Columbia, June 7, 2017

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

NASTOOH AVESSTA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review arises from a decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada [Board]. The Applicant, Nastooh Avessta, challenges the Board's dismissal of his appeal of a visa officer's decision refusing the sponsorship of his Iranian mother, Azar Araghi.

[2] Ms. Araghi was initially determined to be inadmissible to Canada on the basis of her non-accompanying husband's (Seyed Montazer) medical condition (diabetes and chronic renal failure). The Board was asked to overturn the decision on humanitarian and compassionate grounds but it declined to do so.

[3] The Applicant contends that the Board's decision is unreasonable because it is contradictory, incoherent and speculative. The particular complaint stems from the Board's treatment of the evidence concerning the potential for Mr. Montazer to emigrate to Canada at a later date under the sponsorship of Ms. Araghi. The Applicant argues that the Board entered the realm of speculation when it considered that risk and when it dismissed the evidence that Mr. Montazer had no intention of ever leaving Iran. The particular part of the decision that troubles the Applicant is the following:

> [10] The underlying concern is that if the applicant becomes a permanent resident she can then sponsor Mr. Montazer. Pursuant to section 38(2)(a) of the *Act* spouses are exempt from the provisions of section 38(1)(c) of the *Act*. Mr. Montazer could gain permanent resident status notwithstanding his health problems. The witnesses testified that Mr. Montazer has no interest in coming to Canada. The applicant is willing enter [*sic*] into an undertaking that she will not sponsor Mr. Montazer. I do not doubt their sincerity. First, however, such an undertaking is not enforceable. Second, life is unpredictable; circumstances change. Should events compel the applicant to change her mind about sponsoring Mr. Montazer, nothing could prevent it. The facts of the appeal must be assessed in that context.

[4] The Applicant contends that the above-noted concern amounts to speculation in the face of the Board's corresponding acceptance of the testimony from Ms. Araghi and Mr. Montazer that he would never seek to emigrate to Canada. The argument is captured in the following passage from the Applicant's written reply:

> Barring a finding of fact that the applicant and her husband were not credible on their evidence, the Tribunal cannot engage in the type of speculation that it engaged in, framing the entire appeal in terms of 'life is unpredictable and circumstances change'. The Tribunal cannot have it both ways both ways [*sic*]. Believing that Mr. Montazer never wants to immigrate to Canada and then speculating that he may decide to immigrate to Canada in the future, are mutually exclusive propositions and a sign that the decision is unintelligible.

[5] The fundamental weakness in the above argument is that there is no inconsistency between the witness testimony and the Board's observation that Mr. Montazer could change his mind. It is not a matter of speculation that an unavoidable risk remained that Mr. Montazer might later seek to come to Canada and thereby impose an excessive demand on Canadian health care. The Board's comment that "life is unpredictable; circumstances change" is not speculation; it is a truism. It was up to the Board to attribute weight to this risk. It is not the Court's function on judicial review to substitute its own view of the evidence for that of the assigned decision-maker.

[6] The other point that is missed in the Applicant's argument is that the Board based its decision on several other relevant factors and concluded that little hardship had been shown. It was particularly noted by the Board that Ms. Araghi was in possession of a multi-entry Canadian visa which allowed her to frequently visit for extended periods. Ms. Araghi also testified that she intended to continue to travel back and forth from Iran as she had in the past, even if she was successful in securing permanent resident status in Canada. During her anticipated absences from Canada, the Board found that Ms. Araghi could continue to maintain contact with her granddaughter via Skype. On the basis of Ms. Araghi's stated intentions, the Board reasonably concluded that the hardship of occasional family separation was self-induced and did not warrant relief.

[7] In the end, the Board did not place undue weight on the risk of Mr. Montazer coming to Canada. What was of central concern to the Board was the absence of a compelling case of family hardship. That finding was, on the evidence presented, entirely reasonable and it is unimpeachable on judicial review.

[8] For the foregoing reasons, the application is dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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