Federal Court  Cour fédérale

Date: 20171020

Docket: IMM-1143-17

Citation: 2017 FC 924

Ottawa, Ontario, October 20, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

AROOJ ASAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant seeks judicial review of a decision by a Senior Immigration Officer of Citizenship and Immigration Canada (the officer) denying an application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds for her and her family members.

[2] The applicant, Arooj Asad, is a 25-year-old citizen of Pakistan who, with her mother, sister and two brothers, claimed refugee protection in Canada in 2014. That claim was refused before the Refugee Protection Division (RPD) of the Immigration and Refugee Board due to lack of credibility concerning the allegations of risk in Pakistan. The Refugee Appeal Division (RAD) upheld the RPD's decision. An application for judicial review of the RAD's decision was dismissed in 2016.

[3] Subsequently, the family made an application for pre-removal risk assessment (PRRA) citing the same risks as were not believed before the RPD and the RAD. The PRRA application was dismissed earlier this year. Leave to commence an application for judicial review of the PRRA decision was later denied.

[4] In parallel with the PRRA application, the applicant and her family filed their H&C application. The grounds advanced were (i) the family's establishment in Canada, (ii) the best interests of the children (the applicant's sister and younger brother are minors), and (iii) hardship in Pakistan.

II. IMPUGNED DECISION

[5] I preface this section by noting that it is unclear whether the officer's decision concerns only the applicant, or also concerns her mother, sister and brothers. The H&C application was made on behalf of all of them, but the officer's decision is addressed to the applicant only and indicates that the other family members are not included in the application. I note also that, for the most part, the subjects of the H&C application are referred to in the officer's decision in the

plural. However, this lack of clarity was not addressed by the parties and it appears that nothing turns on it.

[6] The officer refused, for the purposes of the H&C application, to consider any of the allegations of risk in Pakistan that had been disbelieved before the RPD and the RAD, and in the context of the PRRA application. The officer added that allegations in the broader context of the family's degree of hardship would be considered. The only analysis of risk and hardship factors by the officer comes near the end of the decision where the officer stated: "The Applicants lived in Pakistan without any problem. They were educated and worked in Pakistan until they left for Canada."

[7] With regard to the family's establishment in Canada, the officer found that they had been in Canada for two and a half years, were working and studying, and were not a burden to society. The officer also observed that the family had been living in Canada off assistance from another family member. The officer concluded that, though the family took positive steps to establish themselves in Canada, "their integration and establishment are very modest as expected and do not justify an exemption [from] the legislative requirement to apply for immigrant visa from abroad." Near the end of the decision, the officer added: "Beside a brother the Applicant has no family in Canada. They have no emotional ties to Canada. As the applicants have been in Canada for a short period of time, re-insertion in their country of origin is still feasible."

[8] With regard to the best interests of the children, the officer noted that the minor children had not seen their father (who remains in Pakistan) for almost three years and that it was in the

best interest of any child to have both parents in his/her life. The officer stated that moving back to Pakistan would give the children a chance to develop relationships with their father and extended family, and would not be detrimental to their development. The officer noted the lack of evidence that the children's access to education or to health care would be adversely affected by such a move. The officer concluded that:

> [T]he applicants had not demonstrated that severing their ties to Canada would have a significant negative financial, emotional and social impact on these children that justifies an exemption under humanitarian and compassionate considerations.

[9] The H&C application was accordingly refused.

III. ISSUES

[10] The applicant takes issue with the officer's assessment of (i) establishment in Canada, and (ii) hardship in Pakistan.

[11] The applicant's memorandum of argument at the leave stage also took issue with the officer's analysis of the best interests of the children, but this line of argument was not followed in the applicant's further memorandum of argument or in oral argument. Accordingly, I will say nothing more on this issue.

IV. ANALYSIS

A. *Establishment in Canada*

[12] The applicant argues that the officer erred by failing to explain in any meaningful way why the family's degree of establishment in Canada was insufficient to justify an H&C exemption, or what degree of establishment would have been sufficient. The applicant focuses on the officer's statement that establishment was "very modest as expected" (emphasis added).

[13] In support of this argument, the applicant cites the decision of Justice Catherine Kane in *Chandidas v Canada (Citizenship and Immigration)*, 2013 FC 258, at paras 74 and following [*Chandidas*]. In *Chandidas*, the analysis of the issue of establishment in the impugned decision was not dissimilar to the analysis by the officer in the present case: the details of the applicants' establishment in Canada were reviewed but found to be no more than one would expect. The following passages from *Chandidas* are of particular interest:

> [77] In my view, even after considering the reasons in their entirety, the officer's finding with respect to establishment is not adequately explained and, as a result, is not reasonable. The applicants are not asking the court to reweigh the evidence; they are asking for the reasons underlying the officer's conclusion.
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> [78] In *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565, [2005] FCJ No 693, Justice Mactavish held, at para 20:
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> > … in this case, the officer reviewed the evidence of establishment in Canada offered by the applicants in support of their applications, and then simply stated her conclusion that this was not enough. We know from the officer's reasons that she did not think that the applicants would suffer unusual, undeserved or disproportionate harm if they were required to apply for permanent residence from abroad. What we do

> not know from her reasons is why she came to that conclusion.
>
> [79] This reasoning was recently echoed by Justice Rennie in *Tindale v Canada (Minister of Citizenship and Immigration)*, 2012 FC 236, [2012] FCJ No 264 at para 11.
>
> [80] Similarly, in the present case, the officer fails to provide any explanation as to why the establishment evidence is insufficient. The officer reviewed the family's degree of establishment in detail, and referred to their work, income, family ties, courses taken, schools attended, and community involvement in various passages of the decision. The officer does not indicate what he would consider to be extraordinary or exceptional establishment; he simply states that this is what he would expect and that it would not cause unusual and undeserved or disproportionate hardship if the family were forced to apply for a visa from outside Canada. While this could be argued to be a reason, it is barely informative.

[14] In *Baco v Canada (Citizenship and Immigration)*, 2017 FC 694 [*Baco*], Justice Keith Boswell recently noted the discussion in *Chandidas* and commented as follows at para 18:

> The degree of an applicant's establishment in Canada is, of course, only one of the various factors that must be considered and weighed to arrive at an assessment of the hardship in an H&C application. The assessment of the evidence is also, of course, an integral part of an officer's expertise and discretion, and the Court ought to be hesitant to interfere with an officer's discretionary decision. However, the Officer in this case followed the same objectionable and troublesome path as in *Chandidas*… It was unreasonable for the Officer to discount the Applicants' degree of establishment merely because it was, in the Officer's view, "of a level that was naturally expected of them… [and it is not] beyond the normal establishment that one would expect the applicants to accomplish in their circumstances." The Officer unreasonably assessed the Applicants' length of time or establishment in Canada because, in my view, the Officer focused on the "expected" level of establishment and, consequently, failed to provide any explanation as to why the establishment evidence was insufficient or to state what would be an acceptable or adequate level of establishment.

[15] On the other side of the issue is the decision of Justice Denis Gascon in *Rocha v Canada (Citizenship and Immigration)*, 2015 FC 1070 [*Rocha*], with the following comments at para 31:

> The *Chandidas* decision referred to by Mr. Rocha is clearly distinguishable. In that case, Justice Kane found that the officer had omitted to provide any explanation as to why the establishment evidence was insufficient despite several positive establishment factors (*Chandidas* at para 83). In *Chandidas*, the evidence showed that the family had established themselves successfully in the community, in the schools and in business, and that their daughter was being treated for a severe illness in hospital, with many appointments. The officer did not turn his mind to whether applying for permanent residence from outside Canada in those circumstances would impose hardship going beyond that which is inherent in having to leave to Canada (at para 82). Unlike in *Chandidas*, the Officer did explain why the Mr. Rocha's establishment evidence was insufficient. Mr. Rocha simply disagrees with the weight that the Officer accorded to the evidence. This is not sufficient to warrant the intervention of this Court.

[16] In *Rocha*, the officer had observed that the applicant's relationships did not represent strong personal ties to Canada and concluded that his degree of establishment was unremarkable.

[17] The Court in *Rocha* also noted that:

1. An H&C exemption is exceptional and discretionary remedy (para 16);
2. There is a very high threshold to meet when requesting an H&C exemption (para 17);
3. The standard of review of the officer's decision on an H&C application is reasonableness (para 19); and
4. "Given the highly discretionary nature of H&C decisions, immigration officers have a broad range of acceptable and defensible outcomes and a large margin of appreciation available to them." (para 20)

[18] In my view, the decisions in *Chandidas* and in *Baco* are distinguishable from the present case. *Chandidas* is distinguishable on the basis set out in *Rocha*. There was an important element of the applicants' establishment in Canada that the officer had failed to consider in *Chandidas*: the effect of the family's removal from Canada on the daughter's treatment for a severe illness. That is not the case here.

[19] In *Baco*, the Court was concerned that the officer's focus on the expected level of establishment distracted from explaining why the establishment evidence was insufficient. In my view, the officer in the present case reasonably explained the insufficiency of the evidence by observing that only one family member is in Canada and that the family has no emotional ties here.

[20] The applicant may have wished for more explanation and a different result, but this explanation is sufficient in the context of the decision as a whole.

B. *Hardship in Pakistan*

[21] With regard to the officer's refusal to consider the risk allegations that had previously been disbelieved, the applicant argues that there is a difference between risk assessment for the purposes of a refugee claim or a PRRA, and assessment of hardship in the context of an H&C application that those risks may cause. The applicant argues that the risk allegations should have been considered anew in the context of the H&C application. I disagree. The officer observed that the family's entire story hinges on these allegations which have been previously considered and dismissed. If the previous conclusions on lack of credibility are to be respected (which the

applicant does not dispute), then there is no basis for finding any hardship arising from those risks.

[22] After removing the disbelieved risk allegations from consideration, the only remaining risks upon which the applicant relies concern conditions in Pakistan, particularly for women. The applicant argues that this aspect of the H&C application was not adequately considered by the officer. As noted above, the officer stated: "The Applicants lived in Pakistan without any problem. They were educated and worked in Pakistan until they left for Canada." These reasons are indeed brief, but they do offer some explanation. The evidence and arguments in the H&C application related to hardship in Pakistan were general, and I have heard no argument that there was evidence of any personal impact of such general hardships on the applicant. In the absence of such evidence of personal impact, I conclude that the officer's reasons on the issue of hardship were adequate, and the conclusion was reasonable.

V. CONCLUSION

[23] For the foregoing reasons, the present application should be dismissed. The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT in IMM-1143-17

THIS COURT'S JUDGMENT is that:

1. The present application for judicial review is dismissed.

2. No serious question of general importance is certified.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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