Federal Court  Cour fédérale

Date: 20180724

Docket: IMM-452-18

Citation: 2018 FC 776

[OFFICIAL ENGLISH TRANSLATION]

Montréal, Quebec, July 24, 2018

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

RECEP ALTIPARMAK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Recep Altiparmak, is a Turkish citizen. In February 2000, he came to Canada and received permanent resident status in Canada. On May 31, 2012, Mr. Altiparmak was convicted of sexual assault under paragraph 271(1)(a) of the *Criminal Code*, RSC 1985,

c. C-46 [the *Criminal Code*], and on July 5, 2013, he was sentenced to 90 days in prison to be served discontinuously.

[2] On September 30, 2015, the Immigration Division [ID] found that Mr. Altiparmak was a person described in paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [Act], and it issued a deportation order against him.

[3] On the same day, Mr. Altiparmak filed an appeal from the ID's decision before the Immigration Appeal Division [IAD]. He did not challenge the legal validity of the above-mentioned deportation order but sought special relief under paragraph 67(1)(c) of the Act, specifically a stay of the deportation order.

[4] On December 22, 2017, the IAD dismissed the appeal. It believed that Mr. Altiparmak had not established, on a balance of probabilities, that there were sufficient humanitarian and compassionate considerations to warrant special relief.

[5] Lastly, in April 2017, Mr. Altiparmak pleaded guilty to a charge of impaired driving under subsection 255(1) of the *Criminal Code*.

II. Impugned decision

[6] In its decision, the IAD pointed out that the deportation order was not challenged in law and was well founded. The IAD also noted that it was incumbent upon Mr. Altiparmak to prove

that there were sufficient humanitarian and compassionate considerations to warrant special relief under paragraph 67(1)(c) of the Act.

[7] The IAD stated the non-exhaustive factors set out in *Ribic v. Canada (Minister of Employment & Immigration)*, [1985] IABD No. 4 (QL), affirmed by the Supreme Court of Canada in *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 [*Chieu*], in addition to the best interests of a child directly affected. These factors are: the seriousness of the offence or offences leading to the deportation; the possibility of rehabilitation or the circumstances surrounding the failure to meet the conditions of admission; the time spent in Canada and the degree to which the appellant is established; family in Canada and the dislocation to that family that deportation of the appellant would cause; the support available for the appellant not only within the family but also within the community; and the degree of hardship that would be caused to the appellant by his return to his country of nationality.

[8] For each of these factors, the IAD provided details on Mr. Altiparmak's situation and found that (1) the offence that led to the deportation order was serious and involved aggravating factors; (2) Mr. Altiparmak's rehabilitative potential was low; (3) his establishment was essentially based on the passage of time and the fact that his two children were born in Canada, but his establishment was surprisingly weak, given that Mr. Altiparmak had been living primarily on social assistance since his arrival; (4) his deportation would dislocate the family, but would not cause them undue hardship; (5) his wife was a source of support for him, but her support had not improved his situation; and (6) given the circumstances presented and the risk

posed by Mr. Altiparmak, the deportation order was not contrary to the best interests of the children.

III. Submissions of the parties

[9] The parties agree that the decision must be reviewed on a standard of reasonableness, with Mr. Altiparmak arguing that the decision is unreasonable and the Minister submitting that it is reasonable.

[10] In his memorandum of fact and law, Mr. Altiparmak pleaded that the IAD's decision was unreasonable because the IAD had failed to properly assess (1) the best interests of the children, and (2) the applicant's alcoholism and his risk of recidivism.

[11] At the hearing, Mr. Altiparmak's counsel wanted to submit new arguments, and counsel for the respondent objected. The jurisprudence of this Court "is that, unless the situation is exceptional, new arguments not presented in a party's Memorandum of Fact and Law should not be entertained as to do so would prejudice the opposing party and could leave the Court unable to fully assess the merits of the new argument" (*Abdulkadir v. Canada (Citizenship and Immigration)*, 2018 FC 318 at paragraph 81; *Del Mundo v. Canada (Citizenship and Immigration)*, 2017 FC 754 at paragraphs 12 to 14 [*Del Mundo*]; *Mishak v. Canada (Minister of Citizenship and Immigration)* (1999), 173 FTR 144 (FCTD) at paragraph 6; *Adewole v. Canada*

(Attorney General), 2012 FC 41 at paragraph 15). In this case, Mr. Altiparmak's counsel did not cite an exceptional situation, and the Court will therefore not consider the new arguments.

[12] Regarding the best interests of the children, Mr. Altiparmak cited long passages from *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], and he essentially argued that the IAD had lacked sensitivity toward the children.

[13] With respect to the second point, Mr. Altiparmak argued that the IAD had erred in assessing the impact of his drinking, the father's possible absence from the children, his absence on the children's way of life and the presence of his wife's parents and her siblings.

[14] As for his risk of recidivism, Mr. Altiparmak maintained that the IAD had not correctly assessed the 2012 psychosexual evaluation report, which confirmed that the risk of recidivism was low and that the recent impaired driving offence was an unfortunate incident attributable to his drinking problem.

[15] The respondent countered that the IAD's assessment of humanitarian and compassionate considerations was reasonable because it took into account all material factors, considered the evidence and testimony, and weighed the competing interests.

[16] The respondent pointed out that the Court had to determine whether the decision was reasonable and not reassess the evidence in the record, and that in this case, Mr. Altiparmak had failed to provide substantial grounds for allowing his application.

IV. Decision

[17] The Court agrees with the parties and will review the IAD decision on the standard of reasonableness (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 58 [*Khosa*]). In reviewing the IAD decision, the Court will be guided by the comments of the Supreme Court that reasonableness is concerned with "the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47).

[18] It should also be noted that the IAD has a broad discretion in assessing whether humanitarian and compassionate considerations warrant special relief under paragraph 67(1)(c) and section 68 of the Act (*Chieu*, at paragraph 66). The Court must therefore exercise restraint and deference (*Kanthasamy*, at paragraph 111).

[19] Finally, in the context of a judicial review, it is not open to this Court to substitute its decision for the one that was rendered, and it is not its function to reweigh the evidence (*Khosa*, at paragraphs 59 and 61; *Ling Du v. Canada (Citizenship and Immigration)*, 2012 FC 1094 at paragraph 48).

[20] Before the IAD, Mr. Altiparmak limited his evidence to seven elements: his 2013 to 2016 notices of assessment, his children's birth certificates, his wife's permanent resident card, a letter

from his daughter, the psychosexual assessment for the Ministère de la Sécurité publique du Québec, a copy of his passport and proof of employment in 2016.

[21] The Court reviewed this evidence and the testimony provided by Mr. Altiparmak and his wife, and considered the arguments made, but was not persuaded that the IAD's findings are unreasonable.

[22] The IAD examined the seriousness of the offence, the applicant's rehabilitative potential, his time spent in Canada, his degree of establishment, his family's presence in Canada, the dislocation that his deportation would cause to his family, the support he has in Canada, as well as the best interests of the children. The IAD's review and its findings do not appear unreasonable in light of the record and fall within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law."

JUDGMENT

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There is no question to be certified;

3. Without costs.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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