Federal Court Cour fédérale

Date: 20181011

Docket: IMM-609-18

Citation: 2018 FC 1022

Toronto, Ontario, October 11, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

NIZAR CHOKR CHOKR

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of the decision of a Senior Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada, dated August 24, 2017 [Decision], which refused Mr. Chokr's application for permanent residence on humanitarian and compassionate [H&C] grounds.

II. Background

[2] The Applicant, Nizar Chokr Chokr, is a citizen of Lebanon and Venezuela. He was born in Lebanon in 1965. He left Lebanon and moved to Venezuela in 1983. He married his now ex-wife in Venezuela in 1987, and became a Venezuelan citizen in 1989.

[3] According to Mr. Chokr, he left Venezuela in 2016 and came to Canada to live with his sister, as a result of fearing for his life from extortionists. That year, Mr. Chokr made an application for permanent residence based on humanitarian and compassionate grounds under subsection 25(1) of the IRPA.

[4] The Officer, in refusing the H&C application, found that Mr. Chokr had not demonstrated the circumstances warranting relief.

[5] For the reasons that follow, I find that the Officer entirely failed to assess a central component of Mr. Chokr's application, namely how the adverse country conditions in Lebanon might result in hardship in a prospective application from abroad. The Decision is, thus, unreasonable and will be returned for reassessment.

III. Issues and Standard of Review

[6] Mr. Chokr raised three issues. As the Officer's failure to assess the evidence of hardship upon return to Lebanon is determinative, I will restrict my analysis to that single issue, which is to be reviewed on a standard of reasonableness, as the H&C exemption is an exceptional and

highly discretionary remedy in the nature of extraordinary and special relief (*Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at paras 18, 29). While significant deference is owed in an H&C context, such deference is not a blank cheque, and there must be reasoned reasons to ground a justified outcome (*Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73 [*Miyir*] at para 13).

IV. Analysis

A. *H&C Hardship Analysis*

[7] Mr. Chokr argues that the intention behind H&C discretion under subsection 25(1) of the IRPA is to alleviate rigidity in the law in appropriate cases, leaving room for flexibility in Canadian immigration decision making and to "offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another.'" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 21 [*Kanthasamy*]). Hardship is a factor in this analysis where presented by the applicant.

[8] The Respondent submits that H&C relief is an exceptional remedy and is not a parallel or stand-alone immigration regime (*Cortorreal De Leon v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1178 at para 31), and the Officer considered hardship generally, along with further submissions regarding the Officer's specific analysis of hardship in Lebanon, discussed below.

[9] The Supreme Court of Canada clarified how the factor of hardship fits into an H&C analysis in *Kanthasamy*, where it was held that "unusual and undeserved or disproportionate hardship" should not limit a decision maker's ability to consider all factors that may be relevant in a particular case (*Kanthasamy* at para 33). Instead, an H&C decision maker must apply subsection 25(1) with regard to its equitable goals, and therefore must consider whether the applicant's "circumstances as a whole" justify an exemption (*Kanthasamy* at paras 45).

[10] *Kanthasamy* did not reject the concept of hardship in H&C applications but rather, indicated that it remains important to an H&C analysis when assessed "equitably, flexibly, and as part of the applicant's circumstances as a whole" (*Miyir* at para 16).

[11] Additionally, the section on "Hardship and the H&C assessment" in the Respondent's relevant policy offers guidance to officers in their assessment of hardship. As of the date of the H&C Decision, this section read as follows:

> As of December 10, 2015, there is no hardship "test" for applicants under subsection 25(1); however the determination of whether there are sufficient grounds to justify granting an H&C request will generally include an assessment of hardship. Therefore, hardship continues to be an important consideration in determining whether sufficient humanitarian and compassionate considerations exist to justify granting an exemption and/or permanent resident status.
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> … [A] decision maker would consider the extent to which the applicant, given their particular circumstances, would face hardship if they had to leave Canada in order to apply for permanent residence abroad. Although 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 subsection 25(1) (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61; *Rizvi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 463).

[Emphasis added]

[12] Accordingly, the decision maker must consider the adverse conditions of an applicant's country of origin where they form part of an applicant's H&C circumstances in order to determine whether an equitable exemption is warranted. This typically means that the decision maker will assess the hardship of returning to those conditions (*Miyir* at para 19).

B. *Hardship Analysis regarding Mr. Chokr*

[13] Here, Mr. Chokr argues that the Decision is unreasonable because the Officer (i) failed to address adverse country conditions in Lebanon, (ii) failed to engage with the evidence documenting hardship, and (iii) ignored the related evidence of Mr. Chokr's likely personal hardship upon his return to Lebanon. In his H&C application, Mr. Chokr submitted articles and various reports documenting the current instability, political strife, violence, and refugee crisis in Lebanon.

[14] Mr. Chokr further argues that he provided several reasons as to why these adverse country conditions in Lebanon would affect him personally, namely that he would be returned to the traumatic conditions he had fled 35 years earlier, and that he would be isolated, lacking any meaningful community or support in Lebanon.

[15] The Respondent counters that there is a presumption that all documentary evidence was taken into consideration (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA)), and that the Officer, after considering the evidence submitted in

support of the claim, was not satisfied that Mr. Chokr would suffer hardship in applying from Lebanon. The Respondent submits that Mr. Chokr did not show a link between the evidence of hardship and his individual circumstances as required under subsection 25(1) of the IRPA (*Kanguatjivi v Canada (Citizenship and Immigration)*, 2018 FC 327 [*Kanguatjivi*] at para 41).

[16] In the Decision, the Officer spends several paragraphs discussing adverse country conditions in Venezuela, but does not acknowledge or make any mention of the adverse country conditions in Lebanon. In fact, with respect to the hardship that Mr. Chokr could face in Lebanon, the Officer only states the following:

> <u>The Applicant submits that he would face hardship to resettle in Lebanon because he left the country more than 34 years ago</u>. However, I note that the Applicant was born in Lebanon where he resided until the age of 18 year[s]-old. According to the H&C forms, the Applicant still has his father, 3 brothers and a sister living in Lebanon. He speaks the language and is familiar with the customs and way of life in Lebanon. The Applicant submits that his establishment would be easier in Canada, a country with a different language and culture where he never lived before. The Applicant contends that since April 2016 he entered Canada he has been residing with his sister and brother.
>
> [Emphasis added]

[17] While the Officer addressed Mr. Chokr's ties to Lebanon, the Officer does not mention any of the reports or articles submitted by Mr. Chokr that squarely address the hardship that Mr. Chokr says he will face upon return. In fact, the Officer failed to reach any conclusion about whether or not Mr. Chokr would experience hardship upon return to Lebanon.

[18] In my view, this runs contrary to the Guidelines' section on "Adverse country conditions" which direct decision makers to do the following:

> When an applicant submits information claiming that there are conditions in the country of origin that would result in hardship if they were not granted the exemption requested, decision makers must consider the conditions in that country and balance these factors into the hardship assessment. Adverse country conditions could include factors having a direct, negative impact on the applicant such as war, natural disasters, unfair treatment of minorities, political instability, lack of employment, widespread violence etc.
>
> [Emphasis added]

[19] In this case, Mr. Chokr provided information to support his claim of adverse country conditions in Lebanon, but I am not persuaded by the Respondent's response that the Officer considered the conditions in Lebanon or balanced those factors into the hardship assessment. Although the Officer proceeded with an analysis of the country conditions in Venezuela, the Officer omitted to address or engage with Mr. Chokr's adverse country condition evidence upon his return to Lebanon.

[20] In looking at *Kanguatjivi*, a case relied on by the Respondent, I find that it in fact supports Mr. Chokr's position. There, Chief Justice Crampton noted that the officer undertook a "lengthy review" of the country condition evidence submitted by the applicant, and subsequently concluded that there was insufficient evidence that adverse country conditions would have a negative impact on her (*Kanguatjivi* at para 40).

[21] Evidence on adverse country conditions must be considered by an officer in the assessment of an applicant's alleged hardship. This did not happen here. In fact, the Respondent accepted at the hearing that this was "problematic". By failing to refer to any of the country condition evidence on Lebanon, one cannot be sure that the Officer considered any of it. Making

a decision without regard to the country condition evidence supporting Mr. Chokr's H&C application was unreasonable (*Ratnarajah v Canada (Citizenship & Immigration)*, 2010 FC 1054 at paras 14, 17).

[22] In view of my determination as to the Officer's unreasonable assessment of hardship, it is unnecessary to consider the remaining issues raised by Mr. Chokr.

V. Conclusion

[23] The Officer's assessment of hardship was unreasonable because of its failure to address or analyze how the adverse country conditions facing Mr. Chokr in Lebanon might result in hardship. The Decision will thus be set aside and the matter returned for redetermination by a different officer.

[24] Neither party raised a serious question of general importance, and I agree that no such question is warranted.

JUDGMENT in IMM-609-18

THIS COURT'S JUDGMENT is that

1. This application for judicial review is granted.
2. The Decision is set aside, and the matter is remitted back for redetermination by a different officer.
3. No question for certification was argued, and none arose.
4. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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