Federal Court  Cour fédérale

Date: 20190410

Docket: IMM-4573-18

Citation: 2019 FC 445

Toronto, Ontario, April 10, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

RENZ MARION MANINGAS

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Renz Marion Maningas (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Appeal Division (the "IAD"), denying his request for relief on humanitarian and compassionate ("H&C") grounds.

[2] The Applicant is a citizen of the Philippines. He entered Canada in September 2008 as a permanent resident, following his marriage to a Canadian citizen. The marriage ended in divorce in March 2009.

[3] In January 2015, the Applicant was reported for inadmissibility on the grounds on misrepresentation, specifically concerning his admission to Canada pursuant to a spousal sponsorship. An exclusion Order was issued by the Immigration and Refugee Board, Immigration Division against the Applicant on March 20, 2017.

[4] The Applicant appealed to the IAD. He did not challenge the legality of the decision of the Immigration Division but sought only the exercise of H&C discretion by the IAD. That jurisdiction is conferred by the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"), paragraph 67(1)(c) which provides as follows:

Appeal allowed	**Fondement de l'appel**
67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,	**67 (1)** Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	**c)** sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

[5] In its decision dated August 29, 2018, the IAD dismissed the Applicant's appeal. It found that the misrepresentation about his marriage was very serious and that upon consideration of the factors outlined in *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No. 4, there were insufficient grounds to allow special relief.

[6] The decision of the IAD is reviewable on the standard of reasonableness. According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[7] The Applicant now argues that the decision is unreasonable, on several grounds, including a failure by the IAD to appreciate the evidence submitted and to consider the best interests of his children who live in the Philippines with their mother, in the home of the Applicant's parents.

[8] The Minister of Citizenship and Immigration (the "Respondent") submits that the decision of the IAD meets the reasonableness standard.

[9] I disagree.

[10] I accept the submissions of the Applicant that the IAD unreasonably failed to address the issue of hardship facing him and his family. The IAD apparently assessed hardship in a limited

fashion, focusing on the immediate hardship if he were removed, rather than taking a holistic approach.

[11] Such a limited consideration of hardship was found to be a reviewable error in the decision in *Shallow v. Canada (Minister of Citizenship and Immigration)* (2012), 410 F.T.R. 314.

[12] In my opinion, the IAD took an equally narrow view of the best interests of the Applicant`s children, failing to follow the guidance of the Supreme Court of Canada in its decision in *Kanthasamy v. Canada (Citizenship and Immigration)*, [2015] 3 S.C.R. 909, as followed by this Court in *Ndlovu v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 878.

[13] It is not necessary for me to address the other arguments advanced by the Applicant. I am satisfied that he has shown legal errors that justify judicial intervention.

[14] In the result, this application for judicial review is allowed, the decision of the IAD is set aside and the matter remitted to a differently constituted panel of the IAD for redetermination. There is no question for certification arising.

JUDGMENT in IMM-4573-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Immigration and Refugee Board, Immigration Appeal Division is set aside and the matter remitted to a differently constituted panel of the Immigration Appeal Division for redetermination, there is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4573-18
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