Federal Court  Cour fédérale

Date: 20190401

Docket: IMM-4294-18

Citation: 2019 FC 394

Ottawa, Ontario, April 1, 2019

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

NIRANJAN MAGANLAL PATEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] A visa officer refused Niranjan Maganlal Patel's application to sponsor his parents because he did not meet the financial sponsorship requirements of the *Immigration and Refugee Protection Regulations*. Specifically, Mr. Patel did not fulfill the Minimum Necessary Income requirement to sponsor his parents according to the Low Income Cut-Off published by Statistics Canada that was in force at the time of the sponsorship application.

[2] On appeal to the Immigration Appeal Division of the Immigration and Refugee Board, Mr. Patel conceded that he had not met the income requirements of the Regulations. Rather, he asked the IAD to exercise its discretion to grant an exemption from the income requirements of the Regulations based on humanitarian and compassionate considerations. The IAD dismissed the appeal, finding that there were insufficient H&C grounds to warrant the granting of special relief in light of all of the circumstances of the case.

[3] Mr. Patel submits that the IAD erred in coming to this decision by applying the wrong test in assessing the H&C considerations at issue. The IAD further erred, Mr. Patel submits, by weighing positive H&C factors against what he says were neutral factors, rather than weighing positive H&C factors against the obstacle to admissibility, as the IAD was required to do.

[4] While I agree with Mr. Patel that the IAD used unfortunate language in its reasons, upon review of the decision as a whole, it is apparent that the IAD properly understood the task before it and that it came to a reasonable decision.

I. Background

[5] While Mr. Patel's financial position had improved over time, he acknowledges that he still did not meet the financial requirements of the Regulations at time of the IAD hearing. While Mr. Patel and his wife were able to meet the required income thresholds for 2016 and 2017, their combined income was still approximately $18,000 short of the Minimum Necessary Income requirement for 2015.

[6] The IAD noted that in accordance with its earlier decision in *Jugpall v. Canada (Citizenship and Immigration)*, [1999] I.A.D.D. No. 600, 1999 CanLII 20685, a lower threshold

for the granting of special relief will be appropriate in cases where the obstacle to admissibility has been overcome by the time that the case is before the IAD. In other cases, the standard to be applied is the higher threshold identified by the IAD in *Chirwa v. Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338, [1970] I.A.B.D. No. 1.

[7] In *Chirwa*, the IAD held that "humanitarian and compassionate" considerations refer to "those facts, established by the evidence, which would excite in a reasonable man in a civilized community a desire to relieve the misfortunes of another - so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the *Immigration Act*": above, at p. 350.

[8] Mr. Patel argues that the IAD erred in finding that there are only two thresholds for H&C relief - a "high" threshold where the obstacle to admissibility still exists at the time of the IAD hearing, and a "low" threshold when the obstacle to admissibility has been overcome. According to Mr. Patel, there is in fact a spectrum of H&C thresholds, and the appropriate threshold is determined by assessing the nature of the barrier to admissibility. At the end of the day, the degree of inadmissibility must always be weighed against the humanitarian factors at issue.

[9] Mr. Patel says that in this case, the IAD's analysis was "abstract", and did not account for the obstacle to admissibility or consider his H&C factors in their context. Rather than assess Mr. Patel's barrier to admissibility, the IAD instead applied the higher of two thresholds, concluding that the identified positive factors were not sufficient to justify the granting of special relief.

[10] The IAD further erred, Mr. Patel says, by weighing the positive H&C factors against "so-called negative H&C factors" (which were actually neutral factors such as hardship), rather than against the obstacle to admissibility. According to Mr. Patel, a true negative factor would be "unclean hands in dealing with Canadian immigration authorities" or similar concerns, rather than a neutral factor such as lack of hardship in the country in question. The IAD therefore erred by treating the neutral factors in this case as if they involved bad behaviour.

II. Analysis

[11] I understand the parties to agree that a proper H&C analysis is a contextual one that has regard to the nature of the obstacle to admissibility and takes all of the relevant considerations - both positive and negative - into account.

[12] Moreover, as the Minister noted, the *Jugpall* decision holds that the persuasive value of the H&C considerations must be commensurate with the degree of inadmissibility. As a result, more compelling H&C factors may be required to overcome a more serious obstacle to admissibility. On the other hand, if the obstacle to admissibility has been fully overcome by the time that the case is before the IAD, this may reduce the extent of the circumstances required to overcome the earlier inadmissibility: *Jugpall*, above at paras. 23-25, 41-42.

[13] While Mr. Patel's financial situation had improved by the time his appeal reached the IAD, it is common ground that he still did not meet the minimum income requirement for 2015. As a result, the obstacle to admissibility that caused the visa officer to reject his sponsorship application had not been overcome by the time of the IAD hearing.

[14] It is true that paragraph 19 of the IAD's reasons suggests that it weighed the positive H&C factors against what it called "negative factors", rather than weighing the positive H&C factors against the seriousness of the obstacle to admissibility. However, the Supreme Court has instructed reviewing Courts not to engage in "a line-by-line treasure hunt for error". Courts are instead instructed to look beyond the words of the reasons to consider the decision as an "organic whole": *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para. 54, [2013] 2 S.C.R. 458.

[15] In this case, the IAD started its analysis by properly identifying the legal impediment to admissibility in issue. It noted that although Mr. Patel satisfied the income requirement for 2016 and 2017, he failed to do so for 2015. It then set out the H&C grounds cited by Mr. Patel, and weighed each of these factors. The IAD found that some of the factors put forward by Mr. Patel operated in his favour, such as the best interests of his two children, the fact that Mr. and Mrs. Patel are hard-working individuals, and the fact that they had made arrangements to accommodate Mr. Patel's parents in Canada.

[16] The IAD also stated that certain other considerations were "negative factors", such as lack of hardship to Mr. Patel or his parents if the parents were to remain in India. I agree with Mr. Patel that the term "negative factor" is perhaps better reserved for facts tending to demonstrate an applicant's misconduct. That said, I agree with the Minister that the IAD's reasons do not suggest that these factors were given undue weight. Rather it appears that the IAD simply did not find them to be of assistance to Mr. Patel's case.

[17] After examining all of the H&C factors cited by Mr. Patel, the IAD ultimately concluded that there were insufficient humanitarian and compassionate grounds to grant special relief from

the financial requirements of the Regulations. Having carefully reviewed the decision as a whole, I am satisfied that the IAD properly understood the extent of the obstacle to admissibility that remained at the time of the hearing. It identified and weighed each of the H&C considerations that Mr. Patel had raised, determining that some of these factors operated in his favour, and that others did not. After weighing all of these factors, the IAD concluded that there were insufficient H&C considerations to warrant granting special relief in all of the circumstances of the case.

[18] This was a decision that was reasonably open to the IAD on the basis of the record before it and Mr. Patel has not persuaded me that there are sufficient grounds for the Court to intervene.

III. Conclusion

[19] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case is fact-specific, and does not raise a question that is suitable for certification.

JUDGMENT IN IMM-4294-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Anne L. Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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