Federal Court  Cour fédérale

Date: 20190530

Docket: IMM-5386-18

Citation: 2019 FC 760

Toronto, Ontario, May 30, 2019

PRESENT: Mr. Justice Bell

BETWEEN:

SOBHI AWAD AL HALABI
TIMAR KHALIL WARDEH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario, on May 29, 2019 and edited for syntax and grammar with added references to the relevant case law)

I. Nature of the Matter

[1] This is an application under subsection 72 (1) of the *Immigration and Refugee Protection Act, SC 2001, c 27* [the *IRPA*] for judicial review of a decision dated October 5, 2018 [the

Decision] by the Immigration Appeal Division [the IAD]. The IAD dismissed the Applicants', Sobhi Awad Al Halabi and Timar Khalil Wardeh, appeal of a removal order issued against them by the Immigration Division [ID]. The Applicants were inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of the *IRPA*. The Applicants did not contest the validity of the removal order. The sole issue before the IAD was whether the appeal should be allowed on humanitarian and compassionate [H&C] grounds, taking into account the best interests of any child directly affected by the decision.

II. Background and Decision Under Review

[2] The Applicants are both citizens of Lebanon. They became permanent residents of Canada on June 5, 1998. They have four children, one of whom, Selena, is a 17 year-old minor.

[3] In their March 2011 renewal application for permanent residency, the Applicants declared that they had not been absent at any time (0 days) from Canada during the relevant five-year period between March 2006 and March 2011. However, contrary to their declaration, they had been living outside of Canada since at least 2006. The Applicants and their family only returned to Canada in 2012. They have resided here since that time. The circumstances regarding their misrepresentation came to light when they applied for Canadian citizenship in 2013.

[4] Further, with respect to this issue of misrepresentation, I find the following facts, as found by the IAD, to be deplorable. These observations constitute a sad indictment about how someone who wishes to "game" our immigration system may be able to do so, with impunity, for many years:

> I find that Timar's time in Canada is a negative factor in this appeal. She has been a Canadian permanent resident for approximately 20 years but has only resided here for a little over six years. Sobhi, her husband, appears to have been in Canada less than Timar.
>
> [Emphasis added]

[5] It must be borne in mind that the vast majority of those six years constituted the period from their return to Canada in 2012 to the date of hearing before the IAD.

[6] In its best interests of the child [BIOC] analysis, the IAD considered, among others, the following with respect to the 17 year-old minor, Selena:

1. She has travelled to Lebanon six or seven times for a period of approximately two months during each visit;
2. She went to an Arabic school in the United Arab Emirates, albeit with an English curriculum;
3. She speaks and reads Arabic well;
4. She would accompany her parents to Lebanon if the event of their removal, as she wishes to remain with them until she is married;
5. She has extended family in Lebanon (her father's side); and,
6. She has a right to return to Canada if she wishes, where she could be with adult siblings.

[7] The IAD began its legal analysis by acknowledging the non-exhaustive factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 [*Ribic*], which govern its' discretionary jurisdiction in the context of removal order appeals. The IAD then considered the decision of this Court in *Wang v Canada (Minister of Citizenship and Immigration*), 2005 FC 1059, where Justice O'Keefe modified somewhat the *Ribic* factors in cases of misrepresentation, they being:

1. the seriousness of the misrepresentation;
2. the remorsefulness of the appellants;
3. the length of time the appellants have spent in Canada;
4. family ties in Canada;
5. community support;
6. hardship and dislocation to the appellants and family members; and
7. best interests of any children affected by the decision.

III. Analysis

[8] In *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 [*Khosa*] at paragraphs 57-59, the Court held that the standard of review of the IAD's decisions based on H&C considerations in the exercise of its equitable jurisdiction under paragraph 67(1)(c) of *IRPA* is that of reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with the existence of justification, transparency and intelligibility within the decision-making process; and also, 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 [*Dunsmuir*] at para 47; *Khosa*, at para 59).

[9] The BIOC test articulated in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, requires the IAD to be "alert, alive and sensitive" to the best interests of the children (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at para 75). Those interests must be well-identified, defined and examined with a great deal of attention in light of all the evidence (*Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 [*Hawthorne*] at para 32). However, as stated by the Court in *Hawthorne*, the

Court is not imposing a magic formula to be employed by immigration officers in the exercise of their discretion (para 7).

[10] The IAD must balance the best interests of the child against other factors that might mitigate the adverse consequences of removal (*Hawthorne* at para 5; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 24). Additionally, the BIOC do not outweigh other considerations in the context of an H&C application (*Baker* at para 75). The BIOC test cannot be determinative on its own (*Tang v Canada (Citizenship and Immigration)*, 2017 FC 107 at para 22).

[11] In the circumstances, I am satisfied the IAD conducted an analysis that is justified, transparent and intelligible. The IAD demonstrated that it was alert, alive and sensitive to the best interests of Selena. The IAD considered her challenging situation, including evidence of stress and failure to focus on her studies, along with the mitigating factors enumerated in paragraph 6 of these reasons.

[12] In addition to its justification, transparency and intelligibility, I am of the view the IAD decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* para 47). A judicial review is not a "line-by-line treasure hunt for error" and a reviewing court must approach the reasons and outcome of a tribunal's 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). Following this approach, there is no basis for judicial intervention in this matter.

IV. Conclusion

[13] The IAD decision meets the requirements of justification, transparency and intelligibility and falls within a range of reasonable possible, acceptable outcomes which are defensible in respect of the facts and law. The application for judicial review is dismissed without costs.

[14] The parties proposed no question for certification and none arises from the facts of this case. As a result, no question is certified for consideration by the Federal Court of Appeal.

JUDGMENT in IMM-5386-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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