Federal Court Cour fédérale

Date: 20190711

Docket: IMM-6615-18

Citation: 2019 FC 915

Ottawa, Ontario, July 11, 2019

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

MAJOR SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of the decision by an officer of Citizen and Immigration Canada [CIC Officer] rendered on May 18, 2018 [Decision], denying the Applicant's application for a Temporary Resident Permit [TRP] pursuant to section 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Style of Cause

[2] The Applicant has named the Minister of Immigration, Refugees and Citizenship Canada as the Respondent in this matter. The correct Respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *Immigration and Refugee Protection Act*, SC 2001, c 27, s 4(1)). Accordingly, the Respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

III. Background Facts

[3] The Applicant is a 49 year old citizen of India who came to Canada in 2012 on a valid work permit. He worked as a Wood Product Assembler at A1 Trusses Ltd. and was eventually promoted to Millworker Assembly Supervisor in April 2015. As his work permit was about to expire on July 28, 2017, the Applicant applied for an extension of the work permit. According to the Applicant, he was assisted by an immigration consultant; however CIC had no record that the Applicant was represented.

[4] The Applicant was called by CIC regarding payment of the processing fee of $155.00 on November 2, 2017. The Applicant claims that he was advised by his consultant that the call was likely fraudulent. Relying on this advice, the Applicant did not return the call. Since the processing fee was not paid, the application for extension of the work permit was rejected on November 22, 2017.

[5] In order to regularize his status, the Applicant applied for a TPR with the help of a different immigration consultant on January 2, 2018. The TRP application was rejected by letter on May 18, 2018. The CIC Officer concluded that the Applicant's primary reason for remaining in Canada was to work, that no unique circumstance with compelling reasons to overcome the Applicant's inadmissibility for overstay had been established, and that there was no risk in requiring the Applicant to apply for a TRP and a new work permit from his home country.

[6] The Applicant claims that neither he nor his former or new consultant received the letter.

[7] On September 25, 2018, the Applicant's new consultant made an inquiry by email about the status of the TRP application. CIC replied by email on October 2, 2018 that the application had been refused and that an explanation email about the Decision had been sent to the consultant on May 18, 2018. On October 17, 2018, the consultant requested a copy of the Decision. CIC forwarded a copy of the refusal letter on December 5, 2018.

[8] The Applicant filed his application for leave and for judicial review on December 31, 2018. The application included a request for an extension of time under paragraph 72(2)(c) of the IRPA.

[9] Leave to seek judicial review was granted on April 25, 2019. However, the Applicant's request for an extension of time was not addressed by the leave judge. No inference can be taken from the granting of leave that the leave judge also granted an extension of time: *Cornejo Arteaga v Canada (Citizenship and Immigration)*, 2010 FC 868 at paras 12-13. Therefore, a

preliminary issue to be determined is whether an extension of time should be granted to bring the application for judicial review.

A. *Whether an extension of time to apply for judicial review should be granted*

[10] To obtain an extension of time, the Applicant must establish a continued intention to pursue the application, that the application has merit, that no prejudice to the Respondent arises from the delay, and that there is a reasonable explanation for the delay (*Chan v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FCA 130).

[11] The statutory deadline to bring a notice of application is 15 days after the day on which an applicant is notified of or otherwise becomes aware of the matter: paragraph 72(2)(b) of IRPA. The CIC notes found in the Applicant's Record establish that the impugned decision was sent on May 18, 2018 to the correct email of the Applicant's representative. Counsel for the Applicant conceded this point at the hearing. In *Kaur v Canada (Minister of Citizenship & Immigration)*, 2009 FC 935 at para 12, Mr. Justice Robert Barnes held that when a communication is correctly sent and where there has been no indication that the communication may have failed, the risk of non-delivery rests with the Applicant and not with the Respondent.

[12] The Applicant states laconically at paragraph 5 of his affidavit that he did not receive or see the letter until "December of 2018" and was informed by his previous and current representatives that "she did not receive it either". At paragraph 6, he states that "the discussion between us in the summer/early fall of 2018 was that we wondered what happened to our TRP application." The Applicant submits that his actions, including the follow up email sent by his

current representative, demonstrate that he acted as quickly as possible in the circumstances. I disagree.

[13] Once the Minister proved that the communication was sent and that no report was received that that the email was not delivered, the Applicant bore the risk involved in a failure to receive the communication. It was therefore incumbent on the Applicant to establish that the consultant's email address was operating properly and that she did not receive the email from CIC for whatever reason. Only the consultant could speak to this. A negative inference is taken from the absence of direct evidence from the Applicant's current consultant to rebut the presumption of communication of the Decision on May 18, 2018.

[14] In any event, it is clear from the Applicant's own evidence that his consultant learned of the negative decision on October 2, 2018. No explanation is provided why the consultant waited over two weeks before requesting a copy of the Decision. Moreover, no explanation is provided why the Applicant did not apply immediately for leave to seek judicial review upon receipt by his consultant of a copy of the Decision on December 5, 2018. Given the communication problems encountered by the Applicant and his consultants in previous dealings with CIC, one would have expected heightened vigilance on their part in ensuring that the application for leave was perfected in a timely manner. The Applicant's lackadaisical approach in seeking judicial review is perplexing.

[15] The Applicant has not satisfactorily accounted for the entire period of delay. Moreover, the Applicant has not established that he acted with due diligence after his consultant was

informed on October 2, 2018 that his application for a TRP had been refused. In the circumstances, I do not consider it in the interest of justice to grant an extension of time.

B. *Whether the Decision is unreasonable*

[16] Although strictly not necessary to do so, I will briefly deal with the merits of the Applicant's case.

[17] It is trite law that the standard of review of an Officer's decision under subsection 24(1) of the IRPA is that of reasonableness, given the highly discretionary and exceptional nature of subsection 24(1) relief (*Huang v Canada (Minister of Citizenship & Immigration)*, 2010 FC 1217 at para 12). The Court will only interfere if the decision under review lacks justification, transparency or intelligibility, and falls outside the range of possible, acceptable outcomes which are defensible on the particular facts of the case and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[18] Counsel for the Applicant acknowledged at the hearing that the authority to grant a temporary resident permit is highly discretionary and exceptional in nature. Counsel submitted however that the CIC Officer erred by failing to consider the unique circumstances of this case, and in particular the fact that the Applicant's failure to renew his work permit was not intentional and that he received poor advice from his first consultant.

[19] The Applicant submits that his situation warrants relief under subsection 24(1) of the IRPA in order to soften the harsh consequences of a strict application of the IRPA in exceptional circumstances. I disagree.

[20] The Applicant did not challenge the earlier decision rejecting his application for an extension of his work permit based on extenuating circumstances. That was the time to raise these issues. He chose instead to apply for a TRP which must be “issued cautiously, as they grant their bearers more privileges than other temporary statuses”: *Vaguedano Alvarez v Canada (Citizenship and Immigration)*, 2011 FC 667 at para 16).

[21] Section 24 of the IRPA requires an officer to decide whether a TRP is justified in the circumstances. I agree with the Respondent that the bottom line is that the Applicant did not submit any information before the CIC Officer regarding any compelling reasons, such as hardship or inability to return to India to apply for a work permit in the usual course. While returning to India will undoubtedly be difficult for the Applicant, it is one of the unfortunate consequences of failing to comply with the immigration rules and procedures.

[22] Nothing in the Record suggests that the Applicant would be unable to find work in India, that there was a personalized risk to the Applicant’s life or security of his person, or that he or his family would suffer hardship if he were to return to India. Given that a TRP is considered an “exceptional regime”, evidence is required of something more than inconvenience to an applicant to justify the issuance of a TRP (*Sellappah v Canada (Citizenship & Immigration)*, 2018 FC 198 at para 9). Consequently, I find the Officer’s Decision reasonable.

[23] For the above reasons, the application for extension of time and the application for judicial review are dismissed. No question for certification has been proposed by the parties.

JUDGMENT IN IMM-6615-18

THIS COURT'S JUDGMENT is that:

1. The Respondent in the style of cause is amended to the Minister of Citizenship and Immigration.
2. The Applicant's request for extension of time is dismissed.
3. The application for judicial review is dismissed.
4. No question is certified.

"Roger R. Lafrenière"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6615-18
STYLE OF CAUSE:	MAJOR SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	EDMONTON, ALBERTA
DATE OF HEARING:	JULY 9, 2019
JUDGMENT AND REASONS:	LAFRENIÈRE J.
DATED:	JULY 11, 2019

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