Date: 20071127

Docket: IMM-4981-06

Citation: 2007 FC 1244

Vancouver, British Columbia, November 27, 2007

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

AITZAZ AHMAD
SHAGUFTA AITZAZ
HASSAN AITZAZ
AFAQ AHMAD
FARRAKH AITZAZ
FATIMA AITZAZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR ORDER AND ORDER

[1] Mr. Aitzaz Ahmad (the "Principal Applicant"), his wife Shagufta Aitzaz and their children, Hassan Aitzaz, Afaq Ahmad, Farrakh Aitzaz and Fatima Aitzaz, (collectively called the "Applicants") seek judicial review of the decision of S. McCaffrey, Pre-Removal Risk Assessment Officer (the "PRRA Officer"), acting as a delegate of the Minister of Citizenship and Immigration

(the “Respondent”). In that decision, made on July 31, 2006, the PRRA Officer rejected the application made by the Applicants for permanent residence in Canada on humanitarian and compassionate (the “H & C”) grounds.

[2] The Applicants are citizens of Pakistan. They entered Canada in May 2002 and claimed refugee status. Their claims were refused and an application for leave and judicial review in that regard was dismissed in 2003.

[3] The Principal Applicant established an automotive related business in Canada with other individuals. Following rejection of their application for judicial review of refusal of their refugee claims, the Applicants applied for permanent residence on H & C grounds.

[4] The application was filed in Vegreville, Alberta but was later referred to the Citizenship and Immigration Officer in Etobicoke, Ontario. After review of the H & C application and supporting documentation, the matter was referred to the Pre-Removal Risk Assessment Unit (the “PRRA Unit”) of the Niagara Falls regional office. The PRRA Unit rejected both the H & C and PRRA applications.

[5] The Applicants did not seek judicial review of the negative PRRA decision. However, they seek judicial review of the decision concerning their H & C application.

[6] The PRRA Officer reviewed the material submitted by the Applicants, including an extract from the narrative to the Personal Information Form (the "PIF") submitted by the Principal Applicant as part of his refugee Convention claim. The PRRA Officer concluded that the Applicants would not be at risk if required to return to Pakistan and further, that they had not shown that they would suffer unusual, undeserved or disproportionate hardship if their H & C application were refused.

[7] The Applicants argue that the PRRA Officer had no authority to make a decision upon their H & C application, that the PRRA Officer used the wrong legal test in making the negative decision and that the PRRA Officer erred in finding that the acts submitted did not demonstrate lack of establishment.

[8] In *Umba v. Canada (Minister of Citizenship and Immigration)* (2004), 257 F.T.R. 169, the Court found that, upon a pragmatic and functional analysis, the appropriate standard of review that should apply to judicial review of a negative H & C decision is reasonableness *simpliciter*. If an error of law is alleged, the appropriate standard is that of correctness.

[9] The first argument advanced by the Applicants is not sustainable. An H & C application is governed by section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"). That provision accords the Respondent a broad discretion to waive strict application of the terms of the Act and the *Immigration and Refugee Protection Regulations*, SOR/2002-227, (the "Regulations"). The Respondent is at liberty to delegate that discretion and according to the

affidavit of Karen M. Mendonça, the PRRA Officer in this case held delegated authority to assess the Applicants' application.

[10] Did the PRRA Officer misstate the applicable test? In my opinion and having regard to the PRRA Officer's notes, the answer is "no". The PRRA Officer was aware of the test to be applied in relation to an H & C application and applied it.

[11] Finally, did the PRRA Officer commit a reviewable error in assessing the evidence, in particular the evidence with respect to establishment? The Officer's conclusions in that regard are essentially a question of fact, subject to review on the standard of patent unreasonableness. I refer to paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[12] The PRRA Officer's conclusions with respect to the degree of establishment are supported by the evidence submitted. The fact that the Principal Applicant chose to begin business activities in Canada when his status had not been regularized does not inevitably mean that he is entitled to a positive determination of his H & C application.

[13] In the result, the application for judicial review is dismissed. There is no question for certification arising.

ORDER

The application for judicial review is dismissed, there is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-4981-06
STYLE OF CAUSE:	Aitzaz Ahmad et al v. The Minister of Citizenship and Immigration and The Minister of Public Safety and Emergency Preparedness
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 17, 2007
REASONS FOR ORDER AND ORDER:	HENEGHAN J.
DATED:	November 27, 2007

APPEARANCES:

Max Berger	FOR THE APPLICANT
David Joseph	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Max Berger Professional Law Corporation Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT