Federal Court  Cour fédérale

Date: 20121106

Docket: IMM-289-12

Citation: 2012 FC 1298

Toronto, Ontario, November 6, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

SHOUKAT HUSSAIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of a Senior Immigration Officer (Officer), dated 4 October 2011 (Decision), which refused the Applicant's application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the Act.

BACKGROUND

[2] The Applicant is a 42-year-old male from Gujranwala, Pakistan. He is married with one son, and is a sweet-maker by trade. He first came to Canada in 2003, based on a work permit authorizing him to work at Vattan Grocery and Sweethouse as a sweet-maker. His wife and son did not come with him. The Applicant continued working in Canada, obtaining extensions of his work permit, the last of which was valid until 10 February 2008.

[3] The Applicant's father was from the Kashmir region in Pakistan, and was an activist who believed Kashmir ought to be an independent state. The Applicant carried on these beliefs and joined the Jammu Kashmir Peoples National Party (JKPNP) in 2000. The mandate of JKPNP is the cessation of violence in Kashmir and the restoration of its lost sovereignty. The Pakistani government does not support Kashmir independence and monitored the activities of the Applicant's father.

[4] The Applicant attended a JKPNP rally in 2001 where he was arrested, but he was released after paying a bribe. In 2002, the Applicant was involved in a recruiting campaign for JKPNP when he was beaten up by members of the Hizbul Mujahideen (HM) who do not support the independence of Kashmir. The next day someone showed up at the Applicant's house and told him to stop his activities or face the consequences. Also in 2002, the Applicant met someone who was impressed with his sweet-making abilities and talked with him about coming to Canada to work for a sweets business in Calgary. The Applicant was interested because he had been looking to leave Pakistan due to the persecution he faced for his political beliefs.

[5] On 13 September 2003, JKPNP organized a large rally. The police and the HM attacked the rally, but the Applicant escaped. That night the police raided the Applicant's home, but he was at his friend's house at the time. The Applicant's wife phoned him and told him that the police were looking for him and they had said they will arrest him anytime, anywhere, in Pakistan. The Applicant feared the police would come and arrest him and so he left for Canada on 16 September 2003.

[6] Since the Applicant began working in Canada he has been sending money back to his wife and son in Pakistan in order to support them. The Applicant's wife does not work and his family depends on the money he sends to them each month. The Applicant says he has become established in Canada, has consistently worked to support himself, and has no intention of relying on social assistance in the future.

[7] On 8 January 2008, the Applicant's employer (Mr. Rehman) received a positive Labour Market Opinion (LMO) from Service Canada. By letter dated 6 March 2008 the Applicant's application for a work permit was denied on the basis that his employer's LMO had been cancelled. This was an error. Meanwhile, the Applicant's work permit had expired on 10 February 2008. Mr. Rehman immediately contacted Service Canada, who replied by letter dated 18 March 2008 stating that "the file was cancelled as the location of the business on the application no longer exists." The Applicant also applied for reinstatement of his status around the same time, but did so without a LMO because one had not been received at that time. Mr. Rehman then replied to Service Canada by letter on 24 March 2008 confirming that his store was still operational and had been for the past

12 years. Service Canada did not offer to correct their error, and told Mr. Rehman that he must submit a new Foreign Worker Application.

[8] Mr. Rehman submitted a new Foreign Worker Application on 24 March 2008. The Applicant and Mr. Rehman made inquiries to Citizenship and Immigration Canada (CIC) and to the MP's Office, and were advised that the Applicant was out of status and needed to apply to have it reinstated. On 17 April 2008, CIC refused both the reinstatement application and the work permit application on the basis that the Applicant did not have a valid LMO. In response, the Applicant contacted both Service Canada and his MP, and a positive LMO was issued on 24 April 2008.

[9] On the same day that the positive LMO was issued, 24 April 2008, the Applicant sent the LMO with a covering letter to the Case Processing Centre (CPC) in Vegreville requesting consideration. The Applicant was not aware that he should have submitted a completely new application and processing fee. There were no directions or indications of the steps that needed to be taken in the Applicant's letter from CIC, nor did the Applicant have the assistance of legal counsel. The Applicant did not receive any response to his letter dated 24 April 2008.

[10] After subsequent inquiries, the Applicant and Mr. Rehman attended the MP's Office on 17 July 2008. They were advised that the Applicant needed to submit a new application for restoration, and that 17 July 2008 was the last day to do so. A new restoration application was sent to CPC Vegreville that day. On 11 August 2008, the application was transferred to CIC Calgary. On 8 December 2008, the Applicant received a letter from CPC Vegreville advising him of the transfer to CIC Calgary, as well as refunding him $150 representing overpayment of fees.

[11] By letter dated 5 January 2009, the Applicant was advised that he was in violation of the Act as a result of overstaying his visa. On 1 September 2009, the Applicant was issued an Exclusion Order. Copies of the letters from CIC could not be found in the Certified Tribunal Record (CTR), or the Applicant's Tribunal Record.

[12] The Applicant submitted an application for a Pre-Removal Risk Assessment (PRRA) on 9 October 2009 and an H&C application on 29 October 2009 on the basis that he had suffered unusual prejudice due to the errors made by CIC in regards to the LMO and his work permit, and that he would face a risk of harm if returned to Pakistan based on his membership in JKPNP.

[13] In support of these two applications the Applicant submitted his JKPNP membership card, a letter from JKPNP's President confirming the Applicant's involvement with the group, and a letter from his wife. The Applicant also submitted two sets of documents during the intermittent time period: one on 21 August 2010 and one on 7 November 2010. Submitted on 21 August 2010 were Western Union receipts showing transfers of money from the Applicant to his wife, as well as a letter from XL Foods Inc. confirming the Applicant's employment there. Submitted on 7 November 2010 were updated versions of these same documents. These are available on pages 36-48 of the CTR. The PRRA application was rejected on 3 October 2011. The same Officer considered the H&C application and rejected it on 4 October 2011. The Officer notified the Applicant of the Decision by letter dated 4 October 2011 (Refusal Letter).

DECISION UNDER REVIEW

[14] The Decision in this case consists of the Refusal Letter and the H&C Reasons for Decision (Reasons) which the Officer signed on 4 October 2011. The Officer reiterated that the Applicant bore the onus of showing that his personal circumstances are such that the hardship of having to obtain permanent residence from outside Canada would be unusual and undeserved, or disproportionate.

[15] The Officer noted that the Applicant had not provided sufficient corroborating objective documentary evidence to demonstrate that the risk he personally faced if returned to Pakistan was unusual and undeserved or disproportionate. She noted that this was the same risk put forward in the Applicant's PRRA application, which had been denied.

[16] The Officer stated that the Applicant's membership in JKPNP was not in dispute. She found that the letter from the President of the party was lacking in detail and she gave it low probative value. She also noted that the Applicant had not provided other corroborative evidence such as police reports, medical reports, or news articles about the arrests and beatings he claims to have suffered.

[17] The Officer reviewed the letter from the Applicant's wife; it said that his life is in danger in Pakistan and an arrest warrant has been issued for him. The Applicant's wife said that it is hard for her to live in Pakistan, and she recommended that he not return. The Officer found that the letter was lacking in detail, there was no corroborating evidence to support what was stated in it, and that it was written by someone with a personal interest in the application.

[18] The Officer pointed out that the Applicant has been in Canada since 2003 and has never filed a refugee claim. He also did not provide any evidence to corroborate the risks he says he faces in Pakistan, or any evidence to indicate that after an absence of 8 years anyone would still be interested in his JKPNP activities there. The Officer stated that some state protection exists in Pakistan, and it would not be an unusual, undeserved, or disproportionate hardship for him to access it.

[19] The Officer noted that although the Applicant provided receipts showing monthly transfers of money to his wife in Pakistan, he did not provide evidence that his wife and son depend on this money for their survival. The letter from the Applicant's wife did not discuss how this money is used, or the well-being of their son. The Officer found that, considering the best interests of the child, though it may be difficult for the Applicant's family to stop receiving the financial support, there is nothing to suggest it would have a negative impact of such magnitude that an exemption is justified in this case.

[20] The Officer pointed out that the Applicant has no family living in Canada. He also did not provide any letters of support from anyone in Canada. The Officer said that although the Applicant has presented evidence to indicate a measure of establishment in Canada, this was to be expected of someone who has lived in Canada for the past eight years. She then stated that the Applicant did not provide evidence to indicate that he is no longer unemployed.

[21] The Officer reiterated that the question at hand was not whether the Applicant would make a good addition to Canadian society, but whether he would face unusual and undeserved or

disproportionate hardship if returned to Pakistan. The Officer found that the Applicant was not established in Canada to the extent that his departure would amount to such.

[22] The Officer stated that there was nothing in the evidence to suggest the Applicant would have trouble reintegrating into Pakistani society. The Applicant's wife and son, as well as several other family members, continue to reside in Pakistan. The Applicant operated a sweets business before coming to Canada, and it is reasonable to expect him to pursue similar opportunities upon his return. The Applicant knew or should have known that his authorization to work in Canada was for a limited time period, and though he was entitled to remain in Canada once it expired to pursue other avenues leading to permanent residence it cannot be said that the resulting hardship was not anticipated by the Act or was beyond his control.

[23] The Officer stated that the test applicable is not whether the Applicant would face any hardship upon return to Pakistan, but whether the hardship faced is unusual, undeserved, or disproportionate. The Officer found that the Applicant's return to Pakistan will no doubt cause hardship, but that it did not meet the required threshold. The fact that Canada is a more desirable place to live than Pakistan is not determinative.

[24] The Officer said that she considered the risk to the Applicant if returned to Pakistan, the best interests of the child, personal relationships that would create hardship if severed, degree of establishment in Canada, and the Applicant's ties to Pakistan. She found that on the evidence before her the Applicant had not shown that his personal circumstances are such that he would face

unusual, undeserved, or disproportionate hardship if returned to Pakistan, and thus she refused his H&C application.

ISSUES

[25] The Applicant raises the following issues in this application:

i. Whether the Officer breached the duty of fairness owed to the Applicant by failing to consider evidence of employment which supported his establishment in Canada.

ii. Whether the Officer breached the duty of fairness owed to the Applicant by failing to provide sufficient reasons.

STANDARD OF REVIEW

[26] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[27] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*], the Supreme Court of Canada held that when reviewing an H&C decision, "considerable deference should be accorded to Immigration Officers exercising the powers conferred by the legislation, given the fact-specific nature of the inquiry, its role within the statutory scheme as an exception, the fact that the decision-maker is the Minister, and the considerable discretion evidenced by the statutory language" (paragraph 62). Justice Michael Phelan followed this approach in *Thandal v Canada (Minister of Citizenship and Immigration)*, 2008 FC 489, at paragraph 7. The review of

evidence is part of the fact-finding exercises of a tribunal, and one to which considerable deference is owed; it is not a matter of procedural fairness (see *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*]. The standard of review on the first issue is reasonableness.

[28] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], the Supreme Court of Canada held at paragraph 14 that the adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes." With respect to the second issue, the adequacy of the reasons will be analysed along with the reasonableness of the Decision as a whole.

[29] 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 with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Khosa* at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

STATUTORY PROVISONS

[30] The following provision of the Act is applicable in this proceeding:

25. (1) The Minister must, on request of a foreign national in	**25.** (1) Le ministre doit, sur demande d'un étranger se

Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

ARGUMENTS

The Applicant

[31] The Applicant points out that the Officer stated that he had provided no evidence of his employment, when in fact he did. That being the case, his employment was disregarded in the analysis. The Officer stated that the submissions from 7 November 2010 were considered, but they clearly were not.

[32] The Officer specifically said, on page 5 of the Reasons, that "the Applicant has not provided information to indicate that he is no longer unemployed." This formed part of the Officer's Decision, and was an error. The Applicant submits that this tainted the Decision and, based on *Chandler v Alberta Association of Architects*, [1989] 2 SCR 848 at page 863, the Decision ought to

be considered a nullity. The Applicant also states that consideration of these documents could have changed the outcome of the decision.

[33] The Applicant submits that the Officer simply reviewed and partially analyzed the information negative to the Applicant, but glossed over the positive evidence. The Applicant cites as an example the statement of the Officer that the "Applicant has presented evidence to indicate a measure of establishment in Canada. Having lived in Canada for approximately eight years a measure of establishment is expected to occur." The Officer made no mention that the Applicant held his position as a sweet-maker for almost five years, and completely ignored the evidence of his current employment (discussed above).

[34] More importantly, the Officer paid no attention to the reason why the Applicant was out of status in the first place. The Applicant provided extensive submissions in regards to the errors made in regards to his LMO, but this was never mentioned by the Officer. This was a crucial part of the Applicant's H&C application, and the Officer disregarded it entirely in her reasons.

[35] The Applicant submits the Decision cannot stand up to a somewhat probing examination due to the Officer's disregard of significant portions of the evidence that was before her (see *Naddaf v Canada (Minister of Citizenship and Immigration)*, 2005 FC 824). For a decision to be upheld, the conclusions drawn by the Officer must be logically valid based on the evidence at hand (*Baker* at paragraph 63).

[36] The Applicant cites *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 [*Adu*] in support of his arguments. The analysis portion of the decision under review in that case consisted of the following at para 13:

> I acknowledge that both applicants have established themselves in Canada. It is reasonable to expect that after more than ten years in Canada, they would become established. Both applicants have upgraded their skills in Canada and have been steadily employed. They have not had to rely on social services for financial support. Despite the positive contributions the applicants have made, I am not satisfied that they have sufficiently demonstrated that the requirement of applying for a visa at a visa office abroad represents unusual, undeserved, or disproportionate hardship.

Justice Anne Mactavish went on to find, at paragraph 14:

> [T]hese 'reasons' are not really reasons at all, essentially consisting of a review of the facts and the statement of a conclusion, without any analysis to back it up. That is, the officer simply reviewed the positive factors militating in favour of granting the application, concluding that, in her view, these factors were not sufficient to justify the granting of an exemption, without any explanation as to why that is. This is not sufficient, as it leaves the applicants in the unenviable position of not knowing why their application was rejected.

[37] The Applicant asserts that the Decision is deficient in the same manner as the decision in *Adu*. The Officer did not provide specific reasons or analysis as to why she rejected the Applicant's claim, and the Decision ought to be quashed.

The Respondent

[38] The Respondent states that the exemption found in section 25 of the Act is not designed to be used as an alternative method of immigration to Canada; it is a discretionary remedy only to be used to special circumstances (see *Vidal v Canada (Minister of Employment and Immigration)*, 13 Imm LR (2d) 123 (FCTD); *Shahla v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ

No 1270 (TD) at paragraphs 12-14; *Saini v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 154 at paragraph 19; *Adams v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1193 at paragraph 30). The Officer concluded that an exception was not warranted in this case, and it was reasonable for her to do so.

[39] The onus was on the Applicant to make sure all the evidence was before the Officer that was required to make an informed decision (*Jeffrey v Canada (Minister of Citizenship and Immigration)*, 2006 FC 605 at paragraph 25 [*Jeffrey*]). It is for the Applicant to show that he will suffer unusual and undeserved or disproportionate hardship if made to return to Pakistan, not for the Officer to explain why he will not. The Respondent points to the *Jeffrey* decision, where Justice Richard Mosley said at paragraph 27:

> The applicant's submission that the reasons in this case are inadequate ultimately comes down to this: that the officer must explain why the applicant's removal will not cause him unusual, undeserved or disproportionate hardship. That is what he appears to take from *Adu* which he describes as being on all fours with this application. With respect, I cannot agree. In *Adu*, the applicant could not have understood the reasons why his H & C application was refused, as the officer only pointed to the strengths of his position. In this case, the officer pointed to the inadequacies of the application. The applicant would not be left in any doubt as to why it was refused.

[40] The Respondent asserts that this case is distinguishable from *Adu* on the same basis as *Jeffrey*. As in *Jeffrey*, the Decision at hand was based on the evidence that was produced by the Applicant for consideration. It was for the Applicant to clearly articulate all grounds of his H&C application (*Melchor v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1327 at paragraph 13), and he failed to do so.

[41] The *Newfoundland Nurses* case states, at paragraph 14, that reasons are to be read together with the outcome to determine if the final result falls within the range of possible outcomes. The Court also found, at paragraph 16, that a finding does not have to be made on each element of evidence that leads to the final decision. The *Dunsmuir* criteria of justification, transparency, and intelligibility will be met if the reviewing court can understand why and how a decision was made. In the case at hand, the Officer clearly stated her reasons for coming to a negative conclusion. The Officer primarily based her Decision to reject the H&C application on two factors: the Applicant failed to provide sufficient evidence that his return to Pakistan would have a significant negative impact on his son; and the Applicant's degree of establishment in Canada did not warrant an exclusion from the Act's requirement that he apply for permanent residency from outside Canada.

[42] In reaching the above conclusions, the Officer reviewed the letters submitted by the Applicant and found that they were lacking in detail and not supported by corroborating evidence. She also noted the Applicant's wife had a personal interest in the outcome of the application. The Officer also reviewed the Western Union receipts, and reasonably stated that this evidence did not demonstrate that the Applicant's family relied on this money for their survival. Nor was there any other evidence demonstrating the Applicant's return to Pakistan would be harmful to the best interests of his child. She also found the Applicant's return to Pakistan would be facilitated by his familiarity with the society and culture, and that he had easily transferable job skills. It can be reasonably inferred from the Decision that the Officer determined the Applicant would continue to be able to support his family from Pakistan.

[43] The Officer also considered the evidence of the Applicant's establishment in Canada before rendering the Decision. She noted there was no evidence submitted by friends or associates of the Applicant in Canada. The Applicant had the burden of demonstrating the hardship he would suffer; thus the Officer reasonably concluded that severing the Applicant's relationships in Canada would not cause unusual, undeserved, or disproportionate hardship.

[44] While the Officer did make an error in stating that the Applicant had not submitted evidence that he was no longer unemployed, this error is not one that ought to be reviewable. The Decision was grounded in the evidence submitted by the Applicant, and the Applicant's record does not indicate that had this information been reviewed the result would have been different. Even though there was an error made in this regard, the Officer's reasons meet the *Dunsmuir* requirements of justification, transparency, and intelligibility.

ANALYSIS

[45] The Applicant alleges breach of procedural fairness on the part of the Officer for overlooking evidence and for inadequate reasons. Neither of these grounds is a basis for procedural unfairness. The real issue is whether overlooking evidence renders the Decision unreasonable. As for reasons, the recent case of *Nurses' Union*, above, at para 22 makes it clear that the adequacy of reasons should no longer be considered as a procedural fairness issue on a stand-alone basis, but should be assessed within the general context of the reasonableness of the Decision.

[46] In my view, the only point of substance which the Applicant raises is the Officer's mistake in saying that the "Applicant has not provided information to indicate that he is no longer

unemployed." This means that the Officer overlooked the evidence the Applicant submitted which showed that he was employed by XL Foods Inc. This evidence is relevant to the Officer's assessment of the Applicant's establishment in Canada which, in turn, is considered together with hardship, the best interests of the child, and any other relevant factors used to determine whether the Applicant's returning to Pakistan would occasion unusual and undeserved or disproportionate hardship. In other words, the Officer's mistake about the Applicant's current employment status cannot be treated in isolation. The issue is whether it renders the Decision as a whole unreasonable.

[47] The Officer's general conclusion on establishment is that the evidence "does not support that the Applicant has become established in Canada to the extent that his departure would amount to an unusual and undeserved or disproportionate hardship." There is nothing in the Decision itself that would suggest that, given all of the other establishment factors, the Officer would have reached a different conclusion had she understood that the Applicant was, in fact, employed at that time.

[48] A reading of the establishment section of the Decision reveals that, employment aside, the Applicant's connection to Canada is very low. The Applicant has no family members in Canada, and there were no support letters from friends and acquaintances or organizations to which he might have connections.

[49] The evidence is also clear that his family is in Pakistan and that his purpose for being in Canada is to find work and earn money to send back to Pakistan. We know that his family depends upon the financial support he provides, but there is no evidence that the Applicant will not be able to support his family if he returns to Pakistan. He says that he sends $5000 per year, but there is

insufficient evidence to support a conclusion that the family will not be able to manage. The Applicant actually acknowledges in his H&C application that "it is difficult to be separated from my wife and son."

[50] When all of these establishment factors are taken into account, it is clear that the Applicant has very little connection to Canada, other than as a source of income to support his wife and son in Pakistan. The only possible hardship related to establishment is, then, the loss of Canadian income. But this factor cannot be fully assessed because, as the Officer points out, there is not enough evidence about the situation in Pakistan to ascribe a meaningful weight to the loss of Canadian income.

[51] In the full context of the Decision, I do not believe that, reasonably speaking, the mistake about the Applicant's employment status in Canada is material. The Officer acknowledged the employment factor of significance (his ability to earn money and send it back to Pakistan) and dealt with it in the Decision. That factor cannot be given a significant weight without evidence of the full situation of his family in Pakistan, which was not provided.

[52] In addition, the Officer takes into account such a wide range of considerations in reaching her final conclusions that, objectively speaking, it cannot be said that she might have reached a different conclusion had she correctly understood the Applicant's employment status in Canada.

[53] This is the only mistake I can find in the whole Decision — which is very comprehensive and detailed — and given all the other factors at play which the Officer reasonably analyzed, I

cannot say that this mistake is material enough to make a difference to the final conclusion. If an error is not significant it will not render the Decision unreasonable (see *Garavito Olaya v Canada (Minister of Citizenship & Immigration)*, 2012 FC 913 at paragraph 67; *Renderos Moran v Canada (Minister of Citizenship & Immigration)*, 2012 FC 546 at paragraph 57).

[54] I have considered all of the points raised and arguments advanced by the Applicant. In my view, this is the only matter of substance. The Decision is justified, transparent and intelligible and falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law as posited in *Dunsmuir*.

[55] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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