Federal Court  Cour fédérale

Date: 20140107

Docket: IMM-2289-13

Citation: 2014 FC 10

Ottawa, Ontario, January 7, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SINGH, IQBAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The hardship which triggers the exercise of discretion on humanitarian and compassionate grounds must generally be more than "what is inherent in being asked to leave after one has been in place for a period of time" (*Irimie v Canada (Minister of Citizenship and Immigration)* (2000), 101 ACWS (3d) 995, 10 Imm LR (3d) 206). The Court does not find that the Applicant provided sufficient evidence as to how being asked to leave Canada would justify an exemption under section 25 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*].

II. Introduction

[2] The Applicant seeks a judicial review, under subsection 72(1) of the *IRPA*, of a decision of an Immigration Officer, dated November 12, 2012, refusing the Applicant's application for permanent residence based on humanitarian and compassionate grounds [H&C], pursuant to section 25 of the *IRPA*.

III. Background

[3] The Applicant, Mr. Iqbal Singh, is a 58 year old citizen of India of Sikh origin. He is a resident of the city of Amritsar, Punjab, since November 1996.

[4] The Applicant states that in April 1996, a Sikh militant came to his home and ordered his family to feed and shelter him at gun point.

[5] After this incident, the Applicant states that the police, suspecting that he was an accomplice to Sikh militants, began investigating him. He indicates that he was arrested in June 2000, October 2001 and June 2002 due to his perceived affiliation with the Sikh militancy.

[6] Mr. Singh came to Canada from India on September 3, 2002. He made a refugee claim on October 8, 2012.

[7] On August 29, 2003, the Refugee Protection Division [RPD] of the Immigration and Refugee Board, refused Mr. Singh's refugee claim, finding that he had not established his identity and that an internal flight alternative [IFA] was viable outside of Punjab.

[8] On January 6, 2004, Mr. Singh filed an application for leave and for judicial review of this decision which was dismissed.

[9] The Applicant submitted an application for permanent resident status based on humanitarian and compassionate grounds in 2007, 2008 and 2009. All three applications were refused.

[10] On February 6, 2012, the Applicant applied for a Pre-Removal Risk Assessment [PRRA] which was denied on December 7, 2012. An application for judicial review is presently before this Court in regard to this application (IMM-2224-13).

[11] On March 27, 2013, the Applicant filed an application for leave and for judicial review of the third H&C decision rendered by Citizenship and Immigration Canada, dated November 12, 2012, which is the underlying application before this Court.

IV. Decision under Review

[12] In her decision, the Officer determined that the Applicant had failed to meet his onus to demonstrate that the country conditions would adversely affect him directly and personally, and cause him undue hardship.

[13] The Officer considered the documentary evidence that was submitted by the Applicant, including various articles and reports in the general country conditions in India; however, she concluded that there was insufficient satisfactory evidence that the Applicant would be targeted by

the police for any reason or would be personally subject to hardship that would be disproportionate to the general population in India.

[14] The Officer also considered the Applicant's establishment in Canada and concluded that, although he had resided in Canada for over 10 years and maintained consistent employment, he did not establish that severing ties with his employment and community in Canada would amount to unusual or disproportionate hardship. The Officer found that the Applicant's degree of establishment was of a level that would be expected from him after 10 years in Canada.

[15] The Officer also noted that the Applicant's entire family – including his spouse, two children and three sisters – still reside in India; therefore, the Officer found that the Applicant would have support with re-establishment in India. She further concluded that it would be in the best interest of the Applicant's children if the Applicant returned to India as they would benefit from the love and support of both of their parents.

V. Issue

[16] Did the Officer err in concluding that the Applicant would not face unusual or disproportionate hardship if returned to India?

VI. Relevant Legislative Provisions

[17] The following legislative provision of the *IRPA* is relevant:

25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for	25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui

permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, 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.	demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, 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.

VII. Position of the Parties

[18] The Applicant submits that the Officer was unreasonable in finding that he would not be personally at risk of hardship if returned to India, but would face only the same general risks as the rest of the population. The Applicant is of the view that personalized risk is not a requirement of hardship in a H&C application.

[19] The Applicant also submits that the Officer erred in discounting his level of establishment in Canada because it is what is expected of refugee claimants who remain in Canada for a long period of time.

[20] The Respondent maintains that the Officer clearly evaluated and weighed all of the relevant factors in the Applicant's H&C application and reasonably concluded that there was insufficient evidence that he would be subject to an unusual, undeserved or disproportionate hardship if required to apply for a permanent resident visa from India. The Applicant failed to establish how he would be directly and personally affected by the situation described in the objective documentary evidence provided in support of his application.

[21] The Respondent also affirms that the Officer's conclusion with regard to the Applicant's establishment was reasonably open to her to make. The Applicant provided no evidence to demonstrate that he would suffer unusual, undeserved or disproportionate hardship if required to sever ties with Canada. The evidence on file demonstrated that the Applicant would likely benefit from a strong family support if returned to India as he would be reunited with his entire family, including his wife and children.

VIII. Standard of Review

[22] The standard of review for issues involving an officer's determination of a H&C application is the standard of reasonableness (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360 at para 18).

[23] As a result, this Court will not intervene if the decision is justified, transparent and intelligible, and if it 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, [2008] 1 SCR 190 at para 47).

IX. Analysis

[24] The law is well-settled that hardship must be personalized in order to meet the threshold for an exemption under section 25; therefore, an allegation of risk or hardship must relate to conditions that would have a direct and personal negative impact on an applicant; there must necessarily be a link between evidence supporting generalized risk and that of personalized risk (*Ramaischrand v Canada (Minister of Citizenship and Immigration)*, 2011 FC 441, 388 FTR 109; *Dorlean v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1024; reference is also made to *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2013 FC 802 at para 33; *Lalane v Canada (Minister of Citizenship and Immigration)*, 2009 FC 6, 338 FTR 224). The onus is on the Applicant to demonstrate such a link.

[25] Chapter IP 5 of the Citizenship and Immigration Canada manual on inland processing of applications, entitled "*Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds*", also expressly provides that adverse country conditions identified in a H&C application must have a direct negative impact on an applicant (s 5.16 at p 17).

[26] In the present case, the Court finds that the Officer reasonably concluded that the adverse country conditions in India would not cause the Applicant unusual, undeserved or disproportionate hardship if he was required to apply for permanent residence from his country of origin.

[27] In assessing whether and to what extent the adverse country conditions in India against Sikhs would directly and personally impact the Applicant, the Officer appropriately concluded that

any impact on him would not amount to a level of hardship to warrant an exemption. This was fully supported by the evidence. As pointed out by the Respondent, there was no evidence on record that would suggest that the Applicant would personally face hardship when entering India with irregular travel documents or that he would be targeted by the police upon his return to Punjab. In fact, the Applicant, himself, in his Memorandum, states that he "faces no personalized risk, has no valid fear", and, as is said in the same paragraph at the outset, "that his claimed adverse country conditions are the same for everybody in his return country" (at para 30) [Emphasis added]. In the Court's view, this statement does not convey a reasonable fear of hardship in India, to any degree. The Court is not persuaded, herein, of a reviewable error.

[28] The Court also cannot agree with the Applicant's contention that the Officer unreasonably discounted his level of establishment in Canada. It is clear from her reasons that the Officer thoroughly considered the Applicant's establishment, including his family, employment and the best interest of his children, in arriving at her decision. The Officer noted that the Applicant had demonstrated a measure of establishment in Canada (he was gainfully employed, paid taxes, etc.); however, she found that this level of establishment was what would be expected of any refugee in similar circumstances. The Court agrees. The hardship which triggers the exercise of discretion on humanitarian and compassionate grounds must generally be more than "what is inherent in being asked to leave after one has been in place for a period of time" (*Irimie*, above). The Court does not find that the Applicant provided sufficient evidence to demonstrate how being asked to leave Canada would justify an exemption under section 25 of the *IRPA*.

[29] In light of the foregoing, the Court finds that the Officer did not commit a reviewable error. The Applicant bore the burden of establishing that H&C grounds existed to warrant an exception from the *IRPA* and he failed to provide sufficient relevant evidence to do so.

X. Conclusion

[30] Although Me Renaud Guérin represented his client with diligence and devotion, the case, as per the evidence, does not lend itself to an outcome, wherein, the Court could grant the judicial review. For all of the specified reasons above, the Applicants' application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Renaud Guérin Jean-François Bertrand	FOR THE APPLICANT
Geneviève Bourbonnais	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bertrand, Deslauriers Barristers and Solicitors Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT