Federal Court  Cour fédérale

Date: 20140306

Docket: IMM-994-13

Citation: 2014 FC 219

Ottawa, Ontario, March 6, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

VICTOR AZHAEV

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of S. Behrue, an Inland Enforcement Officer [the Officer], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Officer dismissed the Applicant's claim for a deferral of his removal from Canada.

I. Issue

[2] A. Is this judicial review moot?

i. If so, should the Court nevertheless exercise its discretion to hear the merits of the requested review?

II. Background

[3] The Applicant is an Israeli citizen. He first entered Canada on December 16, 2008, on a six-month temporary residence permit. On June 22, 2009, he made a claim for refugee protection. His claim was refused by the Refugee Protection Division of the Immigration and Refugee Protection Board on April 10, 2012, and leave to the Federal Court was denied on July 3, 2012.

[4] The Applicant made an Application for Permanent Residence under the Spouse or Common-Law Partner in Canada Class [Permanent Residence Claim] on July 20, 2012.

[5] On January 15, 2013, the Applicant was notified that he was the subject of an in-force removal order and was asked to attend the Canadian Border Services Agency [CBSA] office in Toronto on January 31, 2013.

[6] On January 24, 2013, the Applicant's Permanent Residence Claim was approved in principle.

[7] On January 26, 2013, the Applicant married Svetlana Batyrshina, the sponsor indicated in his Permanent Residence Claim.

[8] On January 30, 2013, CBSA officers did a bond compliance check. The Applicant was not living at his stated address.

[9] On January 31, 2013, the Applicant attended CBSA offices and admitted that he was in fact living in a common-law relationship with another woman and his marriage with Ms. Batyrshina was one of convenience.

[10] On February 2, 2013, the Applicant was notified he was scheduled for removal on February 7, 2013.

[11] On February 4, 2013, the Applicant's Permanent Residence Claim was rejected.

[12] On February 6, 2013, the Applicant requested a deferral of his removal for either 30-60 days or until he had an opportunity to have a judicial review of the refusal of his Permanent Residence Claim heard by the Federal Court. The Applicant's request for a deferral was rejected the same day by the Officer and the Applicant immediately launched a judicial review of the Officer's decision. This decision is the subject of the instant application.

[13] In his refusal letter, the Officer stated:

> The Canada Border Services Agency (CBSA) has an obligation under section 48 of the Immigration and Refugee Protection Act to carry out removal orders as soon as possible. Having considered your request, I do not feel that a deferral of the execution of the removal order is appropriate in the circumstances of this case.

[14] On February 7, 2013, Justice John A. O'Keefe granted a stay of the Applicant's removal until the instant application was heard or leave denied.

[15] On February 19, 2013, the Applicant applied for judicial review of the February 4, 2013, rejection of his Permanent Residence Claim.

[16] On June 25, 2013, Chief Justice Paul S. Crampton refused leave for judicial review of the Applicant's Permanent Residence Claim.

[17] I find that based on the facts before me, the matter is moot for the reasons that follow.

III. Analysis

[18] The Applicant argues that the Court may exercise discretion where there is still an adversarial relationship between the parties, if deciding the issues is in consideration of the judicial economy, and if it would not result in the court intruding into the legislative sphere (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*]).

[19] The Applicant suggests there is still an adversarial relationship, as the Applicant and Respondent have different positions on how much time the Applicant should have to liquidate his assets prior to his removal from Canada.

[20] The Applicant also asserts that he has "exigent personal circumstances" which warrant a deferral being granted (*Canada (Minister of Public Safety and Emergency Preparedness) v Shpati*,

2011 FCA 286, at para 44; *Ramada v Canada (Solicitor General)*, 2005 FC 1112, at para 3). These exigencies include the failure of the Officer to consider the best interests of the Applicant's son (*Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165, at para 7) and language difficulties which led to the denial of his Permanent Residence Claim.

[21] The basis of the Applicant's February 6, 2013, deferral request was to allow the Applicant to remain in Canada until 30-60 days had elapsed from the date of the deferral decision or until a judicial review of his Permanent Residence Claim was heard. As both the time requested has elapsed and the Applicant's application for judicial review of his Permanent Residence Claim has been denied at the leave stage, a judicial review of the Officer's deferral decision is now moot, as there is no live controversy to be resolved based on the original controversy between the parties (*Borowski*, above, at para 15).

[22] While this Court has room to exercise its discretion to hear the merits of the instant application, as guided by the principles in *Borowski*, I disagree with the Applicant that there is an adversarial context remaining in this matter. In *Borowski*, the Court discussed an adversarial context as one where "collateral consequences" arise in related proceedings. For example, if the resolution of an issue in an otherwise moot proceeding determines the availability of liability or prosecution in a related proceeding between the parties, there remains an adversarial context between them. In the instant application, no collateral consequences will arise as a result of whether the Officer erred in his decision.

[23] The second factor enunciated in *Borowski*, that of judicial economy, weighs against the Applicant as well. In one sense, judicial economy is related to being mindful of expending scarce judicial resources to hear an academic argument (*Borowski* at para 34). This is not relevant in the instant application, as Court resources have already been allocated. However, *Borowski* does refer to judicial economy in another way: to resolve ongoing uncertainty in the law to facilitate the expeditious resolution of similar cases in the future (*Borowski* at para 35). The Applicant's argument for this Court to exercise its discretion is based largely on this principle. He argues that it will help future litigants, including himself, to develop the jurisprudence on what "personal exigencies" justify a deferral of removal. However, the Court in *Borowski* at para 36 specifically warned against the application of this factor in the manner suggested by the Applicant:

> The mere fact, however, that a case raising the same point is likely to recur even frequently should not by itself be a reason for hearing an appeal which is moot. It is preferable to wait and determine the point in a genuine adversarial context unless the circumstances suggest that the dispute will have always disappeared before it is ultimately resolved.

[24] I find that this factor also weights against hearing the instant application.

[25] The third principle in *Borowski* is not relevant in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed;

2. No question is to be certified.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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