Federal Court  Cour fédérale

Date: 20150420

Docket: IMM-545-14

Citation: 2015 FC 496

Ottawa, Ontario, April 20, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

MIROSLAV SKORIC
MARIJANA MEDIC SKORIC
PETAR SKORIC

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are a family consisting of two children, one of whom is Canadian-born, and their Croatian parents. They seek judicial review of a decision refusing to re-open their application for permanent residence on humanitarian and compassionate grounds. For the reasons that follow, I have concluded that the application should be dismissed.

I. Background

[2] The applicants' H&C application was based on their establishment in Canada and the best interests of the two children. The applicants also relied on the hardship that they would face in Croatia because of Mr. Skoric's Roma ethnicity and both parents' Serbian descent.

[3] An immigration officer refused to grant an H&C exemption to the applicants, finding that the family's establishment in Canada was limited. The officer further found that no information had been provided with respect to the best interest of the children, beyond the general assertion that they would be better off in Canada than in Croatia.

[4] The officer also noted that the Refugee Protection Division did not believe that Mr. Skoric was Roma. Their claim was rejected on credibility grounds, and this Court upheld the Board's decision on judicial review.

[5] As the applicants did not provide the immigration officer with any additional information regarding Mr. Skoric's Roma ethnicity, the officer gave it no weight as a hardship factor. The immigration officer gave little weight to the applicants' assertion that they would face "issues" in Croatia as a result of their Serbian ancestry, as they failed to explain what these "issues" were.

[6] The applicants did not seek judicial review of the officer's original H&C decision. They had, however, provided additional submissions in support of their H&C application after the decision was made, but before they were notified of the decision. These submissions included pay slips relating to Mr. Skoric's employment, several letters of support from family and friends in Canada, and a series of news articles referring to ethnic conflict and economic conditions in Croatia.

[7] The immigration officer treated these further submissions as a request to re-open the H&C application. However, after reviewing the submissions, the officer decided not to exercise his discretion to reopen the application, noting that the submissions largely consisted of general statements by counsel rather than new and useful information. The officer also found that the news articles did not appear to relate to the applicants' personal situation in a significant or relevant way.

[8] The officer accepted that the letters of support were "more helpful", and that some letters referred to the economic problems in Croatia, although they did not address the other hardship factors relied upon by the applicants. The officer also accepted that a number of people held the applicants in high regard. The officer was, however, not satisfied that the additional information justified re-opening his previous decision. The officer's refusal to re-open the applicants' H&C application is the subject of this application for judicial review.

II. Analysis

[9] The applicants assert that the officer provided insufficient reasons for refusing to reopen their H&C application, and that the officer failed to consider the hardship they would face in Croatia as persons of Serbian ancestry. The applicants further submit that the officer's assessment of the best interests of their children was inadequate, and that the officer's "contemptuous" and "dismissive attitude" gave rise to a reasonable apprehension of bias.

A. *Bias*

[10] An allegation of actual or apprehended bias raises a question of procedural fairness. I must, therefore, determine whether the process followed by the decision-maker satisfied the level

of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339.

[11] The test for actual or apprehended bias is well known: the Court must consider what an informed person, viewing the matter realistically and practically - and having thought the matter through - would conclude. That is, would he or she think it more likely than not that the decision-maker, either consciously or unconsciously, would not decide fairly: see *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at 386, 68 D.L.R. (3d) 716.

[12] The applicants have not satisfied this test. The additional submissions that the applicants provided in support of their H&C application were brief, very general, and largely repetitive of the original submissions that they had made. It was, therefore, hardly surprising that these submissions were given fairly short shrift by the immigration officer, and the applicants have not persuaded me that there is a reasonable apprehension of bias in this regard.

B. *Adequacy of Reasons*

[13] The applicants rely on a number of cases, including my decision in *Adu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 565, [2005] F.C.J. No. 693, in support of their assertion that the officer's reasons for refusing to re-open their H&C application were inadequate. However, as I observed in *Ayanru v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 1017 at para. 4, [2013] F.C.J. No. 1113, the law relating to the sufficiency of reasons in administrative decision-making has evolved substantially since the time that *Adu* was decided, both with respect to the degree of scrutiny to which fact-based,

discretionary decisions such as the one at issue in this case should be subjected, and in relation to the sufficiency of reasons as a stand-alone ground for judicial review.

[14] Indeed, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, the Supreme Court held that an alleged insufficiency of reasons is no longer a stand-alone basis for granting judicial review. Reasons need not be fulsome, and need not address all of the evidence or arguments put forward by a party. Rather, they are to be read as a whole, in conjunction with the record, in order to determine whether the reasons provide the justification, transparency and intelligibility required of a reasonable decision and whether the decision falls within the range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47, [2008] 1 S.C.R. 190.

[15] In this case, the officer's reconsideration decision clearly explains why the officer decided not to exercise his discretion in the applicants' favour. Consequently there is no merit to the argument that the officer's reasons were insufficient.

C. *The Reasonableness of the Officer's Decision*

[16] The Federal Court of Appeal held in *Kurukkal v. Canada (Minister of Citizenship and Immigration)*, 2010 FCA 230, 324 D.L.R. (4th) 292, that immigration officers do indeed have the discretion to reconsider H&C decisions based on new information. A review of the officer's January 7, 2014 decision reveals that the officer was aware that he had this discretion, and that he had considered the applicants' further submissions.

[17] The applicants say that the officer failed to address the best interests of their children. However, their second set of submissions simply repeated the bald assertion made in their initial submissions that the children would be better off in Canada. Officers are presumed to know that a child will generally be better off living in Canada: *Hawthorne v. Canada (Minister of Citizenship & Immigration)*, 2002 FCA 475 at para. 5, [2003] 2 F.C. 555. The applicants have not pointed to anything material that was in the letters of support regarding the best interests of the children that required express consideration by the officer.

[18] The officer was, moreover, aware that the applicants alleged that they would face "issues" in Croatia based upon their Serbian ancestry, but gave the allegation little weight as the applicants did not explain what the "issues" were that they would face in Croatia. The applicants included newspaper articles referring to ethnic tensions in Croatia in their further submissions, but still did not explain how the articles related to their personal situation. Nor did they explain how they would be identified as persons of Serbian ancestry. In the circumstances, it was reasonable for the officer to find that the articles did not justify re-opening the applicants' H&C application.

III. Conclusion

[19] The applicants appear to be industrious individuals who want to make a better life for themselves and their children here in Canada. While I am sympathetic to their situation, sympathy does not provide a basis for quashing a discretionary decision such as the one in issue in this case. H&C relief is exceptional, and the officer reasonably found that the applicants' case was not exceptional. Consequently, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

"Anne L. Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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