Federal Court  Cour fédérale

Date: 20160902

Docket: IMM-624-16

Citation: 2016 FC 1001

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 2, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

JORGE MAXIMO YACTAYO RAMOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Montréal, Quebec, on August 11, 2016)

I. Nature of the matter

[1] Jorge Maximo Yactayo Ramos [Mr. Ramos] is applying for judicial review of the decision by the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada to maintain the Immigration Division's [ID] decision that Mr. Ramos made a

misrepresentation to obtain his permanent residence status. As a result, the ID issued a deportation order against Mr. Ramos.

II. Facts

[2] Mr. Ramos was born in Peru on July 22, 1977. He arrived in Canada on September 27, 1995, and applied for refugee protection that day. On December 10, 1998, his application was denied. On September 19, 1998, Mr. Ramos married Daisy Toro Guevara [Ms. Guevara], a Canadian citizen of Peruvian origin. On February 15, 1999, Ms. Guevara sponsored Mr. Ramos to become a permanent resident. On June 20, 2000, Mr. Ramos obtained his permanent resident status.

[3] On April 22, 2009, an inadmissibility report was issued under subsection 44(1) and paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, chapter 27 [the Act], on the grounds that Mr. Ramos had not declared that he had separated from his first wife about four months before he was granted permanent residence status, which constitutes misrepresentation or withholding of material facts relating to a relevant matter within the meaning of paragraph 49(1)(a) of the Act. Mr. Ramos' file was therefore referred to the ID. Mr. Ramos and his first wife, Ms. Guevara, presented several contradictory versions regarding the date of their separation before the ID.

[4] Their accounts of the date they separated vary: Mr. Ramos told an officer that they separated in February 2000, whereas his spouse testified that they separated at the beginning of July. Mr. Ramos later testified that they separated on July 22 and his spouse finally testified that

they had separated at the end of July. The differences were explained in paragraph 28 of the IAD decision:

> [TRANSLATION] In his submissions, the appellant's counsel said that the appellant and his first spouse had tried to change their testimonies to correct their previous errors, which was a mistake on their part.

[5] The ID concluded that Mr. Ramos and Ms. Guevara were separated when Mr. Ramos became a permanent resident. Consequently, because of the contradictions and implausibilities, the ID concluded that paragraph 40(1)(a) of the Act applied to him. The ID conducted an investigation, found that Mr. Ramos had made a misrepresentation and issued an exclusion order against him.

III. Issues

[6] This matter raises two issues:

1. Were the IAD's findings regarding the validity of the exclusion order reasonable?
2. Were the humanitarian and compassionate considerations sufficient?

IV. Standard of review

[7] The parties agree on the applicable standard of review, i.e. that of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]). The Court must not intervene if the IAD 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 the law"

(*Dunsmuir*, above, at paragraph 47). The Court must show a high degree of judicial deference toward the IAD's findings regarding evidence and credibility.

V. Analysis

[8] In terms of the validity of the exclusion order, the Minister points out that two factors must be present for a finding of inadmissibility under subsection 40(1) of the Act: i) the person must have made misrepresentations; and ii) those misrepresentations must relate to a relevant matter that induces or could induce an error in the administration of the Act (*Ghasemzadeh v. Canada (Citizenship and Immigration*), 2010 FC 716, at paragraph 12, [2010] FCJ 875).

[9] These guiding principles are summarized by Madam Justice Strickland in *Goburdhun v. Canada (Citizenship and Immigration),* 2013 FC 971, at paragraph 28, [2013] FCJ 1235. The key principles include: i) the broad interpretation of the provision; ii) that any exception to this rule is narrow and applies only to truly extraordinary circumstances; and iii) an applicant has a duty of candour to provide complete, honest and truthful information in every manner.

[10] Mr. Ramos maintains that the IAD's findings of fact, specifically that he was not in a relationship when he was granted permanent resident status, are not supported by the evidence. However, I note that the IAD pointed out many contradictions and implausibilities in the evidence, specifically concerning Mr. Ramos's and Ms. Guevara's separation date. The IAD concluded that they hid the real separation date to help Mr. Ramos obtain permanent residence status.

[11] Assessment of evidence is central to the IAD's jurisdiction. As for the finding that there were insufficient humanitarian and compassionate considerations to justify taking special measures, Mr. Ramos maintains that the IAD gave too much weight to the seriousness of the misrepresentations, which makes its analysis of the sufficiency of humanitarian and compassionate considerations unreasonable. He maintains that the IAD did not take into account the evidence showing that he is his immediate family's main wage-earner and that it is in the best interest of his children to have emotional and financial support. He also maintains that the IAD did not give enough weight to the psychological report. In this regard, I note that Mr. Ramos has a spouse and two children in Peru.

[12] The IAD conducted a comprehensive assessment of the humanitarian and compassionate considerations, including the financial support Mr. Ramos provides for his family. Humanitarian and compassionate considerations are assessed as a whole. The "best interests of the child" principle is highly contextual because of the multitude of factors that may impinge on the child's best interest (*Kanthasamy v. Canada (Citizenship and Immigration),* 2015 SCC 61 at paragraph 35, [2015] SCJ 61). The best interests of the child should be assessed in light of the application as a whole.

[13] In this case, in addition to assessing the best interests of the child, the IAD conducted a comprehensive analysis of other humanitarian and compassionate considerations, including the weight given to a psychologist's report and family ties in Canada.

[14] It is not for the Courts to reweigh the factors considered by an H&C officer (*Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, at paragraph 24, [2009] FCJ 713). I am therefore of the opinion that the IAD finding regarding the application of humanitarian and compassionate considerations falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

VI. Conclusion

[15] Overall, the IAD's decision is reasonable based on the parameters established in *Dunsmuir*. Intervention by the Court is therefore not justified.

[16] I would therefore dismiss this application for judicial review.

JUDGMENT

THE COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. There is no question to be certified.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-624-16
STYLE OF CAUSE:	JORGE MAXIMO YACTAYO RAMOS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	AUGUST 11, 2016
JUDGMENT AND REASONS:	BELL J.
DATED:	SEPTEMBER 2, 2016

APPEARANCES:

Jorge Colasurdo	FOR THE APPLICANT
Thi My Dung Tran	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jorge Colasurdo Counsel Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT