Federal Court  Cour fédérale

Date: 20170420

Docket: IMM-2296-16

Citation: 2017 FC 383

St. John's, Newfoundland, April 20, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

PAUL CARL ROONEY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Paul Carl Rooney (the "Applicant") seeks judicial review of the decision of an Officer (the "Officer") refusing his application for permanent residence from within Canada, made on humanitarian and compassionate ("H&C") grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant based his H&C application upon his status as a stateless person, his degree of establishment in Canada and adverse country conditions, in light of his physical and mental health conditions, in two countries of reference, that is the United Kingdom and St. Vincent and the Grenadines.

[3] The Applicant claims to have been born in 1963. According to the generic application form that he completed, that is form IMM 0008, he was born on July 23, 1963, possibly in Birmingham, England. In "Schedule A Background/Declaration", form IMM 5669, he stated that his date of birth was February 23, 1963 and his country of birth was St. Vincent.

[4] In a statutory declaration dated November 24, 2015, the Applicant provided some details about his life. He was adopted in England. His adoptive parents brought him to Canada; he thinks this happened sometime in the 1980s. He had been told by his adoptive parents that he was born in Toronto. He was also told by his adoptive parents that his biological parents were both from St. Vincent and the Grenadines. He no longer maintains contact with the adoptive parents and does not know if they are alive or dead.

[5] In the statutory declaration dated November 24, 2015, the Applicant referred to certain problems he had experienced in Canada which led to detention by the Canada Border Services Agency. That detention began on October 25, 2013. He said he was detained on "identity grounds". According to a second statutory declaration from the Applicant, dated April 7, 2016, his detention lasted until February 9, 2016 when the Immigration Division ordered his release, upon conditions.

[6] By Notice of Application for leave and judicial review filed on February 9, 2016, in cause number IMM-615-16, the Minister of Public Safety and Emergency Preparedness (the "Minister") sought leave to commence judicial review of the decision of the Immigration Division authorizing the release of the Applicant from detention.

[7] The Minister sought and obtained a temporary stay of that order, pending a full hearing of a motion to stay the operation of the Order. Temporary stays were granted until the stay motion was argued on March 2, 2016. By Order issued on March 2, 2016, the Minister's motion was dismissed.

[8] By Order dated June 9, 2016, leave was granted to the Minister to commence an application for judicial review. Following a hearing on August 22, 2016, the application for judicial review against the decision of the Immigration Division was dismissed.

[9] In the meantime, the Officer had dismissed the Applicant's H&C application in a decision dated May 20, 2016. In that decision, the Officer noted that the Applicant considers himself to be a "*de facto*" stateless person because he was unable to establish citizenship in Canada, the United Kingdom or St. Vincent and the Grenadines. The Officer found that it is "possible that the applicant has citizenship rights in either country".

[10] The Officer also observed that "there is insufficient evidence to conclude on a balance of probabilities that the applicant is *de facto* stateless."

[11] The Officer considered the Applicant's establishment in Canada, noting that he had been employed in various jobs, possibly from 1995 until 2013. The Officer also accepted that the Applicant had been involved in some romantic relationships and had "at least four close friendships ranging between three and about twenty years".

[12] The Officer acknowledged that the Applicant had been convicted of two criminal offenses in 1997 to which he pleaded guilty. The Officer found that the commission of criminal offenses undermines the degree of establishment in Canada.

[13] The Officer considered other factors, including the Applicant's physical and mental health and risk and adverse country conditions, by reference both to United Kingdom and St. Vincent. The Officer concluded that the country conditions did not "present an exceptional difficulty because of his employment history and failure to describe in detail any hardships in either country".

[14] The Applicant addresses two main issues in his application for judicial review. First, he argues that he suffered a breach of procedural fairness because the Officer made negative credibility findings and did not give him the opportunity to address those conclusions, by way of an oral interview. Second, the Applicant submits that the Officer ignored relevant evidence.

[15] The Minister of Citizenship and Immigration (the "Respondent"), on the other hand, argues that there was no breach of procedural fairness and that the Officer reasonably assessed the evidence.

[16] The standard of review for a breach of procedural fairness is correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at paragraph 43.

[17] An H&C decision involves the exercise of discretion, as informed by the statutory provisions. An H&C decision is reviewable on the standard of reasonableness; see the decision in *Kanthasamy v. Canada (Minister of Citizenship and Immigration)*, [2015] 3 S.C.R. 909 at paragraph 44. The reasonableness standard requires that a decision be "justifiable, transparent and intelligible" and fall within a range of possible, acceptable outcomes; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[18] It is not necessary for me to address the arguments about an alleged breach of procedural fairness since I am satisfied that the decision, on its merits, does not meet the standard of reasonableness.

[19] In my opinion, the Officer unreasonably limited his or her consideration of the evidence relating to the Applicant's establishment in Canada.

[20] As well, the Officer's conclusion that the Applicant may have citizenship in either the United Kingdom and St. Vincent and the Grenadines is not clearly supported by the evidence. In my opinion, this conclusion is not reasonable as per the standard set out in *Dunsmuir, supra*.

[21] The Officer also apparently failed to appreciate the full context of the Applicant's situation. There is an appearance of a closed mind in the Officer's notes. The fact that the Applicant presents an "unusual" personal history does not authorize the Respondent, by his servants and agents, to take a narrow view of the evidence submitted.

[22] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different Officer. There is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different Officer. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2296-16
STYLE OF CAUSE:	PAUL CARL ROONEY v. MCI
PLACE OF HEARING:	VANCOUVER
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JUDGMENT AND REASONS:	HENEGHAN J.
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APPEARANCES:

Peggy Lee	FOR THE APPLICANT
Aman Sanghera	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Peggy Lee Elgin, Cannon & Associates, Barristers and Solicitors Vancouver, British Columbia	FOR THE APPLICANT
William F. Pentney, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT