Federal Court Cour fédérale

Date: 20180208

Docket: IMM-370-17

Citation: 2018 FC 152

Calgary, Alberta, February 8, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ABIDA NOREEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] Ms. Abida Noreen (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Division (the "Board"), dated January 11, 2017. In that decision, the Board determined that the Applicant is inadmissible to Canada on the grounds of serious criminality.

[2] The Applicant is a citizen of Pakistan. She attempted to travel to the United Kingdom in 2004 but was intercepted in Doha. She was subsequently charged with the offence of travelling on a false passport.

[3] In 2005, the Applicant was convicted of an offence under the *Passport Act,* 1974, a statute of Pakistan.

[4] The Applicant obtained permanent resident status in Canada in 2008, following her marriage to a Canadian permanent resident. In 2016, following dissolution of that marriage, the Canadian immigration authorities became aware of the conviction in Pakistan and the Minister of Citizenship and Immigration (the "Respondent") referred the Applicant to an admissibility hearing.

[5] In its decision, the Board determined that the offence under the *Passport Act* of Pakistan was equivalent to the offence of using a forged passport (check), pursuant to the *Criminal Code of Canada*, R.S.C., 1985, c. C-46, (the "Criminal Code"). The Board purported to apply the first test of equivalency set out in the decision of *Hill* v. *Canada (Minister of Employment and Immigration)* (1987), 1 Imm. L.R. (2d) 1 (F.C.A.).

[6] The Applicant now argues that the Board erred in finding equivalency between the offence set out in the *Passport Act* and subsection 57(1) of the Criminal Code. She submits that the Board erred in law and its decision should be reviewed on the standard of correctness.

[7] The Respondent argues that the decision of the Board is reviewable on the standard of reasonableness and meets that standard; he submits that there is no basis for judicial intervention.

[8] I agree that the Board's decision, involving a question of mixed fact and law, is subject to review on the standard of reasonableness, as set out in the decision of *Dunsmuir v. New Brunswick*, 2008 1 S.C.R. 180 at paragraph 47.

[9] The standard of reasonableness requires that a decision of a statutory decision maker be justifiable, transparent and intelligible and fall within a range of possible, acceptable outcomes.

[10] In my opinion, the decision does not meet that standard.

[11] I agree with the Applicant that the Board unreasonably failed to assess the issue of intention when concluding that the offence under the *Passport Act* of Pakistan was equivalent to the offence under subsection 57(1) of the Criminal Code.

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

JUDGMENT for IMM-370-17

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Immigration and Refugee Board, Immigration Division is set aside and the matter remitted to a differently constituted panel for redetermination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-370-17
STYLE OF CAUSE:	ABIDA NOREEN v. MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 26, 2018
JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	FEBRUARY 8, 2018

APPEARANCES:

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Stephen Jarvis	FOR THE RESPONDENT

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