Federal Court  Cour fédérale

Date: 20180315

Docket: IMM-1951-17

Citation: 2018 FC 297

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 15, 2018

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

BRIAN STIVEND PENA MORA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA], of an immigration officer's decision, dated April 7, 2017, to reject the applicant's application for permanent residence on humanitarian and

compassionate grounds, which was made under section 25 of the IRPA. For the reasons that follow, I am dismissing the application.

II. Facts

[2] The applicant, age twenty-four (24), is a citizen of Colombia. He arrived in Canada with his parents on February 7, 2015.

[3] The applicant and his parents claimed refugee protection when they arrived in Canada, alleging that they were being persecuted by a group of drug traffickers because of their involvement with disadvantaged youth. Their refugee claim was rejected by the Refugee Protection Division [RPD]. The Federal Court subsequently refused to allow their application for leave and judicial review of the RPD's decision on August 28, 2015.

[4] On October 12, 2016, the applicant filed an application for permanent residence on humanitarian and compassionate grounds under section 25 of the IRPA to be exempted from the statutory requirement that applications for permanent residence must be filed from outside of Canada. That application was dismissed on April 7, 2017. That decision is the subject of this application for judicial review.

III. Decision under review

[5] On April 7, 2017, an immigration officer rejected the applicant's application for permanent residence on humanitarian and compassionate grounds. After taking into consideration his establishment in Canada, the situation and conditions in Colombia, as well as

the combined effect of the factors analyzed, she determined that the applicant had not raised sufficient factors to warrant exemption from the IRPA requirements in order to allow his application to be filed from within Canada.

[6] Concerning the applicant's establishment, the officer considered his period of establishment in Canada of just over two (2) years to be short. She was satisfied that the applicant had a girlfriend, but was unable to conclude that they were living together or that the girlfriend could not accompany the applicant if he had to leave Canada.

[7] The officer also noted that the applicant lives with his older brother, a permanent resident of Canada, and his parents. She found that there is no interdependence between the applicant and his brother, that his parents have no status in Canada and that they could stay in contact through various electronic means of communication.

[8] Lastly, the officer gave some positive weight to the fact that the applicant is employed, does volunteer work and is learning French, as well as to the letters of support provided by his colleagues and friends. However, she found that leaving his friends, job and activities in Canada to travel to a different country in order to file an application for an immigrant visa would not cause any difficulties warranting an exemption under section 25 of the IRPA.

[9] The officer went on to examine the conditions in Colombia and noted that the applicant used the same facts as those on which he had based his refugee claim, which the RPD rejected after deeming it not credible. She gave more weight to the RPD's findings than to the letter from the applicant's brother describing the events that occurred, evidence that she considered to be

biased. The officer noted that the applicant had not provided other evidence allowing her to assess the credibility of the allegations, or any evidence demonstrating the applicant's specific situation regarding the general conditions in Colombia.

[10] The officer found that the combined effect of the various factors examined did not justify granting the exemption set out in section 25 of the IRPA.

IV. Issue

[11] The applicant raises several issues to be decided. The respondent raises only one: is the officer's refusal to grant the exemption sought under section 25 of the IRPA reasonable? In my opinion, the answer to that question resolves this application.

V. Relevant provisions

[12] Section 25 of the IRPA provides that:

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent,

foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

VI. Standard of review

[13] The Court has consistently held that an immigration officer's decision to grant or refuse an exemption from the IRPA requirements on humanitarian and compassionate grounds is a discretionary decision that raises questions of fact and law. Thus, it is reviewable on the reasonableness standard, which requires judicial deference (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47 [*Dunsmuir*]; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, [1999] F.C.J. No. 39 at paragraph 62). As long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at paragraph 59).

VII. Parties' position on the relevant issues

[14] The parties disagree with respect to the reasonableness of the officer's decision on two points, specifically the applicant's establishment in Canada and the situation and conditions in

his country of origin. The applicant argues that the findings on these two factors are unreasonable, while the respondent submits they are completely reasonable.

A. *Establishment*

[15] The applicant submits that the officer did not understand his degree of establishment in Canada, since she did not give sufficient weight to the evidence he submitted relating to his job, his volunteer work and his social circle. He refers to *Lauture v. Canada (Citizenship and Immigration)*, 2015 FC 336, [2015] F.C.J. No. 296 for a list of the factors that an officer must take into consideration. The applicant criticizes the officer for having incorrectly disregarded the evidence relating to his establishment because of his limited time in Canada and for using [TRANSLATION] "only the unusual and undeserved or disproportionate hardship test to deny that the applicant's life is now in Canada."

[16] On the contrary, the respondent submits that the officer weighed each of the factors the applicant raised and that the decision made after exercising her discretion is reasonable, in that it falls within the range of possible outcomes (*Dunsmuir* at paragraph 47). The respondent argues that the officer did not use the "unusual and undeserved or disproportionate hardship test", but rather performed an overall analysis of the humanitarian and compassionate grounds cited by the applicant. The respondent points out that a certain degree of establishment, in itself, is not sufficient to warrant granting an application for permanent residence on humanitarian and compassionate grounds (*Ramos Tarayao v. Canada (Citizenship and Immigration)*, 2008 FC 350, [2008] F.C.J. No. 439 at paragraph 16; *Buio v. Canada (Citizenship and Immigration)*, 2007 FC 157, [2007] F.C.J. No. 205 at paragraph 37; *Kawtharani v. Canada*

(Minister of Citizenship and Immigration), 2006 FC 162, [2006] F.C.J. No. 220 at paragraph 20). Moreover, the mere fact of needing to leave Canada to file his visa application from outside Canada implies inherent hardship that is insufficient to warrant exemption from the requirements of the IRPA (*Walker v. Canada (Citizenship and Immigration)*, 2012 FC 447, [2012] F.C.J. No. 479 at paragraph 34; *Jiang v. Canada (Citizenship and Immigration)*, 2010 FC 580, [2010] F.C.J. No. 686 at paragraph 41).

B. *Conditions in Colombia*

[17] The applicant submits that the officer [TRANSLATION] "broke down her analysis to indicate that the situation in Colombia represents general conditions in the country." He criticizes the officer for having mistaken her role, reviewing the credibility of his refugee claim. The applicant criticizes the officer's decision to disregard his brother's letter and for using [TRANSLATION] "only the unusual and undeserved or disproportionate hardship test to deny that the applicant's life is now in Canada."

[18] On the contrary, the respondent argues that a request for exemption from the requirements of the IRPA is not an appeal of the RPD's decision regarding the alleged risks that have been deemed not credible (*Hussain v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 751, 97 A.C.W.S. (3d) 726 at paragraph 12; *Kouka v. Canada (Citizenship and Immigration)*, 2006 FC 1236, [2006] F.C.J. No. 1561 at paragraphs 26–28; *Nkitabungi v. Canada (Citizenship and Immigration)*, 2007 FC 331, [2007] F.C.J. No. 449 at paragraph 8). Furthermore, since the applicant did not demonstrate a connection between the general situation in the country and his personal situation, the officer's decision cannot be considered

unreasonable (*Piard v. Canada (Citizenship and Immigration)*, 2013 FC 170, [2013] F.C.J. No. 165 at paragraph 16; *Lalane v. Canada (Citizenship and Immigration)*, 2009 FC 6, [2009] F.C.J. No. 658 at paragraphs 38, 42–44; *Rahman v. Canada (Citizenship and Immigration)*, 2009 FC 138, [2009] F.C.J. No. 187 at paragraph 39; *Jakhu v. Canada (Citizenship and Immigration)*, 2009 FC 159, [2009] F.C.J. No. 203, at paragraph 27).

VIII. Analysis

[19] The applicant has not demonstrated any errors in the officer's reasons that could justify the Court's intervention. The officer took into account all the factors raised by the applicant in his application and analyzed their combined effect. The applicant clearly disagrees with the officer's findings, but that is not enough for the decision to be considered as not falling within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at paragraph 47). The IRPA does not create an alternative immigration scheme:

> [23] There will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1): see *Rizvi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 463, at para. 13 (CanLII); *Irimie v. Canada (Minister of Citizenship and Immigration)* (2000), 10 Imm. L.R. 206 (F.C.T.D), at para. 12. Nor was s. 25(1) intended to be an alternative immigration scheme: House of Commons, Standing Committee on Citizenship and Immigration, *Evidence*, No. 19, 3rd Sess., 40th Parl., May 27, 2010, at 15:40 (Peter MacDougall); see also *Evidence*, No. 3, 1st Sess., 37th Parl., March 13, 2001, at 9:55 to 10:00 (Joan Atkinson).
>
> (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 S.C.R. 909 at paragraph 23)

[20] I consider the officer's decision to be reasonable.

JUDGMENT in IMM-1951-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed without costs;

2. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

Certified true translation
This 1st day of October 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

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