Federal Court  Cour fédérale

Date: 20190208

Docket: IMM-2743-18

Citation: 2019 FC 163

Ottawa, Ontario, February 8, 2019

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

JIN LING ZHOU
GUI RONG WEN
JIN HAN ZHUO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision rendered by a Senior Immigration Officer of Citizenship and Immigration Canada (the Officer) refusing the applicants' application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds pursuant to section 25 of *IRPA*.

[2] For the reasons set out below, I have concluded that this application should be dismissed.

II. BACKGROUND

[3] Jin Ling Zhuo, his wife, Gui Rong Wen, and their son, Jin Han Zhuo (the applicants) arrived in Canada on August 23, 2013. The applicants made a refugee claim and were initially successful before the Refugee Protection Division (RPD) of the Immigration and Refugee Board. The applicants alleged that they were farmers in China and left due to confrontations with the authorities after their land was expropriated.

[4] The respondent, the Minister of Citizenship and Immigration, appealed this decision to the Refugee Appeal Division (RAD), providing new evidence disclosing contradictions in the applicants' narrative. The RAD determined that this new evidence undermined the applicants' credibility and allowed the appeal. The applicants' refugee application was thus denied.

[5] The applicants' then submitted an application under section 25 of *IRPA* seeking permanent residency status on H&C grounds. It is from this decision that the applicants seek judicial review.

III. DECISION UNDER REVIEW

[6] The Officer began her review by summarizing the findings of the RAD. The RAD had been presented with new evidence from the respondent which highlighted contradictions in the evidence presented to the RPD. These contradictions appeared on a United States visa application, where the applicants had claimed a different occupation from that indicated in their Canadian refugee claim. The applicants acknowledged that the information in the visa

application was false, but alleged that it was a third party, a travel agency, that submitted the information. The RAD determined that this new uncontested evidence undermined the credibility of the applicants and, thus, allowed the appeal.

[7] The Officer gave significant weight to the findings of the RAD since the hardships asserted by the applicants for the H&C assessment were materially the same as the risks alleged before the RAD.

[8] The Officer acknowledged that the applicants were farmers in China and noted evidence demonstrating the negative effects of expropriation on farmers. Yet, the Officer also noted the lack of credibility found by the RAD on this issue. The Officer relied on the applicants' job experience in Canada and concluded that the evidence was insufficient to establish that they would be unable to find employment in China. The Officer remarked on the applicants' ability to adapt over the last five years to their new environment in Canada, their familiarity with Chinese language and culture, as well as the presence of other family members in China.

[9] As regards establishment in Canada, the Officer acknowledged that the applicants have been employed in Canada and are active members of their church, and concluded that, though such establishment in not uncommon, these were positive elements in the assessment of the H&C application. The Officer also recognized that the applicants have made friendships in Canada, but concluded that there was insufficient evidence "that the relationships developed in Canada are characterized by a degree of interdependency and reliance," or that said relationships could not be maintained from China.

[10] Ultimately, the Officer found that the applicants' establishment in Canada did not overcome the conclusion that the applicants will be able to re-establish themselves in China.

IV. ISSUES

[11] The issues outlined by the applicants are:

A. Were the reasons provided by the Officer adequate to support the decision to refuse the H&C application?

B. Did the Officer err in consideration of the applicants' establishment in Canada?

C. Did the Officer erroneously speculate about whether the applicants' family members in China would be able to assist them in re-establishing in China?

D. Did the Officer err in applying the conclusions of the RAD in its H&C decision?

V. ANALYSIS

A. *Were the reasons provided by the Officer adequate to support the decision to refuse the H&C application?*

[12] The applicants argue that the Officer's reasons were inadequate because on some issues she simply recited the evidence and stated vague generic conclusions which amount to boilerplate rationales intended to immunize the decision from judicial review. Aspects of the impugned decision cited by the applicants in respect of this issue include:

i. The Officer's assessment of the applicants' personal ties in Canada, including the statement that there is insufficient evidence that the relationships they have developed in Canada are characterized by "a degree of interdependence and reliance";

ii. The Officer's statement that the applicants will be "returning to their native country, a country where they were born, educated, speak the language and have family";

iii. The reasons do not explain how the Officer reached the conclusion that they would not be subject to the discrimination to which farmers in China are exposed, as supported by documentation; and

iv. The reasons do not explain why the factors in favour of granting the H&C exemption are outweighed by the factors against.

[13] Though the applicants acknowledge that inadequacy of reasons is not a standalone basis for judicial review, they note that adequate reasons are necessary to the justification, transparency and intelligibility that are essential for a decision to be reasonable. As stated by Justice Donald J. Rennie when he was on the Federal Court in *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11, reviewing courts may connect the dots on the page where the lines, and the direction they are headed, may be readily drawn, but it cannot do so if there were no dots on the page.

[14] I am not convinced that the Officer's reasons are inadequate. Though some of the reasons may have some similarity with decisions on similar issues in other cases, I am not convinced that they contain the kind of vague generic conclusions and boilerplate rationale that this Court has found to be problematic. I am satisfied that the Officer considered the evidence specific to the applicants' case, and did not rely on generalities. With specific reference to the potential for discrimination against the applicants as farmers in China, the Officer was satisfied that they would be able to obtain employment in China, and hence need not rely on farming for their livelihood.

B. *Did the Officer err in consideration of the applicants' establishment in Canada?*

[15] The applicants argue that the Officer erred in basing her decision partly on their ability to adapt to new locales, differing cultures, life changes and new language (all as demonstrated from their activities since arriving in Canada) when she concluded that they could re-establish themselves in China. The applicants argue that this reasoning goes counter to the principle set out in *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 [*Lauture*].

[16] In *Lauture*, the Court criticized the assessment of an H&C application on the basis that the applicants' ability to establish themselves successfully in Canada indicated that they would also be able to establish themselves successfully upon return to their country of origin. The Court concluded that this was erroneous reasoning in that it turned a factor that should weigh in favour of granting an H&C exemption (establishment in Canada) against the applicants (by applying it to minimize the issue of hardship in their home country).

[17] I recognize the principle set out in *Lauture*, and I accept that, in assessing the applicants' hardship upon return to China, the Officer considered their activities since arriving in Canada. However, I am not convinced that the Officer strayed into impermissible reasoning. The Officer has not turned an otherwise positive factor into a negative factor. In fact, in discussing the applicants' establishment in Canada, the Officer accepted that "the applicants have several positive elements towards their establishment and integration into Canadian society." In the concluding paragraph of the impugned decision, the Officer repeated that she gave positive weight to the applicants' establishment and integration in Canada. However, that positive weight was balanced against the RAD's negative credibility findings and the applicants' familiarity with China. In my view, despite concluding that the applicants' establishment and integration in

Canada was a positive factor, it remained open to the Officer to consider that some of the skills the applicants had acquired in Canada could reduce the potential hardship of their return to China. The Officer's assessment of the applicants' establishment was not improperly "filtered through the lens of hardship" as it was in *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 35.

C. *Did the Officer erroneously speculate about whether the applicants' family members in China would be able to assist them in re-establishing in China?*

[18] The applicants argue that the Officer engaged in impermissible speculation in concluding that they could expect to rely on the assistance of family members in China when re-establishing themselves there. The applicants cite jurisprudence discussing the difference between the permissible drawing of an inference and the impermissible reliance on speculation: *Smith v Canada (Citizenship and Immigration)*, 2009 FC 1194 at para 49, quoting the Federal Court of Appeal in *Canada (Employment and Immigration) v Satiacum* (1989), 99 NR 171, [1989] FCJ No 505 (QL).

[19] In my view, this is not a case of the Officer engaging in speculation that family members would assist the applicants. Rather, the Officer noted the insufficiency of evidence to establish the opposite conclusion on which the applicants bore the burden of proof (that those family members would not assist). This is an important distinction that was noted in *Regalado v Canada (Citizenship and Immigration)*, 2017 FC 540 at para 15. In the absence of evidence to the contrary, it was not unreasonable for the Officer to note the existence of family members in China in concluding that the applicants had failed to show that they would face hardship there upon their return.

D. *Did the Officer err in applying the conclusions of the RAD in its H&C decision?*

[20] The applicants argue that assessment of hardship for the purposes of an H&C application is different from the assessment of risk for a refugee application, and therefore the Officer erred in relying on the findings of the RAD, and in imposing on the applicants the burden to overcome those findings. In particular, the applicants argue that the hardship to which they would be exposed as farmers in China should have been assessed for the purposes of the H&C application, rather than simply relying on the RAD's analysis. The applicants note that the Officer accepted as a fact that the applicants were farmers in China.

[21] I am not able to agree with this argument. Firstly, the Officer clearly understood that the assessment of hardship in an H&C application is different from risk assessment in a refugee application. She devoted part of her decision to that very point. Secondly, the Officer noted that the applicants' assertions of hardship as farmers in China for the H&C application were the same as those before the RAD. Thirdly, and most importantly, the Officer's decision was based on the fact that the applicants could find employment, and therefore would not have to live as farmers or be exposed to any hardship as farmers.

VI. CONCLUSION

[22] Accordingly, the present application for judicial review should be dismissed.

[23] The parties agree that there is no serious question of general importance.

JUDGMENT in IMM-2743-18

THIS COURT'S JUDGMENT is that:

1. The present application is dismissed.

2. There is no question of general importance to certify.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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