Federal Court  Cour fédérale

Date: 20240516

Docket: IMM-3160-23

Citation: 2024 FC 753

Ottawa, Ontario, May 16, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

ABDULMOULLA S ABDULMOULLA ALGAZAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Abdulmoulla Algazal, a citizen of Libya, has lived in Canada for approximately 15 years. His siblings and their families have permanent status in Canada. Mr. Algazal applied for permanent residence on the basis of humanitarian and compassionate grounds [H & C Application]. An officer at Immigration, Refugees and Citizenship Canada [IRCC] refused his application on February 21, 2023. Mr. Algazal is challenging this refusal on judicial review.

[2] Foreign nationals applying for permanent residence in Canada can ask the Minister to exercise ministerial discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because of humanitarian and compassionate factors (IRPA, s 25(1)). The Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration) (1970)*, 4 IAC 338, [1970] IABD No 1, confirmed that the purpose of this humanitarian and compassionate discretion is "to offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (*Kanthasamy* at para 21).

[3] Given that the purpose of humanitarian and compassionate discretion is to "mitigate the rigidity of the law in an appropriate case," there is no limited set of factors that warrants relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but "officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them" (*Kanthasamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74–75).

[4] Canada currently lists Libya as a country to which an Administrative Deferral of Removal [ADR] applies, meaning that the Minister has recognized under subsection 230(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] that because "the circumstances [in Libya] pose a generalized risk to the entire civilian population", deportation to Libya is generally not taking place. Mr. Algazal argues that the Officer unreasonably found that

the hardship he would face in returning to Libya was mitigated because Canada is not currently deporting individuals to Libya. I agree with Mr. Algazal that the Officer's reasoning on this point is inconsistent with this Court's jurisprudence on the impact of an ADR on a hardship assessment in the H & C context and is therefore unreasonable.

[5] The Officer ultimately found that though "the ongoing conflict in Libya has displaced thousands and that safety and security is still uncertain for many in the country", the ADR designation was "important" because it "mitigates many of the applicant's concerns and provides him safety and protection." Like Justice Norris found in *Bawazir v Canada (Citizenship and Immigration)*, 2019 FC 623, "the officer did not consider that [the applicant] had no choice but to leave Canada … [for the country where an ADR is in place] if he wishes to apply for permanent residence unless an exception is made for him" (para 17). The Officer was required to consider the application before them currently and evaluate the applicant's hardship in having to apply for permanent residence from outside of the country. A number of subsequent cases have addressed this same problem, including *Elshafi v Canada (Citizenship and Immigration)*, 2023 FC 266 at paragraphs 27–31, *Younan v Canada (Citizenship and Immigration)*, 2022 FC 484 at paragraphs 12–15, *Al-Abayechi v Canada (Citizenship and Immigration)*, 2022 FC 873 at paragraphs 13–15, and *Ibrahim v Canada (Citizenship and Immigration)*, 2022 FC 1194 at paragraphs 32–35.

[6] The Respondent argues that this case can be distinguished from these other ADR cases because the Officer here actually considered the country conditions and found that the conditions were mitigated for reasons other than just the ADR in place. I do not agree.

[7] Following the ADR discussion, the Officer's consideration of the hardship of return is limited to stating that the Applicant is "likely able to re-establish himself in Libya successfully after the initial period of re-adjustment" because he lived there for a "significant portion of his life and speaks the native language" and that while they "accept that it would be a hardship for the applicant to return to a country that is undergoing a food crisis and has high levels of unemployment", that "these factors are mitigated by the applicant's newly acquired knowledge, skills and financial resources from employment and education in Canada." While it is true that the Officer discusses other factors that mitigate the applicant's hardship of return, this was not done in a meaningful way that actually grapples with what someone in Mr. Algazal's situation would face upon return; instead it reads as boilerplate statements disjointed from the real concerns raised by the application.

[8] Further, Mr. Algazal's medical condition which requires MRIs three times a year was not adequately addressed either in the Officer's boilerplate analysis described above or in the separate section on Mr. Algazal's health condition. The Officer acknowledged in a section dedicated to Mr. Algazal's health condition that "many factors impose serious challenges to the public health sector [in Libya] such as the insufficiency of health information system, severe medical supply shortage, and the loss of health staff", but then notes that based on the evidence before them, "it is likely that … [the applicant] may be adequately treated during his stay in Canada."

[9] There is no consideration of the medical treatment, if any, Mr. Algazal could receive in Libya, a factor he raised in his application. It is not clear from the Officer's reasons why this was

not addressed. This reasoning appears, though not explicitly stated in the health condition section, to again be based on the view that the hardship of the conditions in Libya is mitigated by the ADR that is in place. In any case, the failure to address this critical issue is another basis on which the decision is unreasonable.

[10] The application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-3160-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of IRCC dated February 21, 2023 is set aside and sent to a different decision-maker for redetermination; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3160-23
STYLE OF CAUSE:	ABDULMOULLA S ABDULMOULLA ALGAZAL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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