Date: 20080110

Docket:IMM-371-07

Citation: 2008 FC 37

Edmonton, Alberta, January 10, 2008

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

RIAD ABOU ALWAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Riad Abou Alwan seeks judicial review of a negative decision in relation to his application for an Humanitarian and Compassionate exemption, asserting that the immigration officer erred in her assessment of the best interests of his Canadian-born child, and in failing to provide him with an oral interview.

[2] For the reasons that follow, I find that the officer's decision was reasonable, in light of the evidence before her. I am also satisfied that the fact that Mr. Alwan was not interviewed in

connection with his application did not amount to a denial of procedural fairness. Accordingly, his application for judicial review will be dismissed.

Background

[3] Mr. Alwan is a Lebanese citizen whose refugee claim was refused on the basis that he was excluded under Article 1(F) of the Refugee Convention, because of his membership in the South Lebanese Army between 1991 and 1999.

[4] After his arrival in Canada, Mr. Alwan married a Canadian citizen. The couple subsequently had a daughter. Tragically, the child suffered a serious head injury when she was very young. As a result, she has a shunt that drains fluid from her head.

[5] Mr. Alwan's marriage has broken down, and he is the sole caregiver for his daughter, as her mother is not involved in the child's life to any significant extent. However, Mr. Alwan has two siblings living in Canada, and his brother and sister-in-law have been actively involved in the child's life, assisting in her care, particularly when his employment as a truck driver takes him away from home.

Standard of Review

[6] There is no dispute between the parties that the general standard of review governing decisions of immigration officers in relation to H&C applications is that of reasonableness *simpliciter*: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

[7] That is, the decision must be able to withstand a "somewhat probing examination": *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748.

[8] Insofar as Mr. Alwan's procedural fairness argument is concerned, it is for the Court to determine whether the procedure that was followed in a given case was fair or not, having regard to all of the relevant circumstances: *Sketchley v. Canada (Attorney General)*, [2005] F.C.J. No. 2056, 2005 FCA 404, at ¶ 52-53.

The Officer's Failure to Accord Mr. Alwan an Interview

[9] The immigration officer initially scheduled an interview for Mr. Alwan in connection with his H&C application. Through inadvertence, Mr. Alwan failed to attend at the scheduled time. The immigration officer then contacted Mr. Alwan's counsel, and advised that she would afford Mr. Alwan an opportunity to make whatever additional submissions in writing that he deemed appropriate, prior to the officer making her decision.

[10] Mr. Alwan took the officer up on this offer, and further written submissions were provided.

[11] Mr. Alwan now argues that he was denied procedural fairness in the processing of his application by reason of the failure of the officer to conduct an oral interview.

[12] H&C applicants do not have a right to an interview. While an interview was initially scheduled in this case, neither Mr. Alwan nor his counsel asked to have the interview rescheduled

after Mr. Alwan failed to attend at the appointed time. Moreover, neither Mr. Alwan nor his counsel objected when the officer advised that she would decide the application without an interview, after affording Mr. Alwan the chance to make further written submissions.

[13] Where a party is of the view that a procedure to be followed by a decision-maker is procedurally unfair, that party is obliged to raise his or her objection at the earliest practicable opportunity: see *Yassine v. Canada (Minister of Citizenship and Immigration)* (1994), 172 N.R. 308 at ¶ 7 (F.C.A.).

[14] Having failed to do so here, Mr. Alwan has waived his right to object to the process that was followed in this case.

[15] That said, even if his fairness issue was being raised in a timely manner, I would still have dismissed his argument.

[16] In this regard, I would note that the immigration officer made no negative credibility findings in relation to Mr. Alwan's application, which could have triggered a duty on the officer to conduct an interview.

[17] Moreover, Mr. Alwan has not pointed to any evidence or information that he was unable to put before the officer to have considered in connection with his application. Nor has he pointed to any findings of fact made by the officer that were incorrect.

The Best Interests of the Child

[18] Mr. Alwan's remaining arguments relate to the officer's assessment of the best interests of his child.

[19] There is no evidence to support Mr. Alwan's argument that the officer's analysis was "results-driven", and that her entire analysis "was designed only to buttress the ultimate conclusion that [the officer] want[ed] to reach".

[20] Indeed a review of the officer's analysis discloses that she carefully considered each of the arguments advanced by Mr. Alwan with respect to his child's interests, weighed the positive and negative factors raised by the application, and clearly explained why she came to the conclusion that she did. The fact that Mr. Alwan believes that the officer should have accorded more or less weight to various factors does not establish the existence of a reviewable error.

[21] Moreover, the law is clear that the burden is on applicants for H&C exemptions to establish the facts on which their claims for an exemption rest: see *Owusu v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 158; 2004 FCA 38. As such, the officer cannot be faulted for finding that Mr. Alwan had not established that adequate medical care would not be available for his daughter in Lebanon.

Conclusion

[22] For these reasons, the application for judicial review is dismissed.

Certification

[23] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Anne Mactavish"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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