Federal Court  Cour fédérale

Date: 20091222

Docket: IMM-2556-09

Citation: 2009 FC 1300

Ottawa, Ontario, December 22, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

SHARAN PAUL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Mr. Sharan Paul, is a Hindu citizen of Bangladesh. He arrived in Canada in August 2002, with a student visa. Prior to his departure from Bangladesh, the Applicant allegedly began a relationship with the daughter of a powerful Muslim man. He returned to Bangladesh in 2003 and 2004 and, he submits, continued his relationship with this woman. The Applicant returned to Canada and made a refugee claim on August 27, 2004 based on persecution from his girlfriend's Muslim family. In a decision dated August 18, 2005, the Refugee Protection Division (RPD) of the Immigration and Refugee Board rejected the claim on the basis that the Applicant was not credible.

[2] In December 2006, the Applicant submitted an application for a pre-removal risk assessment (PRRA) and, in August 2007, he submitted an application for permanent residence from within Canada, pursuant to s. 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*), on humanitarian and compassionate (H&C) grounds. Both these applications were dismissed in two decisions made by the same pre-removal risk assessment officer (the PRRA Officer). The Applicant has sought judicial review of both decisions. The PRRA decision is considered by this Court in Court File No. IMM-2558-09 and the application for judicial review has been dismissed. The following constitutes my reasons for dismissing the application for judicial review of the negative H&C decision.

[3] Having determined that the judicial review of the PRRA decision should be dismissed, the sole issue raised by this application is whether the Officer erred by applying the wrong test for assessing risk.

[4] While the overall decision of the Officer is reviewable on a standard of reasonableness, the issue of whether the Officer applied the correct test is a question of law reviewable on a standard of correctness (see *Ramotar v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 362, [2009] F.C.J. No. 472 at para. 12 (*Ramotar*); *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paras. 47 and 50).

[5] In an assessment of an H&C application, the deciding officer must determine whether there is sufficient evidence to show that an applicant would face unusual, undeserved or disproportionate hardship in obtaining a permanent resident visa from outside Canada. Thus, the

factual basis of a PRRA and H&C application may be the same in respect of risk. However, in the context of an H&C application, the decision-maker is required to consider whether a return to the country of origin to apply for permanent residence would constitute unusual, undeserved or disproportionate hardship. Although this test is not set out in the words of s. 25 of *IRPA*, it is well established in the jurisprudence (see *Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 646, [2008] F.C.J. No. 814 at para. 37; *Ramotar*, above, at para. 13; *Pinter v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 296, 44 Imm. L.R. (3d) 118 at para. 3).

[6] In this case, it is clear from the reasons that the Officer recognized that a different test applied for H&C considerations:

> Risk analysis in an H&C application is based on criteria that are quite different from those assessed by the RPD. We must be satisfied that there is an objectively identifiable personalized risk to the applicant's life or safety and that it results in unusual and underserved or disproportionate hardship for the applicant.

[7] The Applicant points out that the PRRA Officer concluded that the Applicant indeed faces a generalized risk faced by Hindu citizens of Bangladesh. He argues that, while a determination of risk under s. 97 of *IRPA* requires a personalized risk, risk assessed as part of an H&C application is not so limited. In other words, the Applicant submits that unusual, undeserved or disproportionate hardship can be found even where the risk to a person is generalized.

[8] I acknowledge a generalized risk <u>can</u> lead to a determination that a person would suffer unusual, undeserved or disproportionate hardship. However, recent jurisprudence of this Court

has indicated that there must be something more to a person's allegation of risk than a generalized risk. The decision of Justice Harrington in *Chand v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 964, [2009] F.C.J. No. 1175 is illustrative. In *Chand*, Justice Harrington was considering a negative H&C decision for a family from Guyana who claimed that they would be subject to the generalized risk faced by all persons of Indo-Guyanese ethnicity. At paragraph 6, Justice Harrington stated:

> [T]he point the officer made, which was quite reasonable, is that there are a great many victims of crime in Guyana and if, as country reports indicate, abuses are rampant in the schools, the Chands would not find themselves in an unusual situation. They should not be in a better position because they left Guyana, while others had to stay behind. As stated in [*Ramotar*, above], it is not enough to be a likely victim of generalized crime. <u>There must be something more.</u> [Emphasis added.]

[9] In this case, because the Applicant's allegations of personalized risk were rejected, all that remained was his generalized risk as a member of the Hindu minority in Bangladesh. With respect to the generalized risk, in the words of the PRRA Officer: "Even though there are human rights problems in Bangladesh, I conclude that he did not demonstrate that the risk could result in unusual and undeserved or disproportionate hardship in his case".

[10] In sum, the Officer weighed all factors (alleged risk, establishment, family factors) to find that "the hardship which he could face is not unusual and underserved or disproportionate". I am not persuaded that there is a reviewable error.

[11] For these reasons, the application for judicial review will be dismissed.

[12] Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for leave and judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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