Federal Court  Cour fédérale

Date: 20110928

Docket: IMM-7215-10

Citation: 2011 FC 1111

Ottawa, Ontario, September 28, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

JORGE ENRIQUE JURADO TOBAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks to set aside a decision of an Immigration Officer at Citizenship and Immigration Canada (CIC), refusing the applicant's application under section 25 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*) for permanent residency on humanitarian and compassionate (H&C) grounds. The CIC Immigration Officer (the Officer) found that the applicant would not face unusual, undeserved or disproportionate hardship by having to apply for a permanent resident visa outside of Canada. For the reasons that follow, this application for judicial review is dismissed.

[2] The applicant is a 59-year old citizen of Ecuador. He was at one time a Canadian permanent resident, but in 1996 returned to Ecuador to pursue his business interests. In consequence, he lost his permanent residency status. In July 2006, over a decade later, he returned to Canada to look after his ailing mother, then a Canadian citizen, who died in March 2010. When in Canada, he resumed his relationship with his daughter, a Canadian citizen, and with his son's Canadian children—his grandchildren. The applicant currently lives with his sister, also a Canadian. Consistent with the condition of his visitor's visa, he has not worked while in Canada. He has apparently depleted his savings of $2,000 USD and in his application notes that he sold some personal belongings and his business in Ecuador. In Ecuador he had a "relatively comfortable existence" working as a plant chief and also earning income from a rented room in his home. Given the opportunity to stay in Canada he asserts that he would work as a heating and cooling technician, or as an aircraft mechanic.

[3] In the November 30, 2010 decision rejecting his application, the Visa Officer wrote:

> The applicant bear [sic] the onus of satisfying the decision-maker that his personal circumstances are such that the hardship of having to obtain a permanent resident visa from outside Canada in the normal manner would be i) unusual and undeserved or ii) disproportionate.
>
> …
>
> After a careful review of the file as a whole, I am not of the opinion that to request the applicant to apply for permanent residence in the usual manner would amount to hardships that was not anticipated by the Immigration & Refugee Protection Act (IRPA) and resulted from circumstances beyond the client's personal control. Based on the evidence currently before me, I am also not satisfied that the hardships associated with submitting an overseas application as

> required under the Act would have a disproportionate impact due to the applicant's personal circumstances.
>
> I am not of the opinion that sufficient humanitarian and compassionate grounds exist to justify this exemption request.

[4] It is well-settled that the grant of an H&C application is reserved for exceptional cases. As well, given the highly discretionary element in an H&C decision, significant deference is afforded by this Court to the decision and a wider scope of possible reasonable outcomes may be present: *Inneh v Canada (Citizenship and Immigration)*, 2009 FC 108 at para 13; and *Del Melo Gomes v Canada (Citizenship and Immigration)*, 2009 FC 98 at para 9. To succeed on judicial review, an applicant must demonstrate that the officer either ignored or misconstrued evidence, or made a reviewable error in the analysis of factors relevant to the discretion.

[5] The thrust of this application, however, is that the Officer's reasons for refusing the H&C application fail to disclose the analysis and balancing of factors required by section 25 of the *IRPA*. Put more colloquially, it is said that the Officer failed to come to terms with the substance of the application and resorted to conclusionary statements. The applicant argues that the reasons, while tracking and listing factors relevant to the exercise of discretion, and identifying certain relevant facts, fails to engage in the analysis necessary for the reasons to cross the threshold of sufficiency. In consequence, the reasons are said to consist of a number of conclusionary statements and assumptions. Moreover, counsel contends that the analysis is devoid of the balancing of factors inherent to any H&C decision and reflects neither a humanitarian nor compassionate perspective essential to the proper consideration of any H&C application.

[6] The Officer's reasons indeed address the substance of the H&C application. They note and applaud the reasons why the applicant came to Canada, they note the development of his relationships with his Canadian grandchildren, but balanced against this the fact that he is a grandparent, and not a care-giver to these children. The reasons note the paucity of facts or evidence concerning the relationship which would elevate removal to hardship beyond that usually suffered as a consequence of removal. The Officer acknowledged the difficulty of separation but considered that the existence of other means of remaining in touch with the grandchildren, although admittedly less preferable, were available. The Officer also notes the continued existence of a residence and family ties in Ecuador—a son.

[7] In sum, the Officer reasonably concluded that, in-so-far as the family relationships were concerned, they did not exceed the usual hardships associated with removal. This conclusion falls within the range of reasonable possible outcomes, particularly when considered in light of the purpose of section 25 of the *IRPA*, which is to provide for exceptional and compelling circumstances. As noted by this Court in *Irimie v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1906 at para 26, the H&C process is not an *ex post facto* screening device which circumvents or supplants the usual process established by the *IRPA*. Nor are H&C officers required to reach a decision that is the most beneficial to children, in this case, the grand-children; rather, the officer must simply be alive to their interests: *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1041.

[8] I turn now to the second branch of the applicant's argument, namely the failure to consider the applicant's personal situation. It is said that the applicant, at the age of 56, divested himself of

most his assets, sold his business and came to Canada to look after his ailing mother. In consequence, she remained in her home and was not a burden to the public health care system. The applicant's visitor visa was renewed four times and in consequence, he is now 60 and claims he has no meaningful prospects of employment in Ecuador.

[9] The Officer was not satisfied, on the evidence, that the applicant would face undue economic hardships if he returned to Ecuador:

> … little evidence was provided to demonstrate that he could not be financially independent in Ecuador in the event that he is required to apply for permanent residence from outside of Canada as stated in the Act. It was mentioned that the applicant is currently renting one room out of his residence in Ecuador which generate enough revenue to maintain the whole house. It is reasonable to assume that the applicant could still reside there if he chooses to in the event he is required to apply in the regular fashion.

[10] It may not be the most economically advantageous situation for the applicant, but the Officer considered the fact that the applicant had a home and some form of residual income available to him on return.

[11] While there are facts in support of the applicant and a different outcome is possible, H&C decisions are highly discretionary. The focus of this Court's inquiry is to ensure that the reasons which underlie the decision demonstrate justification, transparency and intelligibility. The reasons why the applicant's situation was not accepted as surpassing the usual hardships of removal are clear and coherent. The Officer noted the competing considerations and grasped the essence of the H&C submission. The fact that, in balancing the considerations, a different and more charitable

decision could have been reached does not render this decision unreasonable. The reasons are not mere conclusions, but in fact reflect a balanced consideration of the relevant factors.

[12] The application for judicial review is dismissed.

[13] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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