Federal Court  Cour fédérale

Date: 20120601

Docket: IMM-7573-11

Citation: 2012 FC 675

Toronto, Ontario, June 1, 2012

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

KRISHNA AUROBINDO WILLIAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of an Immigration Officer [the Officer] dated August 31, 2011 in which the Officer denied the applicant's request for permanent residence from within Canada based on humanitarian and compassionate [H&C] grounds.

BACKGROUND FACTS

[2] The applicant Krishna Aurobindo William is a citizen of St. Lucia born on June 2, 1986. He arrived in Canada on September 4, 2004 with a student visa. At the time of his arrival, he was 18 years old and was accompanied by his legal guardian, Narcisse Francis [Francis], who was a pastor.

[3] Francis had been the applicant's guardian for some time before they came to Canada. During that time, both in St. Lucia and after coming to Canada, he abused the applicant both physically and sexually. Francis was charged with assault on October 25, 2004; he pled guilty on December 10, 2004 and received an absolute discharge. Around the same time, the applicant told the Church about the abuse and that Francis was gay. Francis returned to St. Lucia in disgrace.

[4] The applicant made a refugee claim on November 30, 2004, alleging that he fears retribution from Francis and his family; a removal order was issued against him on the same day. His claim was refused on January 11, 2006; the Board determined that the applicant had used the fact of the assault to fabricate a refugee claim. His application for judicial review of the Board's decision was dismissed on April 24, 2006.

[5] The applicant subsequently made the H&C application. He also applied for a Pre-Removal Risk Assessment [PRRA]. The PRRA was refused on August 26, 2011 and the H&C on August 31, 2011.

[6] The applicant initially sought to challenge both the H&C decision and the PRRA in this application for judicial review. Pursuant to the Order of my colleague Justice Campbell dated December 14, 2011, the application was amended to challenge only the H&C decision. The Order also stayed the applicant's removal from Canada pending the resolution of this application.

THE DECISION UNDER REVIEW

[7] The Officer reviewed the evidence of the applicant's establishment in Canada, and found that it weighed in favour of a positive decision. However, the Officer noted that this establishment, for the most part, took place after the removal order was issued, and that the applicant therefore established himself in Canada knowing that his status was uncertain.

[8] The Officer considered the applicant's ties to St. Lucia and noted that he has three sisters currently living there. The Officer found that the applicant had not demonstrated that he would be unable to find work or housing if he returned to St. Lucia. The Officer also considered the applicant's common-law spouse in Canada, but noted that the two began their relationship knowing that the applicant was subject to a removal order and that they could be separated for a period of time.

[9] The Officer acknowledged that it would be in the interest of the applicant's Canadian child to grant the application. However, he also found that the child's primary caregiver was his mother, and that the applicant had not shown that the child's needs would not be met if he was removed

from Canada. The Officer also found insufficient evidence that the applicant could not care for his son in St. Lucia if the parents decided that the child should go with his father.

[10] Finally, the Officer considered the risk of retribution by Francis or his family. While he acknowledged the police report describing attacks against the applicant's family in 2008, the Officer relied on the Board's decision in the refugee claim, as well as evidence that there was adequate state protection if there really was a threat to the applicant.

[11] The Officer therefore found that there was insufficient evidence to establish unusual and undeserved or disproportionate hardship.

[12] H&C applications are reviewable on the reasonableness standard (see *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360 at para 18).

IS THE DECISION REASONABLE?

[13] The applicant submits that the decision is unreasonable and that the Officer failed to consider his establishment in Canada or the best interests of his son. I disagree. In particular, he argues that the Officer applied the incorrect test in assessing the risk on his return, citing a number of cases about the different risk analyses required in H&C and PRRA applications.

[14] I disagree. The Officer considered the evidence the applicant provided and acknowledged that both his establishment in Canada and his Canadian son weighed in favour of granting the

application, but ultimately concluded that there was insufficient evidence that the applicant's removal would result in hardship. Although the applicant disagrees with this conclusion, he has not pointed to any specific evidence or information that was not considered.

[15] Neither has he demonstrated that the assessment of risk is flawed. The Officer's decision clearly demonstrates that she was aware of and applied the appropriate test: "Risk factors within an H&C application are not determined with the thresholds, standards, or criteria of a Pre-removal Risk Assessment. Rather, when risk is cited as a factor in an H&C application, it is more broadly evaluated in the context of the applicant's degree of hardship." I note as well that the risk alleged is the same as that in his refugee claim and PRRA, so the Officer cannot be faulted for considering the Board's decision in her assessment. I am therefore satisfied that the Officer did not commit a reviewable error in assessing the applicant's risk.

[16] The application for judicial review is therefore denied.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7573-11
STYLE OF CAUSE:	KRISHNA AUROBINDO WILLIAM V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Quebec
DATE OF HEARING:	May 31, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	TREMBLAY-LAMER J.
DATED:	June 1, 2012

APPEARANCES:

Sunny Vincent	FOR THE APPLICANT
Jocelyn Espejo Clarke	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sunny Vincent Barrister, Solicitor and Notary Public Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan, Deputy Attorney General of Canada Toronto, Ontario	FOR THE APPLICANT