Federal Court  Cour fédérale

Date: 20120828

Docket: IMM-480-12

Citation: 2012 FC 1020

Ottawa, Ontario, August 28, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

MOHAMMAD ANWARUL KABIR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Immigration Appeal Division (IAD) of the Immigration and Refugee Board, dated November 25, 2011. The IAD denied the appeal by the Applicant and sponsor, Mohammad Anwarul Kabir, of the refusal to issue a visa to his mother, Shamsunnahar Azim, since she suffers from chronic renal failure and is inadmissible to Canada on health grounds as being reasonably expected to cause excessive demands on health or social services under subsection 38(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

I. Background

[2] The Applicant arrived in Canada in 2000 and is now a citizen. He applied to bring his mother to the country in 2004, but a related medical examination revealed a diagnosis of "Renal Failure – Chronic". Mrs. Azim was given an opportunity to provide additional medical evidence and did so – this evidence indicated that her condition was presently stable.

[3] Following a review of this evidence, the medical officer and consequently the visa officer maintained that the Mrs. Azim had a health condition that might reasonably be expected to cause excessive demand on health services and refused her permanent residence visa application. The medical assessment relied on by the visa officer, for example, stated:

> Mrs. Azim requires ongoing assessment and management by specialists in the field of renal disease as well of hypertension. Further deterioration of her already impaired renal function will require access to specialized hospital facilities and services for diagnosis and treatment including pre-dialysis clinics and ultimately renal replacement therapy including dialysis and renal transplantation. These services are expensive and renal transplantation is in high demand with wait lists across Canada.

[4] Thereafter, the Applicant appealed the visa officer's decision. His appeal was, however, dismissed by the IAD. He now seeks the intervention of this Court by way of an application for judicial review.

II. Decision under Review

[5] The IAD found the visa officer's decision valid in law. It was persuaded that the medical officer took into account all documents submitted and it was reasonable for the visa officer to rely on the related medical assessment. Although the Applicant was willing to pay for treatment, if Mrs. Azim was allowed to immigrate to Canada that treatment would be available to her more or less without cost.

[6] Turning to humanitarian and compassionate (H&C) factors, the IAD acknowledged that while the stability of Mrs. Azim's current condition weighed in her favour, it was "diminished by the fact that the refusal in this case was not based on her current situation but rather on the expected deterioration in the next five to ten years of her kidney function given her age, hypertension and microproteinuria."

[7] The IAD specifically addressed the Applicant's establishment in Canada and ability to care for his mother, his sister's return to Bangladesh to assist in July 2011, his yearly visits, and their close knit family. At the same time, the Applicant and his siblings "made informed decisions regarding their lives without taking into consideration the possible consequences flowing from leaving" their mother in Bangladesh.

[8] Regarding the hardships of the visa refusal, the IAD stated:

> When I consider hardships, I look at *inter alia* the appellant's ability to visit; the applicant's family in Bangladesh and her current overall situation. I am persuaded that the applicant is well looked after. Based on the appellant's testimony, the applicant has regular follow

> ups and medical care in Bangladesh; she is financially stable; she has two brothers and a sister who all live in Bangladesh with whom she has contact; her children have been visiting her on a regular basis and her youngest son is still living in Bangladesh; even though he has applied for immigration, nothing has been finalized to date.

[9] In addition, the IAD did not consider the sojourn of the Applicant's sister in Bangladesh to care for their mother an undue hardship. The best interests of the Applicants' children to have Mrs. Azim in Canada full time weighed only minimally in favour of the Applicant. While Mrs. Azim would benefit from being in Canada with her son and possibly other children, there was no reason why she could not apply to visit Canada in the near future.

[10] The IAD ultimately concluded:

> While I am certain that my decision to dismiss the appeal will be a disappointment to the appellant, considering he is able to remain in close contact with the applicant and visit them fairly often, I am not of the view that by not allowing the applicant to come to Canada, he will suffer any undue hardships.

III. Issues

[11] This application raises the following issues:

(a) Did the IAD err by concluding that the visa officer's refusal was valid in law?

(b) Did the IAD err in finding that there were insufficient H&C factors to warrant relief?

IV. Standard of Review

[12] Assessments by the IAD in this regard deserve the deference afforded by the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paras 56-58).

[13] Reasonableness is concerned with the existence of justification, transparency and intelligibility as well as whether the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

A. *Validity of Refusal*

[14] The Applicant insists that the IAD did not take into account the totality of the evidence before upholding the visa officer's conclusion that his mother would reasonably be expected to cause excessive demand on health services contrary to subsection 38(1)(c) of the IRPA. He points to some additional medical evidence presented that her condition has been stable for the last 10-12 years; she is on conservative management through diet control rather than medication; and does not require renal replacement therapy at the moment.

[15] I am not persuaded, however, that evidence was ignored by the medical officer in preparing a report and the visa officer's subsequent determination of inadmissibility on health grounds. Based on the totality of this evidence, it was reasonable for the IAD to find that the conclusion in this regard is valid in law.

[16] As the Respondent stresses, although Mrs. Azim's current condition is seen as stable, the issue for the IAD was that the medical officer recognized a loss of kidney function due to aging, as well as hypertension and microproteinuria, may not be reached for another five to ten years. This would support the conclusion that she would reasonably be expected to cause excess demand on health services in the future.

[17] Similarly, the Applicant's suggestion that he would undertake to pay for health services for the next the five to ten years would not be enforceable according to prior jurisprudence by this Court (*Jafarian v Canada (Minister of Citizenship and Immigration)*, 2010 FC 40, [2010] FCJ no 332 at para 25).

[18] As a consequence, the Applicant has not demonstrated that the IAD somehow ignored the relevant evidence, but merely that he disagrees with the ultimate weighing and conclusion. This is not a valid basis for the Court's intervention where there is sufficient justification, transparency and intelligibility to support the conclusion that it was legally valid to find the Applicant's health condition would lead to concerns based on subsection 38(1)(c) (*Dunsmuir*, above).

B. *H&C Factors*

[19] The Applicant contends that the IAD acknowledges all of the H&C factors but then erroneously concludes, without regard to the totality of the evidence, that these are insufficient to warrant relief. For example, he maintains that his mother will be unable to get a visa for visits due to the medical requirement. She is also financially dependent on him. He further suggests the analysis is unreasonable because it is inconsistent with a stated objective of IRPA to ensure the reunification of families.

[20] On my review of the IAD's reasoning, I fail to see that evidence was ignored or misinterpreted. The IAD directed its attention to relevant H&C factors as discussed in *Chirwa v Canada (Minister of Citizenship and Immigration)*, [1970] IABD No 1. The weighing of the evidence by the IAD, as the Applicant attempts to critique, is not the role of this Court on judicial review (*Khosa*, above). As in this case, as long as the conclusion falls within the range of possible, acceptable outcomes or, put another way, demonstrates sufficient justification, transparency and intelligibility, it is not for me to interfere in the overall determination (*Dunsmuir*, above).

[21] The IAD simply found, after balancing all of the H&C factors before it, that although the situation of the Applicant's family was a sympathetic one, there were no undue hardships of not granting relief. The IAD referred to the stability of her current condition and strong family ties. It nonetheless balanced this against her expected deterioration and the possibility of visits to Canada and the ability of family members to travel to Bangladesh to assist her.

[22] The IAD is entitled to balance H&C factors, and consider such important aspects as the goal of family reunification, against issues associated with excessive demands on the health care system (see for example *Aleksic v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1285, [2010] FCJ no 1594 at paras 33-34). Although the Applicant may have expected that his family history and current circumstances would warrant a different conclusion, that alone is not sufficient to succeed on his application where the IAD balanced the relevant factors and justified its conclusion that these factors did not demonstrate the required level of hardship.

VI. Conclusion

[23] Since I consider the IAD's conclusions reasonable and reflective of the evidence presented in the circumstances, the application for judicial review is dismissed.

JUDGMENT

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

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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