Federal Court  Cour fédérale

Date: 20140626

Docket: IMM-11849-12

Citation: 2014 FC 621

Ottawa, Ontario, June 26, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

PARMINDER KAUR AMARINDER SINGH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] **UPON** an application for judicial review of a decision made by an Immigration Officer on October 18, 2012, whereby the Immigration Officer refused the applicant's application for permanent residence in Canada on the basis of humanitarian and compassionate grounds [H&C];

[2] **AND UPON** examining carefully the record presented by the parties in this judicial review application;

[3] **AND UPON** hearing the parties on June 19, 2014;

[4] For the reasons that follow, the judicial review application must be dismissed.

[5] This judicial review application, made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], must fail because the applicant was unable to discharge the burden that comes with a challenge of this nature. Basically, the applicant claims that her life in Canada is better than her life in her country of origin, India. However, such is not the burden.

[6] The IRPA is clear that the person who wants to become a permanent resident of this country must make her application before seeking to enter Canada. However, the IRPA provides that it is possible to make such an application from within Canada. It will be for the Minister to apply his discretion in finding that such a decision is justified "by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected."

[7] In the case at bar, the applicant very honourably states that she would want to stay in Canada where she has many family members and has been residing for many years now.

[8] Unfortunately, as already stated, such is not the test. There is considerable discretion in the Minister when considering whether or not an application under section 25 of the IRPA ought to succeed. The exercise of the discretion is reviewable on a standard of reasonableness

(*Okoloubu v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 326 [*Okoloubu*]), which carries a measure of deference towards the decision-maker. If there exists justification, transparency and intelligibility in the decision-making process, the decision will be considered reasonable, as long of course as it 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).

[9] Contrary to what was argued by Crown counsel, section 25 does not require that the circumstances not be anticipated by legislation. As found by the Court of Appeal in *Okoloubu*, the Minister, or his delegate, "is limited to deciding whether H&C considerations justify exempting the respondent from the strict application of permanent resident requirements, and not to decide the validity of a removal order issued against the respondent." (para 63)

[10] Actually, H&C considerations are not limited either to hardship. In *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 [*Agraira*] , the Court gave a brief summary of considerations under section 25, at paragraph 41:

> [41] … H&C considerations include such matters as children's rights, needs, and best interests; maintaining connections between family members; and averting the hardship a person would suffer on being sent to a place where he or she has no connections (see *Baker*, at paras. 67 and 72).

[11] On the other hand, it is the burden of the applicant to convince the Court that the exercise of discretion was unreasonable in the circumstances of her case. For that, the applicant resorts to the guidelines issued to Immigration officers in the exercise of the ministerial discretion in an attempt to argue that these have not been followed in this case. Guidelines are of a limited use.

Brown and Evans, in *Judicial Review of Administrative Action in Canada* (Brown and Evans, *Judicial Review of Administrative Action in Canada* (Toronto, On: Carswell, 2013) (loose-leaf updated 2014, release 1)), noted at para 12:4421:

> Nevertheless, valid guidelines and policies can be considered in the exercise of discretion, provided that the decision-maker puts his or her mind to the specific circumstances of the case. Indeed, a court may refer to guidelines issued to those entrusted with the exercise of discretion as an indication of the factors to be considered by the decision-maker and, perhaps, their relative weight, when reviewing a discretionary decision for unreasonableness.

[12] Guidelines can only be of limited use because they cannot fetter the discretion given by Parliament. In *Agraira*, the Court considered the guidelines in existence in that case because they "can be of assistance to the Court in understanding the Minister's implied interpretation of the "national interest"." (para 59)

[13] In my estimation, the applicant's argument boils down to a disagreement with the weight given by the decision-maker to the factors brought forward in her application under section 25. The weighing of the relevant factors continues to be the responsibility of the Minister (*Legault v Canada (Minister of Citizenship and Immigration)*, [2002] 4 FC 358, 2002 FCA 125, at para 11). The guidelines do not purport to say how the listed factors have to be applied and what weight they are to be given. That is for the decision-maker to exercise the discretion in a reasonable manner. The burden of showing that the decision made does not fall within a range of possible, acceptable outcomes has not been discharged.

[14] Counsel for the applicant very fairly resiled from the argument put forth in the application for leave and for judicial review that the decision-maker was biased or that there was a reasonable apprehension of bias.

[15] As a result, the application for judicial review is dismissed. There is no question to be certified.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed. There is no question to be certified.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11849-12
STYLE OF CAUSE:	PARMINDER KAUR AMARINDER SINGH v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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