Federal Court  Cour fédérale

Date: 20141024

Docket: IMM-4196-13

Citation: 2014 FC 1015

Ottawa, Ontario, October 24, 2014

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

ORLANDO THORPE GORDON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of a decision of an Immigration Project Manager (the Manager) to refuse a request under subsection 11(1) of the *Immigration and Refugee Protection Act* (the *Act*) for an authorization to return to Canada (ARC) pursuant to subsection 52(1) of the *Act*.

[2] The ARC was required because the Applicant was seeking permanent residence in Canada, and his departure from Canada in 2009 had been the result of enforcement of a removal order. The removal order had been issued following the Applicant's failure to appear for removal as originally scheduled earlier in 2009.

[3] My decision turns on whether the Manager failed to observe procedural fairness by failing to provide written reasons for refusing the Applicant's request for an ARC. I will also address submissions made at the hearing of this application as to the unreasonableness of the Manager's decision.

II. Delay in providing reasons

[4] It is not disputed that the Manager's letter dated April 25, 2013 communicating her refusal did not provide reasons. The Applicant noted this omission in his Application for Leave and for Judicial Review commencing the present proceeding.

[5] Pursuant to Subsection 9(1) of the *Federal Courts Immigration and Refugee Protection Rules* (the *Rules*), the Registry of this Court requested that the reasons be provided if they exist. Subsection 9(2) of the *Rules* provides that the tribunal shall provide the reasons without delay. In response, the Respondent provided a letter dated July 2, 2013 to which was attached Global Case Management System (GCMS) notes related to the Applicant's application for permanent residence. It is not disputed that these GCMS notes also did not contain reasons for the refusal to grant the ARC. Therefore, it appears that the Respondent failed to comply with subsection 9(2) of the *Rules*.

[6] The reason that the July 2, 2013 letter did not include reasons is unclear. At the hearing, Respondent's counsel indicated that it was the result of inadvertence caused by the fact that the request for an ARC and the application for permanent residence were dealt with by the Respondent under different file numbers. Apparently, the GCMS notes provided on July 2, 2013, omitted other notes created in relation to the request for an ARC. I note that the Respondent has provided no evidence that the failure to provide the ARC notes was actually inadvertent, and its counsel's submissions to that effect cannot be treated as evidence. The Applicant argues that the failure to provide reasons with either the April 25, 2013 letter or the July 2, 2013 letter suggests that they were being deliberately hidden.

[7] There is evidence that the ARC matter and the permanent residence application matter were indeed dealt with under different file numbers within the Ministry of Citizenship and Immigration (see the Affidavit of the Manager, Carol McKinney). Also, I have no direct reason to believe that the failure to provide reasons was deliberate or that the Respondent acted in bad faith. The Applicant did not cross-examine Ms. McKinney on her affidavit. The failure to provide reasons with the July 2, 2013 letter shows at least surprising carelessness, but I will presume that the Respondent acted in good faith.

[8] The Respondent eventually provided reasons for the refusal to grant the ARC, but only upon filing its Record on August 27, 2013. The reasons are in the form of other GCMS notes under the ARC matter. The relevant entry reads as follows:

> I have considered the merits of the request for authorization to return to Canada. I would note that this applicant was wanted for enquiry in 1991 and did not come to our attention again until 2006. He had to have known that he was in Canada illegally and in

> violation of immigration laws. I would further note his very serious decision in failing to appear for his deportation in 2009. I am not satisfied with the explanation provided as to why he failed to appear given it is entirely self-serving. This applicant does not have ties to Canada that I consider compelling, his immediate family members reside in his country of origin and his application as a member of the family class is refused. His only weak tie to Canada is arranged employment which I do not find overcomes the negative factors stated above. Overall I am not satisfied that this applicant should be authorized to return to Canada. Refused.

[9] The Applicant argues that these other GCMS notes should not be treated as reasons because they were not provided to the Applicant either with the original decision or as required under section 9 of the *Rules*. They were produced only after the Applicant had already filed his Memorandum of Argument in this proceeding pointing out the continued failure of the Respondent to provide reasons.

[10] The Applicant argues that one of the purposes of the requirement to provide reasons is to permit a party to assess possible grounds for review of the related decision. In this case, the Applicant did not have that opportunity because the reasons were not provided until after the Applicant had devoted the efforts to, and incurred the expense of, commencing the present application and providing a written argument in support of his position.

[11] The Respondent notes that the delay in providing reasons did not deprive the Applicant of the opportunity to respond thereto. He had the right to address the adequacy (or inadequacy) of the reasons in additional written submissions after receiving them. He chose not to do so. Any prejudice the Applicant might have suffered from the late production of the reasons could have been addressed in costs. However, since production of the reasons does not appear to have

prompted the Applicant to alter his position in any way, I don't believe he has suffered any prejudice.

[12] In my view, the Applicant was not deprived of procedural fairness by the delay in receiving reasons for the Manager's decision.

III. Submissions on the unreasonableness of the decision

[13] At the hearing of the application, Applicant's counsel made, for the first time, detailed submissions going to the unreasonableness of the Manager's decision in light of the reasons produced in August 2013. These submissions dealt with (i) the circumstances that led to the issuance of the removal order in 2009 that gave rise to the need for an ARC; (ii) support letters produced by the Applicant in support of his application for permanent residency in Canada; (iii) the fact that he had employment in Canada arranged; and (iv) the fact that he had met all of the other requirements to obtain permanent resident status in Canada. Applicant's counsel argued that, in light of all this, the decision to refuse the ARC was unreasonable.

[14] For its part, the Respondent objected to these submissions arguing that they should have been included in the Applicant's written submissions. The Respondent argued that it did not have an adequate opportunity to prepare a response to the Applicant's new arguments. The Applicant replied that his arguments concerning the unreasonableness of the Manager's decision were included, in general terms, in his Application for Leave and for Judicial Review, and therefore the Respondent was given adequate notice of the Applicant's position.

[15] I am inclined to side with the Respondent on this issue. The Applicant's submissions on the unreasonableness of the Manager's decision went well beyond anything provided in writing before the hearing, and the Respondent could not be expected to respond adequately to these submissions at the hearing.

[16] However, even if I were to consider these submissions by the Applicant, I am satisfied that:

(i) there is nothing unreasonable in the reasoning cited by the Manager to reach her decision; and

(ii) though the standard of review for procedural fairness is correctness, the standard of review of the Manager's decision to refuse the ARC is reasonableness and I must show considerable deference to that decision (*Umlani v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1373, at para 60).

[17] I am also satisfied that the reasons produced as GCMS notes are adequately detailed. The Manager was not obliged to explicitly address all of the issues raised by the Applicant. The Applicant notes that the Manager misstated the facts when she stated that the Applicant "did not come to our attention again until 2006". In fact, the Applicant made an application for permanent residency on humanitarian and compassionate grounds in 2003. In my view, this discrepancy is not of sufficient importance to displace or seriously impair the Manager's decision.

IV. Conclusion

[18] For the foregoing reasons, I dismiss the present application. The parties are agreed that there is no serious question of general importance to be certified.

ORDER

THIS COURT ORDERS that:

1. The present application for judicial review is dismissed;

2. No serious question of general importance is certified.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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