Federal Court  Cour fédérale

Date: 20141125

Docket: IMM-4327-13

Citation: 2014 FC 1137

Ottawa, Ontario, November 25, 2014

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

SWARNJIT SINGH SIDHU

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of India, who came to Canada in 2003 as a member of the Family Class. In 2010, the Immigration Division found him inadmissible for misrepresentation and revoked his permanent resident status. He appealed to the Immigration Appeal Division

(IAD), which dismissed his appeal. The Federal Court denied him leave to appeal the IAD's decision.

[2] In February 2013, the Applicant submitted a PRRA application, claiming a fear of returning to India as a non-resident Indian (NRI) who was wealthy and would be perceived as such. The Officer noted that the Applicant had a house worth $200,000, which he would need to sell and take those proceeds back to India. The Applicant submitted several internet articles relating to the murders of wealthy NRIs.

II. **Issue**

[3] This matter raises the following issue:

1. Was the Officer's decision reasonable?

III. **Decision**

[4] The Officer rejected the Applicant's PRRA application, in which the Applicant claimed a fear of returning to India on the basis that many NRIs are killed or kidnapped for money.

[5] The Officer started by noting that she was excluding statements and evidence related to (i) establishment in Canada and (ii) the IAD's decision, as both of these matters fell outside the scope of a PRRA review.

[6] The Officer analyzed the news articles submitted by the Applicant and the websites from which they were drawn, and found that the Applicant had provided insufficient objective evidence to indicate that he would be at risk upon returning to India. The Officer placed low weight and low probative value on the articles, and found that the articles failed to provide enough information to demonstrate a link to the Applicant's personalized risks.

[7] Finally, the Officer considered publicly available country condition evidence. She concluded that the Indian government generally accepted the rights of individuals to repatriate to India and made positive findings regarding the government's ability to protect its citizens.

[8] The Officer concluded that the Applicant had adduced insufficient corroborative evidence to demonstrate that he faced a personalized, forward-looking risk upon returning to India. She determined that on the basis of all the evidence before her, there was no nexus to any Convention ground, and no serious possibility that the Applicant would suffer persecution under section 96 or be subject to a risk or danger under section 97.

IV. **Submissions of the Parties**

[9] The Applicant submits that the Officer erred in the following ways:

A. The Officer ignored and unreasonably gave little weight to the documentary evidence submitted by the Applicant. Specifically, the Officer's failure to reveal the research she conducted in reaching her conclusion that the websites were not credible renders the Decision unreviewable, robbing it of intelligibility and transparency.

B. The Officer failed to conduct a risk assessment in relation to the specific risk alleged, because her entire analysis focused on whether the Indian government allowed freedom of movement and allowed citizens abroad to return, which was entirely unrelated to the risk asserted by the Applicant. An analysis of state protection can only take place in relation to a specific type of individual and specific type of harm.

[10] The Respondent submits that there is no reasonable interpretation of the evidence that could lead one to conclude that NRIs have a well-founded fear of persecution and that state protection is inadequate. The evidence is deficient. With respect to the Applicant's submissions above, the Respondent submits that:

A. The Officer referenced the Applicant's documentary evidence, but found it insufficient to support the alleged risk of persecution. The Officer also had concerns about the reliability of the websites from which the Applicant obtained the articles.

B. The Officer then reviewed the section of the U.S. Department of State Report (US DOS Report) that discussed repatriation to India. If the problems alleged by the Applicant were as pervasive as he alleged, they would have been found in this section.

[11] The Applicant argues that the Respondent's submissions are an attempt to provide new reasons that are not found in the decision. *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*NL Nurses*] invites courts to

supplement the reasons, not to re-cast them (*Pathmanathan v MCI*, 2013 FC 353 at para 28). Further, the Applicant argues that just as the Court of Appeal found in *Lemus v MCI*, 2014 FCA 114 at paras 27-38, this Court should favour the approach discussed in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 in this kind of case.

V. **Standard of Review**

[12] Both parties agree, as do I, that PRRA decisions are reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 62; *Chekroun v MCI*, 2013 FC 737 at para 36). In a reasonableness review, the Court is concerned with the existence of justification, transparency and intelligibility within the decision-making process, as well as with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[13] As inadequate reasons are no longer an independent ground on which a reviewing court can quash a decision, the Court should only intervene if, when the reasons provided are read in the context of the entire record, the decision falls outside of the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*NL Nurses*, above, at para 14).

[14] Certainly, deference is not a blank cheque, and there must be "reasoned reasons" leading to a justifiable finding (*Giron v MCI*, 2013 FC 7 at para 15, citing *Njeri v MCI*, 2009 FC 291 at para 12). However, the Supreme Court of Canada has directed reviewing courts to review the reasons together with the outcome, and to pay respectful attention to the reasons that "could be offered in support of a decision" (*Newfoundland Nurses* at paras 12, 14; *Dunsmuir* at para 48).

[15] While this direction is not a "carte blanche to reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result" (*Alberta Teachers*, above, at para 54), it does allow the Court to look to the record in order to draw logical inferences that were implicit to the result but were not expressly drawn (*Komolafe v MCI*, 2013 FC 431 at paras 10-11).

VI. **Analysis**

[16] I do not agree with the Applicant that the Officer's decision was unreasonable, or that the reasons were inadequate.

[17] I acknowledge that the Officer, in undertaking research on the quality of the information provided, could have explained how she arrived at the conclusion that the websites and sources were "not credible, unbiased or objective", and how she came to the conclusion that "they post stories found from other random websites and those provided by the general audience" (Decision, Certified Tribunal Record, p 6). However, the Officer considered the US DOS Report and preferred it over the documents submitted by the Applicant. While it would have been preferable for her to detail how she determined that the sources presented were less reliable, the fact that she did not do so is not fatal to the decision.

[18] Ultimately, I agree with the Respondent that the Applicant's real complaints in this case are the weight given to the evidence and the sufficiency of the reasons. The Officer did not ignore the Applicant's claimed risk. Rather, she concluded that the Applicant had provided insufficient objective evidence to indicate that he would be at risk upon returning to India. Her

reasons were short, but in my view, quite sufficient. The Officer preferred the US DOS Report, which did not corroborate the fear claimed by the Applicant. In order for the Applicant to be successful, he would need to provide sufficient objective evidence that there is a serious possibility he would suffer either persecution under section 96, or a risk of cruel and unusual treatment or punishment under section 97. He did not do so.

[19] The test for reasonableness is a highly deferential one in the circumstances, and I find that the Officer's conclusions were well within the range of possible, acceptable outcomes. I do not feel that the reasons were inadequate: they covered the ground necessary to deal with the issues and the alleged risks.

VII. **Conclusion**

[20] The Applicant's counsel ably argued that the Officer's reasons lacked intelligibility and transparency. However, based on a review of the full record, I am not persuaded that the Officer erred in this case.

[21] No questions were raised for certification.

JUDGMENT

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

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

Docket:	IMM-4327-13
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APPEARANCES:

Anthony Navaneelan	FOR THE APPLICANT
Sybil Thompson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk and Kingwell LLP Migration Law Chambers Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT