Federal Court  Cour fédérale

Date: 20151104

Docket: IMM-2630-14

Citation: 2015 FC 1245

Toronto, Ontario, November 4, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ROOHUL AMIN SHAHZAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Roohul Amin Shahzad seeks judicial review of Citizenship and Immigration Canada's refusal of his application for permanent residence on inadmissibility grounds. An immigration officer concluded that Mr. Shahzad was a member of the Mohajir Quami Movement (MQM), an organization for which there are reasonable grounds to believe has engaged in terrorism. As a consequence, the officer found that Mr. Shahzad was inadmissible to Canada under subsection 34(1)(f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] Mr. Shahzad argues that he was treated unfairly in the inadmissibility process as he was never made aware of a change in CIC's policy regarding the processing of applications under section 34 of *IRPA* introduced through a May, 2013, Operational Bulletin. Mr. Shahzad has not, however, been able to demonstrate that he suffered any prejudice as a result of the change in policy. Consequently, his application for judicial review will be dismissed.

I. Background

[3] Mr. Shahzad is a citizen of Pakistan. He arrived in Canada on November 28, 2002, and claimed refugee protection upon arrival. Mr. Shahzad was granted refugee status in 2003, and he applied for permanent residency shortly thereafter. His application was approved in principle on September 1, 2004. Concerns subsequently arose as to Mr. Shahzad's admissibility, however, due to his admitted membership in the MQM, and Mr. Shahzad was afforded an opportunity to address those concerns.

[4] In 2009, a CIC officer made a preliminary determination that Mr. Shahzad was inadmissible to Canada pursuant to paragraph 34(1)(f) of *IRPA* for being a member of the MQM, an organization for which there are reasonable grounds to believe has been involved in terrorism. Mr. Shahzad was given notice of this determination on September 16, 2010, and he was advised that he could apply for Ministerial Relief from his inadmissibility under subsection 34(2) of *IRPA*. This letter said nothing about whether Mr. Shahzad's permanent residence application would be finally decided before or after his application for Ministerial Relief was decided.

[5] Mr. Shahzad applied for Ministerial Relief on October 8, 2010. At the time that Mr. Shahzad applied for Ministerial Relief, CIC's policy was to hold an application for

permanent residence in abeyance pending a decision in relation to an applicant's application for Ministerial Relief. This policy was not always followed, however: see for example, *Ali v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1174, [2005] 1 F.C.R. 485.

[6] In May of 2013, CIC introduced Operational Bulletin 524, which provides that applications for permanent residence would no longer be held in abeyance pending decisions on applications for Ministerial Relief. The respondent acknowledges that this Operational Bulletin was not publically available, and Mr. Shahzad argues that he was treated unfairly in relation to the paragraph 34(1)(f) inadmissibility process, as he was not made aware of CIC's change in policy.

[7] On March 14, 2014, Mr. Shahzad was advised that an immigration officer had finally determined that he was inadmissible to Canada under paragraph 34(1)(f) of IRPA, because of his membership in the MQM. Mr. Shahzad's application for Ministerial Relief remains outstanding.

II. Analysis

[8] Mr. Shahzad's arguments raise questions of procedural fairness. Where an issue of procedural fairness arises, the Court's task is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339.

[9] Mr. Shahzad submits that he was treated unfairly by CIC as the officer considering his application for permanent residence relied upon extrinsic evidence in the form of OB 524 in refusing his application. I do not accept this submission. A directive governing CIC's internal procedures is not evidence, extrinsic or otherwise.

[10] Mr. Shahzad also says it was unfair of the immigration officer considering his admissibility to Canada to make no reference to the humanitarian and compassionate considerations that he had put forward in relation to his application for permanent residence in finding him to be inadmissible to Canada. Mr. Shahzad has, however, conceded that H&C considerations are not relevant to a subsection 34(1) inadmissibility determination. There was no obligation on the immigration officer to expressly address irrelevant considerations, and no unfairness has thus been demonstrated in this regard.

[11] Mr. Shahzad further submits that he was treated unfairly because of the change that was made to section 25 of *IRPA* precluding the availability of H&C relief to someone who has been found to be inadmissible to Canada under subsection 34(1) of the Act. There is, however, no evidence to suggest that Mr. Shahzad ever brought an H&C application under section 25 of *IRPA*, nor could Mr. Shahzad explain how the introduction of CIC's 2013 policy change regarding the sequence in which decisions under the two parts of section 34 would be made had any bearing on his entitlement to relief under section 25 of the Act.

[12] As I noted in *Ali*, above at paras. 40-43, there were two components to the version of section 34 of *IRPA* that was in effect at the relevant time. When read in conjunction with section 33, subsection 34(1) required a CIC immigration officer to determine whether, amongst other things, there were reasonable grounds for believing that an applicant was a member of a terrorist organization. In contrast, subsection 34(2) contemplated that a different decision-maker - the Minister of Public Safety and Emergency Preparedness him- or herself - consider whether the foreign national's continued presence in Canada would be detrimental to the national interest.

[13] A subsection 34(2) inquiry was thus directed at a different issue than the inquiry contemplated by subsection 34(1) of *IRPA*. The issue for the Minister under subsection 34(2) was not the soundness of the officer's determination that there are reasonable grounds for believing that an applicant is a member of a terrorist organization. Rather, the Minister was mandated to consider whether, notwithstanding the applicant's membership in a terrorist organization, it would be detrimental to the national interest to allow the applicant to stay in Canada.

[14] In other words, subsection 34(2) of *IRPA* empowered the Minister to grant exceptional relief in the face of an inadmissibility finding that had already been made by an immigration officer. Nothing in section 34 of *IRPA* dictates whether a Ministerial Relief decision under subsection 34(2) should be made before an admissibility determination under subsection 34(1) or vice versa: *Hassanzadeh v Canada (Minister of Citizenship and Immigration)*, 2005 FC 902, at para. 25, [2005] 4 F.C.R. 430.

[15] The finding that Mr. Shahzad was inadmissible to Canada was made in 2010, and he was advised of the availability of the Ministerial Relief process at that time. No assurance was, however, given to him that if he were to make an application for Ministerial Relief, his application for permanent residence would be held in abeyance until such time as a decision was made in relation to his application for Ministerial Relief.

[16] More fundamentally, Mr. Shahzad has not been able to articulate how CIC's policy change resulted in any unfairness to him. In particular, he has not satisfactorily explained what, if anything, would be different if the Ministerial Relief decision were made before his permanent residence application was decided rather than after. Mr. Shahzad's outstanding application for

Ministerial Relief will continue to be processed, and there is nothing in the record before me suggesting that this application will be negatively affected by the fact that a decision has now been made refusing his application for permanent residence because of his inadmissibility to Canada.

III. Conclusion

[17] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

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

"Anne L. Mactavish"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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