Federal Court  Cour fédérale

Date: 20171222

Docket: IMM-2243-17

Citation: 2017 FC 1189

Ottawa, Ontario, December 22, 2017

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

CSABA OROSZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review by Csaba Orosz (the "Applicant") pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, c 27 ("IRPA"). The Applicant applied for permanent residence from within Canada on humanitarian and compassionate ("H&C") grounds, which was denied by a Senior Immigration Officer (the "Officer") by way of a decision (the "Decision") dated May 3, 2017. In denying the claim, the Officer considered two

H&C factors: establishment, and the risk of discrimination should the Applicant return to Hungary. The Officer found that the Applicant had "somewhat established himself in Canada" and gave this factor "some positive weight," but concluded that the Applicant did not provide sufficient evidence to demonstrate that he was of "sound financial management." With respect to discrimination, the Officer accepted that there is "prevalent discrimination" against the Roma in Hungary, but found that this discrimination could be mitigated through redress mechanisms, or that the Applicant could move to another European Union ("EU") country.

II. Preliminary Matter: Style of Cause

[2] It has been brought to my attention that the Respondent was incorrectly named in the leave application. The correct legal name of the Respondent is the Minister of Citizenship and Immigration and the style of cause of this case is amended to reflect as such.

III. Facts

[3] The Applicant is a 35 year old Hungarian citizen of the Roma ethnic group. He is single, has no children, and his parents are deceased. It appears that his sole immediate relative is his half-brother, Andras Sevaracs, who resides in Hungary.

[4] Having acquired an education in several trades, in 2009 the Applicant moved to Germany to work in the construction industry. He came to Canada in November 2011 as a visitor, and eventually settled in Calgary. He established a profitable construction and painting company, Baja Ltd., and has owned and operated this business since March 2012.

IV. Issues

[5] Two issues arise in this matter:

(1) Did the Officer err in assessing the Applicant's establishment in Canada?

(2) Did the Officer err in assessing whether the Applicant would suffer undue hardship should he be required to apply for permanent residence from outside Canada?

V. Analysis

A. *Standard of Review*

[6] The Officer's finding with respect to both establishment and hardship are reviewable upon a standard of reasonableness. As the Supreme Court of Canada explained in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 62, where the appropriate standard of review is established in jurisprudence, a full analysis of the standard is unnecessary. This Court has found that H&C determinations by immigration officers are normally reviewable upon a standard of reasonableness: *Ahmad v Canada (Citizenship and Immigration)*, 2008 FC 646 at para. 11. I shall adopt this standard in the case at bar.

[7] The role of a court in reviewing a decision on the reasonableness standard involves inquiries into the qualities that make a decision reasonable, including the articulation of reasons. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras. 14-15, it was held that adequacy of reasons is not an independent ground of review, but that a decision is reviewable if the reasons do not allow the reviewing court to

understand how the tribunal arrived at its decision. In my view, the Decision raises questions about the adequacy of the reasons for denying the H&C application.

(1) Establishment

[8] In considering establishment, the Officer correctly identifies the relevant positive factors: notably, the Applicant owns and operates a profitable business (as evidenced by income tax returns and above-average income), and he has strong connections to his community in Canada (as evidenced by letters of support). As for negative factors, the Officer laments the absence of bank statements and notes the Applicant's comparatively stronger family ties to Hungary. Overall, the Officer concludes that he has "somewhat established himself in Canada."

[9] I do not believe that the evidence on the record supports the Officer's conclusion with respect to establishment. The only "reason" offered for the Officer's conclusion about financial management is the Applicant's failure to provide bank statements. This is not really a "reason" at all. The logical conclusion that flows from the Applicant's sole ownership and operation of a business is that he draws money out of it to support himself financially. Pointing to the absence of some other piece of evidence – in this case, bank statements – is wholly insufficient to substantiate the Officer's conclusion. I consider this case to be similar to *Tindale v Canada (Citizenship and Immigration)*, 2012 FC 236 [*Tindale*]. In *Tindale,* an H&C officer identified relevant establishment factors but failed to provide analysis as to why establishment was insufficient to grant the application. Justice Donald Rennie found that "any fair and objective reading of the reasons points in the opposite direction from the conclusion reached" (*Tindale* at para. 8). I believe the same is true with respect to this Officer's conclusion on the issue of

financial management; while the relevant positive factors are identified (ownership of a business and above-average income), they are casually dismissed and a purported lack of evidence is used to turn an overall positive factor into a negative one. In my view, the founding of a profitable business – let alone one which employs others to their great satisfaction – is formidable evidence of establishment and should not be so easily disregarded.

[10] I also find the Officer's conclusion about the Applicant's so-called "comparatively stronger family ties" to Hungary to be rather perverse. Factually, the statement is correct because the Applicant has not identified any living relatives aside from his half-brother. However, to count this as a factor against establishment is to strip that fact of all context; there was no evidence before the Officer attesting to the quality or nature of the Applicant's relationship to his half-brother, and there were multiple letters of support from employees and friends illustrating the Applicant's substantial personal ties to Canada – one of which specifically notes his inclusion at *family gatherings*, such as birthdays and holidays (Certified Tribunal Record ("CTR"), p. 50). In my view, at best the Officer's contemplation of family ties is unreasonable because it draws adverse conclusions without regard to the totality of the evidence; at worst, it is disingenuous and suggests that the Officer actively looked for reasons to bolster the factors against establishment.

[11] The formation of friendships and personal relationships with members of one's community is one of the key factors in assessing the degree of establishment, and the Officer not only barely mentions the relationships that the Applicant has formed with others since his arrival in Canada, but fails to undertake any analysis regarding the role that these relationships play in cementing the Applicant's establishment in Canada. Plenty of evidence attests to the strong

bonds between the Applicant and his community: George Alekstar says that he can "…only say good thinks (sic) about [the Applicant]" and that the Applicant helped him "…several times when [he was] not able to work because (sic) the cold weather," and "…always give some jobs to due (sic) even (sic) he was not that busy" (CTR, p. 47). Istvan Kis writes that it is a "…pleasure to work for [the Applicant]" and provides of an example of the Applicant's generosity and the nature of their friendship:

> […] To give you an example my mother get seek (*sic*) I have (*sic*) to go back to Europe to see and help my mother he give (*sic*) me the time off and he advance (*sic*) me six weeks of salary with out of question (*sic*).
>
> [CTR, p. 48]

[12] Gladys Takacs writes that the Applicant is a "…responsible, hard worker, has a great charisma and sense of humor he is funny and always happy; he makes everyone laughed (sic) all the time" (CTR, p. 51). Sandor Rigo says that the Applicant "…has always treated [him] with kindness and generosity" and that "[d]uring [their] time together, [Mr. Rigo has] gotten to know him as a hardworking, caring and thoughtful person" (CTR, p. 52). These are but a few examples to show that the Decision to deny H&C relief is not based on sufficient reasons, as the law requires, but rather on thinly veiled semantic excuses that effectively disregard a significant portion of the evidence presented in support of the application. With respect to the other factors involved in making a decision on H&C grounds, the Officer merely glosses over the positive contributions that the Applicant has made to Canadian society, again without engaging in any specific analysis regarding the role that these factors play as they relate to the Applicant's establishment in Canada.

[13] In my view, the Officer correctly identified the relevant factors related to the Applicant's establishment in Canada, but failed to explain how they were analyzed, weighed and ultimately found to be insufficient to warrant H&C relief. In this respect, I find the Decision to be unreasonable.

(2) Hardship

[14] With respect to hardship, the Officer recognizes the discrimination that exists against Roma persons in Hungary, but affirms that institutions in Hungary offer redress to respond to such discrimination. The Officer also notes that the Applicant has the possibility of establishing himself elsewhere in the EU should he not wish to return to Hungary. After cataloguing the institutions and non-governmental organizations that exist in Hungary, the Officer concludes that "the hardship from discrimination that the applicant may face upon return to Hungary would be largely mitigated should he choose to avail himself of these resources, as required" (Decision, p. 6).

[15] I have two concerns with respect to the Officer's hardship analysis. First, it appears that the Officer focuses exclusively on the hardship that would result from discrimination. That approach is too narrow. The Supreme Court of Canada has outlined the approach that is to be used when considering hardship in the context of an H&C application:

> […] what officers should not do, is look at s. 25(1) through the lens of the three adjectives as discrete and high thresholds, and use the language of "unusual and undeserved or disproportionate hardship" in a way that limits their ability to consider and give weight to *all* relevant humanitarian and compassionate considerations in a particular case."

> *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at para. 33 [*Kanthasamy*]
>
> [Emphasis in original]

[16] There are other sources of hardship that are likely to impact the Applicant should he be required to apply for permanent residence from abroad. For example, when considering establishment, the Officer specifically recognizes that the Applicant's business is likely to close if he were to return to Hungary; however, the Decision is silent about how this factor is weighed as a potential source of hardship. In the face of this silence, I cannot but conclude that the Officer failed to take it into account. This constitutes a reviewable error.

[17] Second, and perhaps more importantly, I find the Officer's conclusion with respect to discrimination to be unintelligible. The documentary evidence before the Officer led to the appropriate conclusion that discrimination against the Roma of Hungary is "prevalent." Although not relied upon in the Decision, the Officer was also in possession of a letter from a similarly situated person, the Applicant's childhood friend Sarkozi Piroska, who faces such discrimination. In spite of this evidence, the Officer simply lists some institutions and concludes that redress mechanisms are available to "mitigate" any hardship the Applicant should face if he returns to Hungary.

[18] Let us set aside the issue as to whether Hungarian institutions are capable of affording adequate redress to the Applicant. I find it difficult to conceive a situation where discrimination on the basis of ethnicity – especially of the pervasive nature that is suffered by the Roma, as illustrated by the documentary evidence – would not constitute disproportionate hardship. As

recognized by the Supreme Court of Canada in *Kanthasamy*, the Guidelines indicate that "disproportionate" means that the decision to refuse H&C relief would have an "unreasonable impact on the applicant due to their personal circumstances." Surely, there is nothing more personal to an individual than his or her ethnic identity, and in this case there is substantial evidence on the record to suggest the Applicant will suffer racism and discrimination if he returns to Hungary. The Applicant's letter from Mr. Piroska speaks about the discrimination that he and the Applicant faced as Roma youth growing up in Hungary, including segregation in school and discrimination in employment. Today, Mr. Piroska continues to be subjected to dehumanizing treatment (being called a "dirty gypsy" and spat upon) and his own children face similar treatment. Objective evidence was also provided, such as the US Department of State Report. That report notes failures and omissions in the Hungarian authorities' investigation of hate crimes (CTR, p. 230); confirms that Roma children are segregated into inferior schools and graduate from elementary school in substantially lower ratios than the general population (CTR, p. 231); points out that Roma persons suffer inadequate housing (CTR, p. 232); and mentions substantially lower employment figures between the Roma and non-Roma population (CTR, p. 231).

[19] The Officer did not engage in any meaningful consideration of the documentary evidence provided by the Applicant concerning country conditions in Hungary as they relate to Roma persons. Even if meaningful redress is available, a simple recitation of the institutions in Hungary does not constitute "reasons" to demonstrate why the hardship threshold is unmet in this case. In my view, this lack of analysis and unintelligible conclusion renders the decision unreasonable and subject to review.

VI. Certification

[20] Counsel for both parties was asked if there were questions requiring certification, they each stated that there were no questions arising for certification and I concur.

JUDGMENT in IMM-2243-17

THIS COURT'S JUDGMENT is that the decision under review be set aside and the matter be returned back for redetermination by a different officer.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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