Federal Court Cour fédérale

Date: 20171218

Docket: IMM-2255-17

Citation: 2017 FC 1168

Toronto, Ontario, December 18, 2017

PRESENT: The Honourable Mr. Justice Grammond

BETWEEN:

MINGHUI HSU

Applicant

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] The Applicant, Mr. Minghui Hsu, is a citizen of Argentina. He, his spouse, Ms. Xiaozhen Cao, and their daughter came to Canada in January 2015. He made a claim for refugee status based on events in Argentina where he was allegedly targeted by criminal groups. His claim for refugee status was denied, as was his request for a pre-removal risk assessment.

[2] Mr. Hsu then made an application to the Respondent Minister for permission to file an application for permanent residence while in Canada, based on humanitarian and compassionate [H&C] grounds. On May 4, 2017, this application was denied. Mr. Hsu now seeks judicial review of that denial.

[3] This Court reviews decisions of that nature on a standard of reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 51, [2015] 3 SCR 909 at para. 44). This means that I must not ask myself what decision I would have rendered. I must simply ensure that the decision under review is based on a defensible interpretation of the applicable legal principles and a reasonable assessment of the evidence before the decision-maker.

[4] In this case, the Officer who made the decision on behalf of the Minister had to apply section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], which says that the Minister may grant the requested relief if he "is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected."

[5] A decision made under section 25 is discretionary. The decision-maker must weigh several relevant factors, but there is no rigid algorithm that determines the outcome. In that context, this Court's role is not to assess the relevant factors or to exercise the discretion anew, but simply to verify that the decision-maker turned his or her mind to the relevant factors and gave them due consideration.

[6] Mr. Hsu based his H&C application on the fact that the members of his family do not possess the same citizenship. He and his daughter are citizens of Argentina, while his wife is a citizen of the People's Republic of China. He alleged that his wife's status in Argentina had expired and that as a result, removal from Canada would result in the family's separation, which would not be in the best interests of his daughter.

[7] However, the Officer rejected Mr. Hsu's claim, mainly because he was not convinced that the family would have to separate if they were removed from Canada. He said that Mr. Hsu had "submitted limited information about his family's circumstances with regard to their immigration options." In particular, there no evidence of the reasons why Ms. Cao would be unable to return to Argentina or to remain there, beyond Mr. Hsu's assertion. The Officer also devoted a substantial portion of his decision to the assessment of the best interest of Mr. Hsu's and Ms. Cao's daughter, who is now 14 years old. He noted that she would not be separated from her family upon removal from Canada. He discounted a psychologist's report that mainly restated Mr. Hsu's case and provided little basis for an assertion that she would be negatively impacted by her return to Argentina. He acknowledged that removal to Argentina would cause disruption in her life, but noted that she was born and raised in that country.

[8] Mr. Hsu essentially asks this Court to perform its own assessment of the relevant considerations. Beyond restating the arguments made before the Officer, however, Mr. Hsu does not explain what error the Officer made, nor why his decision is unreasonable.

[9] The Officer was alive to the negative consequences that could result from Mr. Hsu's family's removal from Canada. However, he did not believe that those consequences would include the separation of the family, as Mr. Hsu contended. On this point, Mr. Hsu had the burden of proof: *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 FCR 360 (CA), at para. 35. Moreover, the officer did not find that those consequences were grave enough to mandate relief on H&C grounds. As the Supreme Court of Canada said in *Kanthasamy*, "[t]here will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1)." (*Kanthasamy*, at para. 23)

[10] In particular, the Officer conducted a thorough examination of the best interests of the child, as mandated by section 25. The Officer recognized that removal from Canada would entail a certain degree of hardship to Mr. Hsu's and Ms. Cao's daughter, but he noted, on the other hand, that Argentina was the country where she was born and had lived most of her life, that she speaks Spanish and that the school system in that country was adequate. In my view, the Officer performed exactly the kind of assessment mandated by section 25 of the IRPA, as interpreted in *Kanthasamy*.

[11] It was also open to the Officer to discount the psychologist's report that purportedly dealt with the best interests of the child. As noted by the Officer, the report appears to be based mainly, if not exclusively, on information provided by Mr. Hsu and Ms. Cao. The psychologist does not say whether she actually met with their daughter. One should not be surprised to find a certain amount of hearsay in a psychological report, as a psychologist must usually rely on his or

her client's word with respect to the facts giving rise to the condition for which the psychologist is consulted (*Kanthasamy* at para 49). However, in this case, the report contains nothing of substance beyond a summary of the facts as recounted by Mr. Hsu and Ms. Cao and an assertion that it would be best for their daughter to remain in Canada.

[12] As a result, I am of the view that the decision under review is reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2255-17
STYLE OF CAUSE:	MINGHUI HSU v THE MINISTER OF CITIZENSHIP & IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 18, 2017
JUDGMENT AND REASONS:	GRAMMOND J.
DATED:	DECEMBER 18, 2017

APPEARANCES:

Max Chaudhary	FOR THE APPLICANT
Christopher Ezrin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chaudhary Law Office Barrister and Solicitor North York, Ontario	FOR THE APPLICANT
Attorney General of Canada	FOR THE RESPONDENT