Federal Court  Cour fédérale

Date: 20180201

Docket: IMM-3610-17

Citation: 2018 FC 111

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, February 1, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

FRANCK MOHAMED KESSE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Franck Mohamed Kesse, is a citizen of Côte d'Ivoire. He arrived in Canada in 1997 on a student visa. He obtained refugee status in 2004 and permanent residence in 2006.

[2] In October 2013, the applicant was the subject of an inadmissibility report under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA] for breaching the residency requirement set out in section 28 of the IRPA. A departure order was issued against him. On November 17, 2014, the applicant lost his refugee status after having returned to his country of origin many times between 2006 and 2014.

[3] On July 28, 2017, the Immigration Appeal Division [IAD] of the Immigration and Refugee Board dismissed the applicant's appeal of the removal order issued against him. Since the applicant's assertion that he worked full time for a Canadian company outside Canada under subparagraph 28(2)(a)(iii) of the IRPA was deemed not credible by the IAD, it found that the applicant did not accumulate the required number of days during the five-year period from October 12, 2008, to October 11, 2013. Furthermore, the IAD found that the applicant did not prove the existence of sufficient humanitarian and compassionate considerations warranting special relief.

[4] The applicant alleges that the IAD erred in applying subparagraph 28(2)(a)(iii) of the IRPA and in assessing the humanitarian and compassionate considerations warranting special relief.

[5] The parties agree that the standard applicable to this case is reasonableness. The finding that an applicant works full time or does not work full time for a Canadian company outside Canada and the finding that humanitarian and compassionate considerations exist or do not exist are questions of fact or questions of mixed fact and law. These questions are within the IAD's

expertise and call for considerable deference from the Court (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraphs 57-58 [*Khosa*]; *Canada (Citizenship and Immigration) v Jiang*, 2011 FC 349 at paragraphs 28-31; *Gazi v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 993 at paragraphs 17-19; *Samad v Canada (Citizenship and Immigration)*, 2015 FC 30 at paragraphs 20-21).

[6] Where the reasonableness standard applies, this Court's role is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law." If "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility," it is not for the Court to replace the outcome with one that would be preferable (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*]; *Khosa* at paragraph 59).

[7] Contrary to the applicant's arguments, the Court believes that it was reasonable for the IAD to find that the applicant had not worked full time for a Canadian company outside Canada during the reference period. The IAD found the applicant not credible because of the numerous contradictions in the evidence concerning his employment with the Rema Bleu company. It also pointed out the lack of evidence concerning the applicant's income and noted that an employee of a Canadian company should normally obtain a T4 slip at the end of a fiscal year. It also considered the applicant's testimony that he did not work for Rema Bleu full time.

[8] The Court is of the opinion that the evidence on record supports the IAD's findings regarding the applicant's credibility and his employment relationship with the Rema Bleu

company. In particular, during his testimony, the applicant maintained that he worked as a consultant for other companies while he was employed with Rema Bleu. When the IAD questioned him about the amount of time he devoted to his consultant work, the applicant replied: [TRANSLATION] "[i]t was no more than half, no more than half." Afterward, the applicant tried to correct his testimony by stating that he worked full time for Rema Bleu until 2011. However, at other times, the applicant stated that he started working for the Ivorian company called Ivoire Torréfaction in November 2010.

[9] The applicant's testimony also contradicts his documentary evidence because he asserts in his application for permanent residence that he worked for Rema Bleu until November 2015. Furthermore, according to the letter from the chief executive officer of the Rema Bleu company dated August 11, 2014, the applicant was reportedly still working for the company at that time.

[10] Considering the lack of clarity surrounding the applicant's employment with the Canadian company, in addition to the lack of evidence showing that he worked full time outside Canada for a Canadian company, it was reasonable for the IAD to find that the applicant did not meet the requirements of subparagraph 28(2)(a)(iii) of the IRPA.

[11] The Court also considers that the IAD's finding regarding the lack of humanitarian and compassionate considerations warranting special relief is reasonable. The IAD conscientiously reviewed each of the factors to be taken into consideration for such an application, and it weighed the evidence by highlighting the favourable and unfavourable elements.

[12] Among other things, the applicant criticizes the IAD for having found that he was not seeking to spend more time with his daughter. However, this finding must be placed in context. While considering the best interests of the child criterion, the IAD stated that it was convinced that the applicant was a present father for his daughter, be it at a distance or in person. However, it also noted that the applicant had been living in Côte d'Ivoire for years, by choice, even though his daughter was in Canada. Given the evidence on record, it was reasonable for the IAD to make that finding.

[13] Though the applicant does not agree with the IAD's findings, it is not up to the Court to reassess and weigh the evidence to reach a conclusion that would be favourable for him (*Khosa* at paragraph 59).

[14] After reviewing the record and the IAD's decision, the Court finds that the IAD's decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" and that it is justified in a way that meets the criteria of transparency and intelligibility of the decision-making process (*Dunsmuir* at paragraph 47).

[15] For all of these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court believes that this case does not raise any.

JUDGMENT in IMM-3610-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
This 1st day of August 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3610-17
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