Federal Court  Cour fédérale

Date: 20180207

Docket: IMM-2963-17

Citation: 2018 FC 144

Ottawa, Ontario, February 7, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

OMAR EL MANSOURI

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] This application for judicial review challenges the refusal of Omar El Mansouri's application for permanent residence due to criminal inadmissibility. As outlined below, this application must fail.

II. Decision

[2] Mr. El Mansouri is a Moroccan citizen. An atheist, he faced persecution in his home country on the basis of his religious convictions. After graduating high school, Mr. El Mansouri fled to South Korea, where his brother and sister-in-law resided.

[3] In 2012, while living in Seoul, Mr. El Mansouri was involved in an altercation with a taxi driver and was subsequently convicted of Inflicting Bodily Injury under South Korean criminal law. He deposes that this South Korean conviction was manifestly unfair as he was the victim in this incident.

[4] In October of 2013, Mr. El Mansouri entered Canada on a transit visa and made a refugee claim. In the proceedings before the Refugee Protection Division [RPD], the Minister intervened on the issue of whether Mr. El Mansouri's conviction in South Korea excluded him from refugee protection under Article 1(F)(b) of the *United Nations Convention Relating to the Status of Refugees*. In response, Mr. El Mansouri testified that he was an innocent party in the taxi driver incident and that he was denied due process by the South Korean criminal justice system. As Mr. El Mansouri's due process assertions were corroborated by objective evidence, the Minister concluded that an Article 1(F)(b) exclusion had not been demonstrated, a finding with which the RPD agreed.

[5] On January 31, 2014, the RPD granted Mr. El Mansouri Convention Refugee status. That, of course, does not bestow permanent residency on the beneficiary, who still has to apply

for and meet the eligibility criteria under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[6] Mr. El Mansouri subsequently applied for permanent resident status in Canada under the protected persons class. The immigration officer [Officer], by letter dated June 15, 2017, determined that Mr. El Mansouri's previous conviction in South Korea equated to Assault Causing Bodily Harm under section 267(b) of the *Criminal Code*, RSC, 1985, c C-46, a crime which carries a maximum penalty of 10 years. As a result, the Officer determined that Mr. El Mansouri's criminal conviction rendered him inadmissible for permanent resident status pursuant to IRPA section 36(1)(b).

[7] Mr. El Mansouri was well aware of his inadmissibility issue during the application proceed. First, in September 2016, the Officer sent Mr. El Mansouri a procedural fairness letter informing him of the preliminary finding of criminal inadmissibility. Then, in October 2016, Mr. El Mansouri responded, submitting various arguments in favour of overlooking his past conviction, such as that (i) the RPD and the Minister had concluded that he was the innocent party in the incident that occurred with the taxi driver, (ii) there was ample objective evidence of institutional racism in the South Korean justice system against minorities, (iii) there were numerous violations of due process in the investigation and adjudication of his conviction; and (iv) at the time of the procedural fairness letter, he had been living in Canada for three years without any legal infractions.

[8] The file notes show that the Officer acknowledged and reviewed Mr. El Mansouri's submissions in response to the procedural fairness letter. The Officer also accepted that the RPD had found that Mr. El Mansouri's conviction was insufficient to exclude him from seeking protection of Canada under Article 1(F)(b), but found that IRPA section 36(1)(b) required a distinct inadmissibility analysis.

[9] However, the Officer concluded that IRPA does not allow officers to derogate from criminal inadmissibility as set out in section 36(1)(b), even where an applicant asserts that the foreign conviction was reached in the absence of due process. The Officer reasoned that "re-determining guilt or innocence in a criminal court matter is not the responsibility of the IRCC [Immigration, Refugees and Citizenship Canada] in an application for permanent residence".

[10] The Officer also noted that it was open to Mr. El Mansouri to seek relief from criminal inadmissibility through the criminal rehabilitation provision in section 36(3)(c) of IRPA. The Officer also emphasized that the permanent residence refusal did not alter Mr. El Mansouri's protected person status in Canada.

III. Issues and Analysis

[11] Mr. El Mansouri raises two issues in his written materials for this judicial review: (i) whether the Officer erred in law in refusing his application, and (ii) whether the Officer made his findings without regard to the evidence.

[12] While the parties did not address the standard of review in their written and oral submissions, reasonableness applies to an officer's interpretation and application of IRPA's criminal inadmissibility provision (*Nguesso v Canada (Citizenship and Immigration)*, 2015 FC 879 at paras 59-60).

[13] Regarding the first issue, Mr. El Mansouri provides no basis upon which the Court finds any error of law. Subject to section 21 of IRPA and the inadmissibility provisions (in this case, section 36), a visa officer must review criminal convictions and conduct an equivalency analysis. Neither of those obligations was challenged in this case. Rather, Mr. El Mansouri suggests that the Officer erred in the duty to examine what transpired in the criminal process, as well as the evidence with respect to due process for foreigners convicted in South Korea.

[14] The Federal Court of Appeal has defined the scope of the analysis in assessing foreign criminal convictions for the purposes of criminal inadmissibility, holding in *Li v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ 1060 (QL) at paragraph 25 [*Li*] that "[t]he Act does not contemplate a retrial of the case applying Canadian rules of evidence. Nor does it contemplate an examination of the validity of the conviction abroad".

[15] While *Li* was decided under prior legislation, the same principles apply to the assessment of criminal inadmissibility under IRPA. In *Beltran v Canada (Citizenship and Immigration)*, 2016 FC 1143 [*Beltran*], the applicant sought to introduce hundreds of pages of documents to explain the circumstances surrounding his foreign conviction and a defence of duress which could have been argued had the offence been prosecuted in Canada. The Immigration Division

concluded that there was no need to consider the documentary disclosure if the defences were equivalent. Justice McDonald held in *Beltran* that, beyond ensuring equivalency, section 36(1)(b) imposes no obligation to examine whether the impugned conduct, if tried in Canada, would have resulted in a conviction (at para 18).

[16] The law is clear that the Officer must, in reviewing a permanent residency application, be satisfied that the foreign national (i) has applied for such status, (ii) has met the obligations for entry broadly set out in section 20 of IRPA, and (iii) is not inadmissible. The Officer does not have a duty — statutory or otherwise — to review the due process that occurred within the foreign trial, which would be akin to an appeal, and create a whole host of challenges; neither IRPA nor the jurisprudence imposes such a weighty legal duty on visa officers. Therefore, Mr. El Mansouri cannot succeed on his first argument that the Officer erred in declining to examine the validity of his conviction in South Korea.

[17] Even if I had found such a duty existed in applying section 36(1)(b) of IRPA, I am not persuaded that the Officer made the decision without regard to the material in the record. A review of the file notes show that Mr. El Mansouri's submissions to the visa office on the issue of criminal inadmissibility — namely that it should not apply to him — were summarized and acknowledged by the Officer. Indeed, the Officer's notes make clear that any evidence or arguments about whether Canadian standards of due process were met in the Korean court went beyond the analysis required under IRPA section 36(1)(b). This was clearly a reasonable finding.

[18] Finally, no questions were raised with respect to the equivalency assessment, nor was it disputed in the fairness letter (see, by contrast, *Liberal v Canada (Citizenship and Immigration),* 2017 FC 173, where such assessment resulted in an unreasonable outcome).

IV. Conclusion

[19] As a result the application is dismissed. No questions for certification were argued, and none arose.

JUDGMENT in IMM-2963-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No questions for certification were argued, and none arose.

3. There is no award of costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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