Federal Court  Cour fédérale

Date: 20180213

Docket: IMM-2129-17

Citation: 2018 FC 167

Ottawa, Ontario, February 13, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ASHREF ABOU EMHEMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Libya who came to Canada on a student visa in June 2014. Three (3) months later, he claimed refugee protection alleging he was targeted by the Zintan Brigade in Libya after an altercation at a café in February 2014.

[2] On November 12, 2014, the Refugee Protection Division [RPD] rejected the Applicant's claim for protection and found that the Applicant was not credible and that he had a viable internal flight alternative [IFA] in Libya. The Refugee Appeal Division [RAD] dismissed the Applicant's appeal on March 4, 2015. The RAD upheld the RPD's credibility findings, but found that the IFA was no longer viable as a result of a worsened situation in Libya. The Applicant applied for leave and judicial review of the RAD's decision, but leave was denied on September 4, 2015.

[3] On June 24, 2016, the Applicant applied for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. He based his application on two (2) grounds, namely the hardship the Applicant would face upon return to Libya and his establishment in Canada. On April 19, 2017, a senior immigration officer [Officer] rejected the application on the basis that the Applicant had failed to adduce sufficient H&C considerations to justify granting him an exemption allowing his application for permanent residency to be processed from within Canada.

[4] The Applicant seeks judicial review of this decision. The Applicant submits that the Officer erred by failing to assess the hardship the Applicant would face upon return to Libya and that the Officer's conclusion on the Applicant's establishment is unreasonable.

II. Analysis

[5] It is well-established that H&C decisions involve the exercise of discretion and are reviewable on the standard of reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44). In assessing reasonableness, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision "falls within a range of possible, acceptable outcomes which are defensible in light of the facts and law" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[6] Moreover, the administrative decision-maker is presumed to have considered all the evidence in reaching his or her decision (*Florea v Canada (Minister of Employment and Immigration*, [1993] FCJ No 598 (QL) (FCA)) and the adequacy of reasons is not a stand-alone basis to quash a decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 16).

A. *Hardship*

[7] The Applicant submits that the Officer failed to conduct a hardship analysis and instead, fettered his discretion by erroneously relying on the fact that the Applicant will not be removed from Canada until the administrative deferral of removal [ADR] to Libya is lifted. The Applicant argues that the Officer's reasoning is circular. On the one hand, the Officer accepts that hardship exists in Libya which is evidenced by the ADR to Libya. Yet, the Officer concludes that there is no hardship because the Applicant will remain in Canada until it is safe for him to return. The

Applicant contends that the Officer should have conducted his own analysis to determine whether the Applicant would face hardship upon return to Libya and considered the ADR to Libya as a positive factor in the assessment. He also argues that the Officer should have then weighed the hardship factor against the Applicant's other H&C factors.

[8] Upon review of the Officer's decision and the record, I find that the Applicant's argument does not warrant this Court's intervention.

[9] First, it is well-established that a moratorium on removals does not preclude an H&C application from being denied (*Ndikumana v Canada (Citoyenneté et Immigration)*, 2017 FC 328 at para 18[*Ndikumana*]; *Likale v Canada (Citizenship and Immigration)*, 2015 FC 43 at para 40 [*Likale*]; *Alcin v Canada (Citizenship and Immigration)*, 2013 FC 1242 at para 55; *Nkitabungi v Canada (Citizenship and Immigration)*, 2007 FC 331 at para 12).

[10] Second, contrary to the Applicant's submission, the Officer did assess the hardship factor advanced by the Applicant. The Officer considered the Applicant's submissions that the overall situation in Libya was worsening with an upsurge of violence and that there were problems with security, food, reduced income options, shelter, power outages and lack of basic necessities. The Officer also noted the Applicant's argument that the ADR to Libya further demonstrated that Canada recognized that a return to Libya would cause an unacceptable level of hardship. The Officer then examined the country condition reports on Libya as well as the ADR to Libya and noted that the ADR was meant to be a temporary measure when immediate action is needed to temporarily defer removals in a situation of humanitarian crisis. Once the situation in a country

stabilizes, the ADR is lifted. It is in that context that the Officer stated that as a result of the ADR, the Applicant would not be removed to Libya until the situation in Libya is considered stable and that the concerns raised by the Applicant would most likely be under control before the Applicant faces removal. The Officer then considered the Applicant's risk allegations regarding the militias he feared in Libya but noted that the RPD had found the Applicant's risk not to be credible and concluded that he did not need to revisit this finding. The Officer indicated that he accepted the Applicant's concerns about being returned to Libya, noting that the country condition reports demonstrated that there were a number of issues affecting the civilian population and that there were problems with various militia groups in Libya even if the Applicant had not been personally targeted. The Officer then reiterated that the ADR assured that the Applicant would not be removed until the situation improved.

[11] I do not consider the Officer to have unduly restricted his hardship analysis or fettered his discretion by deferring to the ADR. The Officer considered all the relevant factors that were put forward by the Applicant in his submissions. I also note that the Applicant did not make any submissions on how the conditions in Libya affected him personally. When viewed as a whole, I find that the Officer's hardship assessment is reasonable. I also find that it was not unreasonable for the Officer to rely on the fact that the Applicant would not be removed from Canada in his assessment of hardship. This Court reached a similar conclusion in *Ndikumana* at paragraph 18 and in *Likale* at paragraph 38.

B. *Establishment*

[12] The Applicant submits that the Officer's assessment of the establishment factor is unreasonable because the assessment was conducted through a hardship lens. He takes issue with a statement made by the Officer in his conclusion where he states that he finds, "based on the evidence before [him], that the Applicant will not face undue, disproportionate, or unusual hardship in having to leave Canada in order to make an application for permanent residence". The Applicant also believes that the Officer misstated the test for assessing establishment when he wrote that the "concept of a person becoming so established in Canada that it would be untenable for them to leave, is based upon the premise that the reason for staying in Canada for an extended period of time was beyond control".

[13] While the Officer's statements, read alone, may suggest that he used the wrong test for assessing the Applicant's establishment, the Officer's words must be considered in the context of the entire decision. It is clear from the decision that the Officer applied the proper test for assessing the Applicant's establishment, that he considered all of the Applicant's evidence, and that he conducted a global assessment of the H&C factors advanced by the Applicant.

[14] At the outset of his decision, the Officer states that the onus is on the Applicant to put forth any H&C factors he believes are relevant to his situation. He further states that he is required to consider the individual H&C factors globally, not in isolation. After noting the Applicant's procedural history, the Officer acknowledged and gave positive weight to the Applicant's letters of support that depicted him as a compassionate, hardworking, kind, and

selfless person and to the fact that he volunteered and participated in his community. However, the Officer also noted that the Applicant had been in Canada for a relatively short period of time (namely, three (3) years) and that the letter from the Applicant's alleged employer stated that he was a volunteer. The Officer further noted that the Applicant had not provided any evidence to demonstrate that he was employed in a capacity that would support him financially, that the Applicant's banking information showed he had no money at the time the information was generated and finally, that no information had been provided to show a pattern of good financial management in Canada.

[15] The onus was on the Applicant to demonstrate with sufficient evidence his establishment in Canada (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5). He failed to do so to the satisfaction of the Officer.

[16] Upon review of the Applicant's submissions, I find that the Applicant is essentially asking this Court to re-weigh the evidence before the Officer and to come to a different conclusion. That is not the role of this Court upon judicial review (*Khosa* at para 59; *Dunsmuir* at para 47).

[17] Overall, I consider that it was open to the Officer, in the exercise of his discretion, to conclude that the Applicant had not demonstrated sufficient H&C considerations to warrant the requested exemption. The Officer's conclusion was reasonable and the decision falls within the range of possible, acceptable outcomes which are defensible in light of the facts and law (*Khosa* at para 59; *Dunsmuir* at para 47). As a result, the application for judicial review is dismissed.

[18] No question of general importance has been proposed by the parties. None will be certified.

JUDGMENT in IMM-2129-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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