

Federal Court



Cour fédérale

Date: 20180425

Docket: IMM-3590-17

Citation: 2018 FC 448

Ottawa, Ontario, April 25, 2018

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

SAHIL ARORA

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review is brought by the Applicant, Sahil Arora, in connection with a visa officer's decision to refuse to grant him a temporary resident visa [TRP].

[2] Mr. Arora is a citizen of India who came to Canada in 2013 on a study permit. He obtained a two year diploma in Business Finance from the Northern Alberta Institute of Technology in December 2016. He had hoped to pursue an advanced business degree in Alberta,

but his immigration status was jeopardized by his involvement in a car accident on October 5, 2014. That incident led to the death of a pedestrian and ultimately to Mr. Arora's criminal conviction for leaving the scene of an accident. On May 1, 2017, he received a custodial sentence of 12 months. Mr. Arora has completed his sentence and has since returned to India.

[3] Mr. Arora applied for a TRP while he was serving his sentence with a view to curtailing an inadmissibility determination and an attendant removal from Canada. His hope at the time was to remain in Canada to complete his studies and to maintain a relationship with his girlfriend. On August 10, 2017, the visa officer rejected Mr. Arora's application for a TRP, concluding the decision in the following way:

DECISION Once again, the purposes of this TRP application, as articulated by the client and his counsel, are summarized and paraphrased as follows: – Maintain temporary resident status while serving his prison sentence. – Suspend his removal from Canada. – Allow him to gain Canadian work experience in furtherance of his aim to eventually reside here permanently. – Allow him to remain close to his longtime girlfriend, whom he intends to marry. Having reviewed all submissions and facts as they are currently known, I am of the opinion that the issuance of a temporary resident permit is not justified in the circumstances. Nothing precludes the client from applying for a TRP nearer to or after he is released from prison, whether in Canada or abroad. Maintaining temporary resident status while in prison confers no apparent tangible benefit on the client, as he will still be criminally inadmissible and unable to work in the interim, with or without a TRP. There is no Canadian work experience to be gained prior to his release from prison that would require a work permit. It is not clear at this time whether the client and his girlfriend will marry. Applications for TRP and work permit refused. Client advised he has no status. As the client is inadmissible to Canada, I am not advising of restoration.

[4] Mr. Arora raises several concerns about the decision, all of which involve the visa officer's treatment of evidence. The standard of review for such issues is reasonableness.

Indeed, the authorities on point indicate that the authority to issue a TRP under subsection 24(1) of the *IRPA* is highly discretionary, such that the decision must be “highly irregular” to justify intervention on judicial review: see *Arif v Canada*, 2016 FC 1149 at para 35. This view is consistent with the language of subsection 24(1), which stipulates that an inadmissible foreign national may obtain a TRP only where a visa officer forms an opinion that relief “is justified in the circumstances”. The visa officer’s discretion is also qualified by the Parliamentary intent that TRPs are to be issued cautiously and under a level of annual legislative oversight: see *Farhat v Canada*, 2006 FC 1275 at para 24.

[5] Mr. Arora raised the following arguments:

- (a) The visa officer speculated about the ongoing suffering of the victim’s family arising from Mr. Arora’s efforts to conceal his culpability;
- (b) The visa officer made contradictory findings about the financial investments made by Mr. Arora and his family in funding his Canadian education. According to Mr. Arora it was “illogical” to accept that he was motivated to return to Canada because of this investment and, at the same time, discount the investment because there was no guarantee of educational success;
- (c) The visa officer engaged in opaque reasoning in assigning little weight to several positive character references;
- (d) The visa officer unreasonably found that the available evidence of remorse was inconsistent; and
- (e) The visa officer erred by treating the TRP application as premature in the face of Mr. Arora’s ongoing incarceration.

[6] In my view, none of the above concerns are meritorious because they merely invite the Court to reweigh the evidence. That is, of course, not the role of the Court on judicial review. Rather, the Court must pay respectful attention to the evidentiary findings of the decision-maker and it should only intervene where those findings are not reasonably supported by the entirety of the record.

[7] The suggestion that the visa officer erred by speculating about the effects of Mr. Arora's actions on the anguish of the victim's family is unmeritorious. The visa officer was reasonably concerned about Mr. Arora's several attempts to cover up his crime. That conduct included the immediate disposal of his car, lying to the police about his involvement, and ultimately fleeing to India. It was only after many months that he agreed to return to Canada to face the consequences of his actions. Against this background of deception and irresponsibility, it was not unreasonable to observe that the anguish of the victim's family could only have been exacerbated.

[8] Mr. Arora's argument about supposed inconsistent findings concerning the significance of his educational investment is difficult to comprehend. The same evidence may support a favourable inference for one purpose and create an unfavourable inference for another. Here, the visa officer noted that part of Mr. Arora's motive to return to Canada was to further his educational investment and not solely to ease his conscience. There is nothing unreasonable about a finding that Mr. Arora had mixed motives for returning, particularly when his own claim for TRP relief was based on his wish to continue studying in Canada and to reunite with his girlfriend. It was also not unreasonable for the visa officer to discount these pull factors on the basis that a TRP would not guarantee future educational or romantic success. This was not, after

all, a situation where Mr. Arora had firmed up his ties to Canada or his romantic commitment. Indeed, on the latter point, it is noteworthy that Mr. Arora's girlfriend did not put forward evidence in support of his application.

[9] The visa officer gave little weight to several positive character references provided by third parties, in part, because they were written in support of his criminal case. At the same time, the visa officer accepted those favourable characterizations more or less at face value. There is nothing wrong with this approach to the evidence. Having a good character is undoubtedly a prerequisite to the granting of a TRP. But this evidence is otherwise unexceptional in a case where the circumstances of inadmissibility were very serious and were aggravated by ongoing deception. Mr. Arora's post-accident conduct did not support his assertion of exceptional good character and it was not unreasonable to weigh the third-party evidence lightly. This is sufficiently obvious that there was no obligation for the visa officer to expressly mention it.

[10] Mr. Arora's complaint that the visa officer unreasonably discounted his evidence of remorse is also unjustified. The visa officer found the evidence of remorse to be inconsistent. There was certainly evidence that Mr. Arora professed to be remorseful but there was also evidence that, during his several police interviews, he presented himself as unmoved by the victim's death. He also stated that the victim's death was predestined and he equated the outcome with his father's illness. On this record, it was not unreasonable for the visa officer to give more weight to the police evidence taken, as it was, from several discussions with Mr. Arora. There is no legal justification for the Court to interfere with this evidence-based credibility finding.

[11] Mr. Arora's criticism of the visa officer's supposed prematurity finding is also unwarranted. He claims to be confused about the following passage from the decision:

Nothing precludes the client from applying for a TRP nearer or after he is released from prison, whether in Canada or abroad. Maintaining temporary resident status while in prison confers no apparent tangible benefit on the client, as he will still be criminally inadmissible and unable to work in the interim, with or without a TRP. There is no Canadian work experience to be gained prior to his release from prison that would require a work permit.

[12] Once again, the above observation is nothing more than a statement of the obvious. It also appropriately reflects one of the factors for consideration in the applicable OP 11 guidelines which directs the decision-maker to consider whether the applicant for a TRP has completed his criminal sentence. The visa officer did not say that Mr. Arora was not entitled to apply for a TRP during his incarceration but only that a TRP would serve no practical purpose until he was released from jail. It was, of course, open to Mr. Arora to reapply at that point just as that remains an option today. Any fresh application will, of course, be based on Mr. Arora's present circumstances including the fact that he has since completed his custodial sentence.

[13] In conclusion, I can identify no reviewable errors in the visa officer's decision. Indeed, it contains a thoughtful and quite thorough review of the evidence culminating in a finding that Mr. Arora had failed to make a compelling case for this form of exceptional relief. The application is, accordingly, dismissed.

[14] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT in IMM-3590-17

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3590-17

STYLE OF CAUSE: SAHIL ARORA v THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA

PLACE OF HEARING: CALGARY, ALBERTA

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JUDGMENT AND REASONS: BARNES J.

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