Federal Court  Cour fédérale

Date: 20181102

Dossier: IMM-1560-18

Citation: 2018 FC 1104

[REVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, November 2, 2018

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MARC JEAN DAVID

Applicant

and

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

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the refusal of an immigration officer [officer] to grant the applicant an exemption from the permanent residence conditions on the basis of humanitarian and compassionate considerations under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant is a citizen of Haiti born in 1988. He arrived in Canada in September 2013 with temporary resident status in the student class. He studied at the University of Quebec at Montréal [UQAM] from September 2013 to December 2014 (software engineering and later administration). From July to August 2014, he worked off campus full time, and in September 2014, he began working part time off campus. In October 2014, he suffered a work-related injury and received income replacement benefits from the Commission de la santé et de la sécurité du travail [CSST] until August 2015. At that time, his study permit expired, and he has not renewed it since.

[3] On August 5, 2016, the applicant applied for permanent residence in Canada on humanitarian and compassionate grounds [H&C application]. After the temporary suspension of removals [TSR] to Haiti and Zimbabwe, in December 2014, Immigration, Refugees and Citizenship Canada paid the fees for his H&C application under the Immigrant Loans Program [Program]. Under the Temporary Public Policy of February 4, 2016, Haitian and Zimbabwean nationals had until August 5, 2016, to submit and H&C application under the Program.

[4] In short, the applicant explained in his H&C application that, following the 2010 earthquake, it would be difficult for him to find work or resume his studies in Haiti. He was likely to be targeted by criminals. He also had very painful memories of Haiti. People close to him died during the earthquake, and his mother had died a year earlier. All of this had deeply affected him psychologically. In Canada, on the other hand, he could count on friends and

various family members, despite the fact that his godmother in Montréal had stopped providing him with financial support.

[5] On September 26, 2016, Quebec's Ministère de l'Immigration, de la Diversité et de l'Inclusion issued the applicant a Quebec Selection Certificate [QSC] in the [TRANSLATION] "humanitarian case—TSR lifted" category, pursuant to paragraph 18(*d*) of the *Regulation respecting the selection of foreign nationals*, CQRL c I-0.2, r 4 [RRSFN].

[6] On March 22, 2018, the officer held that the H&C considerations raised by the applicant did not warrant an exemption from the legislative obligations to enable his permanent residence application to be processed in Canada.

[7] The officer's decision can be summarized as follows:

(a) **The applicant's establishment in Canada:** The officer noted that the applicant had never obtained a work permit. He was prohibited from holding any employment except for on-campus employment at the institution where he was registered full time. Moreover, there is no evidence in the record establishing his sources of income or financial independence. The officer noted that the applicant had studied at a Canadian university but did not give much weight to this element because the applicant had interrupted his studies. The officer viewed the applicant's network of friends as a positive element. Finally, the officer noted that the applicant had been in Canada for four years, but found that his establishment in Canada was limited;

(b) **Adverse conditions in Haiti:** The officer referred to the applicant's submissions and noted that the Canadian authorities had established a TSR because of the situation in Haiti. Ultimately, the officer concluded that the applicant had failed to demonstrate how the situation in Haiti could affect him directly. The officer also noted that the applicant had spent most of his life in Haiti, knew its language and customs and still had a father there. The officer presumed that the applicant still had a network there. The applicant completed higher education in Haiti. All of these factors militate in favour of his re-establishment in Haiti; and

(c) **QSC**: The officer also took into account the QSC issued to the applicant, but concluded that this did not outweigh the other factors and the fact that he considered an exemption unwarranted.

[8] The standard of reasonableness applies to a review on the merits of the impugned decision, while the standard of correctness applies to the principles of procedural fairness (*Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 21). The Court must therefore ask itself, in light of the reasons provided by the officer, whether the refusal of the H&C application was an acceptable outcome given the evidence in the record and the principles applicable in such matters.

[9] In short, the applicant submits that the officer made erroneous findings of fact, unsupported by the evidence in the record, and erred in law in noting that the applicant had worked illegally in Canada. The officer's finding regarding his financial independence was unreasonable. He lived with his godmother, Monique Paul, for his first two semesters, and it was

she and the applicant's family who met his financial needs. He also received income replacement benefits from the CSST. Furthermore, the applicant had been entitled to work off campus since June 2014; in the alternative, the officer violated his right to procedural fairness by failing to inform him of his reservations. Finally, the officer's conclusion that the applicant could re-establish himself in Haiti was unreasonable, and the officer erred with respect to the level of the diplomas issued by the Haitian authorities.

[10] There is no reason to intervene in this case. The officer did not fail to consider all the evidence in the record or any relevant factor that could warrant an exemption on humanitarian and compassionate grounds. Among other things, the officer considered the applicant's establishment in Canada, the adverse conditions in Haiti and the fact that a QSC had been issued to the applicant.

Low degree of establishment

[11] The applicant's lack of financial independence is a determinative factor. First, the applicant dropped out of his university studies in Canada because he lacked financial resources, was no longer receiving benefits from the CSST and was no longer receiving support from his godmother. Second, even if other family members were still supporting the applicant financially (which is not established by the evidence filed in support of the H&C application), it was not unreasonable to conclude that the applicant was not himself financially independent, which certainly constitutes a negative factor with respect to his establishment in Canada (*He v Canada (Citizenship and Immigration)*, 2018 FC 278 at paras 14-15; *Joseph v Canada (Citizenship and Immigration)*, 2015 FC 661 at para 26).

[12] Also, even though the study permit issued to the applicant in September 2013 states that he may not work off campus without authorization, it must nevertheless be taken into account that, since June 2014, paragraph 186(*v*) of the *Immigration and Refugee Protection Regulations* [IRPR], a full-time student no longer needs a work permit if the following conditions are met:

(v) if they are the holder of a study permit and	v) s'il est titulaire d'un permis d'études et si, à la fois :
(i) they are a full-time student enrolled at a designated learning institution as defined in section 211.1,	(i) il est un étudiant à temps plein inscrit dans un établissement d'enseignement désigné au sens de l'article 211.1,
(ii) the program in which they are enrolled is a post-secondary academic, vocational or professional training program, or a vocational training program at the secondary level offered in Quebec, in each case, of a duration of six months or more that leads to a degree, diploma or certificate, and	(ii) il est inscrit à un programme postsecondaire de formation générale, théorique ou professionnelle ou à un programme de formation professionnelle de niveau secondaire offert dans la province de Québec, chacun d'une durée d'au moins six mois, menant à un diplôme ou à un certificat,
(iii) although they are permitted to engage in full-time work during a regularly scheduled break between academic sessions, they work no more than 20 hours per week during a regular academic session;	(iii) il travaille au plus vingt heures par semaine au cours d'un semestre régulier de cours, bien qu'il puisse travailler à temps plein pendant les congés scolaires prévus au calendrier;

[13] In this case, the applicant stopped studying full time in December 2014. If the refusal to grant an exemption were based exclusively on the applicant's failure to respect the conditions of his study permit by working off campus between July and December 2014, intervention might be

warranted. However, even if the applicant did not work illegally in 2014, his relationship of employment was not severed and he continued to receive income replacement benefits from the CSST until August 2015. As of January 2015, he required a work permit. That said, the officer's decision must be read as a whole and in light of any humanitarian and compassionate considerations warranting an exemption from the statutory conditions of residence.

Adverse conditions in the country of origin

[14] The officer did not commit a reviewable error in finding that the applicant's allegations were not supported by the evidence in the record and that the applicant had failed to demonstrate that the adverse conditions in his country of origin were sufficient to warrant granting an exemption.

[15] Among other things, the applicant failed to establish to the officer's satisfaction that he risked being personally targeted by criminals or that his psychological condition precluded his return. The officer did not act unreasonably by noting that the applicant's fears had no connection to his personal situation (*Bakenge v Canada (Citizenship and Immigration)*, 2017 FC 517 at paras 27-33; *Cadet v Canada (Citizenship and Immigration)*, 2016 FC 1242 at para 10; *Paramanayagam v Canada (Citizenship and Immigration)*, 2015 FC 1417 at para 19; *Kanthasamy v Canada (Citizenship and Immigration)*, [2015] 3 SCR 909 at paras 55-56 [*Kanthasamy*]).

[16] The officer also considered the applicant's allegations regarding hardship in Haiti. The former situation may have justified a temporary suspension of removals, but that is no longer the

case today. Naturally there will be challenges associated with a removal, but the various factors enumerated by the officer in his decision will help the applicant re-establish himself in Haiti.

[17] On that point, the applicant faults the officer for having noted that he had completed [TRANSLATION] "higher" education in Haiti. This consists of a "Bacc1" (2002-2008) and a "Bacc2" (2009-2010), which correspond to a [TRANSLATION] "secondary" education. However, this characterization error is not determinative with respect to the positive factors for re-establishment in Haiti (*Aguilar Sarmiento v Canada (Citizenship and Immigration))*, 2017 FC 481 at paras 12-14).

[18] In this case, the officer conducted a complete analysis of the applicant's prospects for re-establishing himself in Haiti, applying the global analysis approved by the Supreme Court in *Kanthasamy* and subsequent case law (*Hameed v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 657 at paras 18-22).

Quebec Selection Certificate

[19] A few points are worth noting here about the relative importance of the QSC issued to the applicant in the evaluation of his H&C application, despite the fact that the applicant did not argue before me that the officer's decision was reviewable because the latter failed to consider or give sufficient weight to the fact that a QSC was issued in the humanitarian class.

[20] Note that the requirements for the grant of a QSC in the humanitarian class may differ from the requirements for an exemption based on humanitarian and compassionate grounds

under the IRPA. Section 18 of the RRSFN covers the category of foreign nationals who are in a particularly distressful situation. Paragraph 18(d) in particular applies to a foreign national who is the subject of a positive opinion on his or her process of integration in Quebec following the cancellation of the stay on removal orders with respect to a country of which he or she is a national, and has made a request for permanent resident status processed in Canada under section 25 of the IRPA or section 65.1 of the IRPR.

[21] While there is some overlap between the establishment factors considered in a QSC application and an H&C application, the issuance of a QSC by the government of Quebec is not, in itself, determinative (*Jean François v Canada (Citizenship and Immigration)*, 2016 FC 1174 at paras 13-20 [*Jean François*]; *Paul v Canada (Citizenship and Immigration)*, 2017 FC 744 at paras 14-18). In this case, the officer took into account the applicant's QSC and reached his own conclusion, namely that the applicant's establishment in Canada was limited, while the humanitarian and compassionate grounds that he raised were insufficient to warrant an exemption.

Conclusion

[22] On the whole, the officer's decision is based on the evidence in the record and does not lack a rational basis. The errors alleged by the applicant have no impact on the substance of the officer's reasoning regarding the applicant's low degree of establishment in Canada, his ability to adapt in Haiti, the absence of a personalized risk upon return to Haiti and the insufficiency of the specific humanitarian and compassionate considerations warranting an exemption from the statutory conditions of permanent residence. It should be recalled that it is up to the officer and

not the Court to weigh the relevant factors. Just because this Court might have reached a different conclusion does not mean that the officer's decision in unreasonable.

[23] For these reasons, the Court dismisses this application for judicial review. Counsel raised no question of general importance.

JUDGMENT in docket IMM-1560-18

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1560-18
STYLE OF CAUSE:	MARC DAVID JEAN v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 24, 2018
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	NOVEMBER 2, 2018

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