Federal Court  Cour fédérale

Date: 20181212

Docket: IMM-2185-18

Citation: 2018 FC 1255

Ottawa, Ontario, December 12, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RUBAL BEHL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Rubal Behl, brings this application seeking judicial review of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada. The IAD upheld a visa officer's determination that Ms. Behl had not complied with the residency obligation for permanent residents under section 28 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [IRPA] and refused to grant relief on humanitarian and compassionate [H&C] grounds.

[2] Ms. Behl submits that the IAD erred. The application raises two issues that I have framed as follows:

(1) Did the IAD unreasonably require that Ms. Behl demonstrate that she was ineligible to remain in the United Arab Emirates [UAE] upon completion of her post-secondary studies?

(2) Did the IAD err in its application of the factors to be considered when exercising its equitable jurisdiction?

[3] Ms. Behl's submissions reflect disagreement with the IAD's findings but have failed to convince me that the IAD committed any error that warrants the Court's intervention. The application is dismissed for the reasons that follow.

II. Background

[4] Ms. Rubal Behl is a 23 year-old citizen of India who was born and raised in the UAE. She has never resided in India.

[5] In 2010, Ms. Behl travelled to Canada with her family and became a permanent resident. She was 14 years old at the time. She reports that her education level was assessed upon arrival in Canada and that she was found to be lacking in certain course credits. As a result, she was to

be placed one year behind in the Canadian education system. Ms. Behl did not want to be placed back a year and decided to return to the UAE.

[6] She completed secondary school in 2013 and considered applying to universities in Canada. She learned that she lacked a mathematics course required for admission to her chosen field of study in Canada and again decided to remain in the UAE to pursue post-secondary education.

[7] While in the UAE, Ms. Behl attempted to renew her permanent resident card. Section 28 of the IRPA imposes a residency obligation on permanent residents. Pursuant to subparagraph 28(2)(a)(i), a permanent resident complies with the residency obligation when they are physically present in Canada for at least 730 days within a five-year period.

[8] In September 2016, a visa officer determined that Ms. Behl was not in compliance with her residency obligation during the five-year period between June 20, 2011 and June 20, 2016. The officer also concluded that Ms. Behl's personal circumstances did not involve H&C considerations that justified the retention of permanent resident status.

[9] Ms. Behl appealed the visa officer's decision to the IAD on H&C grounds.

III. The Decision under Review

[10] The IAD noted that Ms. Behl had not challenged the visa officer's determination that she was not present in Canada during the relevant five-year period for the minimum required 730 days. Rather, she sought to establish sufficient H&C grounds to warrant special relief.

[11] The IAD found that Ms. Behl was present for 141 days during the relevant period, representing serious non-compliance with the minimum residency obligation. This fact weighed against Ms. Behl in her H&C assessment.

[12] The IAD noted that Ms. Behl's absence from Canada was for her own convenience. Her decision to remain in the UAE for post-secondary education was not attributable to any compelling or unforeseen circumstances beyond her control. The IAD found that her choice to pursue post-secondary studies in the UAE did not reflect a commitment to return to Canada, that she had not made reasonable efforts to return to Canada at the earliest opportunity, and that these factors weighed negatively in the H&C analysis.

[13] The IAD acknowledged that Ms. Behl's parents and brother reside in Canada but noted the absences of any history of work, studies, or community involvement in Canada, concluding Ms. Behl's establishment was minimal.

[14] The IAD also addressed potential hardship. The fact that Ms. Behl's student visa in the UAE would expire upon completion of her studies in 2018 was recognized; however, the IAD

noted the absence of any evidence suggesting that Ms. Behl would be unable to secure another visa there. It was also noted that although Ms. Behl had never lived in India, she had family members there who might assist her if she were to return to India. The IAD found there was no evidence establishing hardship with respect to her circumstances in the UAE or living circumstances in India.

[15] Finally, the IAD addressed the emotional hardship that may be faced due to the separation of Ms. Behl from her family in Canada. The IAD weighed the emotional hardship against Ms. Behl's choices to remain in the UAE and the fact that her relationship with her mother, father, and brother had been predominantly a long-distance relationship for years. It was noted that neither she nor her family would be restricted from continuing to visit one another. The IAD concluded that Ms. Behl would face minimal hardship should she lose her permanent resident status and that there were insufficient H&C grounds to overcome the serious non-compliance with the residency obligation.

IV. Standard of Review

[16] The parties both take the position that the IAD's conclusions within the context of a residency obligation appeal are reviewable against a standard of reasonableness (*Gill v Canada (Citizenship and Immigration)*, 2018 FC 649 at paras 11–12 [*Gill*]; *Meghjani v Canada (Citizenship and Immigration)*, 2018 FC 666 at para 14).

[17] I agree. The IAD's assessment of whether H&C considerations warrant special relief to overcome a failure to comply with the residency obligations set out in the IRPA is a fact-specific

assessment that involves the exercise of a high degree of discretion and is owed considerable deference (*Gill* at para 11, citing *Ahmad v Canada (Citizenship and Immigration),* 2017 FC 923 at para 18).

V. Analysis

A. *Did the IAD unreasonably require that Ms. Behl demonstrate that she was ineligible to remain in the UAE upon completion of her post-secondary studies?*

[18] Ms. Behl submits that in assessing hardship, the IAD required she demonstrate that she was unable to remain in the UAE at the conclusion of her post-secondary studies. She argues that in doing so, the IAD misconstrued the test for hardship and placed an impossible onus on her to prove that she would be unable to secure visas and employment in the UAE. I disagree.

[19] In her evidence before the IAD, Ms. Behl testified, in response to her counsel asking if she could remain in Dubai, that "after I am done graduating there is no way I can stay back here because they will not <inaudible> my visa." It was in responding to Ms. Behl's assertion that she had no entitlement to reside in the UAE that the IAD commented on the absence of any evidence indicating she was ineligible or prevented from securing a further visa that would allow her to remain in the UAE.

[20] It is well established in the jurisprudence that an applicant who seeks an exemption from the residency requirements of the IRPA has the burden of demonstrating the sufficiency of the H&C factors being relied upon (*El Assadi v Canada (Citizenship and Immigration)*, 2014 FC 58 at para 52). In this case, it is evident that Ms. Behl was relying upon an inability to remain in the

UAE as a factor in support of her request for H&C relief. As Ms. Behl relied on this factor, it was not an error for the IAD to comment on the absence of evidence to support her assertion that "there is no way I can stay."

[21] It is also important to recognize that the IAD did not limit its analysis to the question of Ms. Behl's ability to remain in the UAE. The IAD also considered Ms. Behl's right to reside in India. The IAD noted the absence of evidence to demonstrate that in India, Ms. Behl would face language barriers or be prevented from accessing housing, employment, education, or social or health services. The IAD noted that she would have the benefit of family support. The IAD again concluded that Ms. Behl had failed to satisfy her evidentiary burden of demonstrating hardship should she be required to return to India, a conclusion that was reasonably available to the IAD.

B. *Did the IAD err in its application of the factors to be considered when exercising its equitable jurisdiction?*

[22] The Applicant also submits that the IAD erred in law by misapplying the H&C factors that must be taken into account in a residency obligation appeal. Again, I disagree. The IAD identified and considered the relevant H&C factors in Ms. Behl's case.

[23] The factors to be considered in the context of a request for equitable relief from the residency requirements imposed by section 28 of the IRPA were recently set out by Justice Jocelyne Gagné in *Gill* at paragraph 13 where she states the following:

> [13] The Applicant argues that the IAD erred in its application of the factors to be considered when exercising equitable jurisdiction within the context of a residency appeal, as confirmed

> by this Court in *Ambat v Canada (Citizenship and Immigration)*, 2011 FC 292. The *Ambat* factors are:
>
> 1. The extent of the non-compliance with the residency obligation;
> 2. The reasons for the departure and stay abroad;
> 3. The degree of establishment in Canada, initially and at the time of hearing;
> 4. Family ties to Canada;
> 5. Whether attempts to return to Canada were made at the first opportunity;
> 6. Hardship and dislocation to family members in Canada if the Applicant is removed from or refused admission to Canada;
> 7. Hardship to the Applicant if removed from or refused admission to Canada; and
> 8. Whether there are other unique or special circumstances that merit special relief.

[24] The factors identified in *Gill* are not exhaustive, are not all necessarily of application in any given case, and have been articulated in slightly different manners in the jurisprudence (see for example *Canada (Citizenship and Immigration) v Wright*, 2015 FC 3 at paras 75–78, referring to the factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD 4 (QL) and endorsed by the Supreme Court of Canada in *Chieu v Canada (Minister of Citizenship & Immigration)*, 2002 SCC 3 at paras 40–41).

[25] In this case, the IAD identified and addressed each of the factors set out in *Gill* in the context of Ms. Behl's evidence and the submissions made on her behalf. The IAD weighed the individual factors and acknowledged the existence of hardship, particularly as it related to the

resulting separation of Ms. Behl from her mother, father, and brother. Considering all of the circumstances, the IAD found the hardship to be minimal and not warranting special relief.

[26] While Ms. Behl disagrees with the IAD's decision, it is not this Court's role on judicial review to reweigh the evidence (*Ambat* at para 32). The IAD's reasons are justified, transparent, and intelligible; the result falls well within the range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

VI. Conclusion

[27] The IAD's decision does not disclose a reviewable error. The application is dismissed.

[28] The parties have not proposed a question of general importance and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and

2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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