Federal Court Cour fédérale

Date: 20181219

Docket: IMM-1483-18

Citation: 2018 FC 1293

Vancouver, British Columbia, December 19, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

AMNIK SINGH NOOR

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Amnik Singh Noor (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Appeal Division (the "IAD"), dismissing his appeal of the decision of an Immigration Officer (the "Officer"). The Officer refused his application for a permanent resident travel document.

[2] The Applicant is a citizen of India. He entered Canada in October 2004, as a permanent resident, pursuant to sponsorship by his wife.

[3] The Applicant trained as a medical doctor in India but was unable to find work in that field when he came to Canada. Between 2005 and 2010, he worked in positions that were not related to his training.

[4] In 2010, the Applicant decided to return to India for the purpose of upgrading his qualifications as a medical doctor. This plan was undertaken with the consent and support of his wife, with a view that the Applicant would return to Canada after acquiring further qualifications.

[5] The Applicant left Canada in November 2010. He returned to Canada on three occasions, that is in March 2011, November 2011 and March 2014. He spent a total of 20 days in Canada within the 5 year period between November 2010 and November 2015.

[6] In 2015, the Applicant applied for a travel document. He acknowledged that he had been in India since 2010 and was unable to meet the residency requirements because he was studying in India. When seeking the travel document, he asked that the best interests of his child be considered.

[7] The Applicant's request for a travel document was refused and he exercised his right of appeal, pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[8] The only issue raised by the Applicant before the IAD was the positive exercise of discretion, on humanitarian and compassionate ("H and C") grounds, pursuant to paragraph 67(1)(c) of the Act.

[9] According to its decision, the IAD framed its analysis of H and C factors by reference to the extent of the Applicant's noncompliance with the minimum residency requirements set out in the Act; the reasons for his departure from Canada; the reasons for his lengthy stay outside Canada; whether he attempted to return to Canada at the earliest opportunity; the degree of his initial and continuing establishment in Canada; family ties in Canada; hardship resulting from loss of permanent residence status and the best interests of a child.

[10] The IAD found that the length of the noncompliance with the residency requirement; the reasons for the Applicant's departure from Canada; the reasons for his lengthy stay abroad; and the lack of effort to return to Canada at the earliest opportunity were "aggravating" factors in consideration of the use of the H and C discretion.

[11] The IAD found that the Applicant's establishment in Canada, family ties in Canada, hardship resulting from loss of permanent residence status and the best interests of the child were "neutral" factors in considering the request for positive exercise of the H and C discretion.

[12] The Applicant now argues that the IAD committed reviewable errors by failing to understand the evidence, in its analysis of the H and C factors and a lack of adequate reasons in its decision dismissing his appeal.

[13] For his part, the Minister of Citizenship and Immigration (the "Respondent") argues that the IAD reasonably considered relevant factors and that its decision is entitled to deference.

[14] The decision is reviewable on the standard of reasonableness; see the decision in *Kisana v. Canada (Minister of Citizenship and Immigration)*, [2010] 1 F.C.R. 360 (F.C.A.) at paragraph 18.

[15] The reasonableness standard requires that a decision be intelligible, transparent, and justifiable, and falling within the range of possible, acceptable outcomes; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[16] Considering the evidence in the certified tribunal record, including the transcript of the Applicant's evidence before the IAD and the submissions of the parties, I am satisfied that the IAD's decision meets the applicable standard of review.

[17] There was little evidence about the Applicant's relationship with his son. The Applicant's wife did not testify. The IAD, at paragraphs 15 and 16, addressed the best interests of the Applicant's child. It accepted the evidence of the Applicant about his relationship with his child but ultimately, it determined that this factor was neutral.

[18] The reasons of the IAD are justifiable, transparent and intelligible.

[19] I see no basis for judicial intervention and this application for judicial review is dismissed. There is no question for certification arising.

JUDGMENT in IMM-1483-18

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1483-18
STYLE OF CAUSE:	AMNIK SINGH NOOR v MINISTER OF CITIZENSHIP AND IMMIGRATION
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