

Federal Court



Cour fédérale

Date: 20191113

Docket: IMM-2027-18

Citation: 2019 FC 1415

Ottawa, Ontario, November 13, 2019

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

CHRISTOS EVANGELOU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Christos Evangelou [the Applicant] seeks a judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, LC 2001, c 27 [IRPA]. The application concerns a decision by an Officer of Immigration Refugees and Citizenship Canada [IRCC] refusing to waive his inadmissibility based on humanitarian and compassionate [H&C] grounds.

[2] The Applicant is a citizen of Cyprus. He had been living in Greece and sought to sell his motorcycle in 2006. The Applicant listed it for sale online and received an offer to purchase it from someone in Nigeria. The Applicant emailed the potential purchaser who in turn sent the

Applicant a cheque in the amount of 18,000 €. The Applicant went to the bank in Greece to deposit the cheque and was informed by the teller that it was a fake. The Applicant left the cheque with the teller and left the bank. Soon after, the Applicant moved back to Cyprus.

[3] The Applicant married his Canadian wife and she sought to sponsor him in 2015. They have two Canadian born children. As part of the sponsorship process, the Applicant was required to obtain a criminal check from every country he had resided in. The criminal cheque from Greece was sent by the Applicant unopened to Immigration Refugees and Citizenship Canada [IRCC]. IRCC notified the Applicant that he had been convicted in absentia in 2010 in Greece. He was advised that he is therefore criminally inadmissible to Canada.

[4] The Applicant received a seven-month sentence, which was suspended for three years and was required to pay a fine of 87.04€. The suspension ended in 2013. When the Applicant was made aware of the conviction by IRCC, he took steps to pay the fine. As a result, he was no longer a fugitive and could apply for criminal rehabilitation five years after becoming eligible, being March 2023.

[5] The Applicant applied to have the Officer consider whether there were sufficient H&C grounds to waive his inadmissibility. The request is based primarily on the best interest of the child [BIOC] and the hardship of separation Of Mr. Evangelou from his family in Canada.

[6] By the delegations of the Minister's authority, the Officer could only reject the H&C application. If the Officer considered that there were sufficient grounds, the file would be transferred to a Director, Assistant Director or Senior Decision Maker at the Case Management

Branch [CMB]. Setting aside the Officer's decision only sends the matter back to initiate the first step again. This was explained to the Applicant.

[7] The Officer found that there were insufficient compelling H&C factors to overcome the criminal inadmissibility. The Applicant challenges both the Officer's conclusions on his criminal inadmissibility and the H&C analysis.

[8] Mr. Evangelou also requested be issuance of temporary resident permit (TRP) to allow him to overcome his inadmissibility and to remain in Canada. The Officer took into consideration the BIOC and the hardships that may befall the family if Mr. Evangelou was removed from Canada. He concluded that the issuance of a TRP to allow Mr. Evangelou to remain in Canada with his family is a justifiable way to mitigate the hardship Mr. Evangelou and his family may face if removed. The Officer also indicated that in this case, to allow Mr. Evangelou to remain in Canada with his family would provide a positive environment and support towards the process of his rehabilitation.

[9] Accordingly, the Applicant was issued a one-year renewable TRP being its maximum duration. The TRP allows the Applicant to reside in Canada, obtain authorization to work in Canada, and if preauthorized, to enter and leave Canada. There is no limit on how many times a TRP can be renewed. As well, the Applicant cannot be removed while waiting for an extension of the TRP.

[10] I am satisfied that no reviewable error in respect of the Officer's conclusion that the Applicant remains inadmissible. The conviction still stands, while the narrative of a purchaser from Nigeria sending a cheque for 18,000€ to be cashed by the Applicant to purchase a

motorcycle in Greece seems improbable, requiring objective corroboration. The Officer committed no reviewable error in requiring probative evidence to support the Applicant's claim of innocence, even if the Applicant was unable to do so due to the lapse of time.

[11] With respect to the Officer's analysis of the H&C submissions, the Officer relies upon the issuance of the TRP to mitigate the Applicant's H&C claim. The Officer acknowledged how devastating it would be for the children if his father was removed in addition to the psychological and physical difficulties the family would face. She limited her reasons stating only that she was alert and sensitive to the BIOC and had reviewed and assessed all of the information, all however without any description of the analysis. This is insufficient to support a reasonable decision on its own by any standard of review.

[12] As described above, however, the Officer's reasons refer to her reliance upon the issue of the TRP as the significant in mitigation of the Applicant's H&C claim, in addition to encouraging his rehabilitation. In this latter regard, I understand that by the Applicant continuing to obtain an extension to his TRP over a number of years, would facilitate the cessation of his criminal record.

[13] Essentially, the Respondent submitted that a series of TRP's was the preferred and indeed the surest means to obtain permanent residency status, as follows with the Court's emphasis:

18. In this case, the question is whether the grant of a TRP is insufficient to satisfy the best interests considerations of the Applicant's children, or whether meeting those needs required a grant of permanent resident status. The issuance of a TRP is a discretionary measure - the Officer who decided to issue it could use her discretion and issue a TRP in light of the BIOC factors present in the case. The renewable TRP allows the Applicant and his children to remain in Canada, including allowing the Applicant to care for his children and to provide for them financially. The

decision to grant the TRP -based on BIOC factors - accommodates those BIOC concerns. The Applicant has not demonstrated that the BIOC considerations at play are not met by the TRP, or that those factors required that the Applicant be granted a pathway now to permanent residence status.

[14] The Respondent relies upon the recent decision in *Cardenas v. Canada (MCI)*, 2018 FC 263 [*Cardenas*]. In this matter, the Officer who rendered the decision on his H&C failed to conduct a complete analysis of the evidence supporting his application. The Officer similarly reasoned that it was unnecessary to weigh the hardships of the applicants if they returned to Colombia given that he had decided to grant them TRPs allowing them to remain in Canada for at least three years.

[15] In rejecting the H&C waiver application, the Court distinguished the decision in *Zazai v Canada (Minister of Citizenship and Immigration)* 2012 FC 162 [*Zazai*], where the applicant was granted a TRP for five years and where the Officer denied the application without analyzing the best interests of the applicant's children. The Court in *Zazai* found that the Officer erred because there was no other mechanism available for considering the best interests of the applicant's children before the applicant's removal from Canada. The applicant would be entitled to a PRRA, but that would not include an analysis of the BIOC. Further, the applicant's status in Canada was in doubt given that the Canadian Border Services Agency had issued orders to the applicant to file reports to it on a regular basis.

[16] In distinguishing this matter, Justice O'Brien ruled at paragraphs 15 and 16 as follows:

[15] Again, the circumstances here are different. Mr. Victoria Cardenas has a secure status in Canada for at least three years. The best interests of his children have been fully considered. Any risk

to him on removal from Canada can be considered on a future PRRA.

[16] Accordingly, I find that the Officer reasonably concluded that it was unnecessary to carry out a balancing of all the relevant factors given that the applicant was entitled to remain in Canada for at least three years.

[17] I find *Cardenas* to be distinguishable, because of the certainty of the three-year TRP and that the children's BIOC had been considered in that matter, where this is not the situation herein. On this basis, I am required to grant the application.

[18] Nonetheless, I fail to understand why the Applicant would put his permanent residency at risk of an eventual H&C consideration when it appears that the renewal of his TRP will provide the same outcome, admittedly over a somewhat longer timeframe, so long as he does not jeopardize his chances by some form of serious misconduct to jeopardize renewal of the TRP.

[19] I am satisfied that Respondent's counsel is most likely correct in holding out that there is no basis to conclude that the TRP would not to be terminated or renewed unless the Applicant conducts himself in a manner that raises issues as to the sincerity of his rehabilitation, or some other violation of the TRP.

[20] Conversely, a CMR rejection of the waiver of inadmissibility should normally terminate the TRP, being the grounds for its issuance in the first place to mitigate the H&C considerations caused by removal, and make his continued presence in Canada ultimately dependent upon a successful stay motion.

[21] In this regard, it should be noted that there were discussions at the hearing, whereby the parties agreed to adjourn the hearing pending the issuance of a further TRP. Ultimately, when delay occurred in issuance of the TRP, the parties requested that the Court issue its decision.

[22] It makes no sense that inadmissible applicants should be allowed to follow two different paths for obtaining permanent residency when the H&C decision-making procedures are already badly backlog. There is no issue that by the Applicant remaining in Canada, there is no basis for an H&C application.

[23] Given the relatively trying task involved in carrying out an H&C analysis, not to mention at two levels, and taking stock of the recognized backlog in proceeding with their determination, I do not believe it would be an unreasonable exercise of discretion for the IRCC to make issuance of the TRP, where appropriate, conditional upon the Applicant not challenging the rejection of the application by the officer, subject to a refusal to renew only on violation of conditions attaching to the TRP. In the Applicant's case, consideration might be given to allowing him to travel outside of Canada and return, where reasonable, such as for work purposes, which appears to have been an issue in this matter.

[24] Although reluctant to do so, the application is granted setting aside the decision of the Officer based on the obvious inadequacies of her H&C assessment and explanation as part of the overall weighing exercise which are not sufficiently mitigated by a one-year TRP without terms for renewal. The matter is returned for reconsideration by a different Officer. No questions are certified for appeal.

JUDGMENT IN IMM-2027-18 IS:

1. The application is granted.
2. The matter is returned for reconsideration by a different Officer.
3. No questions are certified for appeal.

“P. Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2027-18

STYLE OF CAUSE: EVANGELOU v MINISTER OF CITIZENSHIP AND
IMMIGRATION

**MOTION IN WRITING CONSIDERED AT [CITY], [PROVINCE] PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES*.**

JUDGMENT AND REASONS ANNIS, J.

DATED: NOVEMBER 13, 2019

WRITTEN REPRESENTATIONS BY:

Kelicia Letlow-Peroune and Nicole Guthrie FOR THE APPLICANT

Nadine Silverman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kelicia Letlow-Peroune and Nicole Guthrie FOR THE APPLICANT
Flemingdon Community Legal Services

Nadine Silverman FOR THE RESPONDENT
Department of Justice