Federal Court  Cour fédérale

Date: 20240522

Docket: IMM-4953-23

Citation: 2024 FC 772

Ottawa, Ontario, May 22, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

DRAKE KULUMBA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Drake Kulumba, had been living in Canada for approximately three years when he applied for permanent residence based on humanitarian and compassionate grounds under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [H & C Application]. Mr. Kulumba's H & C Application was refused by an officer at Immigration, Refugees and Citizenship Canada [IRCC]. He challenges this refusal on judicial review on two grounds.

[2] First, he argues that the Officer unreasonably considered his past immigration history when they relied on the Refugee Appeal Division's [RAD] negative credibility findings about the basis of his refugee claim. Second, he argues that the Officer unreasonably relied on positive establishment factors to mitigate the hardship he would face leaving Canada. I do not find that Mr. Kulumba has established a sufficiently serious shortcoming in the Officer's assessment with respect to either of these grounds, and therefore dismiss the application for judicial review.

[3] On the first issue, Mr. Kulumba solely relies on jurisprudence that is inapplicable to the argument he is raising. *Mateos de la Luz v Canada (Citizenship and Immigration)*, 2022 FC 599 is a case about placing disproportionate or undue weight on an applicant's past non-compliance with immigration laws. Here, the Applicant is not arguing about the weight of past non-compliance but rather the Officer's reliance on the RAD's finding that the central basis for his claim was not credible, the same basis on which he is claiming hardship on the H & C Application. In his submissions to the Officer, Mr. Kulumba continued to rely on the same facts that were found to not be credible by the RAD. In these circumstances, and based on the arguments advanced on judicial review, I see no basis to interfere with the RAD's determination on this issue.

[4] Mr. Kulumba also argues that the Officer's assessment of the "lack of meaningful economic opportunity" in his home country was unreasonable. In particular, he argues, relying on cases like *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at paragraphs 23-28 and *Amarasingam v Canada (Citizenship and Immigration)*, 2023 FC 655 [*Amarasingam*] at paragraphs 36-38, that the Officer unreasonably relied on his positive establishment in Canada to

diminish the hardship he would face in leaving Canada. Mr. Kulumba takes issue with the following statements in the Officer's decision: "During the applicant's short stay in Canada he managed to secure employment and housing. This is indicative of the applicant's ability to build a home and secure a source of income even when he had minimal ties and support upon arrival to Canada."

[5] These sentences taken on their own tend to support Mr. Kulumba's view. I agree that there is jurisprudence that finds it unreasonable for officers to "turn positive establishment factors into negative ones" (*Amarasingam* at para 38). That being said, when I read these statements in the full context of the Officer's reasons, I do not find it to be a sufficiently central shortcoming that renders the decision unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100).

[6] The positive establishment statements are a peripheral part of the Officer's reasoning regarding the Applicant's claim that there would be a "lack of meaningful economic opportunity" in his country of citizenship. The Officer concluded that there would be "some hardship" but that the Applicant had "not demonstrated that [he] would be unable to re-establish himself in [his country of citizenship]." The Officer repeatedly referenced other grounds for this conclusion, including: insufficient evidence that he would be unable to find work in his country of citizenship; his short time away from his country of citizenship (three years); that he came to Canada after finishing his degree and working for a number of years in his country of citizenship; and that he hadn't provided any evidence that "their experience working and living in [their country of citizenship] were inadequate."

[7] Reading the reasons holistically, I am not satisfied that the Applicant has identified any sufficiently serious shortcoming in the Officer's analysis. Accordingly, the application for judicial review is dismissed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-4953-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4953-23
STYLE OF CAUSE:	DRAKE KULUMBA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

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