Date: 20070212

Docket: IMM-3888-06

Citation: 2007 FC 153

Ottawa, Ontario, February 12, 2007

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

SALEEM AHMED RANA
FARHAT SALEEM
ISMA SALEEM
SEHRISH SALEEM
AFTAB AHMED RANA
TAIMOOR AHMED RANA

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision dated June 2, 2006, by an officer of the Minister, Ms. Josée St-Jean (officer), to reject the application for permanent residence of Saleem Ahemed Rana (applicant) and his dependents (applicants) on humanitarian and compassionate grounds.

I. The facts

[2] The applicants are citizens of Pakistan. They arrived in Canada on October 23, 1999, as visitors. On November 23, 1999, they made a refugee claim under the false names of Saleem Ahmed, Farah Saleem, Amina Saleem, Ansa Saleem, Atif Ahmed and Arif Ahmed (tribunal record, report 27, page 1036).

[3] On October 12, 2000, following an anonymous tip, the applicants were arrested. The Canadian authorities drafted an offence report against them for having applied for refugee protection using false names. After the offence report was issued, a deportation order was made against the applicants.

[4] On February 15, 2002, the Immigration and Refugee Board of Canada (IRB) rejected the applicants' claim for refugee protection. The applicants applied for judicial review of this decision, which was dismissed on May 16, 2002.

[5] On November 18, 2002, the applicants submitted an application for permanent residence on humanitarian and compassionate grounds (H&C application), alleging, *inter alia*, that they risked being persecuted if they returned to Pakistan, since Mr. Saleem Rana (principal applicant) was a member of the PPP (Pakistan Peoples Party).

[6] On June 2, 2006, the officer rejected the applicants' H&C application. This is the decision under judicial review.

[7] In their written submissions, the applicants raise a number of arguments against the decision under review. Some of these arguments were not addressed during the oral submissions. For the purposes of this review, I will strive to respond to all the arguments where possible. The applicants also raised new arguments during their oral submissions. Since these arguments were not raised in the written submissions, however, I do not intend to comment on them. I would add that they would not alter my determination in any way in this case.

II. Issues

(1) Was the officer acting within her jurisdiction in ruling on the H&C application, including the risks of return, before a PRRA decision was made?

(2) Did the officer err in failing to ask the applicants to submit additional documents before making a decision regarding their H&C application?

(3) Did the officer commit other errors warranting the intervention of this Court?

III. Analysis

(1) Was the officer acting within her jurisdiction in ruling on the H&C application, including the risks of return, before a PRRA decision was made?

[8] The applicants allege that the officer could not rule on the H&C application, including the risks of return, before processing their PRRA application. According to the applicants, an officer of the Minister may not process an H&C application until the applicant is deemed inadmissible under subsection 25(1) of the IRPA. Since the applicants arrived in Canada when the former *Immigration Act*, c. I-2, was still in force, they maintain that they can be deemed inadmissible only following a negative PRRA decision.

[9] Subsection 25(1) of the IRPA reads as follows:

25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.	**25.** (1) Le ministre doit, sur demande d'un étranger interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.
[Emphasis added]	[Je souligne]

The wording of subsection 25(1) of the IRPA clearly indicates that only a foreign national who is inadmissible or who does not meet the requirements of the Act can make an H&C application. In this case, even though the applicants are not deemed inadmissible in Canada, they do not meet the requirements of the IRPA.

[10] In this regard, under subsection 11(1) of the IRPA, a foreign national must make an application for permanent residence before entering Canada.

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement, lesquels sont délivrés sur preuve, à la suite d'un contrôle, qu'il n'est pas interdit de territoire et se conforme à la présente loi.

In this case, however, although the applicants entered Canada before the IRPA came into force, their H&C application is governed by the IRPA, in accordance with section 190 of the IRPA, which reads as follows:

***190.** Every application, proceeding or matter under the former Act that is pending or in progress immediately before the coming into force of this section shall be governed by this Act on that coming into force.	***190.** La présente loi s'applique, dès l'entrée en vigueur du présent article, aux demandes et procédures présentées ou instruites, ainsi qu'aux autres questions soulevées, dans le cadre de l'ancienne loi avant son entrée en vigueur et pour lesquelles aucune décision n'a été prise.
*[Note: Section 190 in force June 28, 2002, *see* SI/2002-97.]	*[Note : Article 190 en vigueur le 28 juin 2002, *voir* TR/2002-97.]

That being said, even under the former *Immigration Act* a foreign national had to apply for a permanent residence visa before entering Canada. (See subsection 9(11) of the former *Immigration Act*.) Consequently, the applicants in this case did not follow the rules established in the IRPA or the former *Immigration Act*, and the officer was therefore acting within her jurisdiction in ruling on the applicants' H&C application.

(2) Did the officer err in failing to ask the applicants to submit additional documents before making a decision regarding their H&C application?

[11] The applicants argue that the officer should have considered the documents they submitted in the course of prior procedures related to their application for permanent residence, such as the documents they submitted with their application to be members of the post-determination refugee claimants in Canada class (PDRCC) under the former *Immigration Act*.

[12] It has been clearly established by this Court that, as part of an H&C application, the onus is on the applicant to satisfy an officer that permanent residence status should be granted on humanitarian and compassionate grounds. In this regard, Gibson J. wrote the following at paragraph 11 in *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 94, a decision that was upheld by the Federal Court of Appeal in *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 28:

> **11** The onus on an application for humanitarian or compassionate relief lies with the applicant. In *Prasad v. Canada (Minister of Citizenship and Immigration)*, in the context of judicial review of a visa officer decision, Justice Muldoon wrote at paragraph 7:
>
> > The onus is on the applicant to satisfy the visa officer fully of all the positive ingredients in the applicant's application. It is not for the visa officer to wait and to offer the applicant a second, or several opportunities to satisfy the visa officer on necessary points which the applicant may have overlooked.
>
> In *Patel v. Canada (Minister of Citizenship and Immigration)*, Justice Heald, once again in the context of judicial review of a visa officer's decision, but dealing with the issue of humanitarian or compassionate grounds, wrote at paragraph 9:
>
> > The applicant submits that he is entitled to have all relevant evidence considered on a humanitarian and compassionate application. I agree with that submission. However, the onus in this respect lies with the applicant. It is his responsibility to bring to the visa officer's attention any evidence relevant to humanitarian and compassionate considerations.
>
> [Emphasis added]

[13] In the case at bar, Citizenship and Immigration Canada (CIC) wrote to the applicants twice, on February 25, 2006, and on May 15, 2006, asking them to update their documents for their H&C

application (tribunal record, letter of May 15, 2006, page 452; tribunal record, letter of February 25, 2006, page 255). The applicants did not submit any documents. Submitting documents is the applicants' responsibility. The officer therefore did not commit an error in failing to consider the documents in question. As for the criticism that the officer did not take into consideration the documents submitted under the former Act, these documents were part of the tribunal record. According to the Court's case law, a decision-maker is not required to mention all documents consulted in arriving at a determination.

(3) Did the officer commit other errors warranting the intervention of this Court?

[14] In *Baker v. Canada (Minister of Citizenship and Immigration)*, 2 S.C.R. 817, at pages 857-858, the Supreme Court determined that, upon judicial review of a decision of an officer of the Minister rejecting an application on humanitarian and compassionate grounds, the appropriate standard of review is reasonableness *simpliciter*. Although *Baker* was decided under the former *Immigration Act*, there is no valid reason why the Court should believe that the standard of review applicable to these decisions has changed. Recent case law from this Court confirms that the appropriate standard of review for a decision rejecting an application on humanitarian and compassionate grounds is reasonableness *simpliciter* (*Kaur v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1192, at paragraph 13; *Liang v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 967, at paragraph 7; *Dharamraj v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 674).

[15] In this case, the applicants allege that the officer committed a number of errors when she reviewed their H&C application, including the following:

- The officer concluded that the young girl, Sahrish Saleem, lied about her name on her initial claim for refugee protection;
- The officer was not satisfied that Saleem Ahmed Rana was a member of the PPP;
- The officer did not allow a threatening letter from Lahore as evidence that the applicants would be at risk if they returned to Pakistan;
- The officer concluded that it was not unreasonable to believe that the children could continue their education in Pakistan;
- The disclosure of the letter of poison pen letter amounted to extrinsic evidence;
- The two children who work have employment that requires specialized training.

[16] As for the first error alleged by the applicants, the evidence in the record, that is, the IRB's negative decision of February 15, 2002, indicates that the applicants made claims for refugee protection under the names Saleem Ahmed, Farah Saleem, Amina Saleem, Ansa Saleem, Atif Ahmed and Arif Ahmed. The name Sharish Saleem is not on this list of names. The officer's conclusion that the applicants all claimed refugee protection using false names is therefore reasonable.

[17] Moreover, the applicants maintain that the officer could not reasonably conclude that Mr. Rana had not been a member of the PPP, since, at his first hearing before the IRB, the panel

agreed that Mr. Rana had been a member of PPP. In my view, it was reasonable for the officer to determine that Mr. Rana was not a member of the PPP, as his PPP membership card was issued to Saleem Ahmet, the false name the principal applicant used for his claim for refugee protection dated November 23, 1999.

[18] With regard to the fact that the officer did not accept the threatening letter from Lahore, it is reasonable to believe that this letter was not allowed as credible evidence because its translation was not dated or authenticated in any way. As for the stamped date, it is legible (November 30, 2000), even though the officer stated that she was unable to read it. This is insufficient to vitiate the officer's determination regarding the threatening letter.

[19] The officer's conclusion that the children could continue their education in Pakistan is not unreasonable. The applicants argue that it would be impossible for the children to continue their education in Pakistan because they cannot read or write in Urdu, the language of instruction in Pakistan. Nevertheless, according to the record, the children (the younger ones) attended a school in Pakistan and their first language is Urdu. Although such a change will cause major inconvenience, it was reasonable for the officer to conclude that the children could continue their education in Pakistan.

[20] The officer's use of the poison pen letter does not amount to extrinsic evidence. The applicants have known about the poison pen letter since fall 2000. There is even documentation that seems to indicate that the letter was submitted during the special ad hoc hearing on November 2,

2000. (See tribunal record, page 668.) It was therefore reasonable for the officer to use it for her analysis.

[21] The officer concluded that the older children's jobs as restaurant managers did not require specialized training and that, as a result, they would be able to find similar work in Pakistan. I agree. Employment as a restaurant manager does not require specialized training. Specialized training is required for professionals such as engineers, physicians and lawyers, who usually require certification issued by a professional order, the lack of which, depending on the situation, may be an obstacle when looking for employment. This is not so in the case of employment as a restaurant manager.

[22] Before concluding this decision, let me add that the applicants' convoluted case history does not make a decision-maker's job any easier. The principal applicant made decisions that did not help the family achieve its objectives. In addition, the onus was on the applicants to submit documentation in support of their application, which they did not do. At this stage, the case has to be considered as is. Although the applicants and their counsel would like to take a different approach, the legislation does not allow it.

IV. Conclusion

[23] In light of the reasons above, the applicants have not demonstrated that the officer's decision as a whole was unreasonable. The application for judicial review is therefore dismissed.

[24] No question was submitted for certification, even though the parties were invited to do so.

JUDGMENT

THE COURT ORDERS THAT:

- The application for judicial review is dismissed.
- No question is certified.

"Simon Noël"
Judge

Certified true translation
Jason Oettel

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Michel Lebrun Lasalle, Quebec	FOR THE APPLICANT
Diane Lemery Montréal, Quebec	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michel Lebrun Lasalle, Quebec	FOR THE APPLICANT
Justice Canada Montréal, Quebec	FOR THE RESPONDENT