

Date: 20081113

Docket: IMM-2249-08

Citation: 2008 FC 1262

Toronto, Ontario, November 13, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

RANA ABDUL RAUF et al.

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are a family, father, mother and two children. The father, mother and oldest child left Pakistan and went to the United States where they resided for about nine years before coming to Canada. The youngest child was born in the United States. All including the youngest child are apparently citizens of Pakistan.

[2] The Applicants came to Canada and claimed refugee status on January 21, 2003. The claim was rejected by the Immigration and Refugee Board in a written decision dated April 14, 2004. Leave to seek judicial review was denied.

[3] The Applicants made an application for exemption from the requirement to file an application for permanent residence outside Canada on humanitarian and compassionate grounds (H&C) in February 2005. In a written decision dated March 28, 2008, a PRRA Officer decided that an exemption would not be granted. This is a judicial review of that decision.

[4] For the Reasons that follow, I find that the application for judicial review is dismissed.

[5] The adult Applicants are both of the Muslim faith however, he is Shi'a and she is Sunni. This disparity has caused strife in each of their families, so much that the Applicants allege that their lives are at risk. The evidence suggests that some family members may have become reconciled to the marriage however it is alleged that a risk to their lives remains.

[6] The Applicants seem to have become adjusted to life in North America, first in the United States, then in Canada. The elder child was just two years old when he entered the United States. The younger has never lived outside of North America. The reasons for leaving the United States and coming to Canada were not clear on the Record. Dr. Pilowski, a psychologist who examined the Applicants, states in a reporting letter that they did not apply for refugee status in the United States as they were told that they would be returned to Pakistan. This is, of course, hearsay- there is no direct evidence from the Applicants on this point.

[7] The principal issue raised on behalf of the Applicants on this judicial review relates to the Officer's findings in respect to the children and as to whether they would face undeserved and disproportionate hardship. The Applicants' counsel asserts that the Officer erred in three ways:

a) Finding that the children would have the support of their parents to adjust to life in Pakistan, while noting that their parents were diagnosed with depression and post-traumatic stress disorder, but failing to mention that their psychologist indicated that would likely suffer from breakdown if ordered to return to Pakistan.

b) Finding that the fact that these children been able to adjust to the move from Queens, New York to Montreal and then to Mississauga, was somehow an indication that they would be able to cope with the transition from a multi-cultural, diverse and tolerant western society, to Sialkot, Pakistan.

c) Finding that the children were responsible in some way for the fact that they have remained in Canada in the fact of a valid removal Order, and have become established here, and therefore are responsible for the degree of establishment that has occurred since the removal Order became operative.

[8] The plight of the children was the main focus of the Applicants' argument. The Officer in deciding the H&C application said at the penultimate page of the decision, in respect of the children:

The PA's children are enrolled in school and according to reports are doing well. They are young and have experienced a move in the past. The evidence before me does not inform that they would be unadaptable at this state of their lives. Dr. Pilowsky writes that Rana "...is afraid of leaving Canada because he had many friends here and he also sees that his parents feel safe and happy". Farheen loves living in Canada because "her parents feel safe and generally happy". No doubt it is difficult at any time for children to move and leave their friends. However, the children have the benefit of support from their parents and the evidence before me does not inform that the children would be unable to forge new friendships in Pakistan. There is the possibility of them acquainting themselves with their father's family. Further, education and health services would be

available to the children. I have considered the best interest of the children and the information submitted by the applicants in that regard nonetheless, I find that relocating them to Pakistan would not be a hardship that is unusual and undeserved or disappropriate.

[9] The Applicants argue that for the Officer to come to the conclusion that the children would “*have the benefit of support from their parents...*” means that the Officer must have ignored the conclusions of a psychologist who examined the Applicants and opined in a written report dated August 24, 2006 which is of record:

“With regards to Mr. Rauf and Ms. Rana, I am of the opinion that they would most likely suffer a psychological breakdown if ordered to return to Pakistan...”

[10] Applicants counsel argues that if the parents would most likely suffer a psychological breakdown, they would be unable to provide the “*support*” upon which the officer relied in the decision. Therefore, Applicants counsel argues, the decision is unreasonable.

[11] Respondent’s counsel argues that the psychologist’s report does not go so far as to say that if the Applicants’ parents suffered a breakdown then they would be unable to provide adequate support for the children. The result of one to the other has not been established in the evidence. Further, counsel argues, that while parental support is a factor upon which the Officer relied in coming to the decision at issue, there were a number of other factors enumerated as well.

[12] The granting of a dispensation under humanitarian and compassionate grounds (H&C) is a highly discretionary matter residing with the Minister and administered by the Minister’s Officials.

Considerable deference must be accorded to these officers as stated by the Supreme Court of Canada in *Baker v. Canada (MCI)*, [1999] 2 S.C.R. 817 at paragraph 62.

[13] Given the considerable deference afforded to the Officers, and the standard against which a decision such as this one is to be reviewed, which all parties agree is reasonableness and given the instruction recently provided by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 that in reviewing a decision on the basis of reasonableness, considerable deference is to be given to the decision maker, the decision of the Officer under review here must be considered within the boundaries of reasonableness as described in *Dunsmuir*.

[14] Accordingly, the application is dismissed. No party requested certification, the matter is fact specific. There is no special reason to award costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is dismissed;
2. There is no question for certification;
3. There is no order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2249-08

STYLE OF CAUSE: *RANA ABDUL RAUF et al. v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION*

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