Date: 20081222

Docket: IMM-945-08

Citation: 2008 FC 1382

Ottawa, Ontario, December 22, 2008

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Saeb Ozdemir BACHA

Applicant

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 (the Act), of a decision of a pre-removal risk assessment officer (PRRA officer), dated November 30, 2007, rejecting the application of Mr. Bacha and his family to authorize them to apply for permanent residence in Canada.

[2] The applicant, Saeb Ozdemir Bacha, and his family—his wife, Sahar Fleifel Bacha, and his children, Ihsan, Izdomir and Karim—are Lebanese citizens. The youngest son, Loay, was born in Canada in July 2007.

[3] The PRRA officer rejected the application because [TRANSLATION] "the claimants have not discharged their burden of proving that they would face unusual, undeserved and/or disproportionate hardship if they had to file their application for permanent residence outside of Canada, as provided by the Act".

[4] Specifically, on the issue of establishment, the officer found that the five years the applicants spent in Canada did not give them time to adopt such a Canadian [TRANSLATION] "way of living and thinking" that their return to Lebanon would be [TRANSLATION] "like a second immigration". In addition, the officer found that they had not demonstrated sound financial management, noting that the evidence did not contain any bank accounts with transactions over a number of months, bills for essential services from the past year, credit card statements, investments, etc. The officer noticed that the applicants did not submit any federal or provincial tax returns or any official proof of their income or its source, other than letters from their employers. Last, the evidence did not contain any indication that the applicants participated in social, recreational or charitable activities.

[5] With respect to their links to Canada, the officer noted that the parents of the applicant's wife live in Canada, as well as her brother, uncles, aunts and cousins. However, he found nothing in the evidence to indicate [TRANSLATION] "the real level of support that the applicants had", other than an undertaking signed by a brother.

[6] Turning to the best interests of the children, the officer found that, although the two adolescent children would certainly experience some difficulties in reintegrating themselves in Lebanon, they would not face any disproportionate obstacles if they had to return. The two younger children, aged seven and one, respectively, are, in his opinion, [TRANSLATION] “too young to speak of uprooting”.

[7] The officer also considered the risks of return that the applicants would face. However, it is only the humanitarian and compassionate (H&C) part of the decision that is currently being disputed.

[8] The following provision of the Act is relevant in this case:

25. (1) The Minister shall, upon request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister’s own initiative or on request of a foreign national outside Canada, 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 se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative ou sur demande d’un étranger se trouvant hors du Canada, 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.

[9] First, and primarily, the applicant submits that the PRRA officer breached his duty of fairness towards him because the officer did not give him the opportunity to provide information and documents that were missing from his initial application.

[10] I agree completely with the respondent that there is no basis in the case law for this assertion. In *Serda v. Minister of Citizenship and Immigration*, 2006 FC 356, Mr. Justice de Montigny wrote, at paragraph 20:

> One of the cornerstones of the *Immigration and Refugee Protection Act* is the requirement that persons who wish to live permanently in Canada must, prior to their arrival in Canada, submit their application outside Canada and qualify for, and obtain, a permanent resident visa. Section 25 of the Act gives to the Minister the flexibility to approve deserving cases for processing within Canada. This is clearly meant to be an exceptional remedy, as is made clear by the wording of that provision: . . .
>
> (Emphasis added.)

[11] Mr. Justice Lemieux summarized the case law on this point in *Singh v. Minister of Citizenship and Immigration*, 2007 FC 1356, at paragraph 32:

> It is well established, in this Court's jurisprudence, that:
>
> - The onus is on the applicants to establish the existence of sufficient H&C factors justifying an exemption from normal legal requirements in IRPA;
> - That onus means the applicants must submit for review by the decision-maker sufficient probative and reliable evidence to support the existence of those H&C factors. The applicants must put their best foot forward and cannot complain later on if they did not lead sufficient persuasive evidence because it is not a function of this Court on judicial review to reweigh the evidence before the decision-maker for the purpose of substituting its decision for that reached by a tribunal (See *Mann v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 567; see also *Samsonov v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1158); the corollary to the requirement an applicant is

required to put his/her best foot forward is the obligation by the decision-maker to consider and weigh that evidence.

[12] Furthermore, the following excerpts from the operational guide concerning applications submitted by immigrants in Canada based on humanitarian and compassionate considerations seem to me to be consistent with this case law:

5.1. Humanitarian and compassionate grounds Applicants bear the onus of satisfying the decision-maker that their personal circumstances are such that the hardship of having to obtain a permanent resident visa from outside of Canada would be	**5.1. Motifs d'ordre humanitaire** Il incombe au demandeur de prouver au décideur que son cas particulier est tel que la difficulté de devoir obtenir un visa de résident permanent de l'extérieur du Canada serait
(i) unusual and undeserved or (ii) disproportionate.	(i) soit inhabituelle et injustifiée; (ii) soit excessive.
Applicants may present whatever facts they believe are relevant.	Le demandeur peut exposer les faits qu'il juge pertinents, quels qu'ils soient.
. . .	[...]
5.26 Onus on applicant Officers do not have to elicit information on H&C factors and are not required to satisfy applicants that such grounds do not exist. The onus is on applicants to put forth any H&C factors that they feel exist in their case.	**5.26. Fardeau de la preuve** L'agent n'a pas à découvrir les facteurs CH par des questions et n'a pas à convaincre le demandeur de la non-existence de ces motifs. Il incombe au demandeur de présenter tous les facteurs CH qu'il estime présents dans son cas.
Although officers are not expected to delve into areas that are not presented, officers should attempt to clarify possible H&C grounds if these are not well articulated by the applicants.	Même si l'agent n'est pas tenu de creuser les points non soulevés à l'examen, il devrait essayer de clarifier tout point que le demandeur ne réussit pas à bien exposer.
. . .	[...]
5.29 The "Case to be met" There is no particular "case to be met." Applicants determine what they feel are the	**5.29. Les points à prouver** Il n'existe pas de point particulier à prouver. Il appartient au demandeur de déterminer les

H&C factors for their particular circumstances and make submissions on them. While officers do not have to elicit H&C factors (i.e., delve into areas that are not presented in the applicants' submissions), it is a good practice to clarify possible H&C grounds if these are not well articulated.	motifs qui, selon lui, sont des facteurs CH pertinents dans ses circonstances particulières et de présenter des observations à leur propos. L'agent n'a pas à tirer au clair les facteurs CH (c.-à-d. creuser les points non présentés dans les observations du demandeur), mais il serait bon de préciser les motifs CH éventuels si ceux-ci ne sont pas bien exposés.
. . .	[...]

[13] It is obvious that, despite the fact that "it is a good practice to clarify possible H&C grounds if these are not well articulated", the onus is on the applicant to determine the relevant H&C factors in his or her circumstances and to present them to the officer.

[14] Therefore, I cannot agree with the applicant's argument that the officer erred by not taking the initiative to ask for missing documents or information.

[15] Second, and in the alternative, the applicant contends that the PRRA officer did not correctly assess the degree of establishment of the applicant and the members of his family and that he did not weigh the best interests of the children directly affected by his decision, especially the child born in Canada, in a humane and positive manner.

[16] On this issue, it appears to me that the applicants simply disagree with the PRRA officer's assessment of the evidence. It is settled law that this Court cannot substitute itself for such a decision-maker to assess the facts where, as in this case, the applicant failed to establish that the decision rendered was based on "an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it" (see paragraph 18.1(4)(*d*) of the *Federal Courts*

Act, R.S.C. 1985, c. F-7). In the circumstances, the PRRA officer's decision appears reasonable to me.

[17] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision of a pre-removal risk assessment officer dated November 30, 2007, is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-945-08
STYLE OF CAUSE:	Saeb Ozdemir BACHA v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 18, 2008
REASONS FOR JUDGMENT AND JUDGMENT BY:	Mr. Justice Pinard
DATED:	December 22, 2008

APPEARANCES:

Luc R. Desmarais	FOR THE APPLICANT
Thi My Dung Tran	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Luc R. Desmarais Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT