Federal Court Cour fédérale

Date: 20110209

Docket: IMM-305-10

Citation: 2011 FC 152

Ottawa, Ontario, February 9, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

DAMEON LODGE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Lodge seeks judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA") of a negative humanitarian and compassionate ("H&C") decision made on December 22, 2009 by an Immigration Officer ("Officer") of Citizenship and Immigration Canada. The Officer found that Mr. Lodge's situation did not warrant an exemption from the requirement to apply for permanent residence from outside of Canada, nor that doing so would constitute unusual and undeserved or disproportionate hardship.

[2] The applicant is a citizen of Jamaica. His mother sponsored him to come to Canada in 1999. He was 18 years of age at the time. Along with his mother, the applicant's stepfather and three sisters also reside in Canada. His father and two brothers remain in Jamaica.

[3] Mr. Lodge became involved in criminal activity soon after his arrival in Canada. In July 2001, Mr. Lodge was convicted for failure to comply with a recognizance and carrying a concealed weapon. He was sentenced to 15 days in prison for each conviction. In November 2001, Mr. Lodge was convicted of failure to comply with a recognizance, possession of break-in instruments, attempted theft, theft, and possession of property obtained by crime. He was sentenced to one day in prison, with 3 months pre-sentence custody taken into consideration, and 18 months probation. It appears from the Officer's decision and reasons that Mr. Lodge was also briefly detained in 2004.

[4] As a result of these convictions, for which he now has a pending application for a pardon, the applicant lost his status as a permanent resident of Canada and a deportation order was issued against him in 2006. Following his release from prison the applicant had moved from Toronto, where his offences had been committed, to London, Ontario where he met and married Kongham (Kay) Phouttharath. They were married in 2006 and have since bought a house and have had a son together. The applicant also has two Canadian-born daughters from two previous relationships. They were born in December 2002 and May 2003. Each daughter lives with their respective mothers in Toronto.The applicant also has a daughter in Jamaica.

[5] An application for an exemption on H&C grounds was submitted in February 2007. The application was denied in December 2008. That decision was quashed on judicial review and sent

back for re-determination in 2009. Justice Russell Zinn found that the Officer had erred in weighing the evidence and, in particular, in assessing the best interests of the applicant's children: *Lodge v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 870, 83 Imm. L.R. (3d) 121.

[6] The H&C application was denied a second time in December 2009. The Officer found that there were insufficient humanitarian and compassionate grounds to approve the request for an exemption and that the requirement to apply for permanent residence from outside of Canada did not constitute unusual, underserved or disproportionate hardship. Consequently, the application was rejected. That decision is the matter under review in this application.

ISSUES:

[7] The applicant has raised several issues regarding the Officer's consideration of the best interests of the children, the applicant's establishment in Canada, the assessment of whether applying from outside of Canada would constitute unusual and undeserved or disproportionate hardship and the adequacy of the officer's reasons for decision.

ANALYSIS:

[8] The reasonableness standard applies in the present matter: *Ahmad v. Minister of Citizenship and Immigration*, 2008 FC 646 at para. 11. As stated in *Inneh v. Minister of Citizenship and Immigration*, 2009 FC 108 at para. 13, H&C decisions are discretionary in nature and are therefore afforded a wider scope of possible, reasonable outcomes. Reasonableness is concerned mostly with

the existence of justification, transparency and intelligibility within the decision-making process: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47.

[9] Contrary to the applicant's submissions, the Officer did consider the potential hardship to Mr. Lodge's children which would be attendant upon his removal. The officer acknowledged the applicant's submissions that to remove Mr. Lodge would be to deprive the children "of financial and emotional support" and would cause them to "lose the love and support of their father". The Officer reasoned, however, that if the applicant were to return to Jamaica, the children would not be growing up without a father. It was not unreasonable for the Officer to find that a geographical separation did not equate to a father no longer loving or supporting his children.

[10] This is not a case such as those relied upon by the applicant: *Kolosovs v. Minister of Citizenship and Immigration*, 2008 FC 165; *Soto v. Minister of Citizenship and Immigration*, 2006 FC 1524. In *Kolosovs*, the Court found that the applicant was very much the emotional and financial support to his four grandchildren, one of whom had special needs and thus required special attention. In the present case, it is overreaching to suggest that Mr. Lodge plays a comparable role in the lives of each of his three Canadian born children. While he does certainly play a role, there are questionable circumstances surrounding his employment and financial establishment. His two daughters are cared for primarily by their mothers.

[11] *Soto* can also be distinguished from the present matter. In that case, the Officer's decision contained only one paragraph which pertained to the children's interest. In the case before us, the Officer's Notes to File were two and half typed pages in length, single spaced, and took numerous

aspects of Mr. Lodge's children's interests into account. The Officer may have misunderstood the evidence of one of the mothers as to the frequency of contacts with one of the children in Toronto but that does not render the decision as a whole unreasonable.

[12] The Officer noted the age of Mr. Lodge's young son, finding that because he was only five months old, the impact of the applicant's removal would be lower. The Officer also looked at the level of dependency between the applicant's children and the applicant, noting that the primary caregivers of Mr. Lodge's two daughters are their mothers. It was reasonable for the Officer to consider that they would therefore continue to be cared for should the applicant return to Jamaica.

[13] Insofar as establishment is concerned, the Officer did note positive factors put forward by the applicant such as his family ties. Mr. Lodge's mother and sisters both live in Toronto as do two of his three children. His third child and his wife live together with him in London. He also owns a home with his wife, Kay.

[14] As to employment, the officer considered the information submitted but found that it did not favour the applicant. The officer also considered Mr. Lodge's volunteer activity giving it little weight because the evidence did not provide any details about the nature of his work, the length of his contribution or the way in which his volunteerism positively affected the community. It was open to the officer to attach little weight to the evidence submitted and his decision to do so does not constitute a reviewable error.

[15] The applicant is correct in stating that the Officer must provide “reasoned reasons”: *Adu v. Minister of Citizenship and Immigration*, 2005 FC 565 at paras. 10 and 11. The reasons must be “sufficiently clear, precise and intelligible so that a claimant may know why his or her claim has failed and be able to decide whether to seek leave for judicial review”: *Ogunfowora v. Minister of Citizenship and Immigration*, 2007 FC 471, 63 Imm. L.R. (3d) 157 at para. 58. The applicant does not, however, present cogent arguments as to why the reasons are inadequate in this case. He argues, for the most part, that the Officer placed little to no weight on certain evidence. That does not constitute a basis on which to find that the reasons are insufficient.

[16] In this case, it seems to me that the Officer made a clear and comprehensive analysis of the information presented. Most of the pertinent evidence submitted was noted in the Officer’s Notes to File. This included: letters in support of the applicant, letters pertaining to volunteer activity, his employment and marital status as well as family ties here in Canada and abroad.

[17] The Officer made no mention of the applicant’s eligibility to apply for a pardon. It is not clear from the record that the application had been made when the matter was before the officer. The application had been submitted but returned for additional information as of the date of the filing of this application. It is presumed that an officer considers all of the evidence but need not mention all of it in the decision: *Sidhu v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 741 at para. 15; *Wynter v. Canada (Minister of Citizenship and Immigration)* (2000), 185 F.T.R. 211, 24 Admin. L.R. (3d) 99 at para. 38; *Rodriguez v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 414 at para. 18. Here, the failure to refer to the applicant’s eligibility was not material as the applicant continued to be inadmissible for criminality when the application was

considered. A pardon will, of course, have a considerable bearing on when the applicant may be permitted to return with his wife's sponsorship and the Minister's consent, assuming he is removed, as counsel noted at the hearing.

[18] The application is dismissed. No serious questions of general importance were proposed for certification.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application for judicial review of the decision made on December 22, 2009 by an Immigration Officer for an exemption on humanitarian and compassionate grounds is dismissed. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-305-10
STYLE OF CAUSE:	DAMEON LODGE and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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