Federal Court  Cour fédérale

Date: 20110217

Docket: IMM-3433-10

Citation: 2011 FC 190

Toronto, Ontario, February 17, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

PENG CHOW LIM
AND TAN HWEE CHIN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants ask the Court to review and set aside a decision of an immigration officer denying their application for permanent residence in Canada from within Canada on humanitarian and compassionate grounds (the H&C application).

[2] They submit that the officer erred in failing to provide sufficient reasons, in denying the applicants procedural fairness, and in making an unreasonable decision, considering the facts adduced and the Guidelines established by the respondent.

[3] The application is dismissed for the reasons that follow.

Adequate Reasons

[4] The applicants' memorandum reproduces lengthy passages from the officer's decision. They submit that much of the decision is "dismissive" due to the officer not giving much weight to the evidence put forward. The applicants say it is trite law that a decision maker must give reasons for the weight he or she accords the evidence, and that here the officer has failed to do so. The applicants say the officer simply reviewed the evidence before her and stated what weight she assigned to it, and that this analysis did not meet the standards set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

[5] The applicants brought the Court's attention to a passage from *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565, where Justice Mactavish wrote, at para. 14, that:

> In my view, these 'reasons' are not really reasons at all, essentially consisting of a review of the facts and the statement of a conclusion, without any analysis to back it up. That is, the officer simply reviewed the positive factors militating in favour of granting the application, concluding that, in her view, these factors were not sufficient to justify the granting of an exemption, without any explanation as to why that is. This is not sufficient, as it leaves the applicants in the unenviable position of not knowing why their application was rejected.

The applicants say this is precisely the error the officer committed here.

[6] The applicants also cite *Raudales v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 385, with respect to what constitutes adequate reasons, and submit that the Court cannot

examine the decision as it stands because it has no insight as to why the officer gave weight one way or the other to much of the evidence.

[7] As examples of the concerns raised, the applicants point to a number of passages where the officer refers to certain facts and then concludes with one of the following statements: “I have weighed this factor and have given it moderate weight,” “I have weighed this factor heavily,” “I have weighed all of these factors, and do not weigh them heavily,” and “I have weighed this factor and have not given it significant weight.”

[8] Unlike the decision before the Court in *Adu*, the officer does more in this case than merely reproduce the facts and then conclude with a statement as to the weight she is assigning to them. When the decision is read as a whole the reasons for assigning more or less weight to certain pieces of evidence are clear. For example, with respect to family and personal relationships in Canada, the officer noted that the applicants chose to remain in Canada and complete an H&C application, that although their daughter has little family in Canada she has been here for almost 18 years, and that her situation is not significantly unusual. With respect to establishment, the officer explained that the applicants’ membership in the Windsor Senior’s Centre and their relationships in Canada were given little weight because the applicants had provided insufficient clarification about how severing these ties would cause hardship. The officer also noted that the applicants have some family in Singapore and that they are financially self-sufficient. These are all reasons why the officer assigned the evidence the weight she did. The applicants should not be in any doubt regarding why their application was refused, and the Court certainly is not.

Procedural Fairness

[9] The applicants' submission that they were denied procedural fairness rests upon the fact that the officer requested that they provide certain documents and then concluded that they had provided "insufficient evidence." The applicants explain the alleged unfairness as follow, at paras. 21 to 25 of their memorandum:

> The Applicants provides [*sic*] the decision maker with the evidence. Having been provided with the evidence requested, the decision maker turns around and refused [*sic*] the application, in large part, for the Applicants having failed to provide "sufficient evidence," despite having provided all the evidence that the decision maker had requested.
>
> It is submitted that this is procedurally unfair and unreasonable on its face.
>
> Having effectively provided the Applicant[s] an opportunity to reply to [her] concerns, by requesting documents, fairness would dictate that all areas in which [s]he believed [s]he need [*sic*] more materials and/or explanations should have been put to the applicants.
>
> It is submitted that not doing so, under the circumstances is simply unfair.

[10] This submission is without merit.

[11] The officer, by letter of February 9, 2010 (a date that is four and one-half years after the H&C application was initially filed), wrote to the applicants as follows:

> Before a decision can be made about exempting you from the requirements of the Immigration and Refugee Protection Act, further information is required, specifically:
>
> Evidence of employment for sponsor (include 2008 Notice of Assessment, last three pay statements, and bank statements for the past 6 months), complete copy of valid passports for yourself and your spouse, information regarding property or home owed in

> Singapore if applicable, and any other updated information you wish to provide.

[12] By letter of February 23, 2010 the applicants provided the specific documents requested and provided two short paragraphs that could be said to be "updated information."

[13] The submission of the applicants that the request for certain documents created a legitimate expectation that the documents requested would be sufficient to allow the decision maker to positively assess the application is without foundation. The letter merely states that these documents are required before a decision can be made – there is no suggestion that the decision made will be positive. Further, when the officer writes that the applicants have failed to provide "sufficient evidence" she is not stating that they failed to respond adequately to the request for information; rather, she is stating that insufficient evidence was provided by the applicants to permit her to reach the result they wished. This is clear when that phrase is read in the context from which it was taken: "However, the applicants have provided insufficient evidence to illustrate that they are established to such a degree that if they had to return to Singapore they would suffer unusual and undeserved or unreasonable hardship."

Reasonableness of the Decision

[14] There is no suggestion that the officer ignored any relevant evidence; rather, the applicants submit that (i) it was counterintuitive of the officer to assign negative weight to the fact that the applicants submitted an H&C application rather than an overseas sponsorship given that if they had submitted an overseas sponsorship there would be no H&C, (ii) that the officer's finding that the hardship was not the result of circumstances beyond the applicants' control was unreasonable given

that the separation they would have to endure for five years while a sponsorship application is being processed is not within the their control, (iii) that the officer's determination that the situation was not unusual was unreasonable because although the officer listed different factors, she did not consider whether cumulatively the situation was unusual, nor did she consider the unusual nature of the applicants' daughter's job, and (iv) that it was unreasonable for the officer to find that the applicants would be economically self-sufficient in Singapore when she found that the evidence was insufficient to demonstrate establishment in Canada.

[15] Contrary to these submissions, I find that there is nothing about the officer's decision that was unreasonable. It fell within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9, at para. 47.

[16] Specifically, there was nothing problematic about the officer's findings that the applicants submitted an H&C application rather than an overseas sponsorship given that this fact is directly relevant to whether or not any hardship that would be experienced by the applicants would be beyond their control. The officer's reference to circumstances beyond the applicants' control related to the hardship of leaving Canada after living here for five years. This is within the applicants' control because they decided to live here without permanent status, albeit with visitor permits.

[17] The officer did consider the facts cumulatively. The officer specifically stated, in the final paragraph of her decision:

> I have considered all the information regarding this application as a whole. Having considered the grounds the applicants have

> forwarded as grounds for an exemption, and weighing these factors together globally, I do not find they constitute as [*sic*] unusual and undeserved or unreasonable hardships.

[18] The officer did not ignore the unusual nature of the applicants' daughter's job as a corrections employee. The officer acknowledged that the job was high stress and involved shift work and overtime, but found that these features (not the job itself) were not unusual.

[19] Finally, it was open to the officer to find that the applicants would be economically self-sufficient in Singapore and still find that their establishment in Canada was not sufficient to warrant a positive H&C decision. Economic self-sufficiency is only one aspect of establishment, which itself is only one aspect of an H&C determination.

[20] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Wennie Lee	FOR THE APPLICANTS
Kareena R. Wilding	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEE & COMPANY Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
MYLES J. KIRVAN Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT