Federal Court  Cour fédérale

Date: 20111021

Docket: IMM-1231-11

Citation: 2011 FC 1211

Ottawa, Ontario, October 21, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

MITRA DAMION KOONJOO

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Immigration Appeal Division (IAD) of the Immigration and Refugee Board, dated January 31, 2011. The IAD dismissed the Applicant's appeal of a Removal Order on humanitarian and compassionate (H&C) grounds under subsections 67(1)(c) and 68(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the following reasons, this application is dismissed.

I. Facts

[3] The Applicant, Mitra Damion Koonjoo, is a citizen of Trinidad and Tobago. He came to Canada with his family at four years old on March 27, 1987. After remaining in Canada illegally, he and his family were granted permanent residence status in 1992.

[4] In September 2007, the Applicant was convicted of aggravated assault and conspiracy to commit an indictable offence. He was sentenced to two 12-month terms to be served concurrently, in addition to 63 days in detention.

[5] Accordingly, the Applicant was found inadmissible to Canada based on serious criminality under subsection 36(1) of the IRPA. A removal order was issued against him.

[6] The Applicant maintains contact with his family in Canada. He also has a 7 year old son, Jayden, who is in the custody of his former girlfriend and has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). The Applicant states that he provides child support when he can and sees Jayden regularly.

II. Decision

[7] The IAD dismissed the Applicant's appeal of his Removal Order, finding that there were insufficient H&C considerations to warrant special relief.

[8] In reaching this determination, the IAD considered a series of relevant factors. Given the seriousness of the Applicant's offences, the involvement of firearms and significance of protecting public safety and security, the Applicant was found to have a markedly high hurdle to overcome to warrant the exercise of extraordinary relief.

[9] This significant negative factor also flowed into a consideration of the possibility for rehabilitation. Although the IAD recognized the Applicant attended a range of courses, it was not persuaded that this amounted to meaningful rehabilitation. There were instances of violent or threatening actions with his family. His behaviour regarding past offences was also found to be inconsistent and not credible.

[10] With respect to the Applicant's degree of establishment in Canada, it was found that the family had a tumultuous relationship despite their continued contact. At least one member of the family had limited knowledge of his criminal acting out. The Applicant's employment history was not steady and cast doubt on his level of economic establishment.

[11] In addition, the IAD was not convinced that the Applicant's family would provide support for his re-integration, noting his brother was a source of his negative behaviour. It was

acknowledged that the family would suffer emotional hardship if he were removed. His son would suffer undue hardship on an emotional level, but not financially.

[12] While the Applicant would undoubtedly find his life more comfortable in Canada and his removal to Trinidad and Tobago would be challenging, this was not considered undue hardship.

[13] Finally, the IAD assessed the best interests of the child. It recognized that this was a significant factor in the Applicant's case but found that public safety and security concerns outweighed it.

III. Issues

[14] This application raises the following issues:

(a) Did the IAD err in its consideration of the best interests of the Applicant's child?

(b) Did the IAD err in its assessment of evidence related to the Applicant's rehabilitation efforts, family support system and economic establishment in Canada?

IV. Standard of Review

[15] The standard of review for the IAD's assessment of the evidence in withholding relief is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paras 58-59).

[16] Reasonableness is "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process" as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

Issue A: *Did the IAD Err in its Consideration of the Best Interests of the Applicant's Child?*

[17] There is no question that the IAD was required to be "alert, alive and sensitive" to the best interests of the Applicant's child and accord them "substantial weight" (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CarswellNat 1124 at para 75). I have no reason to believe that the IAD failed to meet this requirement in the present case.

[18] The Applicant submits that the IAD merely mentioned the best interests of the child and failed to examine them with care and weigh other factors as required by *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] FCJ No 457 at para 13. They contend that in the short section devoted specifically to the best interests of the child the IAD did not make any mention of Jayden and potential concerns associated with his ADHD. The IAD also failed to recognize the closeness of the relationship between the Applicant and his son, suggesting that the letter provided by his former girlfriend in support was vague. The Applicant acknowledges that there were references to Jayden in the assessment of other factors but insists this was mainly cursory and ultimately yielded to security considerations.

[19] As the Respondent makes clear, however, the best interests of the child were given "substantial weight" and examined with care. Admittedly, the section devoted specifically to best interests of the child does not elaborate on the evidence. This reflects that much of the evidence was addressed earlier in the decision. Viewed in their entirety, the IAD's reasons do consider the interests of the Applicant's son.

[20] As a prime example, the IAD recognized the emotional impact on the Applicant's son of the prospective removal. While the IAD did not find the degree of closeness between father and son that the Applicant would have preferred, it was open to the IAD to assess the evidence before it. It considered the Applicant's claims that he met with the son every weekend as well as recognition that his visits were sometimes limited. Reference was also made to a letter from the Applicant's former girlfriend stressing that her son needed his father in his life. The IAD simply found that the letter was short on specifics to reinforce the extent of contact between them. It also recognized that the Applicant's incarceration would have disrupted his relationship with the son.

[21] Similarly, the IAD was reasonable in its assessment of the lack of financial dependency of the son on his father. It noted that the Applicant pays child support when he can but suggested that his sporadic employment history interfered with his ability to do so. As a consequence, the removal would not create a financial hardship.

[22] The IAD also made reference to the son's ADHD. However, there was no medical evidence of the diagnosis and any particular effects that might be suffered as a result of the father's removal.

Contrary to the Applicant's assertion, the IAD's inability to give further weight to the son's ADHD does not make the determination related to the best interests of the child unreasonable. The Applicant has the burden of adducing relevant evidence related to the best interests of the child (see *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 1 FCR 635 at para 5).

[23] Moreover, it is up to the IAD to determine what weight must be given to the best interests of the child (*Legault*, above at para 12). As a result, the best interests of the child need not be determinative. Despite significant emotional hardship to the son, IAD was able to balance the best interests of the child against public safety and security concerns. To find that the latter outweighed those best interests was within the range of possible, acceptable outcomes.

Issue B: *Did the IAD Err in its Assessment of Evidence Related to the Applicant's Rehabilitation Efforts, Family Support System and Economic Establishment in Canada?*

(i) Rehabilitation Efforts

[24] The Applicant claims that the IAD mischaracterized the evidence relating to his rehabilitation. They discounted his participation in numerous programs to address the underlying causes of his behaviour and positive assessment of a probationary officer by focusing on his conviction and what was termed his "overall history of violent acting out." Moreover, the Applicant suggests that the IAD based its determination primarily on two incidents of violent behaviour – an incident with his former girlfriend in 2003 prior to his conviction and in which the charges were

dropped as well as an outburst with his parents in 2008. He claims that the incident with his parents was related to his drinking and he voluntarily attended a meeting of Alcoholics Anonymous (AA).

[25] Nevertheless, I am persuaded by the Respondent's submission that the IAD considered all of the evidence. The IAD described in detail the programs attended and conclusions of the probationary officer. It proceeded to weigh these positive factors against negative ones to find that the Applicant had not engaged in meaningful rehabilitation. The IAD noted that there was no evidence of any attempts at rehabilitation prior to his sentencing in September 2007. While the IAD mentioned the two violent incidents, contrary to the Applicant's claim, these were not considered determinative.

[26] A review of the decision highlights that the critical factor for the IAD seemed to be the Applicant's inconsistent descriptions of his criminal conduct including his willingness to accept responsibility. The IAD did not consider the Applicant a credible witness because he was selectively candid and regurgitated much of what he learned in courses. His prospects for rehabilitation were considered low as he did not have insight into his conduct, could not identify root causes of his substance abuse, and retained contact with his brother, the main perpetrator of the crime.

[27] Given that the IAD weighed all of these positive and negative factors, it was reasonable to conclude that the Applicant had not demonstrated meaningful rehabilitation. While the Applicant would have preferred that the attendance of courses was given greater emphasis, this Court cannot intervene to reweigh the evidence considered by the IAD.

(ii) Family Support System

[28] The Applicant submits that the IAD was unreasonable in its assessment of the availability of a family support system. A letter from the grandmother and the rest of the family regarding their willingness to assist the Applicant was not specifically addressed.

[29] In addition, the IAD relies on the incident when the Applicant was forced to leave his parent's home because of his violent behaviour and return to custody until the Bail program agreed to supervise him. The Applicant contends that this blames his parents for being unable to assist him when intoxicated and ignores two years of support they provided in allowing him to remain clean.

[30] The Respondent highlights that the IAD's conclusion on the presence of a family support system and impact on relatives of removal was that it represented a positive factor. The factor was also accorded below moderate weight. This assessment demonstrates that the IAD considered the evidence in the Applicant's favour.

[31] While the Respondent acknowledges that the IAD seems to have overlooked the letter provided by the grandmother and the rest of the family, this would not undermine the overall conclusion. As part of its more positive determination, the IAD considered letters from the Applicant's parents and a family friend stating their willingness to provide support.

[32] Moreover, it was reasonable for the IAD to call attention to an incident when the Applicant's parents were unable to assist him. It is not meant to completely dismiss the support provided by the parents, but is indicative of their inability to assist him in his most acute crises.

[33] As result, I must agree with the Respondent that the IAD's consideration of the availability of a family support system and recognition of it as a positive factor was reasonable. Once again, decisions of weight should not be overturned by the Court, as the Applicant implies by his submissions.

(iii) Economic Establishment in Canada

[34] The Applicant disputes the IAD's characterization of his employment history as "sporadic." He draws the Court's attention to his steady job at a factory prior to a break-up with his former girlfriend. He claims he stopped working due to stress and depression associated with this break-up. More recently, the Applicant started a construction job receiving $500.

[35] I agree with the Respondent that the determination by the IAD of the Applicant's economic establishment was reasonable. There was no letter from the factory confirming previous employment. For a brief period, the Applicant received social assistance. Even if the Applicant was found to have jobs in the past, this would not solidify his economic establishment. The IAD noted that he lacked skills, personal property or bank account savings. He had no plans for the future. The IAD considered the evidence before it.

[36] I also note that the IAD's overall conclusion on the establishment issue was that it represented a neutral factor. Despite the lack of weight attributed to the Applicant's economic establishment in Canada given his questionable employment history, he was given substantial consideration for his time spent in the country and social establishment.

[37] The IAD's conclusions on rehabilitation efforts, family support system and economic establishment were based on the evidence before it and within the range of reasonable outcomes. I am not persuaded that there was a mischaracterization of that evidence suggesting that the IAD would be compelled to reach a different conclusion.

VI. Conclusion

[38] The IAD reasonably considered the best interests of the Applicant's child and assessed the evidence relating to rehabilitation, family support and economic establishment.

[39] Accordingly, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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