Federal Court  Cour fédérale

Date: 20120730

Docket: IMM-8769-11

Citation: 2012 FC 943

Ottawa, Ontario, July 30, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

AZIZUL HAKIM CHOWDHURY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of Pre-Removal Risk Assessment (PRRA) Officer Lisa Rae Devries (the Officer), dated March 3, 2010, with an addendum dated May 24, 2011. The Officer refused the Applicant's request for permanent residence from within Canada based on humanitarian and compassionate (H&C) grounds.

I. Facts

[2] The Applicant, Azizul Hakim Chowdhury, is a citizen of Bangladesh born on December 16, 1956. He is deaf and mute. His wife and three children all remain in Bangladesh along with his seven siblings. The Applicant arrived in Canada on August 23, 2003 and claimed refugee protection, alleging persecution by the police and several rival political parties who had forced him to draw political cartoons insulting each other. His refugee claim was refused on January 20, 2005 after the Board found insufficient credible and reliable evidence that he was at risk in Bangladesh and explicitly rejected the allegation that the Applicant is being sought by either state authorities or political party officials. In November 2006, he made an H&C application and, in February 2007, applied for a PRRA.

[3] The H&C and the PRRA were refused on March 3 and 4, 2010 respectively. However, they were inadvertently not disclosed to the Applicant, who made additional submissions in both the H&C and the PRRA in October 2010. Those additional submissions were considered in addenda dated May 24 and 31, 2011 and then both final decisions were disclosed to the Applicant.

II. Decision under Review

[4] The Officer considered the hardship resulting from the Applicant's establishment in Canada and the risk he faces in Bangladesh, but found that there was insufficient evidence to warrant a positive decision.

[5] The Officer noted the negative refugee decision and referred to the PRRA analysis before finding that the Applicant's evidence was not sufficient to demonstrate hardship if he must return to Bangladesh. The Officer also gave little weight to letters from individuals in Canada and in Bangladesh that affirmed the risk to the Applicant, as they all lacked first-hand knowledge of the risk.

[6] The Officer accepted that the Applicant is being treated for depression and trauma, but found that there was insufficient evidence to show that these conditions resulted from his fear of return. The Officer noted that the doctor's reference to a lack of support suggested that the doctor was not fully apprised of the Applicant's circumstances – specifically, his many family members in Bangladesh who could provide support.

[7] The Officer considered the evidence about country conditions in Bangladesh, but found that conditions were improving and that, despite some evidence of difficulties faced by the disabled, there was insufficient evidence of hardship given the Applicant's personal circumstances and achievements before he left Bangladesh.

[8] Turning to his establishment in Canada, the Officer accepted that this was a positive factor and commended the Applicant's efforts to establish himself. However, the Officer found that there was little objective evidence that his having to leave Canada would cause unusual and undeserved or disproportionate hardship.

III. Issues

[9] There are two issues in this application: (1) whether the Officer applied the correct legal test in the H&C when assessing the hardship that results from risk; and (2) whether the Officer based the negative H&C decision on unreasonable inferences.

IV. Standard of Review

[10] The first question is one of law that requires the correctness standard (see *Kim v Canada (Minister of Citizenship and Immigration)*, 2008 FC 632, [2008] FCJ No 824 at para 24. The second relates to the Officer's consideration of the evidence and findings of fact and therefore requires deference (see *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at para 46).

V. Analysis

[11] The Applicant submits that the Officer applied the wrong legal test in considering his risk in the H&C decision. In support of this argument, he quotes passages that refer to insufficient evidence of risk, as well as several cases discussing the importance in H&C decisions of considering whether the risk causes hardship.

[12] The Respondent submits that the Officer properly assessed the Applicant's risk and reasonably concluded that it did not amount to hardship. It also notes that Applicant cannot merely

rely on evidence of country conditions and must link that evidence to the hardship they face, citing *Lalane v Canada (Minister of Citizenship and Immigration)*, 2009 FC 6, [2009] FCJ No 658 at para 38.

[13] The Applicant also submits that the Officer based the H&C decision on the following unreasonable inferences: that his doctor was referring to family support when he stated that insufficient support would be available in Bangladesh, that his family would in fact be able to support him in Bangladesh, and that his knowledge of American Sign Language would be of use in Bangladesh.

[14] The Respondent submits that these inferences were reasonably open to the Officer and that the Officer's conclusions are reasonable.

[15] The Applicant has not established that the Officer's risk analysis is improper. Mere references to the PRRA and the refugee decision are insufficient to show that the Officer failed to consider whether the risk can lead to hardship. Although the Applicant has quoted certain passages from the Officer's decision that mention risk, the majority of these references also mention the hardship that could result from that risk. When read as a whole, the decision clearly considered whether the risk the Applicant faces could lead to unusual and undeserved or disproportionate hardship.

[16] The Applicant's argument with respect to unreasonable inferences is entirely without merit. The Officer's inferences were not unreasonable given the evidence in the record; in fact, the

Applicant's PRRA submissions specifically relied on the support from his family to argue that he did not have an internal flight alternative. Even if the Officer erred in making these inferences, the error is inconsequential. The Applicant bore the burden of establishing that H&C grounds existed to warrant an exception from the general requirements of *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) and he failed to provide sufficient evidence to do so. The decision is reasonable.

VI. Conclusion

[17] For these reasons, the 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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STYLE OF CAUSE:	**AZIZUL HAKIM CHOWDHURY v MCI**
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