Federal Court Cour fédérale

Date: 20121210

Docket: IMM-2496-12

Citation: 2012 FC 1459

Ottawa, Ontario, December 10, 2012

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

SUTHAKARAN KANAGARATNAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the February 29, 2012 decision of the Director, Case Determination, Case Management Branch of Citizenship and Immigration Canada, finding there were insufficient humanitarian and compassionate [H&C] grounds to justify granting the applicant an exemption from the requirement of applying for permanent residency from abroad.

[2] The applicant is a citizen of Sri Lanka. In a decision dated April 16, 2010, the Immigration Division of the Immigration and Refugee Board found him to be inadmissible to

Canada pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] by reason of his involvement with a terrorist organization, the Liberation Tigers of Tamil Eelam or LTTE. Accordingly, the applicant was ordered deported from Canada.

[3] In August of 2010, the applicant applied for permanent residence in Canada and sought an exemption on H&C grounds from the normal requirement that permanent resident applications must be made from abroad. Such an application, however, is foreclosed to the applicant, by reason of the inadmissibility determination. The H&C application, therefore, would have the effect of waiving the applicant's inadmissibility.

[4] The applicant's wife, Mrs. Suthakaran, was granted refugee status in 2011 based on the risk associated with being the wife of an LTTE member in Sri Lanka. The couple's two children had previously been granted refugee status in 2004, based on their risk of being forced into LTTE recruitment. Mrs. Suthakaran's story changed through the years: when she arrived in Canada, without the applicant, she highlighted the various actions the applicant undertook as an LTTE member and relied on this evidence in support of her refugee claim. However, when her husband arrived in Canada in 2007 and was then subject to inadmissibility proceedings, she tried to recant this testimony. Not surprisingly, she was not believed.

[5] The applicant and his family reside with the applicant's mother-in-law, brother-in law and his family. The evidence before the Director indicated that relationships in the extended family household were tense and that the applicant's brother-in-law intended to have the applicant's family move out of the house. The applicant's wife is currently suffering from

depression. The applicant filed two relatively brief notes from his wife's treating psychiatrist in support of his H&C application, which indicate that Mrs. Suthakaran has difficulty carrying out day-to-day chores and in caring for her children, is taking medication, and that the applicant has been ensuring that she takes her medication. The treating psychiatrist expressed the view that if the applicant were deported, Mrs. Suthakaran may not comply with the intake of her prescribed medication, stating that he was "very concerned that she may come to feel so profoundly hopeless that she may harm herself".

[6] The applicant's children are in their late teens and depend to a large extent on their father for care, guidance and support, given their mother's illness. The applicant is the sole breadwinner in the family, with his wife currently being incapable of working. She has not worked outside the home in the past.

[7] The applicant argued before the Director that in light of his wife's illness and the needs of his children, he should be afforded H&C consideration. The Director disagreed, holding that there were insufficient H&C grounds to warrant waving the applicant's inadmissibility.

[8] The standard of review applicable to the Director's decision is that of reasonableness (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 174 DLR (4th) 193 at para 62; *Prashad v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1286 at para 26, 208 ACWS (3d) 387; *Paz v Canada (Minister of Citizenship and Immigration)*, 2009 FC 412 at paras 22-25, [2009] FCJ No 497).

[9] The applicant argues that the Director's decision is unreasonable and should be set aside because the Director:

1. made findings based on speculation and ignored evidence in finding that the applicant's wife might recover from her depression and be able to care for the children and hold gainful employment. The applicant argues in this regard that the Director erred in relying on information from the website of the Centre for Addiction and Mental Health [CAMH] in preference to the evidence from Mrs. Suthakaran's psychiatrist;

2. failed to properly assess the best interest of the applicant's children, who will effectively be left without a guardian, given their mother's incapacity; and

3. considered the H&C factors in isolation.

In my view, none of these submissions has merit.

[10] In assessing the reasonableness of the Director's decision, it must first be borne in mind that the reasonableness standard of review is an exacting one, particularly in the case of a discretionary decision. The reasonableness standard, as noted by Justice L'Heureux-Dubé in *Baker*, above, at pp 857-858, requires that "[…] considerable deference should be accorded to immigration officers exercising the powers conferred by the legislation, given the fact-specific nature of the inquiry, its role within the statutory scheme as an exception, the fact that the

decision-maker is the Minister, and the considerable discretion evidenced by the statutory language." As such, the role of this Court is a limited one.

[11] Secondly, it must be recalled that the burden is on an applicant to establish grounds for the exercise of H&C consideration and that where, as here, an officer is called upon to balance national security concerns with the personal circumstances of an applicant or his family, an applicant is required to put forward significant H&C considerations to warrant an exemption. As Justice Zinn wrote in *Qureshi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 335 at paras 30 and 33:

> The granting of an exemption for humanitarian and compassionate reasons is exceptional and highly discretionary, thus deserving of considerable deference by the Court […] Where there has been a finding of inadmissibility, any humanitarian and compassionate factors must be balanced against the public interest in excluding inadmissible persons from Canada.
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> […]
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> …H&C considerations [have] to be significant when balanced against the reasons for the inadmissibility.

[12] Insofar as concerns the treatment of the medical evidence, contrary to what the applicant asserts, the Director did not base her decision on speculation or ignore evidence concerning Mrs. Suthakaran's condition. In this regard, it was not inappropriate for the Director to have considered information on the CAMH website, which is a credible source regarding psychiatric conditions. Moreover, the information the Director considered was disclosed to the applicant (and his counsel) for comment. There is no suggestion that the Director did not fairly summarize the information contained on the CAMH website, which does indicate that depression may often go into remission, particularly with psychotherapy and medication. The information from Mrs.

Suthakaran's psychiatrist, on the other hand, contrary to what counsel for the applicant asserts, did not indicate that Mrs. Suthakaran would not recover from her depression if the applicant were deported. Rather, to put the doctor's notes at their highest, they stated merely that there was a risk that Mrs. Suthakaran might cease taking her medication if her husband were removed to Sri Lanka and that the psychiatrist had a concern that she might deteriorate and contemplate suicide.

[13] The Director fairly summarized the evidence from both these sources in the decision, and determined that "[…] it seems that people can return to their normal routines with appropriate treatment. Moreover, the evidence suggests that if Mrs. Suthakaran continues with her treatment; accepting the protocol recommended by her psychiatrist, it is likely that she will be able to resume more parental and household duties." In coming to this decision, the Director afforded greater weight to the information from the CAMH website as opposed to that from Mrs. Suthakaran's psychiatrist. The weighing of such evidence is at the heart of the specialized expertise of H&C officers, and it is inappropriate for this Court on judicial review to reweigh the evidence (see e.g. *Japan Electrical Manufacturers Assn v Canada (Anti-Dumping Tribunal)*, [1982] 2 FC 816 (CA) at p 818; *Buchan v Canada (Attorney General)*, 2007 FC 1141 at para 29). That, in effect, is what the applicant seeks to have me do in the present case.

[14] This case is distinguishable from *Volniansky v Canada (Minister of Citizenship and Immigration*, 2005 FC 1597, *Kambo v Canada (Minister of Citizenship and Immigration*, 2012 FC 872, *Romans v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1157 and *Gillespie v Canada (Minister of Citizenship and Immigration*, [2000] FCJ No 545, relied on by

the applicant, as in those cases, unlike here, there was no evidence before the officers to support the conclusions reached regarding the claimants' mental health status or treatment available to them abroad. Here, on the other hand, the evidence from the CAMH website does support the Director's conclusions. In *Damte v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1212, also relied upon by the applicant, the officer was found to have engaged in a series of perverse findings. Again, that is not the situation in the present case.

[15] Insofar as concerns the Director's treatment of the best interests of the applicant's children, as counsel for the applicant argued, to a large extent, the Director's reasoning on this point builds upon her reasoning regarding the possibility of Mrs. Suthakaran's recovery. If she recovers, she will be able to care for her children. As I have found the Director's reasoning on this point to be sustainable, it follows that her treatment of the best interests of the children is not unreasonable.

[16] Moreover, contrary to what the applicant asserts, the children will not be left without emotional support even if Mrs. Suthakaran remains depressed, as they do have an extended family in Canada and there is no evidence that Mrs. Suthakaran lacks the capacity to be their legal guardian, as opposed to presently facing difficulty in carrying out daily tasks. While the boys' uncle filed a statutory declaration indicating that he would not be able to support the children financially, it does not follow that he and (and others in the family) would not provide the children with emotional support. In addition, as the Director noted, the boys are in their late teens and thus holding that they would be able to access transit and potentially find part-time jobs like many other Canadian teenagers is not unreasonable.

[17] As concerns finances, as the Director stated, if Mrs. Suthakaran continues to be unable to work, social assistance would be available to her and the children. The fact of needing to resort to social assistance does not necessarily warrant H&C consideration, since the family would be on all fours with many other families in Canada.

[18] Finally, it is erroneous to suggest that the Director viewed the H&C factors in isolation from each other. The Director considered each of the arguments put forward by the applicant and balanced all the various interests to decide if H&C consideration was warranted and held that the H&C considerations did not outweigh the applicant's non-admissibility on security grounds pursuant to paragraph 34(1)(f) of the IRPA.

[19] In short, the Director determined that two short notes from a psychiatrist, which indicated that Mrs. Suthakaran suffers from depression, did not justify granting an LTTE member the right to remain in Canada as a permanent resident. I cannot find this conclusion to be unreasonable, particularly in light of the evidence regarding the likelihood of recovery from depression with proper treatment. In addition, it appears that - at least to a certain extent - the shifting stories that have been related in the various proceedings about the degree of the applicant's involvement in the LTTE have led to the situation in which the applicant and his wife now find themselves. Thus, this cannot be said to be a situation where they are facing undeserved hardship. This application will accordingly be dismissed.

[20] No question for certification under section 74 of the IRPA was suggested and none arise in this case, which is entirely fact-specific.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. This application for judicial review is dismissed;

2. No question of general importance is certified; and

3. There is no order as to costs.

"Mary J.L. Gleason"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE:	**SUTHAKARAN KANAGARATNAM** - and - **THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
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