Federal Court  Cour fédérale

Date: 20130410

Docket: IMM-6148-12

Citation: 2013 FC 356

Ottawa, Ontario, April 10, 2013

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

SOHAIL NADEEN REHMAT DIN, PAKEEZA SOHAIL NADEEM, MARHAMAH SOHAIL, MOHAMMAD UMAIR SOHAIL AND MOMENA SOHAIL, by their litigation guardian SOHAIL NADEEN REHMAT DIN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants – the Male Applicant, his wife (the Female Applicant) and three children – are citizens of Pakistan who came to Canada in 2005 after residing in the United Arab Emirates (UAE) for many years. Once in Canada, the family claimed refugee protection on the basis that they feared being the subject of honour killings in Pakistan. In a decision dated June 27, 2008 (the RPD decision), the claim was rejected on multiple grounds, including a negative credibility

finding that "the incidents, as described, never occurred". The Federal Court dismissed an application for leave to judicially review this decision. A negative pre-removal risk assessment (PRRA) decision was made in February 2010.

[2] The Applicants filed an in-Canada application for permanent residence on humanitarian and compassionate grounds in September 2009. In a decision dated May 24, 2012 (the H&C Decision), a Senior Immigration Officer (Officer) determined that the H&C factors did not warrant an exemption from the usual requirement to apply from outside Canada. The Applicants seek to overturn the H&C Decision.

[3] The Applicants assert that the Officer erred by:

1. failing to be alive, alert and sensitive to the best interests of the three minor Applicant children;

2. failing to reasonably assess the Applicants' establishment in Canada; and

3. failing to reasonably assess the hardship to the Applicants in Pakistan.

[4] For the following reasons, the Court's intervention is not warranted.

Standard of Review

[5] Reasonableness is the standard of review in the context of a discretionary H&C determination (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18, [2010] 1 FCR 360). As stated in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190 [*Dunsmuir*], "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process". A court must also consider "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47).

Best Interests of the Children

[6] In assessing an H&C application under s. 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), an officer must be "alert, alive and sensitive" to the best interests of children directly affected (see, for example, *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75, 174 DLR (4th) 193; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 12, 212 DLR (4th) 139).

[7] The Applicants argue that the Officer failed in his assessment of the best interests of the Applicant children. I do not agree.

[8] Although the words used by the Officer may not be ideal, the Officer reasonably considered the children's circumstances in the context of submissions provided. To refrain from

elevating form over substance, it is necessary to take into account the context of the Officer's decision.

[9] Firstly, the Officer considered what was in the children's best interests, addressing their educational achievements, one child's particular cognitive delay, the children's exposure to their Pakistani heritage and the residence of extended family in Pakistan.

[10] Although the Officer commented on the ability of the children to cope with change, the children's best interests were not measured against this standard. Instead, upon reading the decision as a whole, I am satisfied that the Officer evaluated the extent to which the children's interests would be compromised by removal. I find it relevant that the Officer did not employ language of "undue hardship" or "basic amenities", which demonstrated the use of an improper standard in *Williams v Canada (Minister of Citizenship and Immigration)*, 2012 FC 166 at paragraphs 63-66, [2012] FCJ No 184 and *Sebbe v Canada (Minister of Citizenship and Immigration)*, 2012 FC 813 at paragraphs 15-16, 10 Imm LR (4th) 321.

[11] Secondly, the decision must be viewed in the context of the submissions before the Officer. The onus is on the Applicants to include pertinent information about children and to explain the effect of particular circumstances on them (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 8, [2004] 2 FCR 635). Applicants omit relevant information from their written submissions "at their peril".

[12] The submissions in the present case were brief and general, focused on the establishment of the children and the family in Canada. The Applicants did not draw the Officer's attention to certain issues raised on judicial review, including particular economic difficulties, danger to children and educational challenges for girls in Pakistan. The Applicants also failed to provide evidence about ongoing treatment for the child with a diagnosed cognitive delay.

[13] The Officer observed that the best interests to have an education and the support of one's parents are general concerns that would apply to all children upon removal. It was open to the Officer to conclude that the Applicants did not specify how the children's interests would be compromised beyond this extent.

[14] In sum, the Officer's analysis of the best interests of the children demonstrates the justification, transparency and intelligibility necessary. The Officer did not fail to consider what was in the children's best interests and did not employ an artificially low standard to minimize those interests.

Establishment

[15] One of the factors to be assessed by an officer, in reviewing an H&C application, is the degree to which the applicants are established in Canada. The Applicants assert that, given the length of time spent and activities in Canada, the analysis of establishment is unreasonable. However, in my view, the Officer's decision is supportable.

[16] I agree with the Applicants that it is an error to minimize an applicant's establishment in a way that does not reflect an applicant's particular circumstances (see, for example, *Jamrich v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 804 at para 29, [2003] FCJ No 1076; *Raudales v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 385 at paras 18-19, [2003] FCJ No 532).

[17] However, in this case, the Officer reasonably analyzed all of the evidence submitted by the Applicants with respect to their establishment in Canada.

[18] Citing Justice de Montigny's remarks in *Serda v Canada (Minister of Citizenship and Immigration)*, 2006 FC 356 at paragraph 21, [2006] FCJ No 425, the Officer found it significant that the Applicants failed to leave Canada when their removal orders came into effect. At this point, the decision to remain in Canada was reasonably within the control of the Applicants.

[19] As stated in *Shallow v Canada (Minister of Citizenship and Immigration)*, 2012 FC 749 at paragraph 9, [2012] FCJ No 745:

> Unless the establishment in Canada is both exceptional in nature and not of the applicant's own choosing, this will not normally be a factor that weighs in favour of the applicants. At best, this factor will usually be neutral.

[20] Therefore, the Officer did not minimize the establishment of the Applicants or form findings that are contrary to their personal circumstances. The analysis of establishment is reasonable.

Hardship in Pakistan

[21] In reviewing an H&C application, an officer must consider the hardship to an applicant in his home country.

[22] The key element of the submissions of the Applicants was a reassertion of the risk of honour killing disbelieved by the RPD.

[23] In addressing this risk, the Officer acknowledged that the test under s. 96 and s. 97 of the *IRPA* is different than the standard of unusual and undeserved or disproportionate hardship for H&C applications. Nonetheless, the letter and documentary evidence submitted by the Applicants were insufficient to overcome the RPD's credibility finding. Further, the Applicants had not addressed the internal flight alternative proposed by the RPD.

[24] The Officer also concluded that the skills, training and experiences of the Applicants in Canada and other countries would be transferable upon return to Pakistan.

[25] The Applicants take issue with three aspects of the Officer's analysis: economic hardship; violence and security matters; and psychological hardship.

Economic Hardship

[26] The Officer's finding that the Applicants would not suffer economic hardship was reasonable. Given the work experiences of the Male and Female Applicants, it was reasonable for the Officer to find that the adult Applicants have transferable skills for employment in Pakistan. This finding was not speculative or contrary to the evidence.

Violence and Security Issues

[27] As stated in *Owusu v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 94 at paragraphs 11-12, [2003] 3 FC 172, it is the responsibility of the Applicants to bring all relevant H&C considerations to the Officer's attention. The risks of gender-based violence and poor security conditions asserted by the Applicants on judicial review were not drawn to the Officer's attention in the written submissions of the Applicants. These submissions only describe risk of honour crimes, which was fully canvassed by the Officer. The Officer's analysis does not demonstrate a reviewable error on this ground.

Psychological Hardship

[28] As part of their H&C application, the Applicants obtained the opinion of a psychiatrist. The report concluded that:

> it will be inhumane and indeed disastrous to condemn this family to return to Pakistan where all indications are that their lives will be highly unstable and that even their physical safety will

> continuously be threatened, quite apart from the emotional havoc that would play on all members of the family.

[29] The Officer did not ignore but assigned little weight to the report.

[30] It is the role of the officer to evaluate medical reports and assign weight to them. If the officer's observations of reported treatment are accurate and expert evidence is not rejected without basis, then the analysis is reasonable.

[31] In this case, the Officer had a reasonable basis for assigning less weight to the psychiatrist's report. The report included information about the doctor's own personal experiences in Pakistan. The report also relied, at least in part, on the Applicants' self-assessment, which was relevant in the context of the credibility finding of the RPD. Further, the report did not recommend further treatment for depression and anxiety, and the Applicants failed to provide evidence that any further treatment was sought.

[32] The cases cited by the Applicants are distinguishable. *Romiluyi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1194 at paragraph 5, [2006] FCJ No 1500 relates to the formation of a global adverse credibility finding in the context of a refugee claim. In *Mile v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1450 at paragraph 22, [2005] FCJ No 1450 the medical report was rejected solely because it was self-serving. By contrast, in this case, the medical report was rejected on three other grounds noted above.

[33] In sum, there is no reviewable error with respect to the analysis of the psychiatric report.

Conclusion

[34] In conclusion, I am not persuaded that the decision of the Officer is unreasonable. While I might have weighed the evidence differently, I am satisfied that the decision, as a whole, falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir,* above at para 47).

[35] Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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