Federal Court  Cour fédérale

Date: 20190621

Docket: IMM-5860-18

Citation: 2019 FC 846

Ottawa, Ontario, June 21, 2019

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

DORSHON KEVINE GLASGOW

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the decision by an Enforcement Officer [the Officer] at the Canada Border Services Agency [CBSA] dated November 28, 2018, which refused a request to defer the Applicant's removal from Canada, originally scheduled for November 30, 2018.

[2] In an order dated November 29, 2018, the Applicant was granted a stay of removal from Canada pending the final disposition of this judicial review. Leave to seek judicial review was granted on April 9, 2019.

II. Background

[3] The Applicant, Dorshon Kevine Glasgow, is a citizen of St. Vincent and the Grenadines [St. Vincent], born August 22, 1999. He grew up in an environment with domestic violence. Additionally, his father was connected to gangs, and the Applicant and his mother suffered threats by gang members.

[4] In 2007, the Applicant's mother escaped to Canada. The Applicant was left in the care of his paternal grandmother, who abused him physically.

[5] In July 2009, at approximately nine years old, the Applicant entered Canada to rejoin his mother, and was granted a temporary resident visa for a period not exceeding six months.

[6] In August 2009, the Applicant and his mother made a claim for Convention refugee status. This claim was refused in October 2010. The Applicant and his mother sought judicial review of this refusal, but leave was denied.

[7] In May 2011, the Applicant and his mother submitted an application for permanent residence based on humanitarian and compassionate [H&C] grounds. This application was refused in October 2011.

[8] In June 2011, the Applicant and his mother made a Pre-Removal Risk Assessment [PRRA] application. This application was dismissed in October 2011.

[9] In February 2012, the Applicant and his mother were instructed to report on February 29, 2012 to receive instructions for removal from Canada. They failed to attend this interview, and a warrant of arrest was issued for the Applicant's mother. No warrant was issued for the Applicant, because was he was a minor.

[10] In June 2012, the Applicant and his mother submitted a second H&C application. This application was denied in May 2013.

[11] In December 2016, the Applicant and his mother submitted a third H&C application. This application was denied in September 2017 [the 2017 H&C decision].

[12] In each of these three H&C applications, the Applicant was a minor, and was therefore included as a minor dependent in an application focused on his mother. As well, all three H&C applications were submitted without assistance from counsel, although the latter two were assisted to some degree by unlicensed representatives from the FCJ Refugee Centre.

[13] In January 2018, the Applicant signed a direction to report for a removal scheduled on February 1, 2018. The Applicant failed to appear for his removal, and a warrant was issued for his arrest.

[14] In June 2018, the Applicant graduated from Downsview Secondary School in Toronto.

[15] On November 11, 2018, the Applicant came to the attention of a Toronto police officer at a traffic stop. As a result, he was detained by the CBSA.

[16] On November 16, 2018, the Applicant was served with a direction to report for removal on November 30, 2018.

[17] On November 20, 2018, the Applicant filed both an application for permanent residence on H&C grounds, and a request to defer his removal from Canada until his H&C application was decided. The Applicant sought a deferral based on his pending H&C application, as well as on H&C factors.

III. Decision Under Review

[18] On November 28, 2018, the Applicant filed an application to judicially review the deemed refusal of his deferral request. Later that day, the Officer issued a decision refusing the request to defer the Applicant's removal from Canada [the Decision].

[19] Addressing first the pending H&C application, the Officer noted that:

> (i) the filing of an H&C application does not automatically entitle an applicant to a deferral. Rather, an enforcement officer's discretion to grant deferrals is limited;
>
> (ii) the application had just been submitted and a decision was not imminent;
>
> (iii) the application would still be processed after the Applicant leaves Canada; and

(iv) the application is the fourth H&C application involving the Applicant, although the previous three were submitted by the Applicant's mother.

[20] Turning next to the H&C evidence, the Officer reviewed the evidence of the Applicant's establishment in Canada, and recognized that the Applicant's present circumstances are largely due to choices made by his mother. The Officer found that there was insufficient evidence demonstrating that the Applicant could not reintegrate, or that he would suffer irreparable or disproportionate hardship, if returned to St. Vincent. The Officer commented that the Applicant could remain in contact with friends and family by phone or over the internet.

[21] As a result, the Officer refused the request to defer the Applicant's removal.

[22] On November 29, 2018, the Applicant was granted a stay of removal from Canada pending the final disposition of this judicial review.

[23] On December 14, 2018, the Applicant was released from immigration holding.

IV. Issues and Standard of Review

[24] The sole issue before this Court is whether the Decision was reasonable. The parties agree that the standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9).

V. Analysis

[25] An enforcement officer's discretion to defer removal is very limited (*Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 54 [*Lewis*]). The mere existence of a pending H&C application does not constitute a bar to the execution of a valid removal order (*Lewis,* above at para 57).

[26] In cases where a determination has not yet been made on a previously submitted H&C application, enforcement officers do not have the discretion to defer removal in the absence of "special considerations" or "a threat to personal safety"(*Forde v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1029 at para 36, Crampton CJ [*Forde*]). This limited discretion has also been described as being limited to cases where "failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment" (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 51).

[27] The Applicant argues that the Decision was unreasonable for two reasons:

(i) the Officer ignored evidence of the Applicant's compelling circumstances; and

(ii) the Officer abdicated his role in assessing risk.

A. *The Officer's consideration of the evidence*

[28] The Applicant argues that the Officer erred by failing to consider the circumstances of the Applicant's case - the poverty and abuse he suffered in St. Vincent, his establishment in Canada, and the hardship he would face if returned to St. Vincent, including the inability to continue his

education. The Applicant argues that the Officer failed to acknowledge or engage with the documentary evidence before him of poverty and unemployment in St. Vincent, as well as the potential for sexual and labour-related exploitation.

[29] I find that the Officer reasonably considered the evidence before him, in accordance with the limited role of an enforcement officer considering a request for deferral.

[30] At several points the Officer meaningfully engaged with the evidence, recognizing the length of time the Applicant has spent in Canada, the degree of establishment in Canada, and the difficulties of reintegrating into a society he left as a nine year old. The Officer recognized that the Applicant will be separated from friends and relations in Canada. The Officer also mentioned the potential to remain in contact with friends and family remotely.

[31] The Officer weighed this evidence, before reasonably concluding that there were no compelling circumstances or special considerations which justified granting a deferral.

[32] Failure to consider each and every argument or bit of evidence does not impugn the validity of either the reasons or the result reached by the Officer (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[33] The Applicant also emphasizes the 2017 H&C decision, where the immigration officer found that it would be in the Applicant’s best interests to remain in Canada, before ultimately

concluding that these best interests did not justify granting permanent residence to the Applicant and his mother.

[34] However, as the Respondent correctly notes, the Officer's mandate here is far narrower than an H&C officer. Moreover, the Applicant is now an adult, and the best interests of the child considerations from the 2017 H&C decision are not determinative. Finally, the Applicant's H&C factors will be considered in due course by way of his recently submitted H&C application. There is also no basis to presume that the pending H&C application will be decided in any specific timeframe, as argued by the Applicant.

[35] Lastly, the Applicant takes issue with the Officer's comment that the Applicant could remain in contact with friends and family in Canada by way of the internet and telephone, citing documentary evidence indicating that internet on St. Vincent is sparse. The Applicant argues it was unreasonable for the Officer to conclude that the Applicant would be able to finance access to the internet or buy a phone. While the economic situation in St. Vincent is certainly less favourable than Canada, the Officer's comment was reasonable in the circumstances.

B. *The Officer's discretion*

[36] The Applicant takes issue with a statement by the Officer regarding the limits of his discretion. The Officer wrote, in reference to the 2017 H&C decision:

> … I note that I am not an IRCC officer and I am not delegated nor do I have the expertise to assess the H&C decision rendered by and [*sic*] officer. I merely recognize that Mr. Glasgow's H&C factors were raised and addressed in the context of an H&C application, prior to his removal from Canada.

[37] The Applicant argues that this statement suggests the Officer fettered his discretion, and failed to meaningfully consider the evidence supporting a deferral of removal, including evidence of gun violence and homicides in St. Vincent.

[38] As outlined above, an enforcement officer's ability to assess H&C factors is limited. This statement by the Officer does not evidence fettering of discretion, nor does it render the Decision unreasonable.

[39] Moreover, the Applicant does not come before this Court with clean hands. The authorities have sought to deport the Applicant and his mother since 2012, and he has repeatedly failed to report for removal. The Applicant has also had his H&C considerations assessed on three separate occasions, with each application being denied, and has pending a fourth application which was not submitted in a timely fashion.

[40] I find that the Officer's Decision to refuse a request to defer the Applicant's removal from Canada pending the outcome of his most recent H&C application was reasonable. This application is dismissed.

JUDGMENT in IMM-5860-18

THIS COURT'S JUDGMENT is that

1. This application is dismissed.

2. No question is certified.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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