Federal Court  Cour fédérale

Date: 20100607

Docket: IMM-3012-09

Citation: 2010 FC 614

Ottawa, Ontario, June 7, 2010

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JOSE NOLI DELOS SANTOS

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] Mr. Jose Noli Delos Santos (the "Applicant") seeks judicial review of the refusal of his application for an inland visa exemption pursuant to the provisions of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"). The decision, dated May 14, 2009, was made by Officer R. Cope (the "Officer").

Background

[2] The Applicant is a citizen of the Philippines. He was landed in Canada on May 13, 1994 pursuant to the provisions and regulations under the former *Immigration Act*, R.S.C. 1985, c. I-2. He was sponsored at that time by his sister under program J-88. That program required that the Applicant be single at the time of becoming a permanent resident.

[3] At the time the sponsorship application was submitted, the Applicant was unmarried. However, by the time he entered Canada, he had married and fathered a child. The Applicant did not disclose the change in his marital and parental status when questioned by an immigration officer upon landing in Vancouver.

[4] In 2004, the Applicant applied to sponsor his wife and children to Canada under the provisions of the Act. His second child had been born in the Philippines in 1994. The disclosure in 2004 that the Applicant had been married and the father of a child when he entered Canada in 1994 was considered to be a material misrepresentation which ultimately led to the issuance of an exclusion order on February 27, 2006.

[5] The Applicant appealed the exclusion order before the Immigration Appeal Division (the "IAD"). In its decision dated February 22, 2007, the IAD dismissed the appeal and decided that the grounds did not exist for the positive exercise of discretion on humanitarian and compassionate grounds pursuant to subsection 25(1) of the Act.

[6] The Applicant successfully obtained leave for judicial review of the IAD's decision and argued his judicial review application before Justice Barnes in Docket Number IMM-1151-07.

[7] In a decision reported as 2007 FC 1325, Justice Barnes dismissed the Applicant's application for judicial review. Applying the standard of reasonableness, he found no error in the manner in which the IAD refused to grant relief pursuant to subsection 25(1) of the Act.

[8] On January 22, 2008, the Applicant submitted his "independent" H&C application, that is an application pursuant to subsection 25(1) of the Act. The application was refused since the Officer found that there was no new evidence submitted that superseded the evidence that was before the IAD and that was considered by that tribunal.

[9] The Officer, in assessing the Applicant's H&C application determined that the IAD had considered the relevant H&C factors in making its decision and that no new evidence had been submitted. The Officer also noted that the Applicant's misrepresentations, as to his marital and parental status upon entering Canada were serious.

[10] The Applicant argues that the Officer made an unreasonable decision and further, that an issue of procedural fairness arises from the fact that the same officer decided this H&C application and his application for Pre-Removal Risk Assessment ("PRRA").

[11] The decision of the Officer is subject to review, on its merits, upon the standard of reasonableness. The question of procedural fairness is reviewable on the standard of correctness. I will first address the issue of alleged bias arising from the fact that the same Officer decided both the Applicant's H&C and PRRA applications.

[12] There is no inherent bias arising from the fact that one officer can deal with both a H&C application and a PRRA application. In this regard, I refer to the decision of the Federal Court of Appeal in *Oshurova v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 301.

[13] I see no evidence of institutional bias, or indeed any suggestion of personal bias, on the record relating to the decision here under review. This argument cannot succeed.

[14] Turning to the merits of the decision under review, the Applicant's arguments amount to a disagreement with the manner in which the Officer assessed the evidence and the submissions that were presented. I see no error in the Officer's conclusion that the Applicant had not submitted "new" evidence, that is evidence that was not before the IAD.

[15] The IAD, in considering the exercise of its discretion pursuant to paragraph 67(1)(c) of the Act, was required to consider the best interests of a child "directly affected by the decision". The IAD, according to its decision, declined to positively exercise its H&C discretion, having regard to the decision that was the subject of the appeal by the Applicant.

[16] The nature of the discretion at issue in dealing with H&C considerations is the same, whether that discretion is invoked pursuant to paragraph 67(1)(c), that is relative to an appeal before the IAD, or "independently", that is pursuant to a stand-alone application pursuant to subsection 25(1). The H&C discretion is a means by which strict compliance with the Act and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("the Regulations") is waived.

[17] An officer is required to exercise the H&C discretion reasonably, having regard to the evidence adduced and without regard to extraneous and irrelevant matters; see *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2.

[18] I am not persuaded that the Officer unreasonably exercised her discretion or in any other way, committed a reviewable error. There is no basis for judicial intervention and this application for judicial review is dismissed.

[19] There is no question for certification arising.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. There is no question for certification arising.

"E. Heneghan"
Judge

SOLICITORS OF RECORD

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