Federal Court  Cour fédérale

Date: 20120612

Docket: IMM-5544-11

Citation: 2012 FC 702

Ottawa, Ontario, this 12th day of June 2012

Present: The Honourable Mr. Justice Pinard

BETWEEN:

SARVJIT SINGH KHANGURA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On August 17, 2011, Sarvjit Singh Khangura (the "applicant") filed the present application for judicial review of the decision of the Immigration Appeal Division (the "IAD") of the Immigration and Refugee Board of Canada, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"). The IAD denied the applicant's request for an extension of time to file an appeal.

[2] The applicant, a citizen of India, became a permanent resident of Canada on October 16, 2003. On February 17, 2009, the applicant returned to India for his father's funeral. Since the applicant's permanent resident card was going to expire, in March 2009, he made an application for a travel document in order to be able to return to Canada. On March 2, 2009, he received a letter from Citizenship and Immigration Canada refusing his travel documents because he was found not to comply with his residency obligations under section 28 of the Act.

[3] The applicant admits having received a letter dated March 2, 2009, denying his request for travel documents, but claims that he was never provided with the decision refusing his travel documents, nor informed of his right to appeal prior to having sought legal counsel in 2010.

[4] The March 2, 2009 letter refused his application for a travel document, indicating that he had failed to comply with his residency obligations under section 28 of the Act. The letter goes on to specify that subsection 63(4) of the Act allows him to appeal this determination before the IAD within sixty days after having received the written decision. Furthermore, the letter indicates that if the applicant has been in Canada at least once during the past 365 days, he is entitled to a travel document to enable him to return.

[5] Upon review of his Computer Assisted Immigration Processing System [CAIPS] notes in May 2010, the applicant found out that a letter dated March 2, 2009 was sent to him outlining the appeal process. The applicant denies ever having received this letter, only discovering its existence in 2010 when reviewing his CAIPS notes.

[6] On July 5, 2010, the applicant filed a Notice of Appeal with the IAD, but did not file a copy of the decision being appealed.

[7] On March 29, 2011, the respondent filed an application to dismiss the appeal because of its late filing. In response the applicant provided the IAD with his Statutory Declaration explaining his reasons for late filing, specifically that he was never informed of his right or need to appeal.

[8] On August 4, 2011, the applicant received the "Notice of Decision (and Reasons)" from the IAD denying his request for an extension of time to file an appeal.

[9] In its decision dated April 15, 2011, the IDA denied the applicant's request for an extension of time to file an appeal, which was made on April 7, 2011. The IDA held that two years had passed since the applicant was refused a travel document. While the applicant claims to have been unaware of his 60-day delay to file an appeal, the IDA stated that "the [applicant] has not demonstrated why he has been abroad so long" and had not taken steps to follow-up with immigration authorities. Such behaviour is not indicative of a true intention to physically reside in Canada. Moreover, the applicant was found not to have provided "clear and cogent information (having given no weight to the Statutory Declaration) why it took him 13.5 months to file a claim".

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[10] The present application for judicial review raises the following issues:

1. Did the IAD err in fact, making factual determinations in a perverse or capricious manner, without regard to the evidence before it?

2. Did the IAD breach its duty of procedural fairness in failing to provide adequate reasons for its negative decision?

[11] The applicable standard of review to a tribunal's factual determinations is reasonableness (*Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 [*Khosa*]; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 [*Dunsmuir*]). A high degree of deference is owed to such determinations (*Khosa*, above at para 46). Consequently, this Court can only intervene if the Board's conclusions are unreasonable, falling outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47).

[12] Inversely, questions of procedural fairness are to be reviewed on a standard of correctness (*Dunsmuir*, above at para 60; *Khosa*, above at para 44; *Weekes (Litigation Guardian) v. Minister of Citizenship and Immigration*, 2008 FC 293, at para 17). However, the respondent rightly asserts that inadequacy of reasons is no longer a stand alone basis on which to ground a breach of procedural fairness pursuant to *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 [*Newfoundland Nurses*]. Thus, the IAD's reasons must be read in the context of the outcome of the decision based on a standard of reasonableness.

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1. *Did the IAD err in fact, making factual determinations in a perverse or capricious manner, without regard to the evidence before it?*

[13] The applicant argues that the IAD erred in fact in concluding that an extension of time to appeal was unwarranted. The IAD wrongly stated that the applicant "had been abroad so long", indicating that his true intention was not to physically reside in Canada.

[14] The applicant also argues that the IAD erred in giving no weight to his Statutory Declaration for this document explained why he had filed his Notice of Appeal outside of the prescribed delay.

[15] Upon reviewing the relevant evidence, I find that it was reasonable for the IAD to refuse the applicant's request for an extension of time. Such determinations are discretionary and deference is owed to the IAD's findings. At the hearing before me, the applicant was unable to point out to any significant evidence that was before the IAD which proved that he had actually been residing continuously in Canada since March 16, 2009, time at which he alleges he had returned from India. His Statutory Declaration makes no reference of him having been in Canada since 2009. Thereby, there was no evidence before the IAD indicating that the applicant had remained and resided in Canada since March 2009. Thus, the applicant has failed to establish that the IAD ignored the evidence before it, wrongly believing the applicant was still in India at the time. The applicant had not provided any evidence that he had remained in Canada since 2009 and therefore it was not unreasonable for the IAD to state that the applicant had been "abroad so long". Furthermore, it was within the IAD's power to decide to give little weight to the applicant's Statutory Declaration for ignorance is not grounds for granting an extension of time (*Arteaga v. Minister of Citizenship and*

Immigration, 2010 FC 868). It is not the role of this Court to reweigh the evidence that was before the IAD. Thus, the applicant has failed to prove that the IAD's decision is unreasonable.

2. *Did the IAD breach its duty of procedural fairness in failing to provide adequate reasons for its negative decision?*

[16] In my view, the IAD did not breach its duty of procedural fairness. Its decision, while short, provides reasons as to why the applicant was not granted an extension of time to bring his appeal. Furthermore, an inadequacy of reasons, as asserted by the respondent, is insufficient to ground a breach of procedural fairness (*Newfoundland Nurses*, above at para 14). Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland Nurses*, above at para 14). Moreover, contrary to the applicant's allegations, the IAD had no obligation to "include all the arguments, statutory provisions, jurisprudence or other details", nor to make a finding on each constituent element of his claim (*Newfoundland Nurses*, above at para 16). Thus, the IAD did not err in failing to explicitly set out the test for the grant of an extension of time set out in *Canada (Attorney General) v. Hennelly*, [1999] F.C.J. No. 846 (QL) (F.C.A.).

[17] The exercise this Court must undertake when the issue of adequacy of reasons is raised when the decision-maker has provided certain reasons, is "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland Nurses*, above at para 16). In this case, the IAD's reasons do allow me to determine that its conclusion is reasonable. Moreover, even if there were to be flaws in the IAD's reasons, these deficiencies alone do not constitute a breach of

procedural fairness: where there are reasons, there is no such breach (*Newfoundland Nurses*, above at paragraphs 21 and 22).

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[18] For all the above reasons, the present application for judicial review is dismissed.

[19] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada, denying the applicant's request for an extension of time to file an appeal, is dismissed.

"Yvon Pinard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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