Federal Court  Cour fédérale

Date: 20130201

Docket: IMM-2249-12

Citation: 2013 FC 114

Ottawa, Ontario, February 1, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

DIEGO ALEJANDRO GIRON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Diego Alejandro Giron left Colombia in 2006 and claimed refugee protection in Canada based on his fear of the FARC guerrilla group. His claim was dismissed.

[2] Mr Giron subsequently became ill with an undiagnosed condition, possibly stomach cancer. In 2010, just as his symptoms began to appear, he applied for permanent residence on humanitarian

and compassionate grounds (H&C). He subsequently requested a pre-removal risk assessment (PRRA). He was able to provide more information about his medical condition in his PRRA application because it was filed almost a year after the H&C.

[3] Mr Giron was turned down on both his PRRA and his H&C. The deciding officer concluded that the medical information was not relevant to the PRRA and was not submitted on the H&C. Accordingly, Mr Giron's medical circumstances were not considered in determining whether he would face undue, undeserved or disproportionate hardship if removed from Canada.

[4] Mr Giron submits that he was treated unfairly by the officer. Since the same officer was deciding both the PRRA and the H&C at the same time, he was obviously aware of the medical issues and their relevance to the H&C.

[5] Mr Giron also maintains that the officer failed to apply the proper test for "hardship" on his H&C. He asks me to quash the officer's decision and order another officer to reconsider his H&C application.

[6] I agree with Mr Giron that the officer treated him unfairly and will allow this application for judicial review on that basis. It is unnecessary to consider Mr Giron's alternative argument.

[7] The sole issue, then, is whether the officer treated Mr Giron unfairly.

II. The Officer's Decision

[8] The officer found that Mr Giron had achieved a reasonable degree of establishment in Canada. Since Mr Giron's children live in Colombia, their best interests would not be compromised by his removal from Canada. Mr Giron could return to his country of origin and find employment there.

[9] As for the risks facing Mr Giron in Colombia, the officer referred to his conclusion in the PRRA decision to the effect that Mr Giron would not be personally at risk in Colombia. The officer would not consider the issue of risk any further because it had already been assessed in the context of the PRRA.

III. The Legal Framework

[10] A number of judgments have considered the interrelationship between a PRRA application and an H&C application:

(1) *Durrant* v *Canada (Minister of Citizenship and Immigration)*, 2010 FC 329

[11] In her original H&C, filed in 2006, the applicant referred to her fear of harm. She was invited to update her file and she provided further submissions in 2009. However, those submissions did not amplify on that fear. In the meantime, in 2007, she provided further information about her fear of her common law partner in the form of letters from her mother, a friend, and herself. These were placed in the PRRA file. The PRRA was denied and, a day later, her H&C was turned down by the same officer. In her reasons on the H&C, the officer referred to the applicant's letters but did

not consider them in her analysis because the information was provided before the applicant had been asked to update her file. Justice Leonard Mandamin noted that there was no justification for the refusal to consider the updated information on risk. In any case, the issue of risk had been raised in the first H&C application and the officer had a duty to consider it. She appeared to have overlooked the original submissions on that point.

[12] Based on the factual scenario, *Durrant* does not stand for the proposition that an H&C officer *must* consider evidence from a PRRA application, even if the same officer is deciding both. However, it is clear that the officer would have considered such evidence on the H&C if it had been provided subsequent to the request for an update.

(2) *Cobe* v *Canada (Minister of Public Safety and Emergency Preparedness)*, September 13, 2012, IMM-975-12 (FC)

[13] Applicants for an H&C must place all evidence and arguments before the deciding officer, even if they have also applied for a PRRA. Justice Mary Gleason held it would be "completely anomalous for the obligations of applicants to state their H&C cases to vary depending on the happenstance of whether they made PRRA applications and, if so, whether such applications were considered by the same officer".

(3) *Sosi* v *Canada (Minister of Citizenship and Immigration)*, 2008 FC 1300

[14] When a single officer decides both the PRRA and the H&C applications "the totality of the evidence offered by an applicant on both issues is relevant to both determinations". Justice Douglas Campbell explained that the deciding officer is "required to have a full knowledge of all the evidence tendered on both issues, and factual findings across both applications must be based on knowledge of the complete record" (at para 12). Applicants do not need to "present the same material on each discrete application when they are inextricably linked. Indeed, since the Visa Officer was charged with rendering both decisions, this is absolutely unnecessary" (at para 15). On the facts of *Sosi*, the two applications were inextricably linked because the analysis of risk in the H&C was taken directly from the PRRA decision.

IV. Analysis and Disposition

[15] Clearly, the most direct authority on the issue before me is *Sosi*. The question is – were the H&C and the PRRA "inextricably linked" in Mr Giron's case? In particular, was the analysis of risk in the H&C taken directly from the PRRA decision? In the H&C, the officer referred to the risk alleged in the PRRA application, but not the recently tendered evidence based on medical concerns. This appears to indicate, quite naturally, that the officer saw the issues in the two applications as being interconnected.

[16] In my view, in circumstances where the officer deciding the H&C has also conducted the PRRA, and where that officer relies on the PRRA analysis in deciding the issue of hardship on the H&C, fairness requires that the officer consider all of the PRRA submissions.

[17] Essentially, the linkage between the risk assessment in the PRRA and the hardship analysis in the H&C is made by the officer, not the applicant. The applicant is entitled to full assessment of his H&C application. If the officer chooses to import his PRRA analysis into the H&C, the applicant is entitled to expect that all of the relevant PRRA submissions will also be considered. In exchange for a full analysis of hardship in his H&C, the applicant should reasonably expect that the relevant evidence supplied in support of his PRRA should be taken into account on his H&C.

[18] Therefore, I find that Mr Giron was treated unfairly. Essentially, the officer imported his PRRA analysis into the H&C but, in doing so, severed off relevant evidence. On that basis, I will allow this application for judicial review, and order another officer to reconsider Mr Giron's H&C. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred back to a different officer for reconsideration.

2. No question of general importance is stated.

"James W. O'Reilly"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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