

Federal Court



Cour fédérale

Date: 20131114

Docket: IMM-423-13

Citation: 2013 FC 1160

Calgary, Alberta, November 14, 2013

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

MOHAMMAD ASHRAF

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a challenge to the November 21, 2012 decision of a Senior Immigration Officer (Officer) rejecting the Applicant's application for permanent residence on humanitarian and compassionate grounds pursuant to s. 25 of the *IRPA*.

[2] The Applicant is a citizen of Pakistan who suffers acute medical problems. With respect to these problems, the Officer made the following findings:

HEALTH CONSIDERATIONS

The applicant suffers from post-traumatic stress disorder (PTSD) and depression. The applicant has submitted four letters in support of his condition. Two reports from psychologist Hap Davis, dated 15 January 2009 and 17 December 2010, and two letters from Dr. Safeen Khan, dated 07 November 2011 and 27 August 2012.

The reports from Dr. Davis indicate that the applicant has been diagnosed with "co-morbid PTSD and major depression." The reports focus on providing reasons why the applicant may have seemed not to be credible to the RPD during his hearing. Dr. Davis states that the applicant's "illnesses combine with his compromised cognitive capacity to render him incapable of functioning independently in Canada; it is not likely that he would be able to do any better in a return scenario in Pakistan." I find this statement to be speculative in nature. The applicant indicates he currently resides by himself in Canada. Further, it would be reasonable to assume that should the applicant be unable to function independently that reuniting with his family in Pakistan would be beneficial to his condition. The applicant states "I do not believe my family will be able to help me as I understand that my condition is likely to become much worse if I return to Pakistan." The applicant does not indicate why he believes his family will be unable to help him or that they would be unwilling to help him.

The letters from Dr. Khan indicate that the applicant continues to require treatment and has been prescribed anti-depressant medications. The letters state that the applicant misses his family. Dr. Khan states, "I hope to see a significant improvement in his [the applicant] mental status when his refugee status will be settled." Dr. Khan does not indicate on what basis he believes this to be true.

While the applicant has been receiving treatment and medication in Canada, he has not provided evidence to demonstrate that he is not able to receive treatment or medication for his condition in Pakistan. The onus is on the applicant to confirm from health authorities in Pakistan attesting that acceptable treatment is unavailable for him or that it would be a hardship for him to access such treatments, should he require them. Further, reports indicate that the applicant may have trouble functioning independently. Lacking evidence to the contrary, it is reasonable to assume that reuniting the applicant with his family in Pakistan would be advantageous in this regard.

[Emphasis added]

(Decision, pp. 3-4)

[3] Counsel for the Applicant makes the following statement of what is expected of an immigration officer's approach in an H&C determination in addressing an applicant's health condition:

According to the case law, if an application for Permanent Residence on H&C grounds includes a psychological report, the immigration officer has a duty to consider whether the report establishes that removing the applicant to his/her home country would result in psychological hardship (*Gaya v. Canada (M.C.I.)*, [2007] F.C.J. No. 1308; *Mughrabi v. Canada (M.C.I.)*, [2008] F.C.J. No. 1115). The case law has also established that when a psychological report indicates that the applicant's removal from Canada is likely to exacerbate his/her existing psychological problems, the officer must directly address this evidence and it is not sufficient for the officer to simply cite the availability of mental health care in the applicant's country of origin as a remedy to this hardship (*Martinez v. Canada (M.C.I.)*, [2012] F.C.J. No. 1388).

(Applicant's Memorandum of Fact and Law, para. 18)

[4] As a result, Counsel for the Applicant argues that in rendering the decision the Officer was functioning under a fundamental misunderstanding with respect to the Applicant's treatment needs and determined those needs in error:

Instead of addressing Dr. Davis and Dr. Khan's conclusions regarding the consequences of removing the Applicant from Canada, the officer focused his/her Reasons on the availability of mental health care in Pakistan. The officer stated that the Applicant had failed to provide evidence that he would not be able to access treatment for his psychological condition in Pakistan. This comment is eminently unreasonable as Dr. Davis had clearly stated in his reports that the Applicant was not a candidate for treatment, making the availability of such treatment in Pakistan completely irrelevant. Dr. Davis identified the Applicant as a brain-injured person with PTSD and cited "fMRI research" indicating that such individuals are "especially treatment resistant". Dr. Davis further explained that the

Applicant's experience is consistent with this research because despite taking antidepressant medications, the Applicant "still wakes from fitful sleep, sometimes shouting which is *an indication that the psychiatric medications are not effective*" (emphasis added in the original).

As Dr. Khan stated in his most recent report, although the Applicant continued to take antidepressant medications, his condition had not only persisted but worsened. Dr. Davis stated in the 2009 report that the Applicant "functions in Canada without a treatment response to medical interventions and his survival would not depend on such treatment in a return". He ended the report stating that the Applicant's "psychiatric treatment for PTSD and depression has been ineffective in Canada and would not be expected to assist him in any return scenario". The necessary inference from this evidence is that even if the Applicant had access to mental health care in Pakistan, he would not be able to benefit from this treatment. It was therefore unreasonable for the officer to discount the psychological evidence on the basis that the Applicant had failed to establish that he would not be able to access treatment in Pakistan.

In any event, following the ruling in P.M.D., even if the Applicant was in a position to benefit from treatment and even if mental health care in Pakistan was perfect, the officer still had a duty to: 1) consider the expert evidence that returning the Applicant to Pakistan would exacerbate his psychological problems, and 2) determine whether subjecting the Applicant to this would amount to undue, undeserved or disproportionate hardship. Having failed to discharge these duties, the officer committed a reviewable error.

[Emphasis added]

(Applicant's Memorandum of Fact and Law, paras. 25-27)

[5] I agree with Counsel for the Applicant's argument. The Applicant's serious mental condition was the main feature of his plea for humanitarian and compassionate consideration. In my opinion a reasonable disposition of this plea must disclose, not only an accurate understanding, but also a humanitarian and compassionate understanding of the hardship that the Applicant would suffer if he were to return to a very uncertain future in Pakistan. Such an understanding was not applied in the decision rendered, and, as a result, I find the decision is unreasonable.

ORDER

THIS COURT ORDERS that

For the reasons provided, I set aside the decision under review and refer the matter back for reconsideration by a different immigration officer.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-423-13

STYLE OF CAUSE: MOHAMMAD ASHRAF V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: NOVEMBER 13, 2013

**REASONS FOR ORDER AND
ORDER:** CAMPBELL J.

DATED: NOVEMBER 14, 2013

APPEARANCES:

Mr. G. Michael Sherritt FOR THE APPLICANT

Mr. Rick Garvin FOR THE RESPONDENT

SOLICITORS OF RECORD:

G. Michael Sherritt FOR THE APPLICANT
Calgary, Alberta

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Edmonton, Alberta