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Reasons and Decision – Motifs et décision

RESIDENCY OBLIGATION

Appellant(s)	BIBI NAZLEE EDOO MUHAMMAD TABREZ HUSSAIN EDOO	Appelant(e)(s)
and		et
Respondent	The Minister of Citizenship and Immigration Le ministre de la Citoyenneté et de l'Immigration	Intimé(e)
Date(s) of Hearing	October 24, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	November 15, 2018	Date de la décision
Panel	K. Dickenson	Tribunal
Counsel for the Appellant(s)	Massood Joomratty Barrister and Solicitor	Conseil(s) de l'appelant(e) / des appelant(e)(s)
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Millie Hrnjez (via written submissions)	Conseil du ministre

REASONS FOR DECISION

[1] The appellants, Bibi Nazlee Edoe (Bibi) and Muhammad Tabrez Hussain Edoe (Muhammad), appeal pursuant to subsection 63(4) of the *Immigration and Refugee Protection Act*¹ (*IRPA*) from the decisions dated October 23, 2017 of the immigration officer determining that they have not met the residency obligations pursuant to subsection 28(2) of the *IRPA*.

[2] The issues in these appeals is the legal validity of the immigration officers' decisions and whether considerations warrant special relief in light of all the circumstances of the case.² There was no challenge to the legal validity of the respective decisions.

DECISION

[3] The Panel finds after reviewing all the evidence that the immigration officers' decisions are valid in law. Having considered the evidence and submissions, the Panel finds that the appellant, Bibi, has not proven on a balance of probabilities that there are sufficient humanitarian and compassionate considerations to warrant special relief. Her appeal is dismissed pursuant to subsection 69(1) of the *IRPA*.

[4] On the other hand, with respect to appellant, Muhammad, he has proven on a balance of probabilities that there are sufficient humanitarian and compassionate considerations to warrant special relief. His appeal is allowed pursuant to paragraph 67(1)(c) of the *IRPA*.

BACKGROUND

[5] The appellants first arrived in Canada on July 22, 2009 and were granted permanent residence with their husband/father and daughter/sister. Upon arrival to Canada, the appellants were 39 and 13 years of age. The appellants worked and attended school and returned to Mauritius in November or December 2009 along with their husband/father and daughter/sister.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² *IRPA*, section 67.

[6] The appellant, Bibi, stated that she returned to Mauritius as she missed her family and that, based on her employment earnings, as well as that of her husband in Mississauga, Ontario, it was not sufficient to satisfactorily pay all expenses.

[7] After leaving Canada in November or December 2009 for Mauritius, the appellants returned to Canada as a family four years thereafter on April 8, 2013 until returning again to Mauritius on August 14, 2013. Since then, the appellants have not returned to Canada.

[8] The appellants gave their evidence *via* tele-conference and provided one exhibit of documentary evidence. The appellants' counsel represented the appellants from his office in Surrey, British Columbia *via* tele-conference as well.

[9] At the end of the hearing, counsel for the appellants submits that the appeals should be allowed on humanitarian and compassionate grounds as the appellants were credible witnesses. They tried twice to remain in Canada but failed and that the appellant, Muhammad, waited until his sister was 18 years of age before applying for a permanent resident travel document (PRTD) with his mother and sister for the purposes of returning to Canada as a family, in the absence of his father who remains in Mauritius.

[10] The Minister did not appear at the hearing but provided written submissions³ asking for the Panel to dismiss these appeals.

ANALYSIS

Residency obligations and circumstances: Bibi Nazlee Edo

[11] The residency obligations provide some flexibility by requiring permanent residents to be physically present in Canada for 730 days out of any five years under consideration. However, the broader objectives of residency are to facilitate settlement, establishment and contribution to Canadian society, while also enriching Canada through the benefits of immigration.

³ Exhibit R-1, October 17, 2018.

[12] In the five-year assessment period, that being five years from when the applications for PRTDs were received at the Canadian High Commission in Pretoria, South Africa, the appellants have 123 days of physical presence in Canada during the assessment period. The appellants are short of the minimum number of physical presence in Canada by 607 days.

[13] After considering all the evidence, the Panel is satisfied that the decision to refuse Bibi a PRTD is legally valid. Since Bibi has not been physically present in Canada for at least 730 days, the more days she needs to meet the residency obligations, the higher degree of evidence would be needed with respect to consideration on humanitarian and compassionate grounds or special relief.

Special relief

[14] In considering whether special relief is appropriate, the Panel considered a number of factors⁴ and took into account additional evidence that was not before the immigration officer.⁵ The Panel is cognizant of the immigration objectives, especially “to see that families are reunited in Canada”;⁶ “to promote the successful integration of permanent residents into Canada”⁷ and to have “consistent standards and prompt processing”.⁸

[15] In *Hawthorne*,⁹ Justice DéCary wrote that the likely degree of hardship to the child caused by the removal is to be weighed with other factors, including public policy considerations that either favor or disfavor the granting of special relief:

⁴ *Yu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1323; *Bufete Arce v. Canada (Minister of Citizenship and Immigration)* (2003), 2003 CanLII 54304 (IRB); *Chirwa v. Canada (Minister of Manpower and Immigration)* (1970), 4 IAC 338 (IAB).

⁵ *Singh v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1673; *Kahlon v. Canada (Minister of Employment and Immigration)*. (1989), 7 Imm. L.R. (2d) 91 (FCA).

⁶ *IRPA*, paragraph 3(1)(d).

⁷ *IRPA*, paragraph 3(1)(e).

⁸ *IRPA*, paragraph 3(1)(f).

⁹ *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, [2003] 2 FCR 555, 2002 FCA 475 (CanLII) para. 6.

[6] ... For all practical purposes, the officer's task is to determine, in the circumstances of each case, the likely degree of hardship to the child caused by the removal of the parent and to weigh this degree of hardship together with other factors, including public policy considerations, that militate in favour of or against the removal of the parent.

[16] The test for humanitarian and compassionate grounds can be found in *Chirwa*.¹⁰ In this regard the standard applies where the initial ground of inadmissibility has not in substance been overcome. The following definitions of humanitarian and compassionate considerations were given in the *Chirwa* case and states as follows:

[...] “humanitarian” [is defined] as “regard for the interests of mankind, benevolence.”

[...] “compassion” [is defined] as “sorrow or pity excited by the distress or misfortunes of another, sympathy” [...] “compassionate considerations” must [...] be taken to be those facts, established by the evidence, which would excite in a reasonable man in a civilized community a desire to relieve the misfortunes of another- so long as these misfortunes “warrant the granting of special relief” from the effect of the provisions of the *Immigration Act*.

[17] Given the appellant Bibi describes that she and her husband, who is not a part of this appeal, found it difficult to make a comfortable living in Mississauga, Ontario where they once lived twice and therefore establish themselves, they returned to Mauritius with the family.

[18] Upon return to Canada on April 8, 2013, Bibi was not working. She did though participate in an Early Child Care Course of which she completed four of the five month course requirement. Bibi’s husband was studying during this period in his field of electrical engineering. Unfortunately, with little money coming in, the family returned to Mauritius on August 14, 2013.

[19] The Panel can appreciate that Bibi and family, like many newly arrived immigrants, depending on education and skill, inclusive of the requisite re-training and acquisition of Canadian working experience, may have difficulties with desired employment commensurate with experience. There may also be environmental social, religious and cultural differences that may be difficult to adjust to. These challenges are not just challenges experienced by Bibi and

¹⁰ *Chirwa v. Canada (Minister of Manpower and Immigration)* (1970), 4 I.A.C. 338 (I.A.B.) at 350.

her family. This is, generally speaking the life of newly arrived immigrants. With a total of approximately eight months in Canada, it cannot be said that Bibi and her husband took the necessary steps to establish themselves in Canada to ensure they will be eventually positioned into desired employment.

[20] Moreover, it is recognized that Bibi and her family settled or tried to settle in Mississauga, Ontario, which is part of the Greater Toronto Area, an expensive region; that in and of itself does not justify the appellant leaving Canada. There is no indication that she and her family considered another less expensive location in Canada to live and work.

[21] After first immigrating to Canada on July 22, 2009 and staying until November or December 2009, Bibi's husband did not sever ties with his life and employment in Mauritius. He remains an electrical engineer for the Central Electrical Board, (CEB) for the past 32 years. It is evident that the effort was not made to make a life in Canada. Bibi's husband and children returned to live their lives in Mauritius as they knew it before immigrating to Canada.

[22] The Panel is not remotely convinced that there was a real plan to settle and live permanently in Canada notwithstanding Bibi's brief employment history. In this instance, Bibi followed her husband's lead, the breadwinner of the family. This by no stretch of the imagination is conclusive or persuasive evidence that supports a case to be had on humanitarian and compassionate grounds. Bibi had a choice to make and that is either remain in Canada as a permanent resident or return to Mauritius. She chose to return to Mauritius to be with her husband who never severed ties with his life and employment in Mauritius after immigrating to Canada.

[23] Given Bibi's lack of presence in Canada and that her husband remains employed as an electrical engineer in Mauritius; it is highly unlikely that Bibi will separate from him, come to Canada with a view of living permanently. In fact, her husband did not apply for a PRTD as it is stated that he believed he would have the same problems as he had when he immigrated with the family so he thought it best to support the family based on his employment in Mauritius.

[24] As far as the Panel is concerned, the course of events would likely repeat itself from when Bibi first obtained permanent residence. Accordingly, Bibi has not provided sufficient credible and trustworthy evidence of a humanitarian and compassionate nature that would warrant the Panel in exercising its discretion.

Establishment

[25] As previously stated, Bibi resided in Canada for approximately eight months from when permanent residence was granted. She was employed for a brief period of time when she first arrived in Canada.

[26] In terms of property, assets and savings in Canada, Bibi was not able to show that she had such resources that would show some reasonable level of establishment.

[27] Other than Bibi's 20-year-old daughter who was successful in obtaining a PRTD in December 2017, she has no other family; she does though have friends.

[28] In Mauritius, Bibi has a home that she owns with her husband. She also has family in Mauritius. Bibi is more established in Mauritius in terms of family, employment and property than in Canada.

[29] Therefore due to the lack of establishment, as well as the evidence heard at this appeal, there exists a lack of credible evidence that would persuade the Panel to allow Bibi's appeal on humanitarian and compassionate grounds in this regard.

Hardship

[30] Bibi describes that if she is not able to return to Canada, it would affect her daughter and son as it would prevent them from having a good life. Whether or not this is truly accurate, Bibi has had an opportunity to live in Canada and have a good life as stated. Instead she chose, in concert with her husband to return to Mauritius.

[31] If the Panel were to accept that there would be hardship and it does not, if Bibi's appeal is dismissed; there is no reason why Bibi and her husband could not apply for a Temporary Resident Visa to visit their daughter who was successful in retaining her status as a permanent resident as she applied at the first opportunity once she became an adult. The Panel therefore was not provided with sufficient credible and trustworthy evidence that would suggest Bibi would suffer hardship if her appeal was not allowed.

Best interests of the child

[32] No evidence was presented that would suggest a child would be negatively affected if Bibi's appeal was dismissed. The best interests of a child is not engaged in this appeal.

[33] Permanent resident status is granted by the government in the exercise of its authority to regulate the admission of non-citizens into Canada and may be lost as a result of the actions of the appellant.¹¹ It is incumbent on newcomers to Canada to know their obligations and their rights, and when they do not satisfy the residency requirements they have the burden to establish that there are exceptional circumstances to overcome those requirements.¹²

[34] Having considered the evidence and submissions, the Panel finds that the immigration officer's decision with respect to the appellant, Bibi Nazlee Edo, is valid in law. In weighing all the evidence in this appeal, the Panel is not persuaded, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

[35] Bibi Nazlee Edo's appeal is dismissed pursuant to paragraph 69(1) of the *IRPA*.

¹¹ *Chu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 893, [2007] 2 FCR 578.

¹² *El Assadi v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 58.

Appeal of Muhammad Tabrez Hussain Edo

[36] The evidence in Muhammad's appeal is that of his mother when he and his family immigrated to Canada on July 22, 2009. He was 13 years of age at the time and when he returned to Mauritius with his parents and younger sibling after being in school for 4.5 months in Canada, it was not his decision to do so given his age.

[37] At the age of 17 years, Muhammad returns to Canada on April 8, 2013 with his mother and sister and remains until August 14, 2013. He is in attendance at school in Canada but was not in a position to make his own decision to remain in Canada or return to Mauritius.

[38] Like his mother, Muhammad too has 123 days of physical presence in Canada during the five-year assessment period immediately before the submission of the PRTDs. Muhammad is short of the requisite period of physical presence in Canada by 607 days.

[39] After considering all the evidence, the Panel is satisfied that the decision to refuse Muhammad a PRTD is legally valid. Since he has not been physically present in Canada for at least 730 days, the more days he needs to meet the residency obligations, the higher degree of evidence would be needed with respect to consideration on humanitarian and compassionate grounds or special relief.

Special relief

[40] In considering the evidence in Muhammad's circumstances, he has been and continues to be a student. He did not though apply for a PRTD on or shortly after reaching his 18th birthday on January 28, 2014. Muhammad provides that he was aware that he could apply for a PRTD when he turned 18 years but did not do so as he wanted to return to Canada with his sister when she turned 18 years, which was November 27, 2016.

[41] Unfortunately for Muhammad, he did not apply for his PRTD until nine months after his sister's 18th birthday. The Panel has considered also the immigration officer's reasons for denying Muhammad a PRTD and that is Muhammad did not do so at the first available opportunity once achieving the age of majority over four years ago.

[42] Although the immigration officer is correct in this assessment, the Panel has considered Muhammad's reasons for not immediately applying for his PRTD at the first available opportunity after turning 18, as being reasonable, in that he wanted to return to Canada with his sister whom he is close with. The Panel gives him the benefit of the doubt in this regard.

[43] It is recognized that Muhammad did not make the decision on his own to return to Mauritius after immigrating to Canada as he was a child and dependent of his parents. The Panel is being somewhat lenient when it considered the reasons as to why he did not apply for a permanent resident travel document to return to Canada upon turning 18 years of age. Likely at this time, he was unaware of the ramifications of not applying for a PRTD until his parents realized the predicament they were all in with respect to their status as permanent residents of Canada.

[44] Muhammad's sister lives in Canada with a friend of their father and is being financially supported by their father in Mauritius. It is reasonable to conclude that Muhammad would likely reside with his sister in the family friend's home or elsewhere while pursuing any studies in Canada under his father's financial support.

[45] Thus, the Panel will exercise its discretion and allow Muhammad's appeal on humanitarian and compassionate grounds based on the totality of the evidence considered.

[46] Muhammad is cautioned that now he is an adult, he is responsible for his actions and ensuring compliance with Canada's residency obligations. He should take immediate steps to return to Canada and live as a permanent resident. Failure to comply with the residency obligations and objectives in the future will not likely result in a positive determination before immigration officials and or the Immigration Appeal Division .

[47] The appeal is allowed for the appellant, Muhammad Tabrez Hussain Edo, pursuant to paragraph 67(1)(c) of the *IRPA*.

NOTICE OF DECISION

The appeal of *Bibi Nazlee Edoo* is **dismissed**.

The appeal of *Muhammad Tabrez Hussain Edoo* is **allowed**. The immigration officer's decision of October 23, 2017 is set aside. The Immigration Appeal Division finds that the appellant, Muhammad Tabrez Hussain Edoo has not lost his permanent resident status.

“K. Dickenson”

K. Dickenson

November 15, 2018

Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.