Federal Court  Cour fédérale

Date: 20160209

Docket: IMM-3613-15

Citation: 2016 FC 172

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 9, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

And

CLEJEUNE LOUIS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The respondent, Clejeune Louis, is a citizen of Haiti. In 1994, at the age of five, he obtained permanent resident status in Canada as a dependant accompanying his father, who was then being sponsored by his wife. In February 2009, Mr. Louis was sentenced to six months in

prison for drug trafficking. A deportation order on grounds of serious criminality was filed against him in July 2009.

[2] On March 18, 2010, the Immigration and Refugee Board of Canada's Immigration Appeal Division (IAD) decided to stay the execution of the deportation order, with certain conditions, for humanitarian reasons. This stay was valid for a five-year period, until March 2015. IAD upheld the deportation order's stay of execution at two interim reviews held in December 2011 and April 2013.

[3] In July 2015, at a third review, a commissioner from IAD (the Tribunal) upheld and extended for an additional year, until July 20, 2016, the stay of the execution of the deportation order issued against Mr. Louis. Today, the Minister of Public Safety and Emergency Preparedness is applying, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, for the judicial review of this Tribunal decision. The Minister submits that the decision was unreasonable and that the Tribunal had no evidence that Mr. Louis would be subjected to significant hardships upon his return to Haiti, namely one of two factors upheld by the Tribunal in its decision to maintain the stay of execution of the deportation order for humanitarian reasons.

[4] The only issue in question is to determine whether the court's decision to uphold and extend the stay of execution of the deportation order against Mr. Louis is unreasonable.

[5] For the following reasons, the Minister's application for judicial review must be dismissed because the Court concluded that the Tribunal's decision was reasonable and fell within the range of possible acceptable outcomes under the circumstances. The Court is satisfied that the Tribunal weighed the different elements of the evidence in the record with respect to the applicable principles and could reasonably determine whether there were humanitarian reasons to justify the special measure to extend the stay. The Minister is essentially contesting the assessment of the evidence that the Tribunal made in its decision, which is not sufficient to justify the Court's intervention.

II. Background

A. *Decision*

[6] In its decision, the Tribunal studied the relevant factors listed in *Ribic v. Canada (Minister Employment and Immigration),* [1985] I.A.B.D. No. 4 (*Ribic*) to determine whether there was reason to extend, for humanitarian reasons, the stay of the deportation order imposed upon Mr. Louis. These factors included the gravity of the offence underlying the deportation order against Mr. Louis and his potential for rehabilitation; the circumstances underlying the order; the period of time spent in Canada and Mr. Louis's level of assimilation; the presence of family members in the country and the upheaval that the deportation could cause for Mr. Louis's family; the support Mr. Louis received; and the severity of the difficulties that Mr. Louis would endure if returned to Haiti.

[7] The Tribunal noted that these factors were not extensive and that their respective value varied depending on the circumstances of each case.

[8] First, the Tribunal noted that the sentence imposed on Mr. Louis in 2009 was his only criminal conviction and that he had not committed any criminal acts since that time. The Tribunal placed great value on this absence of recidivism. However, the Tribunal noticed that Mr. Louis had not made a serious effort at rehabilitation and that, despite having been in Canada for over 20 years, he still did not show a high level of assimilation. This lack of assimilation was a negative factor in the Tribunal's assessment.

[9] In addition, the Tribunal noted that Mr. Louis did not maintain contact with family members living in Canada and that the only community support he received came from negative influences. Nevertheless, the Tribunal pointed out that Mr. Louis had moved to another city to get away from these negative influences and to get a new job.

[10] With respect to the significance of the hardships he might endure upon returning to Haiti, the Tribunal referred to the fact that his mother, living in Haiti, was not involved in Mr. Louis's life and to Mr. Louis's testimony that he was afraid to be judged by his mother after his return to Haiti. The Tribunal added that, although Mr. Louis had not made a statement to this effect, it was convinced that Mr. Louis [translation] "would endure significant hardships should he return to a country in crisis, a country he had left as a child and where he had neither emotional nor material support." The Tribunal placed a great deal of importance on these potential difficulties.

[11] In terms of its analysis, the Tribunal agreed that Mr. Louis's lack of recidivism since the original offence, as well as hardships he would endure upon returning to Haiti, justified upholding the stay for an additional year, despite the existence of other, more numerous negative elements. Having considered Mr. Louis's testimony, the documentary evidence and the parties' presentations, the Tribunal finds that, under the circumstances, there are humanitarian reasons justifying the taking of special measures and authorizing it to stay the deportation order for an additional year, under the conditions stipulated in the decision.

B. ***Standard of review***

[12] The assessment of the evidence at the Tribunal's disposal is a mixed question of fact and law, which is subject to the reasonableness standard of review. Neither of the parties contested this. It was, however, well established that, upon the IAD review of a stay of execution of a deportation order, the Tribunal's evaluation of the evidence falls entirely under its jurisdiction and must be examined according to the standard of reasonableness (*Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCR 3 (*Chieu*) at paragraphs 40-41 and 90; *Dunsmuir v. New Brunswick*, 2008 SCR 9 [*Dunsmuir*] at paragraph 47; *Iamkong v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 355 at paragraph 27; *Abdallah v. Canada (Citizenship and Immigration)*, 2010 FC 6 at paragraph 23).

[13] This characteristic of reasonableness is concerned with the justification of the decision, the transparency and the intelligibility of the decision-making process, and of whether the decision falls within a range of possible acceptable outcomes that are defensible in respect of the facts and law. The reasons behind a decision are considered to be reasonable "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" (*Dunsmuir* at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board),* 2011 SCC 62 (*Newfoundland Nurses*) at paragraph 16). In this context, the Court must show restraint and respect toward the Tribunal's decision and cannot substitute its own reasons. However, it may, if necessary, "look to the record for the purpose of assessing the reasonableness of the outcome" (*Newfoundland Nurses* at paragraph 15).

III. Analysis

[14] The Minister submits that the Tribunal's decision is unreasonable and arbitrary because it is contrary to the evidence that was presented to it. More specifically, the Minister emphasizes that the Tribunal had no evidence to the effect that Mr. Louis would be subjected to significant hardships should he return to Haiti, which is one of two factors specifically upheld by the Tribunal in its decision to maintain the stay of execution of the deportation order. The Minister adds that, because IAD is not a court with specialized knowledge in the same way as the Refugee Protection Division (RPD), the Tribunal could not take judicial notice of prevailing conditions in Haiti in the absence of evidence presented by Mr. Louis.

[15] The Minister specifically insists on the passage in the decision where the Tribunal affirms that, although Mr. Louis [translation] "had not made a statement to this effect," the Tribunal remains convinced that Mr. Louis would endure significant hardships should he return to Haiti. The Minister claims that the Tribunal's record does not contain evidence enabling it to support the Tribunal's comments concerning the country in crisis in which Mr. Louis had not lived since

he was a child, and concerning the lack of emotional and material support for Mr. Louis in Haiti. The Minister emphasizes that in the hearing's transcription, Mr. Louis makes only one reference to the fact that his mother would judge him unfavourably upon his return to Haiti and that Mr. Louis had nothing further to add.

[16] The Minister submits that, given the lack of evidence for one of the two criteria specifically mentioned and upheld by the Tribunal to justify the extension of the stay of the deportation order, the Tribunal's decision is unreasonable and may not fall within the range of possible acceptable outcomes.

[17] Mr. Louis submits that the Tribunal could not reasonably conclude that, under the circumstances, the absence of recidivism and the hardships that Mr. Louis would endure in Haiti were sufficient factors to justify the temporary extension of the stay of the deportation order (*Alvarez v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 702 at paragraph 5).

[18] The Court does not agree with the Minister's position and does not subscribe to its arguments. Instead, it is the Court's opinion that this record does not concern a situation in which there was a complete lack of evidence to support the Tribunal's decision. The Tribunal based its decision to extend the stay of the deportation order on two elements: the absence of recidivism on Mr. Louis's part and the hardships that he might endure upon returning to Haiti. Following its examination, the Tribunal gave these elements greater weight than the other negative elements in its assessment of the various factors analyzed.

[19] The Court first emphasizes that it is well established that the relevant factors to be considered in the assessment of humanitarian reasons to stay a deportation order are those established in *Ribic* and adopted by the Supreme Court in the *Chieu* judgment and by the Federal Court of Appeal in *Ivanov v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 315. The Tribunal indeed had recourse to all these factors in its decision, mentioned and considered them in its reasons, and explained how they contributed in a positive or negative way to its analysis.

[20] With respect to the absence of recidivism, the Minister did not deny that the evidence in the record supports the Tribunal's factual findings. The Court notes that the record does support the Tribunal's analysis and that the absence of recidivism certainly constitutes a criterion on which the Tribunal could base its decision and to which it could reasonably grant a significant value.

[21] With respect to the difficulties Mr. Louis would face in Haiti, Mr. Louis told the Tribunal during the hearing that he feared being judged and ridiculed because of his criminal conviction if he were sent back to Haiti. From the Tribunal's record, it also appears that certain representations about the conditions that Mr. Louis would face in Haiti had been made by his former counsel during earlier reviews before IAD. In addition, in the IAD decision following the April 2013 review, which is part of the Tribunal's record, IAD referred to the fact that Mr. Louis had left Haiti when he was five years old, had not had contact with his mother in Haiti for many years and had not set foot in that country since 2000. IAD found that Mr. Louis would face

significant difficulties if he had to return to Haiti and adapt to a country that was unfamiliar to him.

[22] Given Mr. Louis's age upon his arrival and the lack of contact with his country of origin over the years he spent in Canada, it is the Court's opinion that it was not unreasonable for the Tribunal to mention that Mr. Louis would face difficulties in Haiti should he be required to return there. The Tribunal's observations regarding the fact that Mr. Louis has had no knowledge of Haiti since he was a child and that he has no emotional support in this country cannot be qualified as being completely dissociated from the evidence in the record or as being unreasonable under the circumstances.

[23] The Court acknowledges that, as the Minister's counsel pointed out, the Tribunal's affirmation that Mr. Louis would have no material support were he to return to Haiti does not rest on clear evidence to this effect in the Tribunal's record. However, when the Tribunal's evidence and record are considered as a whole, the Court is not convinced that there is a complete lack of evidence to support the Tribunal's findings regarding the significant hardships Mr. Louis might endure, to the point of making said findings unreasonable.

[24] The Court understands that the Minister may not find this evidence sufficient to justify the Tribunal's comments regarding this element, but it is not of the opinion that the limits of the evidence on which the Tribunal relied are enough to render the decision unreasonable. The standard of reasonableness requires respect, and the Court must simply determine whether the Tribunal's findings fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir* at paragraph 47). If the process and the outcome in

question are consistent with the principles of justification, transparency and intelligibility, the Court cannot replace it with an outcome that would be, in its opinion, a preferable one (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 59).

[25] Despite the effective representations made by the Minister's counsel, the disagreements raised with respect to the Tribunal's conclusions do not justify the Court's intervention in this case. The Court certainly shares the Minister's concerns about the slim evidence on which the Tribunal seems to have relied in concluding that Mr. Louis would face serious difficulties were he to return to Haiti. Had the Court been in the Tribunal's position, it may have assessed the evidence differently, granted a different relative weight to the relevant factors, and come to a different final conclusion. However, in the context of judicial review, the Court must determine whether the Tribunal's decision was reasonable, and the Court is not convinced that, under the circumstances in this record, this decision falls outside the range of possible, acceptable outcomes in respect of the facts and the law.

[26] When the Court reviews a decision according to the standard of reasonableness, its role is not to substitute its own assessment of the evidence for that of the decision-maker (*Kanthasamy v. Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 (*Kanthasamy*) at paragraph 99). The Court's mission is not to reassess the pieces of evidence in the record but rather to limit itself to learning whether a finding is irrational or arbitrary in nature, such as the total lack of fact-finding or the lack of any acceptable basis for the findings of fact that were made.

[27] The Court adds that, in the end, the Tribunal considered all relevant factors developed by the *Ribic* case and confirmed by the subsequent judgment, placed the emphasis on two of these factors (the absence of recidivism and the potential for significant hardships) and assigned them a greater relative weight in order to agree upon the existence of humanitarian reasons justifying a special measure, such as extending the stay of the deportation order. It is not up to the Court to reassess the relative weight that the Tribunal gave to different relevant factors (*Chieu* at paragraph 40; *Kanthasamy* at paragraph 99).

[28] The arguments advanced by the Minister regarding the Tribunal's findings and its assessment of the evidence do indeed ask that the Court substitute its opinion and its reading for those of the Tribunal. However, this is not the Court's role with respect to judicial review. As the Tribunal explained at the beginning of its decision, it was able to consider Mr. Louis's testimony, the documentary evidence and the parties' representations as made before the Tribunal and in the record. It is assumed that the Tribunal considered and took into account all the evidence without being required to refer to every constituent element (*Newfoundland Nurses* at paragraph 16; *Kanagendren v. Canada (Minister of Citizenship and Immigration)*, 2015 FCA 86 at paragraph 36).

[29] To echo what the Court said in *Moreno v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 841 at paragraph 15, many small, immaterial errors are not enough to render a decision unreasonable. An imperfect decision is still reasonable. The standard of review is not the perfection of the decision but rather its reasonableness. Therefore, in this case, there is no reason for the Court to intervene.

IV. Conclusion

[30] For the above-mentioned reasons, the application for judicial review by the Minister is dismissed. The Tribunal's decision that an additional stay of Mr. Louis's deportation is justified is transparent and intelligible, and it falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and the law. This is not a situation where there is a total lack of evidence supporting the Tribunal's decision.

[31] The parties did not raise any questions for certification in their written or oral representations, and the Court agrees that there are none in this case.

JUDGMENT

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs;

2. No serious questions of general importance will be certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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