

Federal Court



Cour fédérale

Date: 20160818

Docket: T-1358-15

Citation: 2016 FC 940

Ottawa, Ontario, August 18, 2016

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

FLORIJA IMEROVIK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application by Florija Imerovik, challenging a decision of the Director General, Aviation Security (Transport Canada) by which Ms. Imerovik's transportation security clearance [TSC] was revoked. The impugned decision brought an end to Ms. Imerovik's employment as a screening officer at the Lester B Pearson International Airport in Toronto. The Director General's decision was based on Ms. Imerovik's personal relationships with three individuals (including her husband and son) who had ostensible connections to an Albanian organized crime group.

[2] Ms. Imerovik received a TSC in 2002. This authorization was renewed three times. But for the Director General's decision, her TSC would have remained valid until October 10, 2017. At some point, Transport Canada asked the Royal Canadian Mounted Police [RCMP] to carry out additional security verifications concerning Ms. Imerovik. This culminated in a Law Enforcement Record Check [LERC] report that identified the concerns leading to the Director General's decision.

I. Procedural Background

[3] The RCMP investigation revealed that Ms. Imerovik lived with her husband and son. In addition, a third party with a known gang affiliation was said to have lived in the family home between 2010 and 2012.

[4] The RCMP reported that Ms. Imerovik's husband was charged in 1991 with possession of property obtained by crime, forgery and uttering forged documents. Those charges were later stayed. The RCMP also reported that in 2013, the husband was observed attending the funeral of a person known to be an executive member of a criminal organization and in the company of some members of an Albanian organized crime group.

[5] The RCMP also reported that Ms. Imerovik's son faced outstanding charges for unauthorized use of credit card data and fraud under \$5,000.00. Charges for assault causing bodily harm and assault with a weapon brought in 2010 against the son had been dismissed. In 2013, the son was observed in the presence of a person known to be a member of an Albanian organized crime group and in July 2014 he was seen in the company of a person facing fraud-

related criminal charges. In 2013, the son was stopped by the Ontario Provincial Police while driving Ms. Imerovik's car.

[6] The RCMP investigators also referred to a third party associate known to be connected to Albanian organized crime. In 2010, the third party was stabbed near a social club said to be frequented by Albanian organized crime subjects and he failed to cooperate with the related police investigation. In 2013, this person was also seen attending the funeral of the person known to be an executive member of a criminal organization and in the company of a member of an Albanian organized crime group.

[7] The content of the RCMP report was sent to Ms. Imerovik for comment. Her legal counsel provided a lengthy written response. Among other points, her counsel attempted to clarify or correct the following:

- (a) The criminal charges faced by her husband arose 23 years earlier, involved property-related matters and were all stayed. No subsequent allegations were ever made against him.
- (b) Ms. Imerovik's husband denied any relationship with Albanian organized crime.
- (c) Ms. Imerovik's son was facing fraud charges but was acquitted of the 2010 assault charges. He had no violence-related criminal record and he denied any relationship with Albanian organized crime or with any other criminal organization.

- (d) The third party was an acquaintance but not a close associate of Ms. Imerovik. During his marital separation he had used her home for mail forwarding but he never lived there.

[8] The decision to recommend revocation of Ms. Imerovik's security clearance was made at a meeting of the Transportation Security Clearance Program Advisory Body held on March 25, 2015. The record of discussion from the meeting contained the following information:

- The issue is whether to allow Ms Imerovik, a Screening Officer with Garda of Canada at Lester B. Pearson International Airport, to retain her security clearance, or to cancel it in light of new information received by Transport Canada.
- Transport Canada, Security Screening Programs, initially granted Ms Imerovik a TSC in 2002, renewed every 5 years, and is currently valid until October 10, 2017.
- Criminal record checks indicate that the applicant has no criminal convictions.
- Transport Canada, Security Screening Programs, received a report from the RCMP, SIBS, on November 20, 2014, detailing the applicant's very close association to three (3) individuals with criminal records and associations to the Albanian Organized Crime group.
- The Advisory Body noted that although the applicant was granted a TSC in 2002, information regarding the applicant's association to individuals with criminal records and associations to the Albanian Organized Crime Group was previously unavailable.
- The Advisory Body noted the applicant has lived with two (2) very close associates since 1990, having been identified as her husband and son, and a third associate between 2010 and 2012.

- The Advisory Body also noted that these associates have been charged with multiple offences including Assault Causing Bodily Harm and Assault with a Weapon.
- The Advisory Body further noted her son's charges of Forgery, Uttering Forged Document, Unauthorized Use of Credit Card, Fraud Under \$5000, and Possession of Property Obtained by Crime, leading them to believe some of these are more sophisticated crimes.
- The Advisory Body noted the applicant's son was a passenger in a car driving by an individual who is a member of an Albanian organized crime group.
- The Advisory Body further noted that two (2) of these close associates recently attended the funeral of an individual known to be an executive member of a criminal organization. They arrived at the funeral accompanied by members of the Albanian Organized Crime group.
- A review of the information on file led the Advisory Body to believe, on a balance of probabilities, that the applicant may be prone or induced to commit an act or assist or abet any person to commit an act that may unlawfully interfere with civil aviation.
- The Advisory Body considered the written submissions provided by the applicant; however, the submissions did not provide sufficient information to dispel the Advisory Body's concerns.

[9] These findings led to the recommendation by the Advisory Body to revoke

Ms. Imerovik's transportation security clearance on the following basis:

The Advisory Body recommends cancelling the applicant's transportation security clearance based on a police report detailing the applicant's associations to the Albanian Organized Crime Group and another individual with a criminal record. The Advisory Body noted that two (2) of the associates live with her and therefore are considered very close associates (father and son). A review of the information on file led the Advisory Body to believe, on a balance of probabilities, that the applicant may be prone or induced to commit an act or assist or abet any person to commit an act that may unlawfully interfere with civil aviation. Furthermore,

the applicant's submission did not provide sufficient information to dispel the Advisory Body's concerns.

[Emphasis added.]

[10] Notwithstanding the seriousness of the matter, it took almost four months for the Director General to act on the above recommendation. The Record of Decision dated July 17, 2015 offered the following rationale for revoking Ms. Imerovik's security clearance:

The issue is whether to allow Ms Imerovik, a Screening Officer with Garda of Canada at the Lester B. Pearson International Airport, to retain her transportation security clearance (TSC), or cancel in light of new information received by Transport Canada. My decision is set out below and is based on a review of the file including the concerns drawn to the applicant's attention in our letter to her dated November 27, 2014, the applicant's submission, the recommendation of the Transportation Security Clearance Advisory Body, as well as the *Transportation Security Clearance Program (TSCP) Policy*.

The information regarding Ms Imerovik's very close association to three (3) individuals, who are associated with an Albanian organized crime group, raised concerns regarding her judgment, trustworthiness and reliability. I noted that the applicant identified two (2) of the individuals as her son and husband, with whom she has resided for the past 25 years. I also noted that, between 2010 and 2012, records show the third individual also resided at the applicant's address, which led me to believe that she and her family are closely associated with this individual. I noted that two (2) of the applicant's associates were observed in May 2013 attending the funeral of a known executive member of a criminal organization and arrived at the funeral in the same vehicle as members of the Albanian Organized Crime group. I further noted the applicant's son, in July 2014, was observed by police in the company of an individual who is a member of an Albanian Organized Crime group. After reviewing all of the information on file, I have reason to believe, on a balance of probabilities, that the applicant may be prone or induced to commit an act, or assist or abet an individual to commit an act that may unlawfully interfere with civil aviation. I considered the statement provided by the applicant, however, the information presented was not sufficient to address my concerns.

I therefore concur with the Advisory Body's recommendation and cancel Ms Imerovik's transportation security clearance.

[11] It is from this decision that this application arises.

II. Issues

- (a) What is the appropriate standard of review?
- (b) Did the Director General err in her decision to revoke Ms. Imerovik's TSC?

III. Analysis

[12] Because this challenge to the Director General's decision involves the application of legal standards to the evidence, the standard of review to be applied is reasonableness: see *Canada v Farwaha*, 2014 FCA 56 at paras 84-86, [2015] 2 FCR 1006.

[13] Article II.35 of the Transportation Security Clearance Program Policy [TSCP Policy] provides for the revocation of a security clearance for any person whose presence in the restricted area of a listed airport would be inconsistent with the objective of the TSCP. That objective is outlined in Article I.4 of the TSCP Policy which states:

The objective of this Program is to prevent the uncontrolled entry into a restricted area of a listed airport by any individual who

1. is known or suspected to be involved in activities directed toward or in support of the threat or use of acts of serious violence against persons or property;
2. is known or suspected to be a member of an organization which is known or suspected to be involved in activities directed toward or in support of the threat or use of acts of serious violence against people or property;

3. is suspected of being closely associated with an individual who is known or suspected of
 - being involved in activities referred to in paragraph (1);
 - being a member of an organization referred to in paragraph (2); or
 - being a member of an organized referred to in subsection (5) hereunder.
4. the Minister reasonably believes, on a balance of probabilities, may be prone or induced to
 - commit an act that may unlawfully interfere with civil aviation; or
 - assist or abet any person to commit an act that may unlawfully interfere with civil aviation.
5. is known or suspected to be or to have been a member of or a participant in activities of criminal organizations as defined in Sections 467.1 and 467.11(1) of the Criminal Code of Canada;
6. is a member of a terrorist group as defined in Section 83.01(1)(a) of the Criminal code of Canada.

[14] The decision to cancel Ms. Imerovik's TSC was based on the Director General's belief that Ms. Imerovik may be prone or induced to commit an act that may unlawfully interfere with civil aviation or assist or abet any person to commit such an act, per Article I.4(4) of the TSCP Policy. The underlying concern was that her personal and family relationships made her vulnerable to unlawful influence. The applicable standard of proof is that of a reasonable belief, on a balance of probabilities: see *MacDonnell v Canada (Attorney General)*, 2013 FC 719 at para 29, [2013] FCJ No 799 (QL).

[15] It is noteworthy that the Director General did not purport to base her decision on Article I.4(3) of the TSCP Policy which deals explicitly with suspect relationships. Under that provision, Ms. Imerovik would have to be suspected of being closely associated with persons known or suspected of involvement in acts of serious violence against persons or property or who are known or suspected members of an organization engaged in such criminal conduct. It could be disqualifying behaviour if Ms. Imerovik's husband or son were reasonably suspected of membership in an organized crime group or were themselves involved in acts of serious violence. However, nothing in the RCMP report supported such a belief.

[16] It is not entirely clear from the Director General's decision what, if anything, she made of the findings and observations of the Advisory Body. The only explicit concern in the decision is the existence of Ms. Imerovik's identified relationship with three persons "who are associated with an Albanian organized crime group". This was said to have raised a concern about Ms. Imerovik's "judgment, trustworthiness and reliability".

[17] Although the Advisory Body took note of outstanding charges for multiple offences facing Ms. Imerovik's "associates", the Director General's decision makes no mention of this information. This is perhaps appropriate given the absence of any evidence about those charges, all of which were outstanding (the son), dismissed (the son), or stayed (the husband). Without background information, the existence of unproven criminal charges is, of course, of no import. In *Canada v Farwaha*, above, the Court considered the potential relevance in this context of criminal charges that are stayed or withdrawn. At paragraph 121, Justice David Stratas

emphasized the need for “facts concerning the incident that led to the charges”: also see *Salmon v Canada*, 2014 FC 1098 at paras 84-85, 247 ACWS (3d) 499.

[18] The Advisory Body recommendation also contains errors. For instance, there is nothing in the RCMP report suggesting the identified third party had ever been criminally charged or convicted. Nevertheless, the Advisory Body incorrectly refers to Ms. Imerovik’s association with “another individual with a criminal record” (see Applicant record, tab 4, Record of Recommendation). The Advisory Body also wrongly attributed some criminal charges to Ms. Imerovik’s son that the RCMP had linked to another person. These errors are the result of a cursory and sloppy review of the RCMP report and ought to have caused the Director General some concern.

[19] If the Director General was not influenced by anything other than Ms. Imerovik’s associations to three individuals with supposed connections to Albanian organized crime, it is necessary to consider what was left in the evidence to support the revocation of Ms. Imerovik’s TSC.

[20] There is nothing in the RCMP report indicating that Ms. Imerovik’s husband or her son were known or suspected of being members of an organized crime group. At most, the report indicates that Ms. Imerovik’s husband and the third party were observed in 2013 at a funeral for a person known to be an executive member of an Albanian organized crime group and arrived in the company of “some members” of that organization. Ms. Imerovik’s son was also observed on

one occasion in the company of a member of an Albanian organized crime group. Both Ms. Imerovik's husband and son denied membership in any organized crime group.

[21] Although the RCMP report did link Ms. Imerovik to the third party who was "associated to" Albanian organized crime, it also asserted that he had lived in the family home between 2010 and 2012. Notwithstanding Ms. Imerovik's denial, this statement is carried over into all of the subsequent reports. Nevertheless, the Advisory Body and the Director General accepted the RCMP statement as fact without any apparent attempts at verification. This was identified as a material factor in the decision and it demanded further enquiry by the Advisory Body and the Director General. Material contradictions of this importance must be subjected to some scrutiny and not simply accepted as factual because of their law enforcement origin. Ms. Imerovik maintained that she had only a passing acquaintanceship with the third party. If that evidence was truthful the case for revoking her security clearance would be weakened.

[22] Given the stark contradictions that were present in the record before the Advisory Body and the Director General and considering Ms. Imerovik's lengthy, trouble-free employment record, she was entitled to a more rigorous investigation of the evidence than she received. In the face of the poor quality of the Advisory Body report and the thinness of the reasons given by the Director General, I find her decision to be unreasonable and it is set aside.

[23] For the foregoing reasons, this application is allowed and the matter is to be redetermined on the merits by a different decision-maker. Any further investigation is to be carried out by

persons who had no involvement with the decision under review. Costs in the amount of \$2,250.00 are payable to Ms. Imerovik.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed and the matter is to be redetermined on the merits by a different decision-maker. Any further investigation is to be carried out by persons who had no involvement with the decision under review. Costs in the amount of \$2,250 are payable to Ms. Imerovik.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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