Federal Court  Cour fédérale

Date: 20171010

Docket: IMM-1054-17

Citation: 2017 FC 896

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 10, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

SALAH EDDINE CHEIKH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant is a citizen of Algeria. He arrived in Canada as a permanent resident in 2001, when he was 11 years old, with his mother and younger sister.

[2] On June 7, 2010, the applicant was convicted of armed robbery, forcible confinement, possession of a restricted weapon, careless use of a weapon, and failure to comply with a decision. He was sentenced to four (4) years in prison and three (3) years of probation. He was also prohibited from possessing firearms, ammunition, and explosive materials for life.

[3] On June 7, 2011, a report for serious criminal inadmissibility was prepared against the applicant within the meaning of paragraph 36(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. On June 16, 2011, the report was referred to the Immigration Division [ID] for investigation under subsection 44(2) of the IRPA. On July 21, 2011, the ID issued a deportation order against the applicant, as he was inadmissible on grounds for serious criminality under paragraph 36(1)(*a*) and subsection 44(2) of the IRPA.

[4] On December 20, 2013, a notice of intent to seek an opinion of the Minister under paragraph 115(2)(*a*) of the IRPA was issued to the applicant.

[5] On February 1, 2017, the Minister's delegate concluded that the applicant was a danger to the public in Canada. He stated that he was satisfied that the applicant was inadmissible in Canada for serious criminality within the meaning of paragraph 36(1)(*a*) of the IRPA due to his convictions for robbery with a restricted firearm, that the applicant currently constitutes and will constitute in the future a danger to the public in Canada within the meaning of paragraph 115(2)(*a*) of the IRPA, that the applicant's life, liberty, and safety will not be endangered if he were to be returned to Algeria and, finally, that the applicant did not raise sufficient humanitarian considerations to lead him to conclude that the applicant should not be deported from Canada.

[6] The applicant requested a judicial review of this danger opinion. He claimed that the conclusions by the Minister's delegate regarding the present and future danger that he represents to the public in Canada are unreasonable.

[7] More specifically, the applicant claims that the evidence does not allow for a conclusion that he represents an unacceptable risk of re-offence, now or in the future. According to the applicant, the evidence related to his criminality is clearly outdated. The last offences were in 2012 and, prior to that, in 2009. He argued that there is no evidence to show that he is a potential re-offender. On the contrary, his file shows more recent evidence of his rehabilitation that does not allow for a reasonable conclusion that he represents a current or future risk to Canadian society on a balance of probabilities.

[8] The applicant also alleged that the Minister's delegate placed an unjustified burden on him of proving that he is legally earning a living in order to show that he does not represent an "unacceptable risk" to Canadian society.

[9] The applicant did not challenge the conclusions by the Minister's delegate regarding his inadmissibility, or those regarding the risk that he could face if returned to Algeria or the humanitarian and compassionate considerations.

[10] After reviewing the arguments by the parties, the opinion of the Minister's delegate and the Certified Tribunal Record, the Court believes that there is no need to intervene.

II. Analysis

[11] The parties agree that a danger notice from a Minister's delegate under paragraph 115(2)(*a*) of the IRPA is a decision that is subject to the standard of reasonableness. It is a question of mixed law and fact that requires restraint by the Court in a judicial review (*Nagalingam v. Canada (Citizenship and Immigration)*, 2008 FCA 153 at paragraph 32; *Alkhalil v. Canada (Citizenship and Immigration)*, 2011 FC 976 at paragraph 16; *Omar v. Canada (Citizenship and Immigration)*, 2013 FC 231 at paragraph 33; *Reynosa v. Canada (Citizenship and Immigration)*, 2016 FC 1058 at paragraph 11).

[12] Where the reasonableness standard applies, the Court's role is to determine whether the decision falls "within the range of acceptable outcomes that are defensible in law and on the facts." If "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility," it is not for the Court to replace the outcome with one that would be preferable (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 59).

[13] In general, it is prohibited under subsection 115(1) of the IRPA to send Convention refugees and protected persons to a country where those individuals risk being persecuted based on their race, religion, nationality, social group or political opinions, or if they risk being tortured or facing cruel and unusual treatment or punishment. This principle of "non-refoulement," however, does not apply when the person is inadmissible in Canada for serious criminality and constitutes a danger to the public under paragraph 115(2)(*a*) of the IRPA. Inadmissibility for

serious criminality occurs under paragraph 36(1)(*a*) of the IRPA when a person is convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least ten (10) years or of an offence under an Act of Parliament for which a term of imprisonment of more than six (6) months has been imposed.

[14] If the person is inadmissible on grounds of serious criminality and constitutes a danger to the public in Canada, the Minister's delegate, to comply with section 7 of the *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11, must also determine whether, based on the balance of probabilities, the person will be exposed to a threat to his or her life, liberty or security, and weigh this risk against the nature and seriousness of the person's behaviour in Canada, the danger that he or she presents to Canadians and the applicable humanitarian and compassionate considerations (*Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paragraphs 76-79; *Canada (Minister of Citizenship and Immigration) v. Ragupathy*, 2006 FCA 151 at paragraphs 18-19).

[15] Contrary to the applicant's claims, the Minister's delegate considered his arguments regarding the lack of re-offence since 2012. He also considered the evidence submitted by the applicant. In fact, the Minister's delegate indicated that the documents provided are very positive regarding the progress achieved by the applicant.

[16] However, in assessing the risk of re-offence, the Minister's delegate noted that the offences committed by the applicant have a common characteristic, in that they were committed for profit. The evidence shows that between 2007 and 2013, the applicant was convicted of

several violent offences involving the possession and use of weapons against people, for the purpose of stealing money and property.

[17] It was in that light that the Minister's delegate reviewed the applicant's employment situation. Noting that the applicant provided little recent information regarding his situation that could show that he has adopted prosocial behaviour, the Minister's delegate asked him to provide certain evidence and clarify certain information. Based on the information provided by the applicant, the Minister's delegate noted the lack of income tax returns for 2013 and 2014, the fact that the applicant does not have the professional qualifications to exercise his trade, and that he has not had a work permit since July 2014. Given the applicant's job insecurity and the lucrative aspect of the offences that he has committed in the past, it was reasonable for the Minister's delegate to consider those elements, since a potential need for money could be the source of a future risk of re-offence. It was also appropriate for the Minister's delegate to consider the reports on record from 2010 indicating the high level of dangerousness, the violence of his crimes and, in particular, his risk of re-offence.

[18] It was thus permissible for the Minister's delegate to conclude that the applicant represents an unacceptable risk of re-offence, now and in the future. That conclusion falls within the possible, acceptable outcomes that are defensible in respect of the facts and law, and the decision is justified in a way that meets the criteria for transparency and intelligibility within the decision-making process (Dunsmuir at paragraph 47).

[19] Essentially, the applicant disagrees with the assessment of the evidence by the Minister's delegate. That assessment of the evidence, however, requires great restraint by the Court, whose role is not to weigh it again (*Williams v. Canada (Minister of Citizenship and Immigration)*, [1997] FCJ no. 393 (QL) (FCA) at paragraph 29; *Derisca v. Canada (Citizenship and Immigration)*, 2013 FC 524 at paragraph 25; *Mzite v. Canada (Citizenship and Immigration)*, 2013 FC 284 at paragraph 48; *Mohamed v. Canada (Citizenship and Immigration)*, 2008 FC 315 at paragraph 20). Moreover, the Minister's delegate was not required to comment on every piece of evidence (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at paragraph 16, 157 FTR 35 (T.D.); *Florea v. Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 598 (QL) (FCA)).

[20] For all of these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court believes that this case does not raise any.

JUDGMENT in IMM-1054-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
This 13th day of September 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1054-17
STYLE OF CAUSE:	SALAH EDDINE CHEIKH v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	SEPTEMBER 18, 2017
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	OCTOBER 10, 2017

APPEARANCES:

Vincent Desbiens	FOR THE APPLICANT
Daniel Latulippe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Montréal Legal Aid Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT