

Federal Court



Cour fédérale

Date: 20180502

Docket: IMM-3826-17

Citation: 2018 FC 472

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 2, 2018

PRESENT: The Honourable Ms. Justice Gagné

BETWEEN:

JANVIER, PAULIN

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Nature of the case

[1] Mr. Paulin Janvier is seeking judicial review of the deportation order issued against him on August 15, 2017, by the Immigration Division [ID] of the Immigration and Refugee Board.

The ID found that he was inadmissible to Canada, pursuant to paragraph 37(1)(a) of the

Immigration and Refugee Protection Act, SC 2001, c. 27 [IRPA], for participating in the pattern of activity planned by a criminal organization for defrauding the Canadian government.

[2] For the reasons that follow, this application for judicial review will be dismissed.

II. Facts

[3] The Applicant is a citizen of Haiti. Beginning in June 2012, he was a locally engaged staff [LES] member of the Administration Section of the Canadian Embassy in Port-au-Prince, appointed to an the position of Property and Material Assistant. In that capacity, he was responsible for purchasing maintenance products for the Port-au-Prince Mission and purchasing appliances for the Mission's staff accommodations. That included preparing specifications, negotiating prices with suppliers and preparing purchase orders.

[4] While he held that position, the Mission's executives investigated a number of LES members. They discovered the existence of a scheme for defrauding the Canadian government of an estimated \$1,728,150.

[5] The investigation began in spring 2015 in connection with the unauthorized use of Canadian diplomatic licence plates. It was then discovered that two LES members, namely Person 1 and Person 3 (the Respondent requested that third parties involved not be identified in these reasons), were using Canadian diplomatic licence plates on their personal vehicles and had allegedly participated in irregular auctions for selling Canadian diplomatic vehicles. They were terminated further to the investigation.

[6] The investigation also revealed that a number of other LES members were involved in various schemes to produce false invoices, sometimes from false suppliers and sometimes in connection with services rendered for the personal benefit of LES members. In March 2016, additional LES members were terminated.

[7] In June 2016, the Applicant was interviewed by the investigators and laid off shortly thereafter, pending the results of the investigation. The preliminary investigation report that he received in August 2016 states:

[TRANSLATION] Despite the fact that the investigation was unable to demonstrate that, like his LES colleagues, Mr. Janvier took advantage of his position to obtain secret commissions from Mission suppliers, his central role with his sector's suppliers, at least three of which are linked to fraudulent activities, and the apparent contradictions in his testimony, raise significant issues regarding his integrity.

Mr. Janvier irremediably severed the relation of trust with his employer, notably through his apparent attempt to hide from the administration the close links between the embassy's health advisor and the company Gladys Dépôt, by fabricating estimates and invoices for a supplier having family ties with his spouse, by circumventing Departmental rules concerning payments to suppliers and, lastly, by being an accomplice with an LES colleague in awarding contracts to a phantom company.

(At pp. 10-11 of the Summary Report of the Administrative Investigation into Allegations of Fraud and Wrongdoing by Paulin Janvier.)

[8] In August 2016, the Applicant submitted his comments on the preliminary investigation report and refuted all allegations made against him. In September 2016, he left Haiti to come to Canada via the United States. He claimed refugee status at the Saint-Bernard-de-Lacolle border crossing.

[9] In an affidavit filed in support of his application for judicial review, the Applicant explains that, since he knew he would be terminated like the other LES members, he did not wait for the outcome of the investigation before leaving Haiti.

[10] The Canada Border Services Agency issued a report under subsection 44(1) of the IRPA; a referral for investigation was issued, and the Applicant's refugee claim was suspended. Further to its own investigation, the ID found that the Applicant was inadmissible for having participated in a criminal organization's pattern of activity and issued its deportation order.

III. Decision being challenged

[11] The ID first sets the context for the investigation that led to the termination of several LES members at the Port-au-Prince Mission. It continues by setting out the reasonable grounds that enable it to believe that there exists a criminal organization within the meaning of paragraph 37(1)(a) of the IRPA and, lastly, it sets out the reasonable grounds that enable it to believe that the Applicant engaged in activities that were part of that organization's pattern of criminal activity.

(1) Background

[12] The Mission's investigation resulted in the termination of at least eleven LES members. The ID analyzed three different fraudulent schemes: (i) the use of diplomatic licence plates for personal use; (ii) fabricating documents, forging signatures and cashing cheques intended for suppliers; and (iii) misuse of Mission resources and fraud against the government.

a) *Use of diplomatic licence plates for personal use*

[13] As mentioned above, Person 1 and Person 3 were using Canadian diplomatic licence plates on vehicles purchased through auctions organized by the Mission. The ID found that this equated to theft and that Person 1 and Person 3 [TRANSLATION] “through deceit, [...] defrauded the Canadian government out of a good that was intended for its use”.

b) *Fabricating documents, forging signatures and cashing cheques intended for suppliers*

[14] This scheme involved three suppliers: Gladys Dépôt, Cynthia Marcellin Produits d’Entretien [CMPE] and Dieureste Duverseau.

[15] Gladys Dépôt was providing maintenance products to the Mission. This company is owned by the aunt of Person 6. During the investigation, a Mission employee admitted that she was giving the cheques intended for Gladys Dépôt to Person 6 or her husband, and not to the owner of the company. It was demonstrated that Person 6 was forging the owner’s signature on payment requisitions and on cheques intended for Gladys Dépôt. The Applicant received the vast majority of the quotes intended for Gladys Dépôt from Person 6, her husband or Person 8, the Applicant’s supervisor. The investigation determined that the Mission paid Gladys Dépôt the amount of \$31,500.

[16] Person 8 also asked the Applicant to add CMPE to the Mission’s list of maintenance product suppliers. Although CMPE became an official supplier, the Applicant never had any

contact whatsoever with that company's representative, and he received the CMPE quotes from Person 7. The latter admitted to intercepting a number of cheques intended for CMPE in order to cash them by forging the signature of its representative. The investigators discovered that Person 7 and the CMPE representative had a personal relationship, but they were unable to locate the CMPE representative. During 2014 and 2015, the Mission paid \$6,965 to CMPE.

[17] Lastly, Dieureste Duverseau was the Mission's general contractor for a number of years. Person 7 admitted that Person 10, an LES member working with her, had intercepted several cheques intended for Dieureste Duverseau and forged the signature of its representative.

[18] The ID describes these schemes as fraud and conspiracy to commit fraud within the meaning given to these offences by the *Criminal Code*.

c) *Misuse of Mission resources and fraud against the Haitian government*

[19] Person 1, Person 8 and Person 11 were three of the Applicant's colleagues. They added personal orders to the orders placed by the Mission in order to avoid paying the costs for transportation, insurance and customs clearance. This scheme would have [TRANSLATION] "increased the delivery costs and customs clearance fees for the Mission and [deprived] the Haitian state of customs revenues".

(2) Criminal organization

[20] ID is satisfied that there are reasonable grounds to believe in the existence of a criminal organization as described in paragraph 37(1)(a) of the IRPA and at subsection 467.1(1) of the *Criminal Code* (*B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58; *Saif v. Canada (Citizenship and Immigration)*, 2016 FC 437).

[21] The evidence leads it to conclude that [TRANSLATION]“several LES members from the Canadian Mission in Haiti acted together to commit crimes against the Mission in order to obtain material or financial benefits”. Those schemes involved several LES members and took place over a number of years. The ID is satisfied that the group composed of three or more persons, which meets the criterion of subsection 467.1(1) of the *Criminal Code*. In the majority of cases, this involves fraud or conspiracy to commit fraud within the meaning of section 380 and clause 465(1)(c) of the *Criminal Code*, but also theft within the meaning of section 322 of the *Criminal Code*. These crimes resulted in a financial loss of \$1,728,150 for Canada, [TRANSLATION] “a significant amount that further supports the finding that a multi-person organization is responsible for those losses”.

- (3) Being a member of the organization or engaging in activities that are part of a pattern of criminal activity

[22] The ID is also of the opinion that there are reasonable grounds to believe that the Applicant engaged in activities that are part of the identified organization’s pattern of criminal activity. Its main reason is that the Applicant’s position placed him in a key position with respect to the fraudulent schemes. It would therefore be unlikely, in its view, that the Applicant was unaware of what was going on around him.

[23] The evidence enabling the ID to find that the Applicant was involved in fraudulent activities with respect to the Mission is connected with three suppliers: Gladys Dépôt, CMPE, and the contractor Daïver Séide.

a) *Gladys Dépôt*

[24] The Applicant admitted that he was receiving quotes from Person 6 or her husband and not from the Gladys Dépôt representative.

b) *CMPE*

[25] The Applicant admitted that he was receiving quotes from Person 7 and that he did not even know the CMPE representative. The ID also noticed in the investigators' report that the signature on a receipt from CMPE began with a P, but that this P had been replaced with an M. The investigators noted the resemblance between this P and the one in the Applicant's signature and, [TRANSLATION] "without, of course, being experts in the matter", the ID found that the writing was also similar. The ID retains this as an additional indication that the Applicant was involved in the fraudulent scheme.

c) *Contractor Daïver Séide*

[26] The Applicant knows this contractor and referred him to Person 1. However, the investigation determined that the Applicant was involved in a suspicious incident pertaining to payments made to this contractor, which aligns with the same modus operandi used for Gladys Dépôt and CMPE. Specifically, the Applicant generated a quote and an invoice for this

contractor and admitted to inventing the sequential numbers found on those documents, without being able to explain this unusual approach. He also says that he does not know who signed them. One thing is certain, the contractor's signatures on these two documents differ and the investigators were unable to reach him for any explanation whatsoever.

[27] The ID also notes some inconsistencies between the Applicant's testimony and the documentary evidence. In particular, the Applicant states that he did not know that Person 1 was using a diplomatic licence plate for personal use. However, the documentary evidence shows that, in March 2015, the Applicant informed his section manager of that same fact. This casts doubt on the Applicant's credibility when he claims that he was unaware of any criminal activity.

IV. Issue and standard of review

[28] This application for judicial review raises only one question:

Did the ID err in finding that it had reasonable grounds to believe that the Applicant is inadmissible under paragraph 37(1)(a) of the IRPA?

[29] The question as to whether an refugee claimant is a member of a criminal organization or has been engaged in activity that is part of a pattern of criminal activity of an organization referred to in paragraph 37(1)(a) of the IRPA is a mixed question of law and fact subject to the reasonableness standard (*Nguesso v. Canada (Citizenship and Immigration)*, 2016 FC 1295 at para. 42; *Athie v. Canada (Public Safety and Emergency Preparedness)*, 2016 FC 425 at para. 36; *Canada (Citizenship and Immigration) v. Tran*, 2016 FC 760 at para. 19; *Talavera v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 768 at para 7).

[30] The Court must therefore examine whether the ID decision meets the criteria outlined in *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, i.e. whether it “is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process” (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59).

[31] The *Dunsmuir* criteria are met if the ID reasons “allow the reviewing court to understand why [the ID] made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 16).

V. Analysis

[32] I am of the opinion that it was reasonable for the ID to conclude that it had reasonable grounds to believe that a criminal organization existed involving LES members of the Mission and that the Applicant engaged in activities that were part of the organization’s pattern of criminal activity. It was therefore reasonable to conclude that the Applicant is inadmissible pursuant to paragraph 37(1)(a) of the IRPA.

(1) The presence of “reasonable grounds to believe”

[33] Whether there are “reasonable grounds to believe” that a fact has occurred, as defined in section 33 of the IRPA, requires more than mere suspicion, but less than evidence on the balance of probabilities. There must be an objective basis built on compelling and credible information

(*Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114; *Nguesso, supra* at para. 54).

[34] I am of the view that the ID considered the totality of the evidence and that its findings are consistent with the applicable burden of proof. Based on the Port-au-Prince investigation, the Minister's evidence before the ID is substantial. It includes investigators' reports and emails from those directly involved in the investigation. The ID describes this documentary evidence as compelling and credible and gives it considerable weight. The ID therefore had sufficient evidence to conclude that the applicable burden of proof was met.

(2) The existence of a criminal organization

[35] On the basis of the evidence submitted, it was reasonable for the ID to conclude that there was a criminal organization involving Mission LES. I quote from paragraph 25 of the decision:

[25] [TRANSLATION] ... The panel is satisfied that there exists a group of at least three persons, as required by the *Criminal Code*, and that these persons are acting in concert to commit crimes, notably theft and fraud, often by following a modus operandi of fabricating quotes and invoices and intercepting payments for goods and services paid for by the mission. It appears that the group was well organized and had put in place a well-established system to be able to carry out these crimes repeatedly over a number of years. Exhibit C-9 sets out the amount of financial losses for the Canadian government at \$1,728,150.00, which is nevertheless a significant amount that further supports the conclusion that an organization composed of several persons is responsible for those losses.

[36] Moreover, the Applicant does not dispute this finding.

- (3) Did the Applicant engage in activities that are part of a pattern of organized criminal activity

[37] I am also of the view that it was reasonable for the ID to conclude that it had reasonable grounds to believe that the Applicant engaged in activities that were part of the pattern of criminal activity organized by his colleagues.

[38] In my view, it is not relevant that the investigation did not demonstrate that the Applicant received any secret commission or other financial benefit. The ID concludes that:

[TRANSLATION] “[T]he evidence shows that Mr. Janvier was involved in fraudulent activities against the mission because he directly and knowingly facilitated fraud by his colleagues”.

[39] This finding is based on several lines of evidence, including the Applicant’s admissions that he was receiving quotes from Gladys Dépôt and CMPE from his colleagues, key players in the criminal organization, rather than from representatives of these companies as dictated by procedures. The ID’s determination that [TRANSLATION] “[i]t is implausible, given the nature of his position, that Mr. Janvier was not aware of the unlawful acts of [Person 6] and [Person 7]” is one of the possible outcomes with respect to the evidence. Its conclusion that the incident involving Mr. Séide uses the same modus operandi as that used with respect to Gladys Dépôt and CMPE is also reasonable.

[40] As for the opinion expressed by the ID that the Applicant’s writing is similar to the P of a forged signature on a receipt from CMPE, it is not decisive as such, but constitutes, for the ID, [TRANSLATION] “a further indication that Mr. Janvier was implicated in the fraud scheme

described above”. As in *Owusu v. Canada (Minister of Employment and Immigration)*, [1989] FCJ No. 33 (FCA), the ID could draw an inference from this similarity since such an inference was also supported by other evidence revealed by the investigation. It was the totality of the evidence revealed by the investigation that satisfied the ID and enabled it to find that it had reason to believe that the Applicant had engaged in activities that were part of the pattern of criminal activity. This is therefore a reasonable inference on the part of the ID.

[41] Membership in a criminal organization is not the only criterion for exclusion under paragraph 37(1)(a) of the IRPA. Simply participating in activities related to a criminal organization also leads to an exclusion (*Canada (Minister of Citizenship and Immigration) v. Thanaratnam*, 2005 FCA 122 at para. 30). The ID listed a number of activities in which the Applicant was involved that are connected with the criminal organization it identified. The ID did not find that the Applicant belonged to a criminal organization, but rather knowingly engaged in activities that are part of the organization’s pattern of criminal activity.

[42] It is true that the Applicant denies knowledge of the fraudulent activities of his colleagues. However, the ID found that he was not credible because of contradictions between his testimony and the documentary evidence and his inability to provide a reasonable explanation. It is for the ID to assess the totality of the evidence and, to the extent that its analysis is reasonable, it is not for this Court to intervene. As explained by the Federal Court of Appeal in *Sittampalam v. Canada (Citizenship and Immigration)*, 2006 FCA 326:

[53] ... The Board is uniquely situated to assess credibility of evidence in an inadmissibility hearing; credibility determinations are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made

without regard to the evidence: *Federal Courts Act*, R.S.C. 1985, c. F7, paragraph 18.1(4)(d).

VI. Conclusion

[43] I am therefore of the opinion that the ID's finding that it had reasonable grounds to believe that a criminal organization involving the LES members working at the Port-au-Prince Mission existed, and that the Applicant had engaged in activity that is part of the pattern of criminal activity of this organization, falls within the range of possible outcomes that are defensible in respect of the facts and law. It follows that it was reasonable for the ID to find that the Applicant is inadmissible under paragraph 37(1)(a) of the IRPA. The application for judicial review is therefore dismissed.

[44] The parties did submit any questions of general importance for certification and no such question arises from this matter.

JUDGMENT in case IMM-3826-17

THE COURT’S JUDGMENT is that:

1. The Applicant’s application for judicial review is dismissed;
2. No question of general importance is certified.

“Jocelyne Gagné”

Judge

FEDERAL COURT
COUNSEL OF RECORD

DOCKET: IMM-3826-17

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