Federal Court  Cour fédérale

Date: 20190130

Docket: IMM-3085-18

Citation: 2019 FC 131

Ottawa, Ontario, January 30, 2019

PRESENT: THE CHIEF JUSTICE

BETWEEN:

NOMIDA MALABUNGA URDAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Urdas is a citizen of the Philippines. She applied for permanent residence in Canada as a member of the Live-in-Caregiver class. Her application was rejected after an officer working for Immigration, Refugees and Citizenship Canada ["**IRCC"]** concluded that her spouse, Ethel Dela Cruz Urdas, is inadmissible to Canada and that therefore she is also inadmissible to Canada.

[2] The officer reached that conclusion after finding that there were reasonable grounds to believe that Mr. Urdas committed an act outside Canada that would have constituted the offence of attempted murder, had the act been committed in Canada.

[3] Ms. Urdas submits that the officer's decision to reject her application on this basis was unreasonable because the officer erred:

i. by concluding, largely on the basis of a settlement reached with the victim's family, that Mr. Urdas had committed the alleged act;

ii. by discounting certain documents as being "self-serving"; and

iii. by relying on unsupported assumptions or beliefs regarding law in the Philippines.

[4] I disagree. For the following reasons, this application is dismissed.

II. **Background**

[5] In the course of processing Ms. Urdas' application for permanent residence, the Respondent requested Mr. Urdas to submit a written explanation regarding a certification that had been included as part of the application indicating that he had "No Criminal Record." In an Affidavit of Explanation submitted in response to the Respondent's request, Mr. Urdas explained that he had been charged with "Frustrated Murder" in 1989. He then explained that the criminal

case against him had been dismissed after the complainant, Mr. Renato Antolin, filed an Affidavit of Desistance in which he requested that the case be dismissed.

[6] Mr. Antolin had previously alleged that Mr. Urdas, together with his brother and his cousin, had stabbed him on September 18, 1988.

[7] In his Affidavit of Explanation, Mr. Urdas added: "The truth of the matter is that on 18 September 1988, I was in our house at Centro, Sta. Ana, Cagayan during the time of the alleged stabbing […] which is more or less ten (10) kilometers from the place where he was stabbed. I was not with my brother REY URDAS and my cousin NELSON LADRIDO at the time because I was tending to my sick father at that time […]."

[8] As exhibits to his Affidavit of Explanation, Mr. Urdas provided additional documents, including the court documents pertaining to the criminal case in question. However, he included only some of those documents and alleged that the rest had been destroyed in a typhoon.

[9] Following a subsequent interview of Mr. Urdas in the Philippines, the Applicant submitted a letter from the National Bureau of Investigation explaining that the "No Criminal Record" clearance certificate had been issued to Mr. Urdas "in view of the fact that records on file with this Bureau show that the case of Frustrated Murder docketed as Criminal Case No. VIII-610 filed against him […] was dismissed on 05 December 1990."

III. **The Decision Under Review**

[10] The decision under review includes a brief letter, dated June 19, 2018, together with notes that the officer entered into the Global Case Management System maintained by IRCC [the "**Decision**"].

[11] In the course of concluding that there were reasonable grounds to believe that Mr. Urdas had committed an act in the Philippines that would constitute the offence of attempted murder in Canada, the officer made several findings. In particular, the officer observed that "throughout the interview the applicant had provided numerous contradictory statements in regards to the settlement agreement that was reached, the whereabouts of his brother and cousin and how he obtained the court documents submitted."

[12] In addition, the officer stated that the documents provided by Ms. Urdas were "self serving and do not provide context to the procedure of the case." In this regard, the officer noted that Mr. Urdas "…had acknowledged that in order for a [sic] the Court Information to be issued to file charges, either police reports, witness affidavits and/or medical reports would have been submitted, but [he] did not provide any of these documents."

[13] Furthermore, the officer observed that, according to the documentation that had been provided, several witnesses to the attack had been identified.

[14] The officer then noted that "most cases [in the Philippines] must be motivated by a complainant," and that it is possible in that country "to have charges thrown out, dismissed or obtain a pardon in exchange of payment of damages to the victim." With this in mind, the officer observed that "a dismissal does not necessarily mean that a client is not inadmissible, it also does not necessarily mean that the client did not commit the offence for which they are charged."

[15] The officer proceeded to note that Mr. Urdas had acknowledged that his mother had engaged in negotiations, both with Mr. Antolin's mother-in-law and with the judge who issued the order dismissing the case. The officer also observed that Mr. Urdas had indicated that an amicable settlement had been reached, following which an Affidavit of Desistance was filed the same day by Mr. Antolin.

[16] Having regard to the foregoing, the Officer concluded that she was "satisfied, on reasonable grounds, that the subject is inadmissible as per A36(1)(c)," and that "this renders the remaining family members on this application inadmissible as per A42(1)(a)."

IV. **Relevant Legislation**

[17] Pursuant to section 33 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the "**Act**"], facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

[18] Pursuant to paragraph 36(1)(c) of the Act, a permanent resident or a foreign national is inadmissible on grounds of serious criminality for committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

[19] Pursuant to paragraph 42(1)(a) of the Act, a foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible.

V. **Standard of Review**

[20] In their essence, the issues raised by Ms. Urdas can be reduced to the single issue of whether the Decision was reasonable. Therefore, the standard applicable to this Court's review of this Application is reasonableness: *Nguesso v Canada (Citizenship and Immigration)*, 2015 FC 879, at paras 59-61; *Mansouri v Canada (Citizenship and Immigration)*, 2018 FC 144, at para 12.

VI. **Assessment**

[21] The central issue in this Application is whether it was unreasonable for the officer to conclude, on the evidentiary standard of "reasonable grounds to believe," that Mr. Urdas had

committed the alleged act, even though the case against him had been dismissed. In my view, that conclusion was not unreasonable.

[22] The "reasonable grounds to believe" standard requires something more than mere suspicion, but less than what is required to establish proof on the balance of probabilities. "In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information": *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at para 114.

[23] In reaching the Decision, the officer relied upon several findings and facts, including the following:

i. Mr. Urdas provided contradictory statements with respect to the settlement agreement that was reached, the whereabouts of his brother and cousin, and whether he was with his attorney when the latter went to the courthouse to obtain the documents that had been requested. As a result of those contradictions, and the fact that Mr. Urdas appeared to be reciting pre-scripted answers rather than spontaneously answering her questions, the officer had "serious concerns" with Mr. Urdas' credibility. I pause to note that Mr. Urbas' explanations for some of these contradictions were simply that he was "very tired" and "nervous," and that the events happened "a long time ago."

ii. Mr. Antolin had filed and then pursued for approximately two years the criminal complaint against Mr. Urdas. Mr. Antolin then suddenly filed

an Affidavit of Desistance the same day that Mr. Urdas' mother engaged in negotiations with the judge (who she knew) and with Mr. Antolin's mother-in-law, which resulted in a settlement. I pause to note that in response to questioning by the officer, Mr. Urdas acknowledged that, before the complaint was filed, he knew Mr. Antolin and that they "saw each other often." It is also relevant to note that in Mr. Antolin's Affidavit of Desistance, he did not state that Mr. Urdas had not committed the act for which he was charged. In this regard, he simply stated the following:

> "[A]fter talking to my witnesses, I pondered and recalled the events that led to my stabling and I myself is [*sic*] *not* also *certain* if the accused were the ones who inflicted injury to me considering the fact that it was dark, there were several persons in the vicinity and the motor cycle was moving fast." (Emphasis added.)

With respect to the witnesses, Mr. Antolin simply stated that two of them had informed him that they would not testify "because they do not like to blame the accused of stabbing me, because they are not sure whether the accused really did so." (Emphasis added.)

iii. When asked why Mr. Antolin's family would enter into a settlement with his mother if he (Mr. Urdas) had not been involved in the alleged incident, Mr. Urdas replied that the settlement had been entered into to repay a debt to Mr. Urdas' mother, who had provided transportation to assist Mr. Antolin's family to bring home the body of Mr. Antolin's brother-in-law, after he was killed. Mr. Urdas added that his mother

"wanted to settle the case before she dies, she wanted to ensure it was settled."

iv. The Information that was filed by the provincial Prosecutor identified several witnesses, including a doctor and a patrolman, as well Mr. Antolin.

v. Mr. Urdas did not provide any certifications to support his claim that certain documents, including police reports, witness affidavits and medical reports had been destroyed in a typhoon, while the documents that were most helpful to him had not been destroyed.

vi. In the Philippines, an accused will often enter into an agreement or an out-of-court settlement with the complainant that results in a dismissal of the case. Such dismissals do not necessarily mean that the accused did not commit the offence for which he/she was charged.

[24] Considering the foregoing, it was not unreasonable for the officer to conclude that there were reasonable grounds to believe that Mr. Urdas had committed the act for which he had been charged. That conclusion was based on more than mere suspicion.

[25] In summary, the officer had a reasonable basis for having "serious concerns" about Mr. Urdas' credibility. In addition, Mr. Antolin had filed a criminal complaint describing the attack against him and identifying Mr. Urdas, whom he knew, as having been one of the perpetrators. There were also witnesses to that attack. Although Mr. Antolin subsequently filed

an Affidavit of Desistance, he simply stated that he was no longer *certain* that the accused were the ones who had stabbed him. Regarding the witnesses, he merely stated that two of them did not wish to blame the accused, and that they *were not sure* of whether the accused had in fact committed the crime in question. No information was provided with respect to the other witnesses who had been identified in the Information filed by the Public Prosecutor.

[26] Based on the foregoing, there was a basis in the evidence to support a reasonable belief that Mr. Urdas may well have participated in the stabbing attack against Mr. Antolin, notwithstanding the Affidavit of Desistance that was filed by the latter. This distinguishes the present factual matrix with that which existed in *Red v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 1271, at paras 26-28, where the complainant filed an Affidavit of Desistance after becoming aware of a "misaccounting and a misapprehension of the facts" on the part of the complainant and the respondent.

[27] The evidentiary basis to support the belief that Mr. Urdas may well have participated in the stabbing attack against Mr. Antolin was further strengthened by the additional facts set forth in paragraphs 23(iii) – (vi) above. In particular, Mr. Antolin's mother-in-law entered into a settlement with Mr. Urdas' mother to repay a debt. That settlement did not appear to have anything to do with a belief that Mr. Urdas may not in fact have been involved in the stabbing of Mr. Urdas. In addition, the dismissal of the complaint against Mr. Urdas occurred on the same day that his mother and Mr. Antolin's mother-in-law reached their settlement. Moreover, Mr. Urdas, whose credibility had been seriously undermined, was not able to corroborate his assertion that documents in the court file which may have adversely impacted upon his

application for permanent residence in Canada had been destroyed in a typhoon. Finally, the officer was aware that dismissals of criminal complaints in the Philippines can result from out-of-court settlements with complainants, and that such dismissals do not necessarily mean that the accused did not commit the offence for which he/she was charged.

[28] Having regard to the additional facts mentioned in the immediately preceding paragraph, it was not unreasonable for the officer to conclude that there were reasonable grounds to believe that Mr. Urdas "did commit the act for which [he was] charged." That conclusion was based on more than suspicion. Taken together, the evidence and related considerations described in paragraphs 23-25 above provided an objective basis, based on compelling and credible information, for the conclusion reached by the officer. In brief, Mr. Antolin, who knew Mr. Urdas fairly well, filed a criminal complaint against him and pursued it for two years, before withdrawing it on the same day that his mother-in-law reached a settlement with Mr. Urdas' mother. That settlement was not based on Mr. Antolin's belief that Mr. Urdas had not in fact committed the alleged offense, but rather on a desire to settle a debt. Moreover, in his affidavit of Desistance, he did not state that Mr. Urdas did not commit the offense in question. He simply stated that he *was not certain* of this, and that two of his witnesses *were not sure*.

[29] In addition to the foregoing, Ms. Urdas alleges that the officer erred by characterizing as "self-serving" the Philippine court documents that she produced in response to the officer's request for additional information regarding the "No Criminal Record" clearance certificate that had been issued with respect to Mr. Urdas. Ms. Urdas maintains that these were objective court records that spoke for themselves.

[30] In my view, the officer's choice of words was inapt. However, the use of those words did not render the Decision unreasonable. It is readily apparent from the context in which the officer used those words that she meant that Ms. Urdas had provided only those documents that assisted her spouse's position, and did not provide other documents that may have made it more difficult for her spouse to maintain that he was elsewhere at the time of the alleged stabbing incident. Such other documents included "police reports, witness affidavits and/or medical reports [that] would have been submitted." In this context, the officer's use of the words "self-serving" did not render the Decision outside "a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47. This is particularly so when one considers that the officer rejected Mr. Urdas' explanation that other documents that would typically have been in the court file had been destroyed in a typhoon. Given the negative credibility finding that was made in this regard, it was reasonably open to the officer to effectively draw an adverse inference regarding the documents that had not been provided: *Tejeda v Canada (Citizenship and Immigration)*, 2009 FC 421, at para 15.

[31] Finally, Ms. Urdas submits that the officer erred in relying on her understanding of law in the Philippines to conclude that there were reasonable grounds to believe that Mr. Urdas had committed the offence in question, notwithstanding that his case had been dismissed by a Court in that jurisdiction. Ms. Urdas maintains that the officer then further erred by pursuing a line of questioning with her spouse that essentially gave rise to a "re-trial" in a field of law in which the officer had no specialized knowledge.

[32] With respect to the law in the Philippines, the officer stated the following:

> I note that there are certain differences between the Filipino and the Canadian legal systems. It is possible in the Philippines to have charges thrown out, dismissed or obtain a pardon in exchange of [*sic*] payment of damages to the victim. Legal practices in Canada are different than the ones in the Philippines since in Canada the Government is the plaintiff in a criminal case. This is often not the case in the Philippines as most cases must be motivated by a complainant. In the Philippines, the accused will often enter into an agreement or out of court settlement with the complainant. This results in the complainant ceasing court appearances or issuing an Affidavit of Desistance, subsequently resulting in the dismissal of the case. *Therefore, a dismissal does not necessarily mean that the client is not inadmissible, it also does not necessarily mean that the client did not commit the offence for which they are charged.* (Emphasis added.)

[33] With one exception, Ms. Urdas has not identified what aspect of the officer's understanding of the differences between the laws in Canada and the Philippines was inaccurate. The sole exception is with respect to the statement that most cases in the Philippines must be motivated by a complainant. Ms. Urdas maintains that this is incorrect, because the Information document in which her spouse was accused of the crime of "Frustrated Murder" was signed by a provincial Prosecutor. However, other documents in the Certified Tribunal Record ["**CTR**"] reasonably support the officer's understanding that the case against Mr. Urdas was *motivated* by Mr. Antolin, and that the case against Mr. Urdas was dismissed *because* Mr. Antolin filed his Affidavit of Desistance.

[34] In particular, in his Affidavit of Desistance, Mr. Antolin stated that he was "no longer interested in the further prosecution" of his case against Mr. Urdas and his co-accused, "and for this reason *I am asking the public prosecutor to have this case dismissed for lack of interest on my part* due to insufficiency of evidence" (emphasis added). Moreover, the Order that was issued

later that day dismissing the case states that Mr. Antolin "*insisted for the dismissal of the case* in the interest of justice and fairness to all the accused" and that therefore the case was dismissed (emphasis added). In addition, a letter dated July 4, 2018 from Ms. Urdas' legal counsel to IRCC states that "although a case was initially opened against Mr. Urdas, *it was later dismissed when the victim voluntarily withdrew the charges* as he was unsure of the identity of the individuals present during the incident." (Emphasis added.) In my view, the foregoing evidence in the CTR is very consistent with the officer's description of the legal system in the Philippines.

[35] In any event, the key conclusions reached by the officer in the passage reproduced at paragraph 32 above were that the dismissal of the case against Mr. Urdas did not necessarily mean that he is not inadmissible to Canada, or that he did not commit the offence for which he was accused. Given the facts discussed at paragraphs 23-25 above, these conclusions were not unreasonable.

[36] It is trite law that "there is nothing improper in considering and relying on charges laid; even where those charges do not subsequently result in a conviction and particularly where there is a plea agreement entered into by the accused which results in the initial charges not being further pursued": *Naranjo v Canada (Citizenship and Immigration)*, 2011 FC 1127, at para 15; *Radi v Canada (Citizenship and Immigration)*, 2012 FC 16, at para 17-22. As Justice Gauthier explained: "This makes good sense given that charges can be dismissed for a variety of reasons including procedural issues, rejection of crucial evidence for technical reasons, or simply because the accused raised a reasonable doubt." *Pineda v Canada (Citizenship and Immigration)*, 2010 FC 454, at para 25.

[37] By comparison, a conclusion that a person is inadmissible pursuant to paragraph 36(1)(c) of the Act can be made on the basis of reasonable grounds to believe that a permanent resident or a foreign national committed an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years. In this context, the issue is whether there is an objective basis for such a belief, based on compelling and credible information. The fact that such evidence may fall "far short of the standard of proof in criminal cases is of no moment": *Xie v Canada (Citizenship and Immigration)*, 2004 FCA 250, at para 23.

[38] In the particular context of this case, the fact that the charge against Mr. Urdas was dismissed required the officer to exercise caution and satisfy herself that there were in fact reasonable grounds to believe that he had committed the act for which he was charged, notwithstanding that the charge had been dismissed. For the reasons set forth at paragraphs 23-25 above, it was reasonably open to the officer to reach an affirmative conclusion in this regard. That conclusion was appropriately justified, transparent, intelligible and therefore fell within a range of possible, acceptable outcomes in fact and in law.

[39] The officer's obligation to satisfy herself as to the reasonable grounds to believe contemplated by paragraph 36(1)(c) of the Act entitled her to fully explore with Mr. Urdas all of the facts and circumstances surrounding the filing of the initial complaint and accusation against him as well as the subsequent settlement and the virtually contemporaneous dismissal of the

charge in question. Contrary to Ms. Urdas' assertion, the officer did not commit any error in this regard.

VII. **Conclusion**

[40] For the reasons set forth above, this application is dismissed.

[41] At the end of the hearing of this application, counsel to the parties confirmed that this application does not give rise to a serious question of general importance, as contemplated by paragraph 74(d) of the Act. I agree.

JUDGMENT in IMM-3085-18

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. There is no serious question of general importance to be certified pursuant to paragraph 74(d) of the Act.

"Paul S. Crampton"
Chief Justice

APPENDIX 1 — Relevant Legislation

Rules of interpretation	*Interprétation*
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
[…]	[…]
Serious criminality	*Grande criminalité*
36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	36 (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :
[…]	[…]
(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.	c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.
[…]	[…]
Inadmissible family member	*Inadmissibilité familiale*
42 (1) A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if	42 (1) Emportent, sauf pour le résident permanent ou une personne protégée, interdiction de territoire pour inadmissibilité familiale les faits suivants :
(a) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; or	a) l'interdiction de territoire frappant tout membre de sa famille qui l'accompagne ou qui, dans les cas réglementaires, ne l'accompagne pas;
[…]	[…]

FEDERAL COURT

SOLICITORS OF RECORD

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