Federal Court  Cour fédérale

Date: 20190711

Docket: IMM-6195-18

Citation: 2019 FC 917

Toronto, Ontario, July 11, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

DO MEE TUNG

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS
(Delivered from the Bench at Toronto, Ontario, on July 8, 2019, subject to revision including grammar, syntax, cases and citations)

[1] This is an application for judicial review of a removal order made by a Minister's Delegate dated December 11, 2018. The Applicant is a citizen of China born in 1955. In 2001, she came to Canada and made a claim for refugee protection. In 2002, she obtained convention refugee status. On May 12, 2004, she became a permanent resident of Canada. Between 2004

and 2014 or so, she applied for and obtained passports in China, and returned to China on some 12 occasions.

[2] Accordingly, the Minster applied to the Refugee Protection Division [RPD] by way of an application for cessation of refugee status, which was granted. However, the RPD's decision was set aside by this Court in 2015. A subsequent RPD cessation and re-availment hearing was held in 2018, and on February 27, 2018, the RPD allowed the Minister's application for cessation, nullifying the 2002 grant of refugee status. This decision was the subject of an application for leave to judicial review which was granted, however, judicial review itself was dismissed on December 6, 2018 by Justice McDonald.

[3] A report was then prepared dated March 22, 2018, which recommended the Applicant's removal. A hearing was convoked on December 11, 2018 at which the Minister's Delegate said the Applicant had lost her permanent residence status. The Minister's Delegate ordered the Applicant to leave Canada, issuing a departure order to that effect.

[4] Importantly, the Applicant had filed written submissions on April 26, 2018 setting out her position that it would not be lawful for the Minister to issue removal because she was, at that time and continues to be, a permanent resident of Canada and not a foreign national. Further, by letter dated December 10, 2018, substantially the same submissions, which were detailed and complex in nature, were once again submitted by the Applicant's counsel to the Minister's Delegate for consideration at or after the hearing.

[5] This is a judicial review, and on judicial review, *prima facie* the standard of review is reasonableness, which I accept in this case and for these purposes. On a reasonableness review, the Supreme Court of Canada recently held in *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 [*CHRC*] at para 55 that "the reviewing court is concerned mostly with 'the existence of justification, transparency and intelligibility within the decision-making process' and with determining 'whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law' *(Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14)." It is not a treasure hunt for errors.

[6] The nub of this case, as I see it at this point, is whether the reasons for the decision, or the absence of reasons in this case, meet the requirements that the Supreme Court of Canada has established namely, that this Court is tasked mostly, and I emphasize mostly, with "the existence of justification, transparency and intelligibility within the decision-making process". The record does not satisfy me in respect of justification, transparency or intelligibility. I say this because there is nothing in the affidavit of the Minister's Delegate or the record generally, that indicates any of the Applicant's detailed submissions were considered at all. I am asked to, and I agree, that the Court should consider the factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 in this respect, which is an administrative law decision. That said, I consider the importance of the matter to the Applicant to be a very relevant consideration in assessing reasons. Further, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, Justice Abella holds at para 14:

> [14] Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §§12:5330 and 12:5510). It is a more organic exercise — the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

[7] I note at the outset that Justice Abella is discussing the adequacy of reasons, which must be accepted. I do not accept the very different proposition that administrative law does not require reasons at all, as happened in the case at bar.

[8] In this case, we have the Minister's Delegate dealing with something quite serious. This is not a visa application made by someone outside of Canada, seeking to come to Canada to visit or even to work. In terms of when reasons are required, I note that the Court is regularly asked on applications for judicial review and on judicial review, to conduct detailed and searching reviews of reasons given by a visa officer refusing a visa to enable a foreign national to visit Niagara Falls or attend a wedding. These are no doubt important matters, as are work permits, the reasons for which the Court is also regularly asked to review in detail on applications for leave and on judicial review. But in many ways these pale in comparison to a decision to strip a person of permanent residence status such as what has taken place in this case. Yet it is effectively argued there is no duty to give reasons for removing Canadian permanent residence status and ordering the permanent resident out of Canada.

[9] Here we have a removal order issued in respect of a permanent resident, who has had her permanent residence status since 2004. I note, as I did in the outset when I raised this with counsel, that permanent residence status is referenced not only in the *Immigration and Refugee Protection Act*, SC 2001, c 27, but is also referred to our Constitution itself: see the *Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11* (at subsection 6(2) of the *Canadian Charter of Rights and Freedoms*).

[10] In my respectful view, before the Minister of Citizenship and Immigration or his or her delegates or appointees may determine that someone has lost the important status as a permanent resident of Canada, and order them to leave Canada, some attention must be paid to the submissions made by the permanent resident as to why that should be done.

[11] Here, in my respectful view, and notwithstanding the very able submissions of Mr. Siddall and Ms. Bruce for the Minister, I am not persuaded any consideration was given to the submissions of the Applicant. Indeed, I have reviewed the record and concluded the Minister's Delegate gave no reasons at all.

[12] I recognize that there are circumstances in which permanent residence status may be removed. But it may only be removed in accordance with law including that set out in *CHRC*; *Dunsmuir v New Brunswick*, 2008 SCC 9 and *Newfoundland Nurses*.

[13] I view permanent residence status as in some ways analogous to and typically the last step on the road to citizenship. Although it is not citizenship, permanent residence status confers many of the rights of a citizen, short of the right to vote and other matters, but includes some constitutional protection. It is not to be trifled with. I do not say that a permanent resident is a permanent resident is a permanent resident. But what I am saying is that a proper administrative law decision must take place before permanent residence status is cancelled and a permanent resident is, in effect, ordered to leave Canada.

[14] I appreciate the adequacy of reasons is not a standalone ground for judicial review. But that does not mean this Court has an open invitation to provide reasons where no reasons are provided in the first place. Indeed, the Federal Court of Appeal per Rennie JA has established there is no such obligation where there are no dots on the page, per *Lloyd v Canada (Attorney General)* at para. 24 (and see *2251723 Ontario Inc. (VMedia) v Rogers Media Inc.*, 2017 FCA 186 per Near JA, Webb JA concurring, Gleason JA dissenting):

> [24] In light of the adjudicator's findings, even on a generous application of the principles in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, the basis upon which the 40-day suspension was justified cannot be discerned without engaging in speculation and rationalization. As I noted in *Komalafe v. Canada (Citizenship and Immigration)*, 2013 FC 431, at para. 11:
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> > *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and

> make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn. Here, there were no dots on the page.

[15] The Supreme Court of Canada per McLachlin CJC specifically agreed with para 11 of Justice Rennie's decision when he was a member of this Court in *Komalafe*, and did so in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2 at para 28.

[16] It may be that the decision-maker, in this case the Minister's Delegate, decided all of the arguments advanced by the Applicant lacked merit. It may be the Minister's Delegate found some had merit and that others did not. I am not able to tell on this record what happened. I am told the Minister's Delegate found status was lost "by operation of law", but there is no such finding in the record. There is effectively nothing. And that gives this reviewing court cause to order judicial review, which will be done.

[17] It is well established that this Court is not required or obliged, nor is it the duty of this Court, to do the job assigned by Parliament or the legislator to others, which in this case is the Minister's Delegate. In my view the assessment need not be excessive in length nor detail but must, in my view, be more than what the Minister's Delegate provided in the circumstances of this case.

[18] Neither party requested that I certify a question of general importance. And, with respect, I see no question of general importance to certify.

[19] Therefore, judicial review will be granted, the decision of the Minister’s delegate set aside, and the matter remanded for redetermination by a different decision-maker. No question will be certified.

JUDGMENT in IMM-6195-18

THIS COURT'S JUDGMENT is that the judicial review is granted, the decision of the Minister's Delegate set aside, and the matter remanded for redetermination by a different decision-maker, no question of general importance is stated and there is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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