Federal Court  Cour fédérale

Date: 20200401

Docket: IMM-4214-18

Citation: 2020 FC 469

Ottawa, Ontario, April 1, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

DARIOUSH YAVARI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS and THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Defendants

JUDGMENT AND REASONS

[1] Darioush Yavari (the Applicant) seeks to overturn three related decisions that have resulted in him being found inadmissible to Canada because of serious criminality. This stems from an incident that occurred in February 2017, when he was arrested after attempting to enter a nightclub while in possession of a loaded handgun, approximately $12,000 in cash and 8.4 grams of marijuana. In August 2017, the Applicant pled guilty to several firearms offences as well as possession of marijuana. He was sentenced to 326 days' imprisonment plus 282 days of remand.

[2] These events had serious immigration consequences for the Applicant. He challenges three decisions that flowed from his criminal conviction. The first decision, dated August 6, 2018 – which is the main focus of the Applicant's arguments – reported him under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for serious criminality pursuant to paragraph 36(1)(a) of *IRPA*. The second decision, dated August 9, 2018, referred his case for an admissibility hearing, pursuant to subsection 44(2) of *IRPA*. The third decision, dated October 18, 2018, was by the Immigration Division (ID) of the Immigration and Refugee Board of Canada and found the Applicant inadmissible for serious criminality pursuant to paragraph 36(1)(a) of *IRPA*.

[3] The Applicant launched three applications for judicial review to challenge these decisions. By Order of this Court dated October 23, 2018, these cases were consolidated and IMM-4214-18 was designated as the lead file. A copy of this judgment and reasons will be placed in each of the files.

[4] For the reasons that follow, these applications for judicial review are granted.

I. Background

[5] The Applicant is a citizen of Iran, who came to Canada as a child with his family through the Resettlement Asylum process. He became a permanent resident of Canada in 2004. All of the members of his immediate family became Canadian citizens except for the Applicant and one of his brothers.

[6] On February 4, 2017, the Applicant and a friend tried to enter a club in Gatineau, Quebec. A security guard discovered a handgun in the Applicant's possession and called the police. He

was arrested and found to be in possession of a loaded .380-calibre handgun, approximately $12,000 in cash and 8.4 grams of marijuana.

[7] On August 14, 2017, the Applicant pled guilty to:

- Possession of a firearm knowing its possession is unauthorized, contrary to subsection 92(1)(3) of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*];
- Possession of a prohibited or restricted firearm with ammunition, contrary to subsection 95(2)(a) of the *Criminal Code*;
- Carrying a concealed weapon, contrary to subsection 90(2)(a) of the *Criminal Code*; and
- Possession of marijuana, contrary to subsection 4(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19.

[8] On August 20, 2017, the Applicant was sentenced to 326 days' imprisonment plus 282 days of remand. He completed his sentence on March 19, 2018.

[9] This resulted in a series of decisions relating to the Applicant's immigration status. The timeline is complicated by the fact that after the first and second decisions were taken, errors were discovered in the original subsection 44(1) report. New reports were issued, and the decisions were taken again. For the purposes of this decision, only the second set of decisions is under challenge. The procedural history is as follows.

[10] In November 2017, a Canada Border Services Agency (CBSA) officer issued a report under subsection 44(1) of *IRPA* finding that the Applicant was inadmissible to Canada for serious criminality pursuant to paragraph 36(1)(a) of *IRPA*. The Applicant was provided with an opportunity to make written submissions providing reasons why a removal order should not be sought. Applicant's counsel made submissions in December 2017, asking that the matter not be

referred to the ID, and providing affidavit evidence from the Applicant and his brother, as well as other documents regarding hardship and risk in Iran. In February 2018, another CBSA officer conducted an analysis of the subsection 44(1) report as well as the Applicant's submissions, and prepared a memorandum recommending that an admissibility hearing be held.

[11] A Minister's Delegate reviewed the report and the memorandum in April 2018, and decided to refer it to the ID for an inadmissibility hearing, pursuant to subsection 44(2) of *IRPA*. This was based on all of the information on the file, including the submissions of Applicant's counsel.

[12] At this point errors were discovered in the original subsection 44(1) report. It misstated the date of the Applicant's sentencing as July 14, 2017, rather than August 10, 2017, and indicated that he had been sentenced to 608 days' imprisonment, rather than specifying that the sentence consisted of 326 days' imprisonment plus 282 days of remand. Following this, the same officers issued revised reports.

[13] On August 6, 2018, a corrected version of the report was issued pursuant to subsection 44(1), again recommending that the Applicant be referred for an admissibility hearing. This is the first decision under review.

[14] On August 9, 2018, the Minister's Delegate referred that report to the ID for an admissibility hearing pursuant to subsection 44(2) of *IRPA*. This is the second decision under review.

[15] On October 17, 2018, the ID held the admissibility hearing. The next day it found that there were reasonable grounds to believe the Applicant was inadmissible for serious criminality

pursuant to paragraph 36(1)(a) of *IRPA*, and issued a deportation order in accordance with paragraph 45(d) of *IRPA*. This is the third decision under review.

II. Decisions Under Review

A. *CBSA Officer's Admissibility Report (s. 44(1))*

[16] By the time the officer reissued the subsection 44(1) report, the analysis originally set out in the other officer's memorandum, as well as the Applicant's submissions, were part of the record. Together with the new report, these comprise the officer's reasons for making the recommendation under subsection 44(1).

[17] The officer reviewed the Applicant's immigration history, and then examined a number of factors, including his age at the time of landing, the length of his residency and time in Canada prior to the criminal charges, his relationship with his family and whether he had particular responsibilities for them, his degree of establishment in Canada, as well as the difficulties he would face if he returned to Iran. The officer noted the Applicant's claim that he would face risks as a member of the Kurdish minority in Iran, that he had not lived there since he was a child and did not speak Farsi, and that he would be subject to mandatory military training.

[18] The officer then examined the Applicant's criminal history, noting that he claimed he was not linked to any criminal organization or part of any gang. The officer referred to the Applicant's statement that he had been abusing drugs and alcohol for about two years preceding his conviction, and that these problems worsened when his father was diagnosed with blood cancer. The officer also referred to the Applicant's statement that he realized "that my substance abuse is what led me onto the dark path I found myself on" as well as his plans for the future,

including his intention to obtain treatment for his addictions, to complete his high school education, and to pursue a college program in culinary arts.

[19] The officer's analysis reviewed the Applicant's submissions as to why his case should not be referred to an admissibility hearing, including his personal circumstances and humanitarian and compassionate (H&C) considerations. The officer noted that all of the Applicant's immediate family is in Canada, he does not speak Farsi and would be at risk in Iran, and that he struggled with substance abuse and intended to pursue treatment. The Applicant's family situation is also reviewed, including his father's cancer diagnosis and his mother's medical conditions, which makes it impossible for either of them to work. Against these positive factors, the officer weighed the serious nature of the criminal offences, and concluded that the Applicant should be sent to an inquiry for criminal inadmissibility.

B. *Minister's Delegate's Referral (s. 44(2))*

[20] The Minister's Delegate's decision is short. It states that the officer's subsection 44(1) report is "based in facts and in law" and continues:

> Taking into consideration all of the information on file, the officer's notes, the circumstances of the Criminal offences as well as the humanitarian factors such as his family situation. I also took into consideration the written submission submitted for the subject by his lawyer. I do not believe that there are sufficient elements to justify the issuance of a warning letter.
>
> Therefore, I agree with the Officer's recommendation to refer the case for an admissibility hearing.

C. *Immigration Division Decision*

[21] The ID decision is also short. It recounts the Applicant's immigration history, as well as his criminal convictions and the sentence he received. It noted that the sentence was longer than

six months, and therefore the Applicant fell within the definition of "serious criminality" pursuant to paragraph 36(1)(a) of *IRPA*. The ID concluded: "I have no alternative then [*sic*] to issue against you a deportation order."

III. Issues and Standard of Review

[22] The only issue in these cases is whether the decisions are unreasonable.

[23] The standard of review is reasonableness. When this case was argued, the leading authority on reasonableness review was *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] and its progeny. Since then the Supreme Court of Canada has updated and clarified the framework for judicial review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], as applied in *Bell Canada v Canada (Attorney General)*, 2019 SCC 66 and *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*]. The appropriate standard of review remains reasonableness in light of the *Vavilov* framework.

[24] In view of paragraph 144 of *Vavilov*, I see no reason on the facts of this case to request additional submissions from the parties on either the appropriate standard or the application of that standard. This case is similar to the situation in *Canada Post*, where the Supreme Court stated at paragraph 24 that it was not unfair to decide a case applying the *Vavilov* framework when it had been argued under the *Dunsmuir* approach, because the results would be the same under both frameworks. The same reasoning applies here.

[25] When reviewing for reasonableness, the Court asks "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"

(*Vavilov* at para 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85).

[26] As such, a decision will be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision maker's reasoning on a critical point (*Vavilov* at para 103). The framework set by this decision "affirm[s] the need to develop and strengthen a culture of justification in administrative decision-making" by endorsing an approach to judicial review that is both respectful and robust (*Vavilov* at paras 2, 12-13).

IV. Analysis

A. *Applicant's Position*

[27] The Applicant's main argument focuses on the first decision, that of the CBSA officer under subsection 44(1). The Applicant submits that since both subsequent decisions – by the Minister's Delegate and the ID – relied on the CBSA officer's subsection 44(1) report, if that decision is found to be unreasonable, the others must also be reversed.

[28] The Applicant submits that the officer's decision is unreasonable for three reasons: (i) the assessment of the H&C factors and chain of reasoning is unreasonable in light of the evidence; (ii) the assessment of the Applicant's criminal history fails to consider his potential for rehabilitation; and (iii) the assessment of his criminal history is based on a highly prejudicial line of reasoning that is not supported in the evidence.

[29] The Applicant argues that the assessment of the H&C factors failed to give due weight to the positive considerations, including that: he had been a permanent resident of Canada for 13 years prior to his only interaction with the criminal justice system; all of his immediate family

live in Canada; he is self-sufficient, and has worked at his brother's restaurant to help support his family; and, he would be at risk if he is forced to return to Iran as a member of the Kurdish minority and because his father had been politically active there. In addition, the officer ignored the Applicant's future plans, which include completing his education and finding employment so that he can help support his family. All of these positive factors were not given due consideration by the officer.

[30] In relation to the assessment of criminality, the Applicant submits that the analysis is flawed in several ways. The officer's statement that the Applicant's "criminal history is of grand importance and seems to have erupted in the last year," is not based in the evidence. The Applicant has only had one interaction with the criminal justice system, and thus the officer's reference to his "criminal history" that has "erupted last year" is not factual.

[31] The officer also failed to give due consideration to the Applicant's potential for rehabilitation, as is required by ENF 6: *Review of Reports under A44(1)* (ENF 6) operation manual. In this case, the officer did not give sufficient weight to the Applicant's rehabilitation efforts. He accepted culpability, expressed remorse, pursued addiction programming while in custody, and has not re-offended. He also had the support of his immediate family in these efforts, as reflected in his brother's affidavit. The officer was required to consider these factors in accordance with the ENF 6 guidance, but failed to explain how they were assessed.

[32] Furthermore, the Applicant submits that the officer erred by referring to his possible involvement with a criminal organization and his failure to take responsibility for his actions. The officer made highly problematic and prejudicial statements that are not supported in the evidence.

[33] The officer noted that the Applicant carried a large sum of cash on him when he was arrested, and stated: "[this] may lead people to believe that he may have an involvement with an organized criminal organization or gang, although there is no proof of these assumptions." Later in the reasons, the officer returns to this theme: "It is unknown whether the subject is part of any organized criminal organization or any street gang, but it is uncommon for any citizen to be in possession of any sort of weapon during their daily lives, specially an unauthorized weapon such as a firearm."

[34] In addition, the officer found that the Applicant did not take "full responsibility for his actions, by stating that on the day of his arrest he was extremely intoxicated while entering a club with one of his friends, in addition to saying that he unfortunately does not remember many details of that night." The officer found that this "proves that [the Applicant] minimises the situation that he got himself into." The Applicant argues that this reasoning does not reflect the facts and misapprehends his statement. It is simply a fact that on the night of his arrest he was intoxicated and does not remember much of what happened. This is not an indication that he does not take responsibility for his actions. The Applicant stated in his affidavit that he is "extremely ashamed of [his] actions on the night of the offense and of the mistakes [he] made in the past that have led me to [his] current situation," and that he recognizes that his struggles with alcohol should have been treated. He says, "I deeply regret that I allowed these circumstances to lead me onto a dark path." The Applicant submits that the officer's conclusion that he did not take responsibility for his actions flies in the face of the evidence.

[35] Finally, the Applicant argues that the officer erred in stating that "even if he loses his permanent residence in Canada he will not be condemned to leave Canada since he was accepted in Canada under the RAG refugee category and would therefore be allowed to remain here as a

protected person." The Applicant submits that this is inaccurate, because if the Minister issues a danger opinion pursuant to section 115 of *IRPA* he would be subject to removal.

[36] For these reasons, the Applicant submits that the officer's subsection 44(1) decision is unreasonable.

[37] In regard to the subsection 44(2) report of the Minister's Delegate, the second decision, the Applicant submits that it relies entirely on the officer's unreasonable analysis in the section 44(1) report and should be overturned on that basis alone. In addition, the Applicant questions whether the Minister's Delegate had the proper authority to make this decision, in accordance with the guidance regarding decisions involving long-term permanent residents set out in ENF 6.

[38] The Applicant submits that the ID decision is similarly tainted by its reliance on the officer's unreasonable analysis, and therefore it must be overturned.

B. *Respondent's Position*

[39] The Respondent argues that the Applicant is simply asking the Court to re-weigh the evidence, which is not its role on judicial review. The CBSA officer assessed the evidence and applied the appropriate criteria. The conclusions of the officer are reasonable, and therefore the decisions of the Minister's Delegate and the ID are also reasonable.

[40] The Respondent notes that subsection 44(1) of *IRPA* involves a two-step process. First, the officer must form an opinion as to admissibility. Second, the officer must decide whether to prepare an inadmissibility report. That is what was done here. At the first step, the officer considered all of the relevant factors, including that the Applicant was not a Canadian citizen, he was found guilty of a criminal offence liable to imprisonment for a term not exceeding ten years,

and he was sentenced to a term of imprisonment of 326 days plus 282 days of remand. Together, these undisputed facts establish that the Applicant is inadmissible for serious criminality pursuant to paragraph 36(1)(a).

[41] At the second step, the officer reasonably decided to prepare an inadmissibility report. The Respondent notes that there are differences in the jurisprudence of this Court as to whether an officer has any discretion not to prepare an inadmissibility report after forming an opinion that a foreign national is inadmissible, and whether an officer can consider personal factors beyond the fact of the conviction and the length of the sentence (see *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 319 at paras 44 and 48; *Richter v Canada (Citizenship and Immigration)*, 2008 FC 806 at paras 12-13 (aff'd 2009 FCA 73); *Correia v Canada (Citizenship and Immigration)*, 2004 FC 782 at paras 22-23, 27-28). It is clear, however, that an officer is under no obligation to consider H&C factors (*Melendez v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1131 at para 31 [*Melendez*]; *McAlpin v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 422 at para 70 [*McAlpin*]).

[42] In this case, the officer's decision was based upon all of the relevant factors, which conclusively established that the Applicant was inadmissible for serious criminality. The officer was under no obligation to consider any further information, and the officer's reasons fully justify and explain the decision to prepare the subsection 44(1) report.

[43] The Respondent submits that the Minister's Delegate's decision to refer the report to the ID for an admissibility hearing is reasonable, and took into account all of the relevant factors. The Respondent points out that the evidence shows that the Delegate had the proper delegations to make this decision. In addition, it is not necessary to resolve the question whether the Delegate

has any discretion not to refer an individual to an admissibility hearing due to personal factors and H&C considerations; the prevailing view is that this discretion is limited (*Melendez* at para 27; *Balan v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 691 at paras 25-26).

[44] In this case, the Delegate did consider the Applicant's submission regarding his personal situation and the H&C considerations. The Delegate's decision to refer the matter for an admissibility hearing is based on a consideration of these factors, as well as an analysis of the memorandum prepared by the CBSA officer that analyzed all of the relevant factors. This decision is reasonable and it is not the role of a court on judicial review to re-weigh the evidence.

[45] The Respondent argues that the Applicant's disagreement with some of the wording in the decision does not render it unreasonable, and this type of careful parsing of an administrative decision is inconsistent with reasonableness review (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14-18 [*Newfoundland Nurses*]). In this case, the Applicant did plead guilty to very serious crimes, and so the statement that these were of "grand importance" is not inaccurate. Similarly, the statement that the Applicant would "not be condemned to leave Canada" even if found inadmissible is correct, since his removal would require the additional step of a Minister's danger opinion and there is no evidence such an opinion has been prepared. Furthermore, the Applicant could also apply for H&C relief pursuant to section 25 of *IRPA* or he could ask for a Pre-Removal Risk Assessment.

[46] Finally, the Respondent submits that the ID decision to issue a deportation order is reasonable because it was the only possible outcome of the admissibility hearing given the nature of the Applicant's convictions. This was one of the clear cases where the facts "simply dictated

the remedy" (*Canada (Public Safety and Emergency Preparedness) v Cha*, 2006 FCA 126 at para 38).

C. *Discussion*

[47] The starting point for the analysis is the *Vavilov* framework, which calls for a robust but respectful review of the decision and the outcome. This involves two separate but related considerations. First, the decision must be justified, having regard to the legal and factual constraints which "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov* at paras 86 and 90). Second, a reasonable decision must be based in an internally coherent chain of reasoning that could reasonably lead the decision maker from the evidence to the conclusion reached, based on the legal framework (*Vavilov* at para 102). In simple terms, "a reviewing court must be satisfied that the decision maker's reasoning 'adds up'" (*Vavilov* at para 104).

[48] It is not necessary to address all of the arguments put forward by the Applicant in this case, because I find there is a fatal flaw in the analysis, which is sufficiently serious to render the decisions unreasonable.

[49] I agree with the Respondent that many of the Applicant's submissions amount to asking the Court to re-weigh the evidence, which is not its role on judicial review (*Vavilov* at para 125). Other arguments by the Applicant raise questions about how a particular phrase in the decision was worded, and this is also not sufficient to make the decision unreasonable. The *Vavilov* framework does not call for perfection in the wording of a decision, and the Supreme Court specifically affirmed the guidance from *Newfoundland Nurses* that the fact that reasons do not "include all the arguments, statutory provisions, jurisprudence or other details the reviewing

judge would have preferred" is not on its own a basis to set the decision aside (*Vavilov* at para 91, citing para 16 of *Newfoundland Nurses*).

[50] However, the officer's references to the Applicant's possible involvement in a criminal organization, and his failure to take responsibility for his actions, are highly prejudicial and not supported in the evidence. These references were not made in passing and then clearly and unequivocally set aside or discounted, and it is therefore impossible to know whether or how they may have affected the officer's analysis and the subsequent decisions that relied on it. This is not reasonable.

[51] The troubling passage from the "Officer's Recommendation" portion of the memorandum is the following:

> One may note that the subject's criminal history is of grand importance and seems to have erupted in the last year. Although our records do not show any past criminal activity, the criminal path which the subject seem sot be involved with nowadays, is comprised of possession of substance (cannabis) and possession of unauthorized firearm. In addition to that, the subject carries a lot of pocket money, during his arrest he had over 12 000$ on his person, which may lead people to believe that he may have an involvement with an organized criminal organization or gang, although there is no proof of any of these assumptions.
>
> The fact that the subject does not take full responsibility for his actions, by stating that on the day of his arrest he was extremely intoxicated while entering a club with one of his friends, in addition to saying that he unfortunately does not remember many details of that night, proves that he minimises the situation he got himself into. Although the subject claims to be remorseful and ashamed of his actions and agrees that he made a mistake, the subject blames al(l) of the circumstances related around this incident to his struggling fight with substance abuse. The real concern in this case is the fact that the subject was in possession of an unauthorized firearm in Canada. It is unknown whether the subject is part of any organized criminal organization or any street gang, but it is uncommon for any citizen to be in possession of any

> sort of weapon during their daily lives, specially an unauthorized weapon such as a firearm.

[52] I agree with the Applicant that this is a "highly prejudicial, problematic and unreasonable line of reasoning." The *Vavilov* framework seeks to "affirm the need to develop and strengthen a culture of justification in administrative decision making" (*Vavilov* at para 2), and states that "reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

[53] In order to give effect to these principles, a reasonable decision must be justified in light of the facts, which in turn are defined by the applicable legal framework. Under *Vavilov*, at paragraph 100, the burden on a party challenging a decision is to satisfy a reviewing court that:

> … there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the decision… Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central to or significant to render the decision unreasonable.

[54] In this case, I am satisfied that the officer's speculation about whether the Applicant was involved in a criminal organization or street gang, and the finding that he did not take responsibility for his actions, are sufficiently central and serious to render the decision unreasonable.

[55] As the Respondent pointed out, the analysis under subsection 44(1) proceeds in two stages. At the first stage, the officer was required to determine whether the Applicant's convictions and sentence brought him within the definition of "serious criminality" under

paragraph 36(1)(a) of *IRPA*. This was a straightforward analysis in this case, given the nature of the offences and the sentence the Applicant received. However, at the second stage the officer was required to determine whether to prepare an inadmissibility report. Although there may not have been a duty on the officer to consider the Applicant's personal circumstances or H&C factors, it is evident that the officer decided to do so. As stated in *McAlpin* at paragraph 70: "where H&C factors are considered by an officer or by a ministerial delegate in explaining the rationale for a decision that is made under subsection 44(1) or (2), the assessment of those factors should be reasonable, having regard to the circumstances of the case" (emphasis in original).

[56] In this case, there was simply no evidence in the record to support a connection to a criminal organization or street gang. The officer can claim no specialized expertise in such matters, and in the absence of either criminal charges or specific references in the police reports, it is unclear what the officer based this speculation upon. Similarly, the officer's statement that the Applicant did not take full responsibility for his actions appears to ignore the fact that he pleaded guilty to the charges, expressed remorse for them, and had sought out treatment for his underlying substance abuse problem while in custody. It is difficult to understand in what other way the Applicant could demonstrate that he took full responsibility for his actions. His statement that he was severely intoxicated on the night in question and that he did not recall much of what happened was merely recounting the facts, rather than trying to explain away his actions.

[57] The *McAlpin* decision provides useful guidance in that the Chief Justice found the decision to be unreasonable because the officer "relied on several withdrawn charges in reaching the conclusion that Mr. McAlpin 'has a significant criminal history that spans the past thirty five

years with few gaps'" (*McAlpin* at para 4). Noting that there were significant gaps during this period between the criminal convictions, the Chief Justice found this analysis to be unreasonable:

> [101] Given the foregoing, it is reasonable to infer that the officer impermissibly relied on Mr. McAlpin's withdrawn charges in finding that he "has a significant criminal history that spans the past thirty five years with few gaps." To the extent that the officer and the Delegate then placed significant weight on that finding in reaching their decisions, those decisions were unreasonable.

[58] Similar reasoning applies here. Given the references to the Applicant's possible links to a criminal organization or gang and to his failure to take responsibility for his actions, it is reasonable to infer that the officer impermissibly relied on these factors and placed significant weight on these findings in reaching his decision. That is unreasonable.

[59] I agree with the Applicant that, in this case, all three decisions were based on the analysis set out in the officer's memorandum. The officer's decision under subsection 44(1) of *IRPA* adopts this analysis in its entirety, as does the decision of the Minister's Delegate under subsection 44(2). The ID decision was a foregone conclusion in light of these reports. Since I have found the original report to be unreasonable, in the circumstances of this case the two subsequent decisions must also be set aside. The matter is returned to a different CBSA officer for reconsideration, under subsection 44(1).

V. Conclusion

[60] For these reasons, the applications for judicial review on all three decisions are granted.

[61] The CBSA officer's decision to refer the Applicant for an admissibility hearing pursuant to subsection 44(1) is set aside, and the matter is remitted to a different officer for reconsideration.

[62] The decision of the Minister's Delegate to refer the Applicant for an inadmissibility hearing pursuant to subsection 44(2) is set aside.

[63] The decision of the Immigration Division finding the Applicant to be inadmissible pursuant to paragraph 36(1)(a) of *IRPA* is set aside, and the deportation order issued pursuant to paragraph 45(d) of *IRPA* is quashed.

[64] There is no question of general importance for certification.

JUDGMENT in IMM-4214-18

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review in all three matters are granted.

2. The Canada Border Services Agency officer's decision to refer the Applicant for an admissibility hearing pursuant to subsection 44(1) is set aside, and the matter is remitted to a different officer for reconsideration.

3. The decision of the Minister's Delegate to refer the Applicant for an inadmissibility hearing pursuant to subsection 44(2) is set aside.

4. The decision of the Immigration Division finding the Applicant to be inadmissible pursuant to paragraph 36(1)(a) of *IRPA* is set aside, and the deportation order issued pursuant to paragraph 45(d) of *IRPA* is quashed.

5. There is no question of general importance for certification.

6. A copy of this judgment and reasons will be placed on Court File Nos. IMM-4213-18 and IMM-5117-18.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-4214-18
STYLE OF CAUSE:	DARIOUSH YAVARI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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