Federal Court  Cour fédérale

Date: 20200901

Docket: IMM-3043-19

Citation: 2020 FC 873

Ottawa, Ontario, September 1, 2020

PRESENT: Mr. Justice Annis

BETWEEN:

DAMIONE WILLIAMS

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

DECISION ON RECONSIDERATION MOTION

[1] It is assumed that this is a motion that the Court reconsider and correct its decision *Williams v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 683 [*Williams*] pursuant to Rule 397 of the *Federal Court Rules*, SOR/98-106, even though there is no motion or any reference made to the Rule.

[2] Applicant's counsel addressed a letter to the Court dated June 17, 2020, which he euphemistically describes as a "Request to correct the decision". In fact, the request is an inappropriately worded complaint of the Court's decision demanding that it be corrected because of the misstatement of one of counsel's submissions.

[3] In reply, the Respondent quite correctly pointed out the limited instances in which a party can request that the Court reconsider or correct an Order pursuant to Rule 397, none of which are present here. In addition, he disagreed with the substantive argument of the Applicant, submitting that the Canada Border Services Agency (CBSA) Inland Enforcement Officer (Officer) was not incorrect to note that the removal order was enforceable since April 2017, citing section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Respondent also noted that the Court had concluded that the point complained of was a "subsidiary technical point" (*Williams* at para 23) regarding "the status of the applicant at the time that he married and his child was conceived." Finally, the Respondent referenced the Court's decision stating that "[i]n any event, the facts on this point relate to the timing of the pregnancy, which is a moot issue" (*Ibid* at para 26).

[4] The Court agrees with the Respondent's multiple grounds to reject the request for a reconsideration. The Court first thought to respond by adopting the Respondent's submissions. However, the imperative tone of the demands and the lack of respect evinced in the language insisting on a correction of the reasons are contemptuous of the Court and warrant comment. As well, there are more substantive reasons underlying the Court's decision, in addition to the Respondent's points.

[5] Examples of counsel's unacceptable tone and language addressed to the Court are as follows:

> In your decision, … you misrepresent one of my arguments and commit a significant error of law. Both need to be corrected.
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> …
>
> In your decision, at paragraph 23, you misrepresent my argument.
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> …
>
> You then committed a serious error of law by asserting that only a positive PRRA decision stays a removal order, and that my argument was wrong[.]
>
> …
>
> This is wrong.
>
> …
>
> Why is this important? First, decisions from the Federal Court should be informed and legally correct. Second, judges should not distort counsel's submissions since this risks tainting the decision.
>
> …
>
> I am asking you to rewrite your decision so that it accurately reflects the issue presented in my memorandum of law and in the hearing, and to correctly reflect the law as stated above. This, I believe, is the least we should expect from judges sitting at the Federal Court. As the Supreme Court recently emphasized in *Vavilov*, the reasoning leading to a decision is as important as the decision itself. Regardless of your decision, the Applicant is entitled to reasons that accurately reflect the issues and the relevant law.

[6] Counsel's statements and demands are contemptuous of the position of a Judge of the Federal Court. They also dishonour his role as an Officer of the Court. A legal regime cannot operate in a liberal-democratic society without civility and respect shown for the offices of judges, regardless of any sentiments towards a particular judge. Moreover, counsel's submissions

cannot be said to be in the best interests of his client, bearing none of the signs of good advocacy. Advocacy is intended to persuade the Court, not berate it.

[7] The Court also did not state that the counsel's "argument was wrong". The Court justly disagreed with his argument. Because of the mutual respect that must be shown to counsel, as Officers of the Court, and reciprocated by them to the Court, judges rarely characterize a submission as "wrong". Counsel should strive to avoid misstating a court's reasons, as should judges of counsel's submissions. Though, it regrettably happens.

[8] Counsel's complaint is that he argued that the CBSA Officer had erred by concluding that the Applicant was subject to an enforceable removal order since April 19, 2017. Counsel argued in his memorandum that although the Applicant received a deportation order on that date, he was issued a Pre-Removal Risk Assessment (PRRA) on June 26, 2017, at which point his removal order was stayed until the PRRA was disposed of. He argues that, crucial to his submission, was that the Respondent "in fact, … was under an *unenforceable removal order*, waiting for a PRRA decision that took one and-a-half years to process." The Court agrees that this is trite law – except where the applicant confesses that the PRRA was based on a fraudulent misrepresentation.

[9] The Applicant contends that the Court's statement in the first sentence of paragraph 24 in *Williams*, that "only a positive PRRA [can] stay the removal order", is wrong. However, counsel ignores the second sentence of that paragraph referring to the Applicant's fraudulent conduct

during the PRRA: “In the present case, as per his affidavit, the Applicant has himself decided not to attend his PRRA interview given that he had lied in filing the application.”

[10] The Applicant deceitfully claimed that he would be at risk upon removal because he was gay. He confessed that this was a fraudulent claim, attempting to justify his wrongdoing by the usual trope that his unnamed immigration consultant advised him to do it. Uncorroborated exculpatory statements attempting to displace responsibility for criminal, fraudulent or even wrongful behaviour to some unidentified individual has no persuasive value, except to reinforce the conclusion of the witness’s lack of credibility.

[11] During the outstanding false PRRA application, the Applicant changed his marital and family status; he married and was expecting a child. The Court’s reference to the obvious absence of a “positive PRRA” is well-founded. The Applicant’s claim based on the PRRA application lacked any substantive, equitable or legal foundation to claim that he had an outstanding PRRA application.

[12] The implication of counsel’s argument is that the Applicant somehow suffers an injustice in not being able to profit from the fraudulent additional time he enjoyed in Canada to improve his circumstances to obtain permanent residency. This would be an absurd interpretation of the *IRPA*, in contradiction of the very purpose of the PRRA. In effect, the Applicant’s PRRA was void of any consequential legal effect in respect of his status, *ab initio*.

[13] In addition, as noted in the Court's reasons and by the Respondent, the parties agreed that any issue about the enforceability of the removal order was moot upon the birth of the child. The Applicant had asked for a short-term deferral of removal so that he could be in Canada when his wife gave birth to the child. It was in this context that the submission of the Applicant being subject to removal in the face of a PRRA was raised. The issue of the effect of the PRRA on the enforceability of Applicant's removal order was not before the Court upon the child's birth.

[14] As far as the Court understood, the outstanding issue relating to the PRRA was its effect in challenging the Officer's refusal to grant a temporary administrative deferral of removal based on his spouse's sponsorship application. It was denied because the Applicant was "deemed to be removal ready" when he was issued with a PRRA. His counsel's statement, in his complaint letter, is that he did not argue that the Applicant "was no longer removal ready – although technically, he was not since he was issued the PRRA – but that his removal order *was no longer enforceable*."

[15] It is the "subsidiary technical" submission that the Applicant was not removal ready that the Court thought was the outstanding issue. The CBSA Officer declared that he was "deemed removal ready" because of the timing of the filing of his PRRA in accordance with CBSA policies. Therefore, he could not benefit from the administrative deferral from the spousal sponsorship application (see *Williams* at para 23). In effect, the CBSA Officer came to a similar outcome as being subject to an enforceable removal, but on account of the timing of filing his PRRA.

[16] To demonstrate counsel's own confusion about this issue, in his complaint letter he states "that he was no longer removal ready – although technically, he was not since he was issued the PRRA – but that his removal order was *no longer enforceable*." In other words, counsel advances the same argument claiming administrative relief based on the effect of the PRRA application preventing his being deemed removal ready.

[17] The submissions relate to the live issue of the CBSA Officer's denial to apply the administrative deferral based on the sponsorship application. Applicant argued in his memorandum, immediately after the submissions on the enforceability of the removal order as the issue described above, that "there were compelling circumstances involving the Applicant's pending sponsorship application", and that it was put to the Officer that he had the discretion to defer removal until the sponsorship application was determined (Applicant's Memorandum (26 August 2019) at paras 23, 41).

[18] Paragraphs 23 to 25 of the Court's reasons in *Williams*, respond to what it thought was this outstanding issue, which comes back to the Officer deeming the Applicant to be removal ready. The reasons were intended not only to uphold the CBSA policies deeming removal ready status, but also in the second sentence of paragraph 24, to emphasize the principle that the fraudulent nature of the PRRA application precluded any positive benefit flowing from the Applicant's falsehoods.

[19] Despite the foregoing, it is not the Court's contention that its reasons cannot be without fault. For that matter, a prolix memorandum of 65 paragraphs, absent any statement of facts, with

numerous issues and long excerpts on the law on various points did not assist the Court in identifying the relevant issues, particularly when the principal short-term argument was rendered moot by the birth of the child.

[20] In effect, the Court is being criticized for trying to respond to what appeared to remain, with the moot submissions removed. Even assuming that the Court misapprehended one of counsel's submissions, if that is what happened, the reality is that courts, and lawyers, misapprehend arguments or statements, despite their best efforts to avoid doing so. If properly presented, courts will correct their errors, obviously only if they affect the outcome of the decision.

[21] In this motion, however, there is no basis for a reconsideration where the alleged misstatement of an argument has no effect on the outcome of the decision, and even more so, when it relates to the Applicant's fraud on the immigration regime, which precluded any fairness contention based upon the PRRA being raised as an issue.

[22] It is not the Court's intention to single out this counsel for a public dressing down. He has appeared before the Court on several occasions and demonstrated that he is a competent advocate, in fact who is usually succinct and issue oriented, and always works hard on behalf of his clients. No one is immune from fault, and the Covid-19 environment only exacerbates frustrations throughout society. None of the Court's comments are intended to diminish its personal respect for the Applicant's counsel.

[23] Nevertheless, the Court is compelled to respond to the disrespectful tone and language of counsel's letter. It also used the occasion to reinforce the point half-heartedly made in its original reasons, that counsel should not advance arguments that undermine the legal regimes intended to benefit refugees and immigrants obtaining or maintaining permanent resident status.

[24] The Court dismisses the request for a reconsideration of its decision pursuant to Rule 397.

DECISION in IMM-3043-19:

1. The Court dismisses the request for a reconsideration of its decision pursuant to Rule 397.

"Peter B. Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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