Federal Court  Cour fédérale

Date: 20211208

Docket: IMM-3197-20

Citation: 2021 FC 1373

St. John's, Newfoundland and Labrador, December 8, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DAVIDAE SKELTON

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS AND JUDGMENT

[1] Mr. Davidae Skelton (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Division (the "Immigration Division"), finding him to be inadmissible to Canada pursuant to paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant entered Canada on April 4, 2009. He held the status of a permanent resident. In May 2015, he took part in a series of armed robberies, together with a number of other people, including the boyfriend of a cousin. The robberies took place over 2 days in the Toronto area.

[3] The Applicant was charged with six counts of robbery, two counts of possession of a weapon for dangerous purpose, and six counts of disguise with intent. He pled guilty to these charges and on February 22, 2018, he was given a custodial sentence, as follows:

- Robbery (6 counts)
    - 4 months imprisonment for 11 counts, and 12 months probation (concurrent)
    - 3 months imprisonment (consecutive) for count 12
- Possession of weapons for dangerous purpose (2 counts)
    - One day of imprisonment (consecutive)
    - 12 months probation for each count
- Disguise with intent (6 counts)
    - 4 months imprisonment (concurrent)
    - 12 months probation (concurrent) for each count)

[4] On December 11, 2018, the Applicant was referred to the Immigration Division for an admissibility hearing. The hearing took place over a number of days and the Applicant testified.

[5] In his written submissions filed as part of his Application Record in the present proceeding, the Applicant raised several arguments, including bias on the part of the Canada

Border Services Agency (the “CBSA”). However, in oral submissions, he did not pursue the allegation of bias and focused on the unreasonableness of the decision.

[6] The Minister of Citizenship and Immigration (the “Respondent”) submits that the Immigration Division made no reviewable error and that the application for judicial review should be dismissed.

[7] The merits of the decision are reviewable on the standard of reasonableness. According to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.) at paragraph 99, that standard requires the Court to ask if the decision under review “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 that decision”.

[8] In my opinion, the decision fails to meet the applicable standard of review.

[9] Among other things, the Member found that the Applicant is a member of an organized crime group. The Applicant submits that the Member erred by accepting the police reports without analyzing them, contrary to case law; see the decision in *Pascal v. Canada (Minister of Citizenship and Immigration*), 2020 FC 751.

[10] I agree with these submissions.

[11] In my opinion, the Reasons are unclear as to what evidence the Member relied upon.

[12] As well, it appears that the Member relied on the police reports, but the Reasons do not show that the credibility or reliability of those reports was independently assessed.

[13] In *Pascal, supra,* at paragraph 29, Justice McHaffie observed as follows:

> Thus the import of each of these cases is that the decision maker must assess and reach a conclusion that the contents of a police report are "credible or trustworthy," rather than ignoring the question or simply making an assumption to that effect. …

[14] The Member may be entitled to accept the Court's findings upon conviction of the Applicant, as per the decision in *Rajagopel v. Canada (Minister of Public Safety and Emergency Preparedness),* 2007 FC 523 at paragraph 43. However, the Reasons do not clearly show whether the Member relied on the findings of fact made in the criminal proceedings or whether the Member relied on the police reports to make factual findings.

[15] This opacity by the Member makes the decision unreasonable and the application for judicial review will be allowed, there is no question for certification arising.

JUDGMENT in IMM-3197-20

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Immigration Division is set aside and the matter is remitted to a differently constituted panel of the Immigration Division for re-determination. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3197-20
STYLE OF CAUSE:	DAVIDAE SKELTON v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE BETWEEN TORONTO, ONTARIO AND ST. JOHN'S, NEWFOUNDLAND AND LABRADOR
DATE OF HEARING:	JUNE 21, 2021
REASONS AND JUDGMENT:	HENEGHAN J.
DATED:	DECEMBER 8, 2021

APPEARANCES:

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