Federal Court  Cour fédérale

Date: 20220426

Docket: IMM-4767-21

Citation: 2022 FC 602

Toronto, Ontario, April 26, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

SANHAN THANH TRUONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a June 16, 2021 decision [Decision] of a Consul and Deputy Migration Program Manager [Officer], rejecting an application for criminal rehabilitation made pursuant to paragraph 36(3)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and subsection 17(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The Officer found that the Applicant had not provided sufficient evidence to establish that he had been rehabilitated.

[2] For the reasons that follow, I find the Decision to be reasonable and that the application should be dismissed.

I. Background

[3] The Applicant, Sanhan Thanh Truong, is a United States [US] national. On April 4, 2019, he applied for criminal rehabilitation [Application]. The Application listed nine past convictions and four other charges in the Application. The Application also attached details of self-employment in 2017, a personal statement, and reference letters from the Applicant's brother, roommate and sister-in-law.

[4] On June 16, 2021, the Officer rejected the Application, stating that the Application and supporting documentation were "thoroughly and sympathetically reviewed", but did not satisfy the Officer that Mr. Truong had been rehabilitated. As a result, he remained inadmissible pursuant to paragraph 36(2)(b) of the IRPA.

[5] The Global Case Management System [GCMS] notes provide reasons for the Decision, including a summary of the Applicant's past convictions and a list of the items considered by the Officer when determining whether the Applicant was rehabilitated. The Officer's analysis of the documentation submitted by the Applicant states as follows:

> ....He has 5 convictions which render him criminally inadmissible per 36(2)(b) In his response to Q. 16, he states that as a young adult he made many mistakes but has since learned the error of his way. He has provided brief descriptions of the events which lead to the charges/convictions, a recurring them[e] is that he was in the wrong place at the wrong time. He has established a pattern of criminal behaviour, with numerous offences and negative contact with the law. He has submitted 3 personal references – from his

> roommate, sister-in-law and his brother. Unfortunately none of the references indicate any detailed knowledge of his multiple convictions but refer in general to his past mistakes or as his brother says "he has made many mistakes in the past" but that his last offence was more than 5 years ago and he has distanced himself from people that weren't good for him. He has submitted a 2017 US Tax return showing business income of $49,522 from self-employment, he states on the form that he is a nail technician. He has not submitted any documents to show any counselling, treatment or other rehabilitation. Having reviewed the Rehabilitation application, there is insufficient documentation to be satisfied that the applicant is rehabilitated and will not reoffend.

II. Issue and Standard of Review

[6] The Applicant raises the following two issues in his application:

(a) Was the Officer's consideration of the Applicant's past convictions so unclear, imprecise and contradictory to render the decision unreasonable or procedurally unfair?

(b) Did the Officer err by applying the wrong legal test when determining whether the Applicant was rehabilitated?

[7] The standard of review for a decision on a rehabilitation application is reasonableness: *Kyari v Canada (Citizenship and Immigration)*, 2020 FC 159 at para 24. None of the situations that would rebut the presumption that administrative decisions are reviewable on a standard of reasonableness are present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 9-10.

[8] In evaluating the reasonableness of the decision, the Court must determine whether the decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision will be

reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

[9] Questions of procedural fairness are not strictly speaking subject to a standard of review analysis. Instead, the issue for determination is whether the procedure followed by the decision-maker was fair and just: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at para 13.

III. Analysis

A. *Was the Officer's consideration of the Applicant's past convictions so unclear, imprecise and contradictory to render the decision unreasonable or procedurally unfair?*

[10] The Applicant argues that the Officer erred by stating that the Applicant had five convictions that rendered him inadmissible when at most he had only three. The Applicant asserts that by not knowing which convictions are referenced in the Decision, the Decision was unintelligible and procedurally unfair.

[11] As a preliminary matter, I note that the first issue was characterized as a procedural fairness argument in the Applicant's written materials; however, the arguments advanced were based solely on the adequacy and substance of the reasons, rather than the fairness of the decision-making process. There is no foundation for an argument of procedural unfairness. I have therefore considered the argument as a matter of reasonableness only.

[12] The Applicant reports nine convictions in his Application. The Officer notes that two of the Applicant's convictions occurred when the Applicant was under 18 years of age and do not render him inadmissible. He also notes that two convictions (one from 2007 and one from 2017) relate to operating a vehicle without a license. He states that these charges are equivalent to provincial offences in Canada and do not render the Applicant inadmissible. While not expressly stated in the GCMS notes, it can be directly inferred that the remaining five convictions identified in the Application are those that the Officer is referencing in his Decision as the five convictions that rendered the Applicant inadmissible. In my view, the fact that the five offences are not expressly stated in the GCMS notes, or that there is a clerical error in one of the sentences, does not make the Decision unintelligible, particularly where a logical inference can be drawn.

[13] The Applicant's reference to other earlier entries in the GCMS notes as a means to raise inconsistency with the Officer's consideration of the Applicant's criminal charges is also not persuasive. The log in the GCMS notes indicates that the earlier entries were not made by the same Officer who wrote the June 2021 entry and do not form part of the Decision.

[14] The Applicant also takes issue with the disturbing the peace charge as being included in the list of five offences as it is a summary offence. However, I agree with the Respondent, as there were already multiple indictable offences included in the conviction list, it was reasonable for the Officer to consider this additional conviction. Further, while there was some uncertainty raised in argument about the resolution of the 2004 drag racing charge, I do not consider the

Officer to have erred by relying on the details of the offence as provided by the Applicant in his Application.

[15] Moreover, even if the drag racing charge was not included, this does not create a fatal flaw in the Officer's reasoning or raise a sufficiently serious shortcoming in the decision to make it unintelligible or unreasonable: *Vavilov* at paras 100, 103-104; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36. There is no dispute that the Applicant's past criminal convictions render him inadmissible. The Applicant's personal statement acknowledges his criminal inadmissibility, the "many mistakes" and multiple convictions and charges experienced by the Applicant.

[16] As noted by the Respondent, the Officer is not deciding the Applicant's criminal inadmissibility, this is already a known fact; rather, he is evaluating the Applicant's application for rehabilitation.

[17] Similarly, the Applicant's argument that the Officer erred in finding a pattern of criminal activity is not persuasive. The fact that there were several convictions and police charges of various descriptions over an extended period of time is not disputed by the Applicant in his personal statement or in the statements of the Applicant's referees. This is not an application based on an isolated incident. In my view, it was not unreasonable for the Officer to find that there had been a pattern of criminal activity that needed to be addressed in the Application.

B. *Did the Officer err by applying the wrong legal test when determining whether the Applicant was rehabilitated?*

[18] The Applicant further argues that the Officer applied the wrong legal test when considering the Application. The Applicant asserts that the Officer denied the Application based on the Applicant's failure to receive counselling, treatment or other rehabilitation when the only requirement was for the Applicant to show that he possessed a clean record for at least 5 years. However, this latter assertion is not correct in law nor the former in fact.

[19] The test stated by the Applicant relates to the test for deemed rehabilitation under section 18 of the IRPR. The Applicant does not qualify for deemed rehabilitation. Rather, his application for rehabilitation falls under paragraph 36(3)(c) of the IRPA and subsection 17(a) of the IRPR. Under these provisions, the Applicant has the burden of satisfying the Minister that he is rehabilitated and will not be a risk to Canadians. The burden is not simply to establish that the Applicant has not been convicted of criminal activity for at least five years.

[20] The Officer identifies a lengthy list of factors he reviewed when determining whether there was rehabilitation, one of which was whether the Applicant completed a rehabilitation program and/or participated in counselling.

[21] The Officer goes on to consider the Applicant's personal statement and supporting documents but finds them to be insufficient to establish rehabilitation. The Officer notes the common theme in the Applicant's personal statement of being in the wrong place at the wrong time. He acknowledges the reference letters but notes that none of them provides any detailed

knowledge of the Applicant's various convictions, referring only in general to past mistakes made by the Applicant and his general desire to distance himself from those experiences. While the Officer states that the Applicant has not submitted any documents to show any counselling, treatment or other rehabilitation, I do not view the Officer's comments as imposing a requirement that the Applicant undergo counselling or treatment for rehabilitation to be possible. Rather, he simply notes that this type of positive evidence was not submitted with the Application and that the Applicant's documentary evidence was limited to his 2017 US tax return and the general statements from the Applicant's referees. The Officer found that the evidence submitted was not enough to establish rehabilitation. In my view, it was open for the Officer to arrive at this conclusion based on the limited nature of the evidence provided. I do not find the Decision to be unreasonable.

[22] For the foregoing reasons, the application is dismissed. No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-4767-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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