

Federal Court



Cour fédérale

Date: 20230524

Docket: IMM-6102-22

Citation: 2023 FC 730

Ottawa, Ontario, May 24, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

CORNEX DUEL THOMPSON

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Cornex Duel Thompson (“Mr. Thompson”), is a citizen of Jamaica who has lived in Canada since 2014. The Canada Border Services Agency [CBSA] directed Mr. Thompson to report for removal on July 8, 2022. Mr. Thompson sought a deferral of his removal based on the following: risk he would face if removed to Jamaica, separation from his family in Canada, the support he provides to his aging relatives in Canada, and his pending Temporary Resident Permit (“TRP”) application.

[2] An Inland Enforcement Officer at CBSA (“the Officer”) refused Mr. Thompson’s request for a deferral. Mr. Thompson challenges that decision in this application for judicial review. Mr. Thompson sought a stay of his removal to Jamaica pending a determination on this judicial review. Justice Southcott granted his stay motion on July 7, 2022, finding a serious issue with respect to the Officer’s risk evaluation.

[3] The Respondent, the Minister of Public Safety and Emergency Preparedness (“the Minister”), argues that Mr. Thompson’s application for judicial review is moot because, now that removal has been stayed, an enforcement officer will have to conduct a new assessment to determine if Mr. Thompson can be removed. The Minister also argues, in the alternative, that the Officer’s decision to not defer removal was reasonable.

[4] I do not find that the matter is moot as there remains a live controversy between the parties - the basis on which the deferral was sought has not been resolved.

[5] I further find that the Officer’s evaluation of Mr. Thompson’s risk was perfunctory. The Pre-Removal Risk Assessment (“PRRA”) officer in 2016 acknowledged that risk could not be meaningfully assessed because no submissions had been provided. Mr. Thompson’s former representative has now been barred from practicing. Further, Mr. Thompson presented the Officer with a 2019 RPD decision of his wife and daughter who were granted Convention refugee status because of the risk they faced in Jamaica due to their association with him. In light of these circumstances, the Officer’s limited analysis of Mr. Thompson’s risk is not sufficient and renders the decision unreasonable.

[6] Based on the reasons below, I grant the application for judicial review.

II. Background

[7] Mr. Thompson is a citizen of Jamaica. He made a refugee claim in Canada based on his fear of persecution by a gang associated with a Jamaican political party because of his active support for an opposing party. He was found ineligible to have a hearing before the RPD due to his criminal conviction in the United States. Instead, he was offered a PRRA. In September 2016, he applied for a PRRA with the assistance of an immigration consultant, who completed the PRRA forms and indicated that submissions and evidence would follow. The immigration consultant did not follow up with submissions or evidence about Mr. Thompson's risk in Jamaica. Mr. Thompson's PRRA was refused in December 2016. Later, Mr. Thompson learned that the consultant who represented him in his PRRA has been barred from practice and was criminally charged in relation to his immigration practice.

[8] In December 2019, the RPD accepted the refugee claims of Mr. Thompson's wife and daughter. Their risk in Jamaica was based on their connection to Mr. Thompson.

[9] There are a number of immigration applications that Mr. Thompson made during this time, including an application for permanent residence based on humanitarian and compassionate grounds, a spousal sponsorship application, and an application as a dependent on the application for permanent residence of his wife. There were also delays in obtaining a Jamaican travel document.

[10] At the end of April 2022, CBSA called Mr. Thompson in for an interview to arrange for his removal. Mr. Thompson requested that removal not be scheduled until after he could attend his daughter's university graduation ceremony. This request was granted. Mr. Thompson then made another request to defer removal based on his assistance of his aging relatives in Canada. This request was refused.

[11] Mr. Thompson made another request to defer his removal, primarily raising that his risk of removal had not been substantively assessed. Mr. Thompson also raised that he has just filed a TRP application and the impact of his separation from his family in Canada. The Officer refused this request on June 27, 2022. It is this decision that Mr. Thompson challenges on judicial review.

[12] Mr. Thompson then sought a stay of his removal that was scheduled for July 7, 2023. The stay motion was granted by Justice Southcott on July 7, 2022 (*Thompson v Canada (Minister of Public Safety and Emergency Preparedness)* (July 7, 2022), Ottawa IMM-6102-22 (FC), 2022 CanLII 59045).

III. Preliminary Issue – Mootness

[13] The Minister argued that this judicial review is moot because the removal date had now passed. The Federal Court of Appeal in *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 [*Baron*] held that the application for judicial review of a deferral decision is not moot simply because the removal date has passed. The key issue is proper characterization of the controversy between the parties, with the Federal Court of Appeal

clarifying that “it is the passing of the events in respect to which the applicant was seeking a deferral of his removal” that renders a judicial review application moot (Baron at para 37). The Minister did not address this guidance from *Baron*, nor the jurisprudence from this Court addressing mootness in the deferral context (see *Sosic v Canada (Minister of Public Safety and Emergency Preparedness)*, 2022 FC 13 at paras 17-25; *Adesemowo v Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 FC 249 at paras 36-47; *Sanhueza v Canada (Minister of Public Safety and Emergency Preparedness)*, 2023 FC 646 at paras 15-18).

[14] Mr. Thompson sought a deferral because he argued that he had evidence relevant to his risk of return that had not been assessed and he had an outstanding TRP application. The evidence before me does not suggest that either of these issues has been resolved. There remains a live controversy between the parties and therefore the matter is not moot (*Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342).

IV. Analysis

[15] Subsection 48(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 directs that enforceable removal orders against foreign nationals must be “enforced as soon as possible.” This has been interpreted to mean that inland enforcement officers at CBSA charged with arranging the removal of those with enforceable removal orders have limited discretion to defer their removal (Baron at para 51; *Lewis v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 54).

[16] The determinative issue on judicial review is the Officer's evaluation of Mr. Thompson's risk, which Justice Southcott found was a serious issue at the stay motion stage. The parties agree, as do I, that I should review the Officer's determination on the reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] described a reasonable decision as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker" (*Vavilov* at para 85). Administrative decision-makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

[17] Mr. Thompson did not have access to a refugee hearing before the RPD; instead, he was offered a PRRA in 2016. Mr. Thompson explained to the deferral officer that his risk of return to Jamaica was not substantively assessed during the PRRA because the immigration consultant who was then representing him failed to make any substantive submissions on his behalf. That consultant has since been removed from the profession. The PRRA Officer confirms the lack of submissions in their decision where they note that they "cannot make a meaningful assessment of risk":

As of the date of this decision, November 4, 2016, the applicant has not presented any submissions with respect to this PRRA. The applicant does not identify that he fears any particular risk if he returns to Jamaica, therefore, I find I cannot make a meaningful assessment of risk in the applicant's case.

[18] Mr. Thompson presented to the deferral Officer the 2019 RPD decision granting the refugee claims of Mr. Thompson's wife and daughter because they had been targeted by gang members as surrogates for Mr. Thompson following his departure from Jamaica. The Officer

considered this submission but found that it did not require Mr. Thompson's risk to be assessed prior to removal.

[19] The Officer found that since the RPD's determination was made on the basis of events that occurred in 2015 and 2016, Mr. Thompson had failed to provide sufficient evidence that he is currently at risk. This analysis fails to appreciate that refugee determinations are made based on forward-looking risk, even if there is a consideration of particular past events (*Natynczyk v Canada (Minister of Citizenship and Immigration)*, 2004 FC 914 at para 71). Moreover, it does not address the key issue raised by this request: Mr. Thompson's risk has not been meaningfully considered prior to removal. The only time risk was purportedly assessed, the decision maker indicated that they could not make any meaningful assessment because no submissions had been provided by the applicant's representative. The Federal Court of Appeal in *Atawnah v Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FCA 144 at para 22 [*Atawnah*] confirmed:

the risk the enforcement officer was required to consider was not restricted to a "new" risk in the sense that it arose after the refugee determination or other process. Rather, the risks an enforcement officer is required to consider include risks that have never been assessed by a competent decision-maker.

[20] Mr. Thompson's risk, particularly since the RPD's 2019 finding about his family members, has never been assessed by a "competent decision-maker." As noted by Justice Grammond in *Thuo v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2019 FC 48 at para 15: "the basic principle, as stated by the Federal Court of Appeal in *Atawnah*, is that someone must actually assess the risks faced by a person who is removed from Canada" (See also: *Abdulrahman v Canada (Minister of Public Safety and Emergency Preparedness)*,

2018 FC 842 at para 13). The Officer's limited analysis of Mr. Thompson's risk is particularly egregious here where the very basis of the RPD's 2019 positive determination for Mr. Thompson's family members was their association with him.

[21] The Minister argued, without reference to any evidence in the record or in the Officer's reasons, the results of a 2020 election in Jamaica was relevant to whether Mr. Thompson remains at risk. This is not something I can consider and is irrelevant to the issues on judicial review. The Officer made no reference to the 2020 election. It is not the basis of their decision to deny the deferral request. Further, I note that, at the deferral request stage, the removals officer is considering whether sufficient evidence of risk has been presented warranting a deferral until a full assessment can be done (*Atawnah* at para 20).

[22] The Officer's evaluation of Mr. Thompson's risk of returning to Jamaica was unreasonable and is therefore set aside. Neither party raised a question for certification and I agree none arises.

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The June 27, 2022, decision to deny Mr. Thompson's deferral request is set aside.
3. If Mr. Thompson is scheduled for removal from Canada, he will be given a minimum 28 days' notice of the date of removal.
4. If Mr. Thompson chooses to make another request to defer removal, this request will be assessed by a different CBSA inland enforcement officer.
5. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6102-22

STYLE OF CAUSE: CORNEX DUEI THOMPSON v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 18, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MAY 24, 2023

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