Federal Court Cour fédérale

Date: 20240104

Docket: T-2623-22

Citation: 2024 FC 19

Ottawa, Ontario, January 4, 2024

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

HABEEB ALI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Habeeb Ali has brought an application for judicial review of a decision by the Minister of Public Safety and Emergency Preparedness [Minister] to return only some of the funds seized from him when he crossed the border from the United States of America into Canada on December 5, 2021.

[2] The Recourse Directorate of the Canada Border Services Agency [CBSA] determined that Mr. Ali had established lawful ownership of $64,000 USD of the funds seized from him. However, the CBSA concluded that the remainder of the $100,450 USD should be retained as suspected proceeds of crime. Mr. Ali asks this Court to order the return of $36,450.

[3] The decision of the Minister's delegate was logical and coherent, and indeed generous to Mr. Ali. The application for judicial review is dismissed.

II. Background

[4] At approximately 2:45 AM on December 5, 2021, Mr. Ali appeared at the Windsor Tunnel border crossing and sought entry into Canada. He said he had been in Chicago for the day visiting a friend. He asserted that he had nothing to declare, including currency or monetary instruments equal to or greater than $10,000 CAD. Pursuant to s 2 of the *Cross-Border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 [Regulations], this is the threshold for declaring the importation of funds.

[5] CBSA officers considered Mr. Ali's behaviour to be suspicious. He was overly friendly and laughed nervously. He is a resident of Ajax, Ontario, and the officers thought it strange that he would drive all the way to Chicago just to spend a day there. They referred Mr. Ali for secondary examination.

[6] During the examination, Mr. Ali was found to have $100,450 USD in his possession. $100,000 USD was contained in 10 Chase Bank envelopes that had been hidden in the lining of a wool coat folded on the back seat of his car. The CBSA officer also discovered $450 USD in Mr. Ali's wallet.

[7] Mr. Ali gave inconsistent explanations for why the money was stored in envelopes issued by a US financial institution. He said this was a bank near Toronto where he exchanged money, and he received it in the envelopes. Then he said he had the envelopes at his home in Ajax, despite not having visited the US in more than two years.

[8] Mr. Ali said he was unaware of the financial reporting requirements at land border crossings, although he had worked at a bank for more than five years. He acknowledged that he was aware of the reporting requirements for air travel.

[9] Mr. Ali also gave inconsistent explanations for why he had such a large amount of money in his possession. He said the money came from refinancing his home, and he had received it from a friend in Chicago. He was carrying it in concealed envelopes to "keep it safe" and "out of the bank". He said he intended to use the funds for investments, including a Rolex watch that he would purchase in the US and sell at a higher price in Saudi Arabia. Then he said that he withdrew the funds from his account with the bank where he worked.

[10] The CBSA officer determined that the entire $100,450 USD should be seized as suspected proceeds of crime. Mr. Ali sought ministerial review of the seizure pursuant to s 25 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [Act].

[11] The CBSA informed Mr. Ali in writing that he would have to demonstrate the legitimacy of the source of the funds that had been seized. In his response, Mr. Ali stated that the money was a loan from an old friend in Chicago. He received the money in cash in order to avoid "any loss due to currency exchange rates" and to "shop around for a better exchange rate".

[12] Mr. Ali explained that his friend in Chicago was the owner of a registered business, and the money was obtained through a business loan. He submitted an unsecured promissory note from the lender, signed by both the lender and Mr. Ali; the business' articles of incorporation; the business' employer identification number from the US Internal Revenue Service; bank statements for the lender's business; bank documentation showing the lender to be the sole owner of the business; documentation confirming a business loan; and screenshots and photocopies of Mr. Ali's financial statements showing significant credit card and line of credit debts with Canadian financial institutions.

[13] Mr. Ali said his behaviour at the border was due to exhaustion from his drive to and from Chicago, the stress of his debts, and his fear of being questioned by CBSA officers.

[14] The CBSA wrote to Mr. Ali on May 3, 2022, confirming receipt of his documents and explanations, and providing further guidance. The CBSA advised Mr. Ali that the documents did

not sufficiently demonstrate the source of the funds. The bank statements did not show a single lump sum withdrawal of $100,000 USD from the business account, and there was nothing to indicate the sources or recipients of many of the e-transfers, withdrawals, purchases, and credit memos recorded in the financial statements.

[15] In subsequent correspondence dated July 14, 2022, the CBSA asked Mr. Ali to explain why withdrawals of different amounts from the business account, ranging from $500 to $25,000 USD, were made at irregular intervals over the course of a month to reach the total of $100,000 USD. Mr. Ali replied that he could not explain the reason for the multiple withdrawals, and he had no information regarding the business' monthly expenses.

[16] On August 2, 2022, the Minister's delegate determined that only $64,000 USD of the $100,450 USD seized from Mr. Ali should be returned to him.

III. Decision under Review

[17] Subsection 12(1) of the Act requires the reporting of currency or monetary instruments of a value greater than or equal to the prescribed amount of $10,000 CAD. Subsection 18(1) of the Act authorizes CBSA officers to seize currency or monetary instruments where they have reasonable grounds to believe that s 12(1) has been contravened.

[18] Subsection 18(2) of the Act requires the CBSA to return seized currency or monetary instruments upon payment of a prescribed penalty, unless there are reasonable grounds to suspect

that the seized currency or monetary instruments are the proceeds of crime within the meaning of s 462.3(1) of the *Criminal Code*, RSC, 1985, c C-46, or are funds for use in the financing of terrorist activities.

[19] The Minister's delegate accepted Mr. Ali's statement that he did not mean to contravene the law, and he did not understand that the financial declaration requirements applied at land borders. However, she noted that good faith does not make unlawful conduct lawful (*Khattab v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 453 at para 8, citing *Zeid v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 539 at paras 53-55).

[20] The Minister's delegate noted that the threshold for seizing funds is low: "reasonable grounds to suspect" they are the proceeds of crime. Given Mr. Ali's unsatisfactory explanations at the border, she concluded that the CBSA officers were justified in seizing the funds.

[21] Having considered the documents and explanations provided by Mr. Ali, the Minister's delegate was not convinced of the legitimacy of the funds. In particular, she was not persuaded that the multiple withdrawals from the business account in November 2021 were clearly connected to the business loan Mr. Ali claimed to have arranged with his friend in Chicago. The withdrawals cited by Mr. Ali were the following:

Date	Withdrawals USD
November 1st, 2021	$5,300
03-Nov-21	$500
16-Nov-21	$10,000
26-Nov-21	$10,000
29-Nov-21	$10,000
Sub total:	**$35,800**
December 1st, 2021	$10,000
03-Dec-21	$9,000
03-Dec-21	$25,000
03-Dec-21	$20,000
Sub total:	**$64,000**
TOTAL:	$99,800

[22] The Minister's delegate accepted that the withdrawals made closer to the date of Mr. Ali's trip to Chicago were connected to the business loan. However, the withdrawals in November were too remote, and were more likely related to "daily business operations". The Minister's delegate also noted several withdrawals of tens of thousands of dollars made after Mr. Ali's trip to Chicago, which cast further doubt on the connection between the withdrawals and the seized funds. The Minister's delegate gave Mr. Ali the "benefit of the doubt" in concluding that the withdrawals made on December 1 and 3 accounted for the funds Mr. Ali was carrying on December 5, 2021.

[23] The Minister's delegate noted that Mr. Ali had provided no explanation for the source of the $450 USD in his wallet. This amount was not returned to him.

[24] In the result, $64,000 USD was remitted to Mr. Ali, while $36,450 was retained.

IV. Issues

[25] This application for judicial review raises two issues:

A. Was the decision of the Minister's delegate procedurally fair?

B. Was the decision of the Minister's delegate reasonable?

V. Analysis

[26] Procedural fairness is subject to a reviewing exercise best reflected in the correctness standard, although strictly speaking no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The ultimate question is whether Mr. Ali knew the case to meet, and had a full and fair chance to respond (*Siffort v Canada (Citizenship and Immigration)*, 2020 FC 351 at para 18). In some circumstances, inordinate delay may also amount to procedural unfairness.

[27] Reasonableness is the presumptive standard of review for administrative decisions (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 25). There is nothing to rebut that presumption in this case. Accordingly, the Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[28] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

A. *Was the decision of the Minister's delegate procedurally fair?*

[29] Mr. Ali complains that the amount of time consumed by the recourse procedure caused him to suffer anxiety, and to receive less than the value of the funds seized from him due to changing currency exchange rates.

[30] An abuse of process may occur if significant prejudice results from inordinate delay (*Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 42, citing *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras 122 and 132). However, I am not persuaded that the delay in processing Mr. Ali's request for the return of the seized funds was inordinate or significantly prejudicial.

[31] The time to complete the recourse process was approximately eight months. This included a number of communications between the CBSA and Mr. Ali, and a commendable effort on behalf of the CBSA to help him present his case in the best possible light. The Minister's delegate rendered her decision just one month after receiving Mr. Ali's final submission.

[32] There can be no serious question whether Mr. Ali was given a reasonable opportunity to be heard. He was informed early in the process of the case to be met, and he received two subsequent opportunities to submit documents and provide explanations. The CBSA provided specific guidance to Mr. Ali about what was required, but ultimately he said he had no further information to offer.

B. *Was the decision of the Minister's delegate reasonable?*

[33] Mr. Ali says that the Minister's delegate did not explain why she accepted the withdrawals from the business account in December 2021 as the source of the seized funds, but rejected the withdrawals in November 2021. He therefore maintains that the decision was arbitrary.

[34] The onus was on Mr. Ali to prove that the funds were not the proceeds of crime (*Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255 at para 50). His burden was to "establish the legitimate source of the amount seized using decisive evidence" (*Sandwidi v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 995 [*Sandwidi*] at para 63, citing *Sebastiao v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 527 at para 54).

[35] According to the Minister's delegate, "it would be reasonable to assume that [the friend in Chicago] was expecting [Mr. Ali] on December 4th, 2021, and would have withdrawn as little as possible to maximize interest on his funds". Despite the possibility that all of the withdrawals

shown on the bank statement "would be related to [the company's] daily business operations and not [Mr. Ali's] loan", she gave Mr. Ali the benefit of the doubt.

[36] This was a generous assessment of the evidence. This Court has previously held that withdrawals from a bank account do not prove the source of currency (*Sandwidi* at para 62, citing *Tran v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 600 at para 25).

[37] The finding of the Minister's delegate that Mr. Ali had not demonstrated that the withdrawals from the business account in November 2021 were connected to the funds in his possession on December 5, 2021 was reasonable. The Minister's delegate noted ongoing withdrawals of a similar nature following Mr. Ali's receipt of the funds, and his inability to provide any information respecting the business' usual monthly expenses.

[38] Pursuant to s 29 of the Act, the Minister's delegate had a limited discretion: "The only question which arises under this provision is whether the evidence submitted regarding the forfeited currency satisfactorily shows that it does not represent the proceeds of crime" (*Bouloud v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 41 at para 3). This is not an impossible standard of proof (*Singh Kang v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 798 at para 40).

[39] It should not have been difficult for Mr. Ali to conclusively establish the legitimacy of the source of the funds he was carrying on December 5, 2021. The friend who loaned him the money was prepared to give Mr. Ali access to his bank statements, and it is unclear why these

were not accompanied by an affidavit or letter of explanation from the lender. Despite being given numerous opportunities to provide the necessary information respecting the source of the seized funds, Mr. Ali failed to do so.

[40] Mr. Ali provided little in the way of evidence to connect the withdrawals from his friend's business account to the money that was seized. The unsecured promissory note did not specify the account from which the funds were to be withdrawn. Mr. Ali did not explain the ongoing withdrawals of a similar nature following his receipt of the funds. He did not demonstrate any connection between the November withdrawals and the ones in early December. The acceptance by the Minister's delegate of only the December withdrawals as legitimate sources of the seized funds, while rejecting the November withdrawals, was logical and coherent.

[41] Mr. Ali's complaint that changes in the exchange rate between US and Canadian currencies caused him to lose money does not render the decision of the Minister's delegate unreasonable. Pursuant to s 29(1)(a) of the Act, an amount of money equal to the value of seized funds "on the day the Minister of Public Works and Government Services is informed of the decision" may be returned [emphasis added].

[42] In his written submissions, Mr. Ali invoked the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter]. In oral argument, he maintained his right to be presumed innocent until proven guilty. However, "proceedings of an administrative – private, internal or disciplinary –

nature instituted for the protection of the public in accordance with the policy of a statute are not penal in nature" (*Martineau v MNR*, 2004 SCC 81 at para 22).

[43] As Justice Angela Furlanetto observed in *Evans v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1516, the forfeiture procedure is not penal in nature; rather, it is a civil collection mechanism: "It is not necessary that the applicant be charged or convicted with a criminal offense, nor is the CBSA or Minister required to establish an illegitimate source of the currency beyond a reasonable doubt" (at para 31).

[44] Mr. Ali's Notice of Application referred to s 6(1) of the Charter, which guarantees mobility rights. However, he did not develop this argument in either written or oral submissions. Suffice it to say that "the central thrust of s 6(1) is against exile and banishment, the purpose of which is the exclusion of membership in the national community" (*United States of America v Cotroni; United States of America v El Zein*, [1989] 1 SCR 1469 at p 1482). Subsection 6(1) of the Charter confers "a right to enter Canada, nothing more" (*Canada v Boloh 1(a)*, 2023 FCA 120 at para 40). Mr. Ali's unsupported claim that he may be subject to additional scrutiny when he seeks to enter Canada in the future does not amount to an infringement of his mobility rights.

VI. Conclusion

[45] The application for judicial review is dismissed.

[46] The Minister seeks costs. Mr. Ali was not represented by counsel in this proceeding, and the ordeal has caused him significant stress and embarrassment. The Minister's delegate accepted that he did not intend to contravene the law. In all of the circumstances, I exercise my discretion not to award costs against him.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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