Federal Court  Cour fédérale

Date: 20240612

Docket: IMM-985-23

Citation: 2024 FC 902

Toronto, Ontario, June 12, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

SARBJIT SINGH MATHARU

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sarbjit Singh Matharu, is a permanent resident who was convicted under the *Criminal Code*, RSC, 1985, c C-46 with four counts of criminal negligence causing death and one count of criminal negligence causing bodily harm. As a consequence of this conviction, a Canada Border Services Agency [CBSA] Officer [Officer] prepared a report pursuant to subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] alleging

that Mr. Matharu was inadmissible to Canada for serious criminality [Subsection 44(1) Report] pursuant to paragraph 36(1)(a) of the IRPA. A Minister's Delegate referred the matter to the Immigration Division [ID] for an admissibility hearing pursuant to subsection 44(2) of the IRPA. Mr. Matharu now seeks judicial review of the Minister's Delegate's December 23, 2022 Decision [Decision].

[2] For the reasons below, this application is denied. The Minister's Delegate's role in a section 44 proceeding is limited in nature, and I am satisfied that her recommendation for an admissibility hearing was reasonable in light of the evidence.

II. Background

[3] Mr. Matharu is a citizen of India and a permanent resident of Canada since May 2009. On June 24, 2016, Mr. Matharu was driving a tractor-trailer that was involved in a collision on Highway 400, near Toronto. The collision occurred in a reduced speed construction zone. Mr. Matharu failed to slow down and brake in time. The accident involved seven cars, causing two serious vehicle fires. It led to the tragic deaths of four persons, and left a fifth person seriously injured.

[4] Mr. Matharu was charged and convicted with four counts of criminal negligence causing death and one count of criminal negligence causing bodily harm, and was sentenced to 8 years in prison.

[5] On August 9, 2021, the Officer issued a report pursuant to subsection 44(1) of the IRPA, providing her opinion that Mr. Matharu is inadmissible to Canada for serious criminality under paragraph 36(1)(a) of the IRPA.

[6] On July 25, 2022, the CBSA interviewed Mr. Matharu and gave him an opportunity to present written submissions outlining why he should not be referred to the ID for an admissibility hearing. His counsel provided written submissions accompanied by letters of support from friends, family and colleagues. Mr. Matharu also provided a letter providing his perspective on the situation.

[7] Pursuant to subsection 44(2) of the IRPA, a Minister's Delegate reviewed the Subsection 44(1) Report prepared by the Officer and determined that it was well-founded. On December 23, 2022, the Minister's Delegate referred the report to the ID for an admissibility hearing.

[8] In deciding whether to refer Mr. Matharu for an admissibility hearing, the Minister's Delegate's notes demonstrate that she assessed Mr. Matharu's written submissions, the support letters provided following his CBSA interview, and his letter. She considered the circumstances surrounding the accident, and the sentencing judge's remarks.

[9] In her Decision, the Minister's Delegate also acknowledges Mr. Matharu's personal circumstances, but ultimately agrees with the Officer's findings in the "Subsection 44(1) and 55

Highlights – Inland Cases" form [Highlights]. There, the Officer had found that the gravity of the offence outweighed the mitigating factors in Mr. Matharu's case.

[10] Ultimately, the Minister's Delegate found the Officer's report to be well-founded, and decided to refer Mr. Matharu for an admissibility hearing.

III. Issue and Standard of Review

[11] The sole issue before this Court is whether the Minister's Delegate's Decision to refer Mr. Matharu for an admissibility hearing pursuant to subsection 44(2) of the IRPA was reasonable under the criteria outlined in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paragraphs 59–63, and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 99 [*Vavilov*].

IV. Analysis

[12] Mr. Matharu's arguments are centered on the Minister's Delegate's exercise of her discretion under subsection 44(2) of the IRPA. More specifically, Mr. Matharu submits that the Minister's Delegate fettered her discretion by deciding to refer Mr. Matharu to an admissibility hearing without exercising her discretion to consider the humanitarian and compassionate [H&C] factors that weighed in favour of the Applicant, and failing to address the public safety and rehabilitation arguments raised by the Applicant.

[13] The role of a decision-maker in a section 44 proceeding has been thoroughly and recently reviewed by the Federal Court of Appeal [FCA] in *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 [*Obazughanmwen*]. This Court has published three significant decisions in this specific area of the law within the last six months considering *Obazughanmwen*, first in the December 2023 ruling of the Chief Justice in *Sidhu v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1681 [*Sidhu*]. Then in March 2024, Justice Gleeson published *Marogi v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 418. Most recently, in April 2024, Justice Ahmed issued *Dass v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 624 [*Dass*].

[14] In brief, key points articulated in these and related decisions are that the Officer and Minister's Delegate's task in section 44 proceedings are "purely administrative," and they basically serve a "screening function" (*Obazughanmwen* at para 30). Their discretion to assess H&C factors is therefore also limited, particularly concerning serious criminality (*Sidhu* at para 60; *Obazughanmwen* at paras 27, 29; *McAlpin v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 422 at para 70).

[15] In practice, this means that the Minister's Delegate is not required to look at all circumstances of a case beyond the factors directly related to the inadmissibility (*Shi v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 345 at para 50; *Thavakularatnam v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 1245 at para 75; *Lin v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 862 at para 16). Their role is to assess what are "readily and objectively ascertainable facts concerning admissibility" (*Sidhu* at para 37,

citing *Obazughanmwen* at para 37). With that said, should the Minister's Delegate choose to consider H&C factors, such consideration does not need to be lengthy (*Dass* at paras 41–42; *Marogi* at para 31).

[16] Applying the facts in these section 44 proceedings to the law, I am satisfied that the Minister's Delegate's decision was reasonable, and am not persuaded that she fettered her discretion. It is clear, in reading the Minister's Delegate's notes, the Officer's Report and the Highlights, which all form part of the Certified Tribunal Record [CTR] (*Dass* at para 13), that she considered the H&C factors raised by Mr. Matharu including Mr. Matharu's immediate family, namely his wife and two Canadian born children, and the fact that his children have never been to India. She also considered the letters provided by Mr. Matharu, his family, friends and colleagues, along with Mr. Matharu's personal attributes, including his assertion that he did not intend on hurting anyone and that such accident will never happen again.

[17] I am also not persuaded that the Minister's Delegate did not sufficiently grapple with the public safety and rehabilitation considerations in this case. The Minister's Delegate considered the fact that Mr. Matharu pled guilty and has no previous convictions or record of criminality. Mr. Matharu places significant weight on the public safety consideration, and claims that the Minister's Delegate erred in failing to meaningfully analyzed the future risk and the likelihood that he would reoffend should he be allowed to stay in Canada.

[18] With respect, I disagree. The Minister's Delegate recognized these mitigating factors. However, she also weighed the factors that did not assist Mr. Matharu's position, including his

responsibility in the events leading to the collision, the contents of the detailed sentencing decision of Justice Michael Code of the Ontario Superior Court, Mr. Matharu's actions leading up to the accident, the gravity of the offence, and other contents of his decision.

[19] Ultimately, the Minister's Delegate reasonably gave more weight to these unfavourable factors rather than the public safety and rehabilitation considerations, and it is not this Court's role in a judicial review to reweigh and reassess the evidence that was before the Minister's Delegate in order to reach it's own conclusion (*Sidhu* at paras 90–92; *Vavilov* at para 125). As Justice Ahmed observed at paragraphs 51–52 of *Dass*:

> A final note. Decision makers for referrals in the section 44(1) and section 44(2) process, in my view, are neither precluded from nor obligated to consider personal circumstances in the discretionary decision to refer a report for an admissibility hearing or not. They retain the discretion to consider these circumstances, albeit one tempered by their role in the process. And they further retain the discretion to refer the report or not, even if it is well founded.
>
> However, once decision makers provide reasons regarding an individual's personal circumstances, their reasons are subject to the strictures of reasonableness review.

[20] In my view, the Minister's Delegate reasonably assessed the totality of the evidence before her, fulfilling her duty to "look into readily and objectively ascertainable facts concerning admissibility and not to adjudicate controversial and complex issues of law and evidence" (*Obazughanmwen* at para 37).

[21] Moreover, she assessed the relevant H&C factors, and did so reasonably. She weighed these factors against the gravity of the offence, and reached the conclusion that the matter should

be referred for an admissibility hearing. In light of the foregoing, Mr. Matharu has not raised a key omission or fatal flaw that would render this decision unreasonable.

V. The Certified Question

[22] As a final point, Applicant's counsel emailed a certified question on the eve of the hearing, received at about 11 p.m. on May 22nd. The May 23rd 9:30 a.m. hearing had been set down nearly three months earlier pursuant to the Leave Order dated February 27, 2023.

[23] I received the certified question email from the Registry Officer less than an hour before the hearing commenced, which reads:

> The Applicant wishes to propose the following question for certification consideration:
>
> "Where
> a) there is a report from an officer that a person concerned is criminally inadmissible
> b) the person concerned provides to the Minister's Delegate both humanitarian and compassionate submissions and public safety/ rehabilitation submissions that the Minister's Delegate should not refer the report to an admissibility hearing of the Immigration Division of the Immigration and Refugee Board, is it reasonable for the Minister's Delegate, when deciding to refer the report to the Immigration Division, to address explicitly the humanitarian and compassionate submissions of the person concerned but not the public safety/ rehabilitation submissions?"

[24] Unsurprisingly, given the timing of the certified question, counsel for the Respondent did not provide their input prior to the hearing. When asked for a position at the hearing, counsel stated that she opposed the certification request received past the deadline set out in the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection*

Proceedings [*Guidelines*], and that it takes time to obtain instructions from her client on certified questions.

[25] Timing aside, counsel argued that the question did not meet the certification requirements, given that a similar question had recently been rejected by the FCA in *Obazughanmwen* on the basis that it raised well-decided law, and that this Court had ruled on the issue of section 44 discretion on numerous occasions both prior to and since that FCA decision.

[26] In response to the Respondent's comments on the timing, Applicant's counsel suggested that the Court's timelines are not strict rules, and the Court has leeway to consider proposed certified questions that are submitted in a manner that is not consistent with the *Guidelines*.

[27] I agree with the Respondent both with respect to the procedural and substantive inadequacies of the proposed question.

[28] First, to address the procedural aspect, I note that the Court's *Guidelines* (as amended most recently on October 31, 2023) read as follows at section 36:

> Certified questions
>
> Pursuant to paragraph 74(d) of the IRPA, "an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question" [emphasis added]. Parties are expected to make submissions regarding paragraph 74(d) in written submissions filed before the hearing on the merits and/or orally at the hearing. Where a party intends to propose a certified question, opposing counsel shall be notified at least five (5) days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question.

[29] Here, instead of being received by the Respondent at least five days prior to the hearing, the proposed question was literally received at the 11th hour on the eve of the hearing. The Applicant had plenty of time to ponder its question – well beyond the approximately three months between the Leave Order and the hearing – given that the Production Order was issued over eight months before the hearing, which would have signalled that a Leave Order would likely ensue.

[30] I further disagree with Mr. Davis' characterization of the *Guidelines*. The Court expects counsel to comply with its practice guidelines. Contrary to what was submitted, they are not optional statements that counsel can choose whether to observe. Counsel may disregard them, but does so at their own risk. As highlighted by Justice Gascon in *Medina Rodriguez v Canada (Citizenship and Immigration)*, 2024 FC 401 [*Medina Rodriguez*] at paragraph 44:

> As I indicated at the hearing, Mr. Rodriguez did not comply with the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings* dated June 29, 2023 [*Guidelines*]. Paragraph 36 of the *Guidelines* provides that when a party intends to propose a certified question, opposing counsel must be notified at least five days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question(s). These *Guidelines* are there to be followed, and submitting a certified question at the last minute is not helpful to the Court nor fair for the opposing party. Moreover, a certified question is supposed to be a question of general importance. Arguably, these are not issues that should arise on the eve of judicial review or as an afterthought. In this case, counsel for Mr. Rodriguez has not provided any reason to explain the late submission of no less than five certified questions. Such a practice is strongly discouraged by the Court, and may be the basis for a refusal to consider the merits of a proposed certified question as it prejudices the other party as well as the Court and does not serve the interests of justice.

[31] Second, I will address the substantive aspect of the proposed question, primarily for the edification of Mr. Matharu, given the stakes of his proceedings. The question raises the Minister's Delegate's discretion to consider public safety and rehabilitation in a section 44 proceeding.

[32] As correctly noted by the Respondent, this question was recently addressed at length in *Obazughanmwen* (see paras 25–41). There, the FCA held that the question was improperly certified by this Court because the scope of a Minister's Delegate's discretion in a section 44 proceeding was well-settled law, and was therefore not a question of general importance. Furthermore, as outlined above, the contents of the question has since been squarely addressed by three recent decision of this Court (*Sidhu*, *Marogi* and *Dass*), each of which cited *Obazughanmwen*, and none of which saw fit to certify a question.

VI. Conclusion

[33] In my view, the Minister's Delegate's decision was reasonable in light of the factual and legal constraints, and thus warrants deference (*Vavilov* at para 99). While Mr. Matharu has definitely shown signs of contrition and there are certainly elements weighing in his favour for which he is to be commended, he is effectively asking this Court to reweigh and reassess the evidence that was before the Minister's Delegate. That is not this Court's mandate on judicial review. This application for judicial review is accordingly dismissed. The question proposed will not be certified.

[34] One final word about counsel: despite the fact that judicial review was not warranted in favour of Mr. Matharu, his counsel, Mr. Davis, assiduously represented his interests, as did Ms. Michaely for her client, in what was a difficult and delicate matter for all parties involved. The Court is appreciative of their assistance in these proceedings.

JUDGMENT in IMM-985-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.

2. There is no question to certify.

3. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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