Federal Court Cour fédérale

Date: 20240702

Docket: IMM-13349-22

Citation: 2024 FC 1019

Ottawa, Ontario, July 2, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

MAHENDRA RAMSUCHIT

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mahendra Ramsuchit, seeks judicial review of the decision of a delegate of the Minister of Public Safety and Emergency Preparedness ("the Minister's Delegate" or "Delegate") to refer him for an admissibility hearing pursuant to s. 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant argues that the decision is unreasonable because the Minister's Delegate failed to engage in an adequate assessment of the impact an inadmissibility finding would have on the best interests of his children and the financial situation of his common law spouse and children.

[3] For the reasons that follow, I find the decision to be reasonable. The Minister's Delegate examined and weighed the Applicant's personal considerations, but found these to be outweighed by the serious nature of the criminality – noting that the Applicant was convicted of cocaine trafficking and sentenced to five years in prison. I find the decision to be reasonable given the legal and factual constraints and in light of the purpose of section 44 in the overall legislative scheme.

II. Preliminary Matters

[4] Two preliminary matters should be mentioned. First, during the hearing the parties agreed that the style of cause should be amended to reflect the Minister of Public Safety and Emergency Preparedness as the proper Respondent, and that change is included in the Order.

[5] Second, the Applicant wrote a letter the day before the hearing indicating that he was proposing a question for certification. In response, the Court issued a Direction drawing the parties' attention to a recent decision that commented negatively on last-minute proposals for

certified questions: *Matharu v Canada (Public Safety and Emergency Preparedness),* 2024 FC 902 at paras 22-32. On the day of the hearing, counsel for the Applicant withdrew the proposed question.

III. Background

[6] The Applicant is a citizen of Guyana. He came to Canada as a permanent resident in December 2008, as a member of the family class.

[7] In January 2015, the Applicant and his common law spouse were caught at the airport in Guyana with 10 kg of cocaine. They were about to travel from Guyana to Canada. In 2017, both of them were convicted in Guyana of trafficking in cocaine. The Applicant was sentenced to 60 months imprisonment, and his common law spouse received a sentence of 56 months imprisonment. Their three minor children had remained in Canada in the care of the Applicant's mother-in-law.

[8] The Applicant and his common law spouse were released on parole by the Parole Board of Guyana in December 2018, on the condition that they return to Canada. The Parole Board's decision to release them was motivated, in part, by their expressed desire to return to Canada to look after their children.

[9] In September 2021, the Canada Border Services Agency issued a letter inviting the Applicant to comment on a report under s. 44(1) of *IRPA* which indicated that the Applicant might be found inadmissible to Canada for serious criminality. The counsel who represented the Applicant at that time (not counsel on this matter) prepared submissions arguing that he should not be referred to an admissibility hearing. These submissions referred to several factors, including the negative impact the Applicant's removal would have on the well-being of his minor children as well as the financial consequences of the loss of his salary for his common law spouse and the children. Counsel stated that if the Applicant was removed from Canada, the care of the children would fall entirely upon his common law spouse, and this hardship would be increased because she would not have the financial means to support the family unit.

[10] The Minister's Delegate relied on the CBSA Officer's s. 44(1) report and referred the Applicant for an admissibility hearing, finding that his submissions regarding the best interests of the children and the humanitarian and compassionate ("H&C") considerations did not outweigh the negative factors in his case.

[11] The Applicant seeks judicial review of the Delegate's decision.

IV. Issues and Standard of Review

[12] The determinative issue in this case is whether the Delegate's reasons deal in sufficient detail with the personal circumstances of the Applicant, in particular the submissions about the best interests of his children and the financial impact his removal would have on his common law spouse and the children.

[13] The standard of review that applies is the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[14] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at para 102). Absent exceptional circumstances, a reviewing court must not interfere with a decision maker's factual findings (*Vavilov* at para 125).

V. Analysis

[15] The principles governing review of a decision by a Minister's Delegate to refer a matter for an inadmissibility hearing have been discussed in several recent decisions of this Court, some

of which are discussed below, as well as in a recent decision of the Federal Court of Appeal: *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 [*Obazughanmwen*].

[16] The parties in this case are largely in agreement regarding the principles outlined in the case law. The main point of debate concerns the scope of the duty to give reasons where an Officer or Minister's Delegate decides to examine the personal circumstances of an individual subject to an s. 44(1) report.

[17] The *Applicant* points to cases that emphasize that such decisions must be sufficiently detailed to meet the requirement of "responsive justification" set out in *Vavilov* and endorsed in *Mason*. For example, in *Dass v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 624 [*Dass*], the Court found that the Delegate's reasons were not reasonable because they did not engage with the applicant's particular submissions. The Delegate failed to provide reasons responsive to the Applicant's request to only refer to a report being issued for the Applicant's less serious offences or to have the matter held in abeyance until the determination of a criminal appeal (*Dass* at para 43).

[18] In reaching this conclusion, Justice Shirzad Ahmed provided the following summary of the relevant principles:

> [51] … 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 to the report or not, even if it is well founded.
>
> [52] However, once decision makers provide reasons regarding an individual's personal circumstances, their reasons are subject to the strictures of reasonableness review. Holding otherwise would see the exercise of public power go unchecked, offending an elemental principle of administrative law that this exercise "must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

[19] The Respondent relies on decisions that emphasize the narrow scope of discretion available to Officers and Minister's Delegates, in light of the screening and fact-finding purpose of the process. For example, *Marogi v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 418, a case involving an individual with a lengthy history of criminality, including offences committed after he was given notice that he might be inadmissible for serious criminality. Here Justice Patrick Gleeson held that even though the Delegate chose to consider H&C factors, the Delegate did not act unreasonably by failing to engage in a more comprehensive or meaningful analysis of those considerations since it is not in their mandate to do so (*Marogi* at para 29).

[20] The Court also rejected an argument that a Minister's Delegate had to engage in a full-blown analysis of the H&C factors enumerated in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 at para 14. Instead, the Court emphasized the limited nature of the discretion available to Officers and Minister's Delegates under section 44:

> [25] Relying on prior jurisprudence, the FCA described the function of officers and MDs acting under section 44 as being an administrative screening function intended to consider "readily and objectively ascertainable facts" related to the question of admissibility (*Obazughanmwen* at para 37). The function of an officer and MD acting under section 44 is not to determine controversial and complex issues of law and evidence, including H&C considerations (*Obazughanmwen* at paras 27, 30, 33-37).

[21] In light of this context, the Court found that the Minister's Delegate's brief consideration and weighing of the H&C factors was reasonable.

[22] It will not be necessary to engage in a forensic parsing of the recent decisions. In my view, the most recent cases turn on their specific facts, while accepting that the basic principles have been established by the Federal Court of Appal in *Obazughanmwen*. Instead, it may be more helpful to step back to examine the question of the scope of the duty to give reasons for addressing an individual's personal circumstances in light of the overall nature and purpose of the legislative scheme.

[23] In the following passage in *Obazughanmwen*, the Court of Appeal confirmed two points that are particularly relevant in the instant case:

> [29] …In cases such as *Correia v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 782, *Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 429, *Canada (Minister of Public Safety and Emergency Preparedness) v. Cha*, 2006 FCA 126 (*Cha*), *Awed v. Canada (Citizenship and Immigration)*, 2006 FC 469 and *Faci v. Canada (Pubic Safety and Emergency Preparedness)*, 2011 FC 693, all referred to by the appellant, the "overall consensus seems to coalesce" (to use the words of counsel for the respondent) around the principles that CBSA officers and MDs had very limited discretion, and that there was no

> general obligation to consider H&C factors nor to explain why they were not considered sufficient to offset other factors supporting a decision to refer a case for an admissibility hearing.

[24] The two key points here reflect the core of the arguments advanced by each side in this case. First, the Court of Appeal accepts that CBSA officers and Minister's Delegates have a very limited discretion to consider the personal circumstances of the individual (generally referred to as H&C factors). This is a point the Applicant emphasized. Second, as underlined by the Respondent, the Court of Appeal stated that there was "no general obligation… to explain why [such factors] were not considered sufficient to offset other factors supporting a decision to refer a case for an admissibility hearing."

[25] In the case at bar, both the Minister's Delegate and the CBSA officer decided to examine the Applicant's personal circumstances, and the key question is whether their reasons are sufficient to meet the *Vavilov* standard. In my view, the reasons are adequate, when examined in light of the legal and factual matrix, as required by the *Vavilov* framework.

[26] Two elements of the legal context should be emphasized in assessing the question of the scope of the duty to give reasons in this context. First, when courts have described the section 44 process as a "screening function", they are referring to two intertwined ideas. First, an officer preparing a s. 44(1) report, and a Minister's Delegate reviewing it and then deciding whether to refer the case for a hearing, are simply performing administrative screening. This can include details regarding the criminal convictions that are the basis for inadmissibility, for example. This

screening can lead to a recommendation whether or not to refer the case for a hearing before the ID.

[27] The decision as to whether an individual is inadmissible or not is made by the ID, and it can only consider cases that are referred to it. In *Obazughanmwen* at paragraph 16, the Court of Appeal summarized the case-law that describes the administrative scheme in the following manner:

> The recommendations of an MD do not constitute a final decision and do not result in a change of status. MDs simply perform a screening process;
>
> CBSA officers and MDs are not authorized or required to make findings of fact or law, rather they provide non-binding opinions on admissibility based on a summary review of the record. The section 44 process does not call for a long and detailed assessment of issues that can be properly assessed and fully resolved in later proceedings;
>
> The ID makes a determination as to admissibility, not the MD.

[28] Second, Parliament has decided that protecting the security of Canadians is one of the fundamental purposes of *IRPA* (see paragraphs 3(1)(h) and (i)). One aspect of this is the inadmissibility process: see *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 S.C.R. 539; *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50, [2017] 2 S.C.R. 289.

[29] There are various legislative provisions that govern the process by which an individual can be found to be inadmissible, as well as the consequences of such a finding in regard to their rights to seek other types of relief before they are removed. As the Federal Court of Appeal put it

in *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 319 [*Sharma*], "officers and the Minister or his delegate must always be mindful of Parliament's intention to make security a top priority…" (*Sharma* at para 23, cited with approval in *Obazughanmwen* at para 32).

[30] The guidance that flows from the legal context was summarized in *Obazughanmwen*. The Court of Appeal confirmed the point expressed in prior case-law that "CBSA officers and [Minister's Delegates] have limited discretion because of the restricted nature of the inquiry they are tasked to perform, and that they are performing a purely administrative and screening function" (*Obazughanmwen* at para 30). Viewed in this light, the section 44 referral process "is only meant to look at readily and objectively ascertainable facts concerning admissibility, and not to adjudicate controversial and complex issues of law and evidence" (*Obazughanmwen* at para 37).

[31] This speaks to a restricted scope of the duty to give reasons generally. One aspect of the s. 44 screening process is to confirm the facts that support the ground of inadmissibility alleged by the CBSA. On this point, it is relevant that a s. 44 report can address a wide variety of grounds, ranging from involvement in organized and/or serious criminality, to failing to meet financial requirements for immigration. The first step in the process is to confirm the facts. In regard to serious criminality, this can include both the nature of the criminal offences, the degree of the individual's involvement and any other factors that may be relevant to assessing the person's degree of culpability and any risk their continued presence in Canada might pose.

[32] A second step is open, which involves a consideration of a wider range of personal circumstances. During the hearing, the parties stated they did not want to use the usual shorthand by referring to these considerations as “H&C factors”, given that this tends to invoke the global and multi-faceted assessment that is required in a full-blown H&C assessment under s. 25 of *IRPA*. I agree with this point as a matter of logical and linguistic precision, although in the end nothing much turns on it.

[33] It is important to recall the purpose of the exercise. Where an officer or Minister’s Delegate decides to consider this wider set of personal circumstances (which can include the best interests of any children), they are doing so in the context of an administrative screening process where their decision is only whether to refer the case for an admissibility hearing or to issue a warning letter instead. Officers dealing with serious or organized criminality grounds of inadmissibility exercise a narrow discretion, because that is what Parliament has mandated: *Obazughanmwen* at para 27; see also *Sharma* and Canada (Minister of Public Safety and Emergency Preparedness) v Cha, 2006 FCA 126 [Cha]. This speaks to a less onerous obligation to give reasons.

[34] Turning back to this specific case, the key question is whether the Delegate’s discussion of the personal considerations put forward by the Applicant was reasonable. The two factors emphasized by the Applicant were the impact of a finding that he is inadmissible would have on the best interest of the children, and the financial and practical impact on his common law spouse and the children. The Minister’s Delegate adopted the s. 44(1) report, and so the reasons for the

decision include the actual referral from the Minister's Delegate to the Immigration Division, the Delegate's notes, and the s. 44(1) Report.

[35] I agree with the Applicant that there is no specific discussion of the best interests of the children or the financial considerations in the Delegate's reasons. It is clear that the Officer and Delegate were aware of the Applicant's submissions, including that he had a common law spouse and children. The Minister's Delegate states "I have taken into account the personal circumstances put forward by [the Applicant]. I acknowledge that these circumstances will result in hardship if he loses his permanent resident status and to a greater degree if he is removed from Canada." The Delegate continues, "I have afforded weight to the mitigating submissions put forward by [the Applicant]." However, the Delegate went on to conclude that "I am of the opinion that the H&C considerations do not outweigh the aggravating factors."

[36] In assessing this against the *Vavilov* framework, it is important to consider the adequacy of the reasons in light of the legal and factual matrix. The Delegate was performing an administrative screening function. The first stage of this was not in dispute: the Applicant did not challenge the fact nor the circumstances of his criminal conviction. He was caught trying to import cocaine into Canada for the purposes of trafficking, for which he was convicted and sentenced to a five-year prison term. As the Respondent points out, there is ample case-law confirming that trafficking in hard drugs such as cocaine is a "crime with such grievous consequences that it tears at the very fabric of society" (*Pushpanathan v Canada (Minister of*

Citizenship and Immigration), [1998] 1 SCR 982 at para 79, cited in *R v Parranto*, 2021 SCC 46 at para 92).

[37] Having decided to consider the Applicant's personal circumstances, the Delegate was not required to engage in a full-blown H&C analysis as required under s. 25 of *IRPA* in carrying out the administrative screening function. In my view, it was sufficient for the Delegate to acknowledge and weigh the personal circumstances that the Applicant cited as favouring the issuance of a warning letter rather than referring his case to the ID. Based on the guidance from *Obazughanmwen* at paragraph 29, the Delegate was under no obligation to "explain why [the personal circumstances] were not considered sufficient to offset other factors supporting a decision to refer a case for an admissibility hearing."

[38] To be clear, if an officer or Delegate say they are considering personal circumstances, but then ignore most or all of the specific points brought forward by an individual, the resulting decision may be unreasonable. Similarly, where the personal factors are of such weight and gravity when compared with the nature of the ground of inadmissibility (for example, the nature of the crime or the degree of involvement of the individual in it), a failure to engage in a more fulsome analysis may be unreasonable (see, for example, *Dass*). In the end, it is important to assess the Delegate's reasons in light of the legal and factual matrix, and to recall that what is being examined is an administrative screening decision.

[39] Based on the analysis set out above, I find the Minister's Delegate's reasons to be reasonable. Due to the particular facts of this case, there was no obligation on the Delegate to engage in a more fulsome discussion of the Applicant's submissions on the best interests of the children or the financial impact of the decision on his common law spouse and children. The Delegate (and the Officer) clearly considered and weighed the Applicant's submissions, and found they did not outweigh his conviction for cocaine trafficking, which resulted in a five-year prison sentence. In these circumstances, more detailed or elaborate reasons on the specifics of the Applicant's submissions were not required.

[40] The application for judicial review will be dismissed.

[41] There is no question of general importance for certification.

JUDGMENT in IMM-13349-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

3. The style of cause is amended, with immediate effect, to name the Minister of Public Safety and Emergency Preparedness as Respondent.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-13349-22
STYLE OF CAUSE:	MAHENDRA RAMSUCHIT v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VIA ZOOM
DATE OF HEARING:	JUNE 25, 2024
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	JULY 2, 2024

APPEARANCES:

D. Cliffort Luyt	FOR THE APPLICANT
Christopher Ezrin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT