Federal Court

Cour fédérale

Date: 20100311

Docket: IMM-4447-09

Citation: 2010 FC 280

Ottawa, Ontario, March 11, 2010

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

LEONARDO JAVIER BOLANOS BLANCO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
and
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is challenging the legality of a decision rendered by the Immigration Division of the Immigration and Refugee Board (the panel) on September 1, 2009, determining that he was inadmissible on grounds of serious criminality.

[2] Under paragraph 36(1)(*c*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), a permanent resident or a foreign national is inadmissible on grounds of serious

criminality for committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

[3] In this case, the panel determined after an investigation that there were reasonable grounds to believe that the applicant had committed an act in the United States that, if committed in Canada, would constitute an offence under subsection 380(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 (the Code), punishable by a maximum term of imprisonment of 14 years.

[4] The applicant is now challenging the legality of this decision on three grounds:

(a) There was a reasonable apprehension of bias in this case;

(b) The panel could not legally enter into evidence documents that were in English and had not been translated into French prior to the hearing;

(c) The panel could not legally rule on the applicability of subsection 380(1) of the Code.

[5] Having considered each of these three grounds on a standard of correctness, the Court is of the view that this application for judicial review must fail for the reasons that follow.

Apprehension of Bias

[6] The allegation of bias is the most serious charge that can be brought against a member. The Court must decide if an informed person, having thought the matter through and viewing the matter realistically and practically, would conclude that there is a reasonable apprehension of bias

(*Committee for Justice and Liberty v. Canada (National Energy Office)*, [1978] 1 S.C.R. 369 at pages 394 and 395 *(Committee for Justice and Liberty)*). This requirement has not been met.

[7] The charge of reasonable apprehension of bias is based on the following information:

1. The advisor from the Canada Border Services Agency (the Agency) took it upon herself to write to the Immigration Division before the hearing to challenge the language of the proceedings being changed to French, without also sending a copy of her letter to the applicant's representative.
2. The member subsequently assigned by the Immigration Division to hear the case, Yves Dumoulin, had already determined before the hearing that the applicant is an American citizen.
3. The impugned decision was made only one day after the additional written submissions were filed by the applicant's representative.

[8] As regards the correspondence exchanged before the hearing, fault is attributable not to the panel but rather to the Agency's advisor. Be that as it may, any breach of the rules of procedural fairness was corrected by the panel's subsequent decision to change the language of proceedings to French, which was the basis of the Agency's challenge in the correspondence in question.

[9] Further, any opinion or preconceived idea of Member Dumoulin on the applicant's citizenship has no bearing on the issue of inadmissibility on grounds of criminality, given that the applicant himself admits that he is not a Canadian citizen and that the panel does not have to

determine to which country the applicant should be deported once the removal order has become enforceable.

[10] Finally, given that the decision in question was made only one day after the applicant had provided additional written submissions, the applicant alleges that it is not possible for Member Dumoulin to have had the time to read the 60-page-long submissions at the same time as writing his 30-page decision.

[11] However, as this Court already noted in *Stapleton v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1320, in paragraph 30, "… the brevity of a decision maker's deliberations [does not] establish *per se* that the decision maker was biased prior to [considering] the evidence and arguments of either party." In this case, the applicant's submissions include approximately four pages of arguments, followed by some 50 pages of case law. Moreover, on pages 30 to 32 of the impugned decision, it is clear that the panel did consider the arguments submitted by the applicant in his additional written submissions.

Language of Proceedings

[12] The applicant was born in Cuba and lived in the United States for a number of years before coming to Canada. While his mother tongue is Spanish, the applicant speaks English fluently.

[13] The report prepared under section 44 of the Act was written and the proceedings relating to the Immigration Division's review of the legality of the applicant's detention and his inadmissibility

to Canada were commenced in July 2008 when the applicant was represented by counsel who communicated with the panel in English.

[14] On March 16, 2009, the panel consented to an application by the applicant's new counsel that the language of the proceedings be changed to French, as permitted by section 16 of the *Immigration Division Rules*, SOR/2002-229 (the Rules). At the same time, the panel refused to have translated into French the documents in English that the Minister had previously sent to the applicant's former counsel, which is the basis for the applicant's current argument that the panel could not legally enter them into evidence at the hearing.

[15] At the commencement of the hearing before this Court, the applicant's counsel confirmed that the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.) and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11, were not at issue, so that the legality of the impugned interlocutory judgment in this case does not have to be considered in terms of these binding instruments.

[16] The applicant now raises the breach of section 25 of the Rules, which sets out that:

25. (1) All documents used at a proceeding must be in English or French or, if in another language, be provided with an English or French translation and a translator's declaration.	**25.** (1) Tout document utilisé dans une procédure doit être rédigé en français ou en anglais ou, s'il est rédigé dans une autre langue, être accompagné d'une traduction française ou anglaise et de la déclaration du traducteur.
(2) If the Minister provides a	(2) Si le ministre transmet un

document that is not in the language of the proceedings, the Minister must provide a translation and a translator's declaration.	document qui n'est pas dans la langue des procédures, il l'accompagne d'une traduction dans cette langue et de la déclaration du traducteur.
(emphasis added)	(non souligné dans l'original)

[17] Section 25 of the Rules is a provision that regulates the disclosure of evidence so that the parties are not taken by surprise at the hearing. A breach of section 25 of the Rules can only result in a postponement of the hearing. It is clear that when the documents in question were provided by the respondents, the language of the proceedings was English, precluding the need for a French translation. It must be acknowledged that there is a difference between providing Minister's documents to an applicant and filing the documents as evidence the day of the hearing. It is therefore impossible for me to interpret this particular provision of the Immigration Division in a way other than that which the respondents suggested and the panel agreed to.

[18] I would add that the applicant, who was allowed to postpone the hearing a number of times, did not prove that he had suffered any harm in this case.

[19] When the report under section 44 of the Act was written and provided to the applicant, around July 18, 2008, the language of proceedings was English. Although the applicant denies having chosen English as his official language, the evidence shows that when the applicant filled out his form titled "Request for Admissibility Hearing / Detention Review Pursuant to the Immigration Division Rules" dated July 18, 2008, he or his counsel at the time chose English as the official language.

[20] In addition, the transcript of oral evidence from the detention review hearing held before Member Ladouceur on July 18, 2008, confirms that the applicant understands and speaks English very well. Further, when the Member asked him at the hearing if he spoke English fluently, he answered that he did. It should be noted that the applicant did not use a Spanish interpreter on this occasion and that there is no evidence to show that he asked to use one before his current counsel had started to act before the panel on his behalf.

Applicability of Subsection 380(1) of the Code

[21] The applicant, who operated two medical clinics in Miami, is a fugitive from the American justice system. In July 2008, the competent authorities of the State of Florida asked the Canadian authorities to extradite him to answer to various charges of fraud and money laundering related to a number of false and fraudulent claims made to the American public health system, Medicare.

[22] With regard to equivalences, the panel considered first the applicability of section 462.31 of the Code, which deals with money laundering, and second, section 380 of the Code, which deals with fraud. Since the Minister could not show that the applicant had an "intent to conceal or convert [any property or any proceeds]," the panel set aside the application of section 462.31 of the Code, while affirming the application of section 380 of the Code.

[23] The thrust of the panel's reasoning with regard to the application of section 380 of the Code can be found at paragraphs 142 to 144 of the impugned decision:

> …
> The evidence deemed credible and trustworthy indicates that there are reasonable grounds to believe that Mr. Bolanos Blanco would be regarded as having committed an offence, had it been committed in Canada—specifically the offence of fraud under paragraph 380(1)(*a*) of the *Criminal Code*.
>
> Indeed, the panel is satisfied that the evidence indicates that there are reasonable grounds to believe that Mr. Bolanos Blanco committed a dishonest act by submitting or getting others to submit on behalf of the institutes a number of false and fraudulent claims to the Medicare public health system in order to be reimbursed for infusion treatments and medications that were never administered or were not administered as indicated on the claims or were unnecessary from a medical standpoint. In so doing, he deprived the victim (the public or any person, whether ascertained or not) of the sum of $11,750.00 (sum identified in paragraph 4 of Exhibit C-6, page 24 of the Minister's exhibits).
>
> Further, the panel is satisfied that the evidence indicates that there are reasonable grounds to believe that Mr. Bolanos Blanco had subjective knowledge that the act was prohibited and also subjective knowledge that it would injure the victim.
> …

[24] The applicant is now challenging the legality of the panel's decision with regard to the application of section 380 of the Code on the grounds that the report prepared under section 44 of the Act does not specifically mention the fraud charges laid against the applicant in the United States but referred only to the charge of money laundering, regarding which an arrest warrant was issued on April 29, 2004, in the State of Florida.

[25] Whether the offence is fraud or money laundering, in both cases, an individual convicted in Canada of either charge laid in the United States against the applicant could be sentenced to a maximum term of imprisonment of at least 10 years. Therefore, the failure to mention the charges of

fraud or section 380 of the Code is of no consequence here, considering the general nature of the allegation in the report prepared under section 44 of the Act, which makes specific reference to the above-noted arrest warrant.

[26] In this case, the applicant was aware of the arrest warrant. He had every opportunity during the hearing before the panel to refute the facts that gave rise to the warrant, including the reasons why he failed to appear before a judge of the District Court of the State of Florida to answer to his indictment by an American grand jury in relation to the charges of fraud and money laundering in question.

[27] The panel did not believe the applicant, dismissing any excuse that he was not there when many of the fraudulent claims were made and that he was not involved in the activities of the medical clinics of which he was the owner at the time.

[28] The applicant did not challenge the panel's findings of fact or the finding of equivalency regarding the fraud charges before this Court, but asserted that the panel exceeded its jurisdiction by going beyond the content of the report prepared under section 44 of the Act. As I have already dismissed this last argument, there are no grounds here to set aside the impugned decision.

[29] Moreover, I am of the opinion that no reviewable error was committed by the panel and that its findings are in accordance with the Act and case law (*Uppal v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 338; *Collins v. Canada (Minister of Citizenship and Immigration)*

(March 17, 2009), Ottawa IMM-2648-08 (F.C.); *Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 429; *Clarke v. Canada (Minister of Employment and Immigration)*, [1984] F.C.J. No. 940 (F.C.A.) (QL) ; and *Eggen v. Canada (Minister of Manpower and Immigration)*, [1976] 1 F.C. 643 (F.C.A.)).

[30] It is clear that the panel not only had jurisdiction in this case but also that its decision is reasonable in the circumstances.

Conclusions

[31] For the above reasons, the application for judicial review must be dismissed.

[32] The applicant posed the three following questions for certification:

> [TRANSLATION]
>
> 1. Did the Immigration Division err by relying on an allegation of medical insurance fraud in the United States and facts that were not mentioned in the report prepared under section 44 of the Act in order to determine inadmissibility on grounds of serious criminality?
>
> 2. Did the Immigration Division err by accepting into evidence, on the day of the hearing on inadmissibility to Canada, the Canada Border Services Agency's documents that were not written in French, the language of the proceedings?
>
> 3. Did the Immigration Division err by denying the applicant the right to obtain evidence filed by the Canada Border Services Agency, on the day of the hearing on inadmissibility to Canada, in the official language chosen by the applicant for the proceedings?

[33] The respondents challenge the certification. In this case, I do not believe that the questions proposed by the applicant transcend the interests of the parties, or that they raise factors with significant impact or of general importance. In addition, as regards the Immigration Division members' jurisdiction to review the grounds for inadmissibility raised by the Minister, the existing case law is sufficient to answer the question. Finally, the Court is of the opinion that the Rules are clear in respect of the language rights of individuals at the Immigration Division. For the above reasons, none of the questions will be certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed.

No question is certified.

"Luc Martineau"
Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4447-09
STYLE OF CAUSE:	**LEONARDO JAVIER BOLANOS BLANCO and THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**
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