Federal Court  Cour fédérale

Date: 20110427

Docket: IMM-1848-10

Citation: 2011 FC 495

Ottawa, Ontario, April 27, 2011

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

LAFISU EJI LASISI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision of the Director General of the Case Management Branch at Citizenship and Immigration Canada (the Minister's delegate), dated December 7, 2009, whereby the Minister's delegate denied an application submitted by Lafisu Eji Lasisi (the applicant) for criminal rehabilitation under paragraph 36(3)(*c*) of the IRPA.

I. BACKGROUND

[2] The applicant, a citizen of Nigeria, first came to Canada as a visitor in 1992. Although he submitted a claim for refugee status at that time, it was subsequently declared abandoned. The applicant was directed to appear, in September of 1994, at an inquiry that would consider, *inter alia*, his use of false identity documents. The applicant failed to appear and in April of 1995 an immigration warrant was issued for his arrest.

[3] At some point in 1993, the applicant had left Canada for the United States of America (USA). On June 2, 1995, he was convicted in the US of Possession of a Fraudulent ID Card in contravention of Illinois state law and was sentenced to 18 months probation. In November of 2002, the applicant returned to Nigeria where he lived until October 2006.

[4] On October 2, 2006, the applicant returned to Canada, using fraudulent identity documents to enter the country. He submitted another refugee claim, but it was eventually rejected as he was deemed ineligible to submit a further claim. A deportation order was issued against the applicant in February of 2007. He submitted a Pre-Removal Risk Assessment application, which was also rejected in March of 2008.

[5] On June 20, 2007, approximately a month after marrying a Canadian citizen, the applicant submitted an application for permanent residence as a member of the spouse or common-law partner in Canada class, as well as an application for criminal rehabilitation in respect of the US

fraudulent ID offence. With respect to his application for criminal rehabilitation, the applicant indicated, in part:

> I believe I am rehabilitated because it's been well over 10 years. I have not re-offended or been involved in any activity that is illegal… I feel ashamed and remorseful for these offences, and have learnt my lesson.

[6] On May 28, 2009, an analyst at the Case Management Branch at Citizenship and Immigration Canada (CIC) prepared a rehabilitation assessment recommending a negative determination with regards to the application for criminal rehabilitation (the rehabilitation assessment). The assessment indicated that the applicant's conviction in the US rendered him inadmissible to Canada due to serious criminality under paragraph 36(1)(*b*) of the IRPA because the US offence was equivalent to "Personation with intent to gain advantage for himself, pursuant to section 403(*a*) of the Criminal Code of Canada."

[7] The analyst indicated that CIC officials were, "not satisfied that [the applicant] would not re-offend in a similar manner if placed in a situation of need." Although it was noted that the applicant had stated the he had learnt from the US conviction and now understood the consequences more fully, the analyst found that the applicant had, nonetheless, re-offended in a similar manner by using false documents to enter Canada in 2006.

[8] The rehabilitation assessment was sent to the applicant for comment on August 24, 2009 and the applicant responded with submissions on October 30, 2009.

II. THE DECISION UNDER REVIEW

[9] On December 7, 2009, the Minister's delegate decided not to grant the application for criminal rehabilitation under paragraph 36(3)(*c*) of the IRPA. This decision was communicated to the applicant via a letter dated March 18, 2010. The applicant requested reasons which were sent on June 24, 2010. They consisted of the text of the rehabilitation assessment that had been sent to the applicant for comment in August of 2009, coupled with the following hand-written note which was dated December 7, 2009 and signed by the Minister's delegate:

> Subject has a history of purposely using false documentation. Most recently was in 2006 when he used a false passport to enter Canada. It can be argued that a person has not committed a criminal offense by using a false document to enter Canada for purposes of making a refugee claim. However subject was deemed ineligible for making a claim and therefore demonstrated continued criminal behaviour in using false documentation.
>
> I am not satisfied the subject has sufficiently demonstrated evidence of being re-habilitated.

III. ISSUES

[10] The applicant raises three issues for consideration by this Court:

a) Did the Minister's delegate breach the duty of procedural fairness owed to the applicant by making an alteration to the rehabilitation assessment?

b) Did the Minister's delegate err by providing inadequate reasons?

c) Was the decision not to grant the applicant's request for criminal rehabilitation otherwise unreasonable?

IV. LEGISLATIVE BACKGROUND

[11] Paragraph 36(1)(*b*) of the IRPA indicates that a permanent resident or foreign national is inadmissible on grounds of serious criminality if they have been convicted of an offence outside of

Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of at least 10 years:

Serious criminality	Grande criminalité
36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for …	36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants : […]
(*b*) having been convicted of an offence outside Canada 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; or	*b*) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
…	[…]

[12] However, paragraph 36(3)(*c*) of the IRPA indicates, in part, that inadmissibility does not result from the circumstances set out in paragraph 36(1)(*b*) if, after the prescribed period (five years), the permanent resident or foreign national satisfies the Minister that they have been rehabilitated:

Application	Application
36(3) The following provisions govern subsections (1) and (2):	36(3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2) :
…	[…]
(*c*) the matters referred to in paragraphs (1)(*b*) and (*c*) and (2)(*b*) and (*c*) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the	*c*) les faits visés aux alinéas (1)*b*) ou *c*) et (2)*b*) ou *c*) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai

prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;	réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées;
…	[…]

V. ANALYSIS

a) *Did the Minister's delegate breach the duty of procedural fairness owed to the applicant by making an alteration to the rehabilitation assessment?*

[13] The applicant submits that the Minister's delegate engaged in "sharp practice" by making an alteration to the text of the rehabilitation assessment relied upon in his reasons.

[14] The impugned alteration is found at the beginning of the assessment where the CIC analyst outlined the applicant's immigration history. After indicating that the applicant had arrived in Canada as a visitor in 1992 and had, in 1993, been directed to appear at an inquiry regarding, among other things, the use of false identity documents, the analyst wrote, "Failed to appear for Inquiry in September 2004 and an immigration warrant for arrest was issued in April 1995" [emphasis added]. In the version of the assessment included in the reasons provided by the Minister's delegate, the "200" was crossed out, and a "199" was written in so that the sentence effectively read, "Failed to appear for Inquiry in September 1994 and an immigration warrant for arrest was issued in April 1995" [emphasis added].

[15] The applicant argues that this alteration materially changed the rehabilitation assessment as compared to the version that was provided for comment and response. He submits that this change constitutes unfair and unjust "sharp practice" because the implausibility of the applicant not appearing at an inquiry in September 2004 when the arrest warrant in relation to that non-appearance was issued nine years earlier, was one of the points relied upon by the applicant in his rebuttal submissions.

[16] There is no merit to this argument. It is clear that the "2004" appearing in the original rehabilitation assessment was a typographical error. The CIC analyst undoubtedly meant to indicate that the applicant did not appear for the inquiry in September of 1994, not 2004. It seems quite unlikely, indeed, that the CIC analyst would have been under the impression that an arrest warrant, issued as it was in April 1995, would have been issued nine years in advance of the event that triggered it – i.e. nine years before the failure to appear. If anything, the alteration reveals that the Minister's delegate attentively reviewed the analyst's submissions and considered the applicant's response.

b) *Did the Minister's delegate err by providing inadequate reasons?*

[17] The applicant argues that the reasons provided by the Minister's delegate are inadequate. He submits that the handwritten portion of the reasons were "illegible and very difficult to make out any meaning at all". This contention is also without merit. Although typewritten reasons may have been preferable, it is not difficult to read and understand the delegate's handwriting in this case.

[18] Furthermore, as the respondent points out, the applicant does not indicate having made any request to obtain a typed version of the reasons. In this regard, I adopt the words of Justice Edmond Blanchard from the *Hayama v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1305, [2003] FCJ No 1642, at para 15 of the decision:

> … If the applicant was unsatisfied with the decision letter and felt it did not adequately explain the decision, a request should have been made for further elucidation. There is no evidence that such a request would have been refused. …

[19] I find that the delegate's reasons are adequate. The "four fundamental purposes" for the provision of reasons set out by the Federal Court of Appeal in *Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158, [2010] FCJ No 809, at para 16, are met. It is clear why the Minister's delegate decided the way that he did. Sufficient details were provided so that the applicant could decide whether or not to apply for judicial review, and so that this Court can assess whether the decision falls within a range of possible acceptable outcomes. The reasons provided are justified, intelligible and display a discernable rationality and logic.

c) *Was the decision not to grant the applicant's request for criminal rehabilitation otherwise unreasonable?*

[20] The applicant submits that the delegate's ultimate decision is unreasonable because it is based on the erroneous determination that the applicant's use of false identity documents to re-enter Canada in 2006 constituted "criminal behaviour". The CIC analyst, in the rehabilitation assessment relied upon by the Minister's delegate, indicated that the applicant "broke the law" when he re-entered Canada in 2006 using a fraudulent passport. The Minister's delegate agreed with this

conclusion and explained in his handwritten reasons that the applicant's use of fraudulent documentation in 2006 amounted to "criminal behaviour".

[21] The applicant contends that section 133 of the IRPA expressly exempts refugees from prosecution for using false documents to enter the country. Thus, the applicant submits the fact that he re-entered the country in 2006 via "improper means" could not properly be considered a violation of Canadian law, nor could it amount to "criminal behaviour".

[22] The question of whether the Minister's delegate erred in exercising his discretion under paragraph 36(3)(*c*) of the IRPA is a question that must be reviewed against the reasonableness standard.

[23] Section 133 of the *Immigration and Refugee Protection Act* reads as follows:

Deferral	Immunité
133. A person who has claimed refugee protection, and who came to Canada directly or indirectly from the country in respect of which the claim is made, may not be charged with an offence under section 122, paragraph 124(1)(*a*) or section 127 of this Act or under section 57, paragraph 340(*c*) or section 354, 366, 368, 374 or 403 of the Criminal Code, in relation to the coming into Canada of the person, pending disposition of their claim for refugee protection or if refugee protection is conferred.	133. L'auteur d'une demande d'asile ne peut, tant qu'il n'est statué sur sa demande, ni une fois que l'asile lui est conféré, être accusé d'une infraction visée à l'article 122, à l'alinéa 124(1)*a*) ou à l'article 127 de la présente loi et à l'article 57, à l'alinéa 340*c*) ou aux articles 354, 366, 368, 374 ou 403 du Code criminel, dès lors qu'il est arrivé directement ou indirectement au Canada du pays duquel il cherche à être protégé et à la condition que l'infraction ait été commise à l'égard de son arrivée au Canada.

[24] Justice Carolyn Layden-Stevenson in *Uppal v Canada (Minister of Citizenship and Immigration),* 2006 FC 338, [2006] FCJ No 455, at para 21, indicated that section 133 of the IRPA is intended, "to allow *bona fide* refugees and refugee claimants to use false passports and supporting documents obtained by them for the purpose of making their way into Canada and to shelter them from a finding of inadmissibility for holding and using those documents." The Minister's delegate was right to point out that the applicant was not a *bona fide* refugee. Section 133 indicates that a person may not be charged with offences relating to fraudulent identification, "pending disposition of their claim for refugee protection or if refugee protection is conferred." There is no pending refugee claim in the applicant's case and refugee protection has not been conferred. As such, section 133 of the IRPA does not apply. In any event, section 133 of the IRPA only prevents charging an individual with an offence, it does not legalize the use of false identification.

[25] Indeed, the applicant did violate Canadian law when he entered the country in 2006 by means of fraudulent identification. Indeed, this was evidence of continued criminal behaviour similar to the criminal behaviour in respect of which the applicant claims to be rehabilitated. As such, I can not find that the delegate's determination that the applicant had not "sufficiently demonstrated evidence of having re-habilitated" falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law. The delegate's decision was not unreasonable.

[26] For the foregoing reasons, the application for judicial review will be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT IS that the application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1848-10
STYLE OF CAUSE:	LAFISU EJI LASISI v MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	April 21, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	TREMBLAY-LAMER J.
DATED:	April 27, 2011

APPEARANCES:

Idorenyin E. Amana	FOR THE APPLICANT
Daniel Latulippe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT