

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131202

Docket: A-266-13

Citation: 2013 FCA 277

**CORAM: EVANS J.A.
STRATAS J.A.
WEBB J.A.**

BETWEEN:

THE MINISTER OF PUBLIC SAFETY

Appellant

and

**RAPHAEL CARRERA
(A.K.A. RAFFAELE MILONE)**

Respondent

Heard at Toronto, Ontario, on December 2, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on December 2, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 2, 2013).

STRATAS J.A.

[1] On July 18, 2013, the Federal Court set aside the Minister's refusal of Mr. Carrera's request to be transferred from a United States prison to Canada: 2013 FC 798. Mr. Carrera requested transfer under the *International Transfers of Offenders Act*, S.C. 2004, c. 21 (as it existed at the time of the request).

[2] The Federal Court found that the Minister's decision was unreasonable. In the Federal Court's view, the record before the Minister required him to give a better explanation why Mr. Carrera's request for transfer should be rejected. As well, the Federal Court found that the Minister applied unreasonably the factors the Act requires him to consider.

[3] In this appeal from the Federal Court's judgment on the application for judicial review, this Court must determine whether the Federal Court selected the appropriate standard of review and applied it correctly.

[4] The parties agree that the Federal Court correctly selected reasonableness as the standard of review. They disagree on whether the Federal Court applied that standard correctly.

[5] In this Court, the Minister makes one submission. The Minister reasonably found that Mr. Carrera left Canada "with the intention of abandoning Canada as [his] place of permanent residence" under paragraph 10(1)(b) of the Act and that alone is sufficient reason for the Minister to refuse to grant the transfer. In other words, according to the Minister, abandonment is a "show stopper" under the Act.

[6] In our view, the appeal must be dismissed with costs. In our view, a reading that exalts the abandonment factor under paragraph 10(1)(b) of the Act above all other section 10 factors is not a reasonable reading of the Act. Section 10, literally read, requires the Minister to consider all of the enumerated factors. Section 10 does not attach primacy to any one factor. Further, any decision must be made with the statutory purposes under section 3 front of mind. Finally, the Minister must

also consider the Canadian offender's right to enter Canada under section 6 of the *Charter: Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at paragraph 49.

[7] It is true that in particular cases the Minister may find that the paragraph 10(1)(b) factor deserves significant weight. Had that been the Minister's view in this case, we would nevertheless find that it was incumbent on the Minister to consider the other section 10 factors and explain why he was reaching a decision different from the assessments made by the Director of the International Transfer Unit of Corrections Canada that largely favoured the transfer: *LeBon v. Canada (Attorney General)*, 2012 FCA 132 at paragraph 23; Reasons of the Federal Court, at paragraph 24. The Minister's decision, when viewed against the record including the Director's assessments, must be intelligible, transparent and justified: subsection 11(2) of the Act; *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47.

[8] Therefore, we agree with the Federal Court that this matter must be remitted to the Minister for redetermination forthwith.

[9] In order to facilitate the Minister's reconsideration, we offer the following guidance in addition to the comments above:

- The Minister must consider and weigh all of the factors under section 10, bearing in mind the purposes of the Act set out in section 3, namely to further "the administration of justice" and "the rehabilitation of offenders and their reintegration into the community" by "enabling offenders to serve their sentences in the country

of which they are citizens or nationals.” The values expressed in section 6 of the Charter also fall to be considered. The Minister shall apply the Act as it existed at the time of Mr. Carrera’s request for transfer.

- Paragraph 10(1)(b) of the Act directs the Minister to ascertain whether the offender “left or remained outside Canada with the intention of abandoning Canada as [his] place of permanent residence.” We agree with counsel for the Minister that this paragraph mandates a backward-looking inquiry – not a forward-looking inquiry – on the issue of abandonment. However, even if abandonment is present, the Minister must still engage in the process of consideration and weighing discussed in the preceding bullet.

[10] For the foregoing reasons, we shall dismiss the Minister’s appeal with costs. The parties have agreed that we should fix costs of the appeal in the amount of \$2,500.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-266-13

APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE HUGHES OF THE FEDERAL COURT OF CANADA, DATED JULY 18, 2013, DOCKET NO. T-2198-12

STYLE OF CAUSE: THE MINISTER OF PUBLIC SAFETY v. RAPHAEL CARRERA (A.K.A. RAFFAELE MILONE)

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 2, 2013

REASONS FOR JUDGMENT OF THE COURT BY: EVANS J.A.
STRATAS J.A.
WEBB J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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