Federal Court  Cour fédérale

Date: 20160414

Docket: IMM-4242-15

Citation: 2016 FC 410

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 14, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

BESSEM CHTIOUI

Applicant

and

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

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review made under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, chapter 27 [IRPA] of a decision made by the

enforcement officer ordering the enforcement of a removal order dated September 19, 2015 [the decision], communicated verbally to the applicant [Mr. Chtioui] on September 14, 2015. The applicant is attempting to have the decision set aside and to be authorized to return to Canada under subsection 52(2) of the IRPA or, alternatively, to obtain a ruling that subsection 52(1) of the IRPA does not apply to him.

[1] For the reasons that follow, the application is dismissed.

II. Background

[2] The applicant is a citizen of Tunisia. He arrived in Canada on October 21, 2010, with a six-month visitor visa, and did not leave the country when it expired.

[3] On January 13, 2012, the applicant was taken in for questioning by police and the next day, January 14, 2012, he was transferred to the Canada Border Services Agency [CBSA].

[4] On January 16, 2012, the CBSA issued a removal order against Mr. Chtioui. He was released with conditions, specifically that he inform a CBSA office of any change of address.

[5] That same day, January 16, 2012, Mr. Chtioui filed a pre-removal risk assessment [PRRA] application in which he said he had come to Canada to live with his spouse while his sponsorship application was being processed and that he would not face any risks if he returned to Tunisia.

[6] On November 19, 2013, the CBSA summoned Mr. Chtioui to inform him of the PRRA decision, but he did not show up. An arrest warrant was issued for him on November 27, 2013.

[7] On September 14, 2015, Mr. Chtioui was arrested by Montréal police for impaired driving. Following this incident, an enforcement officer informed Mr. Chtioui of the negative decision issued on November 27, 2013, regarding his PRRA application.

[8] On September 16, 2015, an application for an agreement to withdraw the criminal charges against the applicant upon his removal from Canada was filed with the prosecutor for the City of Montréal.

[9] On September 17, 2015, at 08:35, the prosecutor for the City of Montréal agreed to withdraw the charges laid against the applicant and informed the enforcement officer of this.

[10] On September 17, 2015, Mr. Chtioui filed an application for leave and for judicial review of the removal decision dated January 14, 2012, and the PRRA decision dated January 27, 2012.

[11] The same day, Mr. Chtioui filed a motion to stay the enforcement of the removal order, which Justice Martineau refused to hear.

[12] On September 17, 2015, the applicant was removed from Canada.

III. Legal framework

[13] The relevant provisions of the IRPA in the present case are as follows:

48 (2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible.	**48 (2)** L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être exécutée dès que possible
50 A removal order is stayed	**50** Il y a sursis de la mesure de renvoi dans les cas suivants :
(a) if a decision that was made in a judicial proceeding — at which the Minister shall be given the opportunity to make submissions — would be directly contravened by the enforcement of the removal order;	a) une décision judiciaire a pour effet direct d'en empêcher l'exécution, le ministre ayant toutefois le droit de présenter ses observations à l'instance;
52 (2) If a removal order for which there is no right of appeal has been enforced and is subsequently set aside in a judicial review, the foreign national is entitled to return to Canada at the expense of the Minister.	**52 (2)** L'étranger peut revenir au Canada aux frais du ministre si la mesure de renvoi non susceptible d'appel est cassée à la suite d'un contrôle judiciaire.

IV. Issues in dispute

[14] The current application raises the following questions:

1. Does the applicant's removal to Tunisia make the judicial review of the PRRA decision moot?

2. Was the removal order issued against the applicant enforced in accordance with the law?

V. Standard of review

[15] The applicant submits that the applicable standard of review in this case is the standard of correctness. Based on paragraph 25 in *Diabate v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 129, the applicant maintains that the decision regarding the interpretation of paragraph 50(a) of the IRPA and its regulations is a question to which the reasonableness standard does not apply and to which the correctness standard should instead be applied.

[16] Contrary to the above, in my opinion, the standard of review is the standard of reasonableness, based on the fact that the interpretation of paragraph 50(a) of the IRPA is not the issue in dispute, but rather the question of fact as to whether or not an agreement existed at the time the CBSA decided to enforce the removal order against the applicant.

VI. Analysis

A. *Does the applicant's removal to Tunisia make the judicial review of the PRRA decision moot?*

[17] The respondent says that Mr. Chtioui's removal to Tunisia makes the judicial review of the PRRA decision moot. For his part, the applicant maintains that there is no need to examine this question because he is no longer objecting to this decision.

[18] Since the judicial review of the PRRA decision was abandoned, it is no longer necessary to carry out this analysis.

B. *Was the removal order issued against the applicant enforced in accordance with the law?*

[19] Under paragraph 50(a) of the IRPA, a removal order is administratively stayed when a "decision that was made in a judicial proceeding would be directly contravened by the enforcement of the removal order," such as when criminal charges are laid. However, paragraph 234(a) of the *Immigration and Refugee Protection Regulations* [Regulations] states the following:

> 234 For greater certainty and for the purposes of paragraph 50(a) of the Act, a decision made in a judicial proceeding would not be directly contravened by the enforcement of a removal order if
>
> > (a) there is an agreement between the Department and the Attorney General of Canada or the attorney general of a province that criminal charges will be withdrawn or stayed on the removal of the person from Canada;
>
> [Emphasis added.]

[20] The charges do not need to be withdrawn or suspended before the applicant's departure; there must simply be an agreement regarding their withdrawal. In this case, the evidence on record shows that a written agreement of unconditional withdrawal of charges between the prosecutor for the City of Montréal and the CBSA was in place at the time of the applicant's removal. The evidence shows that the agreement was sent and returned on the same day, September 17, 2015, before the applicant's removal, which took place at around 16:00.

[21] On this point, the applicant claims that the prosecutor and the CBSA intentionally tried to mislead him regarding the existence of this agreement before his removal to Tunisia. He maintains that the date on the document shows that the agreement was made on September 18, 2015, but that the date was manually changed to replace the 8 with a 7, thereby changing the document date from September 18 to September 17. He therefore maintains that his removal was not enforced in accordance with paragraph 50(a) of the IRPA.

[22] Examination of the document during the hearing revealed that the written date, September 17, 2015, is identical to the other dates in the document, such as the fax "sent" and "received on" stamps. As the dates are identical in both form and substance, the Court can only conclude that an agreement was, in fact, made on September 17, 2015.

[23] Since there were no further obstacles to the removal, the order became enforceable and, under subsection 48(2) of the IRPA, had to be enforced as soon as possible. Under these circumstances, the enforcement of Mr. Chtioui's removal respected the agreement and was consistent with the intent of the law.

[24] I also agree with the respondent that the validity of the order is not an issue because the applicant is only contesting the enforcement of the order and not its merit. There are therefore no grounds for ordering the applicant's return to Canada under subsection 52(2) of the IRPA. In any event, such an order would not provide the solution the applicant seeks because a valid removal order against him would still exist and as soon as he were to arrive on Canadian soil, the authorities would again enforce his removal.

[25] In light of the above, the application for judicial review is dismissed and no question will be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed and no question is certified.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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