

Federal Court



Cour fédérale

**Date: 20170112**

**Docket: IMM-5691-15**

**Citation: 2017 FC 42**

**Ottawa, Ontario, January 12, 2017**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**LEN VAN HEEST**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr Len Van Heest has been before the Court on a number of occasions in an effort to resist his removal from Canada for the Netherlands, a country he left as an infant nearly 60 years ago. Mr Van Heest never acquired Canadian citizenship; he is subject to removal on the basis of his criminal record (according to s 36(1)(a) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*; see Annex).

[2] In this application, Mr Van Heest challenges a decision of an officer with the Canadian Border Services Agency refusing to defer Mr Van Heest's removal from Canada in December 2015. The CBSA officer found that, given the agency's limited capacity to make provisions for a Canadian citizen in a foreign country, adequate arrangements had been made for Mr Van Heest's removal. Those arrangements included providing Mr Van Heest with information that he will likely require in the Netherlands: contact information for mental health services, social housing, and remaining family members. The officer was also satisfied that Mr Van Heest would be eligible for medical care and medication in the Netherlands, should he need them, once he registers for social services. In sum, the officer found that Mr Van Heest would be capable of taking care of himself in the Netherlands with the assistance of the various services available to him.

[3] Mr Van Heest submits that the officer's decision was unreasonable because it assumed a level of competence on Mr Van Heest's part that is unsupported by the evidence. Further, Mr Van Heest submits that the officer treated him unfairly by failing to consider the impact that his removal from Canada would have on his mental health. Mr Van Heest asks me to quash the officer's decision and order another officer to reconsider the issue of his removal.

[4] I can find no basis for overturning the officer's decision. The officer had a limited discretion to defer Mr Van Heest's removal. He considered the relevant evidence before concluding that a deferral was not warranted in the circumstances. His conclusion was not unreasonable or unfair. Therefore, I must dismiss Mr Van Heest's application for judicial review.

[5] There are two issues:

1. Was the officer's decision unreasonable?
2. Did the officer treat Mr Van Heest unfairly?

II. The Officer's Decision

[6] The officer cited a number of grounds for refusing Mr Van Heest's request for a deferral:

- The CBSA had provided Mr Van Heest with information about the availability of social services and housing in the Netherlands. Mr Van Heest looked at the material, but did not use it to begin preparing for his arrival in the Netherlands.
- The CBSA contacted Mr Van Heest's uncle in the Netherlands, and tried numerous times to contact his cousin. While it is unclear whether these relatives would be willing to provide assistance, Mr Van Heest at least had their contact information.
- The CBSA researched medical resources in the Netherlands and found that Mr Van Heest would have access to them once he registered for social services. However, the officer was not persuaded that Mr Van Heest would actually require medical assistance in the Netherlands. He noted that Mr Van Heest was no longer taking his medication or attending his medical appointments. Further, he was not living with his mother anymore; he was living independently in a hostel.
- Mr Van Heest appeared to have sufficient financial resources to obtain food and accommodation in the Netherlands.

III. Issue One – Was the Officer’s Decision Unreasonable?

[7] Mr Van Heest maintains that the officer’s decision was unreasonable because it did not take adequate account of his disability. Further, Mr Van Heest contends that the officer failed to recognize the difficulties he would have obtaining medical help and social services in the Netherlands. He also points to my 2015 decision staying his removal from Canada pending judicial review of a negative decision regarding the humanitarian and compassionate (H&C) grounds favouring his remaining in Canada. At that time, I found that there was a serious issue of whether the officer who conducted the H&C had taken account of Mr Van Heest’s limited ability to access the resources he would require in the Netherlands, and that Mr Van Heest risked irreparable harm if he were removed. Mr Van Heest submits that the officer should have come to the same conclusion.

[8] In my view, the officer’s decision was not unreasonable on the evidence before him.

[9] The officer’s discretion to defer removal is limited to special or compelling circumstances. The evidence before the officer, described above, did not support the existence of those circumstances in Mr Van Heest’s case.

[10] The evidence before me in 2015 showed that Mr Van Heest was dependent on health care providers who were assisting him in complying with the terms of his probation. Without their assistance, it seemed unlikely that Mr Van Heest would be capable of negotiating his way through the social services bureaucracy in the Netherlands.

[11] However, the evidence before the officer showed that Mr Van Heest was not reliant on his Canadian support network anymore. He was living independently, no longer taking medication, and had much less need of medical care. He had some modest financial resources that would ensure he would not be homeless on his arrival.

[12] On this evidence, I cannot conclude that the officer's decision was unreasonable. Contrary to Mr Van Heest's submissions, the officer did not ignore the evidence relating to Mr Van Heest's mental illness.

IV. Issue Two – Did the Officer Treat Mr Van Heest Unfairly?

[13] Mr Van Heest submits that the officer had a legal duty to consider the effect that removal would have on his mental health. In his view, the officer simply failed to consider that aspect of Mr Van Heest's circumstances.

[14] I disagree. While the officer had a duty to consider the evidence that was relevant to the exercise of his limited discretion to defer removal, Mr Van Heest had the burden of persuading the officer that a deferral was warranted in his circumstances. It does not appear, however, that Mr Van Heest provided the officer any meaningful evidence or submissions on this point. The sole reference in the record to the impact of removal on Mr Van Heest is contained in a letter from a social worker who stated that Mr Van Heest's mental state could be affected by his removal to a foreign country. This vague allusion was insufficient, in my view, to trigger an obligation on the officer to analyze the impact of removal on Mr Van Heest's mental state. The officer did not treat Mr Van Heest unfairly by failing to conduct that analysis.

[15] Accordingly, Mr Van Heest's submission that the officer's failure to defer his removal violated his constitutional rights and would shock the conscience of Canadians is not supported by the evidence that was before the officer.

V. Conclusion and Disposition

[16] The officer considered the relevant evidence and reasonably concluded that a deferral of Mr Van Heest's removal was not warranted. Further, the officer treated Mr Van Heest fairly by addressing the evidence and submissions before him. I must, therefore, dismiss this application for judicial review. Neither party proposed a question for certification, and none is stated.

**JUDGMENT in IMM-5691-15**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed,  
and no question of general importance is stated.

"James W. O'Reilly"

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Judge

Annex

*Immigration and Refugee  
Protection Act, SC 2001, c 27*

*Loi sur l'immigration et la  
protection des réfugiés, LC  
2001, ch 27*

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 :

(a) having been convicted  
in Canada of an offence  
under an Act of Parliament  
punishable by a maximum  
term of imprisonment of at  
least 10 years, or of an  
offence under an Act of  
Parliament for which a  
term of imprisonment of  
more than six months has  
been imposed;

a) être déclaré coupable au  
Canada d'une infraction à  
une loi fédérale punissable  
d'un emprisonnement  
maximal d'au moins dix  
ans ou d'une infraction à  
une loi fédérale pour  
laquelle un  
emprisonnement de plus de  
six mois est infligé;



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5691-15

**STYLE OF CAUSE:** LEN VAN HEEST v THE MINISTER OF PUBLIC  
SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JUNE 15, 2016

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** JANUARY 12, 2017

**APPEARANCES:**

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