Federal Court  Cour fédérale

Date: 20180801

Docket: IMM-752-18

Citation: 2018 FC 810

Vancouver, British Columbia, August 1, 2018

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MEHDI SHABABY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr. Mehdi Shababy, seeks judicial review of the opinion of the Minister, made pursuant to paragraph 115(2)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA], that he is a danger to the public in Canada [impugned decision].

[2] The Minister may form the opinion that a Convention refugee constitutes a danger to the security of Canada. In such cases, the protected person or Convention refugee may be removed from Canada to the country from which they originally fled:

115 (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	115 (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.
(2) Subsection (1) does not apply in the case of a person	(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire :
(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada;	a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;

[3] The applicant arrived in Canada as a 23 year old Convention refugee in June, 2001. He received permanent resident status as a government sponsored refugee. He is now 40 years old, and has lived in Canada for nearly 17 years. His family remains in Iran and he has no family members in Canada. The Applicant has a lengthy and serious criminal history, including forty-four convictions ranging from robbery, assault, credit card fraud, theft (both under and over $5000) and multiple convictions of uttering threats. There is no dispute that the applicant is inadmissible to Canada for serious criminality.

[4] In deciding whether the protected person can be removed from Canada, the Minister must balance the risk the person faces and the danger to the Canadian public. Section 7 of the *Canadian Charter of Rights and Freedoms* [Charter] informs the analysis, as the balancing must take into account whether the person will likely face a risk to life, liberty or security of the person on removal. The Minister also considers humanitarian and compassionate factors (see *Clarke v Canada (MCI)*, 2012 FC 910, para 7).

[5] Based on the record, the Minister's Delegate [the Delegate] found that the applicant is a danger to the public. The Delegate also concluded that he would not face a risk to his life, liberty or security of the person if he is returned to Iran. Finally, in light of the applicant's very limited positive establishment in Canada, the Delegate concluded that humanitarian and compassionate considerations do not outweigh the danger he poses.

[6] The impugned decision is reviewable on the reasonableness standard (see *Nagalingamk v Canada (MCI)*, 2008 FCA 153, para 32).

[7] The applicant does not challenge the Delegate's weighing of humanitarian and compassionate factors, but submits that the Delegate erred in respect of the danger assessment and in considering the risk the applicant might face upon his return to Iran. The applicant no longer claims that the Delegate failed to consider the application of section 7 of the Charter. For the reasons mentioned below, the present attack against the reasonableness of the impugned decision must fail.

Danger to the public

[8] The applicant simply disagrees with the conclusion of danger to the public and the Delegate's assessment of the evidence on record. Contrary to the general reproach made by the applicant, the reasons provided by the Delegate in support of his conclusion are not cursory. The Delegate began reviewing the applicable international and domestic law, as well as the Applicant's above described criminal history. The Delegate concluded that the Applicant's prodigious and protracted criminal history, which spanned from 2003 to 2017 and includes some 45 convictions at the date of the impugned decision, rendered him "a danger to the public". It is not necessary to state here each and all offences for which the applicant was convicted except to note that four carried with them a punishment of up to 10 years of imprisonment, and another four were for uttering threats. The Delegate also noted in his decision that there is a lack of evidence of rehabilitation. The Delegate also took note of the applicant's counsel's argument that the convictions are on the "lower end of the scale", that the applicant was in the throes of drug addiction from 2002 to 2006 and there is no history of physical assaults on the public. However, the Delegate noted that the applicant did threaten to kill one of his victims, while he was carrying a knife, adding that "[t]his type of event would traumatise any reasonable person and may have caused long term effects." Furthermore, although theft and fraud-related offences are not necessarily violent, the Delegate noted that the criminal behavior from the perpetrators is dangerous, adding that "[t]heft and Identity theft cause an enormous amount of stress on the victims". The Delegate thus gave great weight to the number of convictions, as well as the fact that the applicant perpetrated those crimes for a period of 14 years, and the fact that the applicant had not presented a plan on how he would stay crime-free. The Delegate therefore concluded

that, on a balance of probabilities, the applicant represents a present and future danger to the Canadian public, whose presence in Canada poses an unacceptable risk.

[9] I agree with the respondent that the Delegate's analysis is not flawed and that his conclusion is supported by the evidence. In particular, the applicant argues that the Delegate erred, as he references a knife being present during one of the "uttered threats" convictions, considering that police occurrence reports that did not result in a conviction should not be taken into account. However, I find that it was reasonable for the Delegate to rely on the report for an account of the event leading to the conviction in the circumstances. The conviction for "breach of probation" arose as a result of the applicant possessing a weapon, being a knife, that same day. Given the conviction, breach of probation, for possessing a knife on the same day, it was reasonable for the Delegate to rely on the police report for a description of the event, and to conclude that the knife noted in the police report was used while uttering threats. Moreover, the wording of section 115 of the IRPA does not include limitations to only particular types of offences, while danger to the public may include physical or psychological danger, as well as financial danger (see *Arinze v Canada (Solicitor General)*, 2005 FC 1547 at para 22; *Ramanathan v Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 834 at paras 45 and 46). Therefore, I am satisfied that no reviewable error has been made by the Delegate in her evaluation of the evidence of danger to the public.

Risk upon return to Iran

[10] I am also satisfied that the Delegate duly considered whether the applicant would face a risk of persecution, risk to his life, or risk of torture or cruel and unusual treatment or punishment

if removed to Iran. The Delegate reviewed the circumstances that resulted in the applicant departing Iran, namely, that he was involved with communist activities in Iran and Turkey. The Delegate referenced counsel's emphasis on Iran's treatment of individuals that are viewed as opponents to the regime. The Delegate next conducted a comprehensive review of country condition evidence in Iran. The evidence provided that Iran's current President has more moderate views toward human rights reforms than previous regimes. The Delegate concluded that the applicant has been outside of Iran for over 16 years. He concluded there is insufficient evidence to find that he will be "ill-treated upon return if he were to return now".

[11] The applicant argues today that the Delegate ignored some of the country condition documents that supported the applicant's contention that he will be at risk upon return to Iran. However, a decision maker is not obligated to refer to every piece of evidence in their decision. In the case at bar, the Delegate examined country conditions in Iran and concluded that the human rights situation has improved under the current President, in place since 2013. Weighing evidence is within the Delegate's jurisdiction. The Delegate was not obligated to accept the applicant's preferred interpretation or weighing of the evidence. This is not a case where the Delegate has ignored contradictory evidence. I agree with the respondent that the Delegate reasonably concluded that the applicant faces "no more than a mere possibility of ill-treatment, given the passage of time, and his low level, short-term involvement in politics after his departure". This conclusion is supported by the evidence on record and by the most recent case law on the issue (see *Baladie v Canada (Minister of Citizenship and Immigration)*, 2018 FC 706 at paras 16 to 18 and 44 to 47).

[12] Overall, the Court finds that the impugned decision is reasonable. Accordingly, the application for judicial review is dismissed. There is no question of general importance raised in this proceeding.

JUDGMENT in IMM-752-18

THIS COURT'S JUDGMENT is that that the application for judicial review be dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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