

Federal Court



Cour fédérale

Date: 20190501

Docket: T-1267-18

Citation: 2019 FC 550

Ottawa, Ontario, May 1, 2019

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

HAMID ALAKOZAI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7, of a decision of the Royal Canadian Mounted Police [RCMP], dated June 4, 2018, denying his application for an Enhanced Reliability Status [ERS]. The RCMP reasonably found that the Applicant was associated with individuals who are potentially involved in criminal

activities and that the Applicant was untruthful during the screening process. Mr. Alakozai is self-represented.

[2] For the reasons that follow, the application for judicial review is dismissed.

II. Background

[3] The Applicant is a dual citizen of Canada and Afghanistan. The Applicant was born in Afghanistan, however, left his country in 1999 to come to Canada. The Applicant is currently established in Ottawa with his Afghan wife and their children, while most of his immediate family, including his brothers, reside in Afghanistan.

[4] The Applicant has a Master's Degree in Political Science and currently works at the Corps of Commissionaires since 2015. He holds a Secret security clearance within the Public Service and is seeking an upgrade to Top Secret.

[5] From 2011 to 2014, the Applicant has held important government posts in Kabul, Afghanistan, where he served Canada as a cultural and language advisor for various international law enforcement agencies. Specifically, since obtaining his security clearance, the Applicant has been employed by various departments and agencies, such as:

Policy Advisor in the Attorney General's Office;

Senior Legal and Parliament Affairs Advisor for the Vice Presidential Office.

[6] In September of 2015, the Applicant submitted an application to become a Regular Member of the RCMP which requires him to obtain a Top Secret security clearance to be employed at an RCMP facility.

[7] Pursuant to the Treasury Board of Canada's *Standard on Security Screening* [TBS Standard] governed under section 7 of the *Financial Administration Act*, RSC, 1985, c F-11, the RCMP commenced the security screening process to evaluate the Applicant's reliability. As part of his application for an ERS, the Applicant had to undergo a Pre-Employment Polygraph, as well as a security interview, to verify his identity, educational and professional credentials and honesty and loyalty. After compiling the results of his investigation in his Continuation Report dated November 27, 2017 to March 7, 2018, the RCMP's Risk Investigator raised some concerns with regards to the Applicant's representations on his social media accounts.

[8] It was found that the Applicant identified himself as the "Ambassador of Humanity", a "medical doctor", a "Senior Legal Advisor", an "International Independent Legal and Political Consultant", the "Leader of National Uprising Party of Afghanistan", and "the Next President of Afghanistan". The Risk Investigator found that the Applicant is actively present online through his YouTube videos, i.e. "Hamid Alakozai: The Afghanistan Pilgrimage for the year 2013", all of which could suggest that the Applicant holds political ties to Afghanistan that could create an apparent or potential conflict of interest.

[9] Next, the Risk Investigator found that the Applicant has over 2,000 friends on Facebook and that he might be associated online with individuals involved in extremist or terrorist entities.

[10] The Applicant attended a second interview on January 15, 2018, as per the Risk Investigator's decision to provide the Applicant an opportunity to address his concerns. The Applicant explained that the misrepresentations were a difference of language and interpretation between Afghanistan and Canada. The Applicant also told the Risk Investigator that his wife often uses his Facebook account and thus, she might have accepted friend requests inadvertently. The Applicant mentioned that he would make sure to remove any challenging contacts from his Facebook account.

[11] According to the Risk Investigator, the Applicant gave a plausible explanation. However, following his second interview, the Applicant had yet to delete his Facebook contact. A follow-up inquiry revealed that the Applicant now had a new contact among his Facebook friends whose profile also indicated that the individual may be involved in extremist activities. It was further found that the Applicant did not bring any corrections to the misrepresentations on his social media accounts. After considering the entirety of the Applicant's application, the Risk Investigator concluded that a denial was recommended because the Applicant demonstrated poor judgment.

[12] On April 16, 2018, the Risk Investigator sent a letter of Recommendation for Denial of ERS to the Director General from the Departmental Security Branch [Director]. The Risk Investigator based his decision to recommend the denial of the Applicant's ERS on a number of factors, namely:

1- His Afghan political ambitions do not appear to have been entirely satiated.

[...]

4- The number of inaccuracies/misrepresentations regarding his social media presence.

5- The indiscriminate acceptance of FB 'friends' supportive of or participants in violent extremism.

6- Despite the social media concerns identified to ALAKOZAI by the RCMP in points 4 & 5, very little, if any, remedial action has been taken, which represents poor judgement on his part.

(CTR, Letter of Recommendation for Denial of ERS, p 7)

III. Decision under Review

[13] On June 4, 2018, a letter from the RCMP was sent to the Applicant informing him that the Director denied his application for an ERS.

[14] The Director determined that the Applicant did not conform to the employment policies and practices of the RCMP in obtaining a reliability/security clearance. The Director indicated having some concerns about the Applicant's behaviours and activities that negatively impacted the necessary trust and reliability required of all RCMP employees. The alleged behaviours include:

- Association, affiliation or contact with individuals who have been involved in criminal activities; and
- Lack of honesty, providing evasive, misleading or false information during the security process.

IV. Preliminary Issue – Amendment of the Style of Cause

[15] The Respondent submits that the style of cause for the present application should be amended to name the Attorney General of Canada as the Respondent since the RCMP is not a legal entity (*Abi-Mansour v Canada (Attorney General)*, 2015 FC 882 at para 23). The Court agrees. The style of cause will be amended accordingly.

V. Preliminary Issue – Admissibility of new evidence

[16] It is trite law that judicial review applications can only be relied on evidence that was before the decision-maker. There are, however, exceptional circumstances to this general rule: (i) if the new evidence provides background information that would assist the Court; (ii) if the new evidence is relevant to address jurisdictional questions; (iii) or if the new evidence is introduced to support an alleged breach of procedural fairness (*McLaughlin v Canada (Attorney General)*, 2012 FC 556 at para 8).

[17] The Respondent argues that the Applicant's Record contains material that was not before the decision-maker. It is submitted that the additional documents form new evidence that should be disregarded by this Court as they do not fall under the limited exceptions mentioned above. The Respondent also argues that, notwithstanding that the exhibits do not fall within the exceptions, they are not determinative of the issue at hand. The Court agrees with the Respondent. In reviewing the exhibits identified by the Respondent, the Court finds that they do not relate to nor are they the basis for the decision of the Director. The Court will consider only those exhibits that were before the Director. In the Continuation Report, there was a reference to

reference letters and it was not clarified as to which reference letters are at issue. Nevertheless, the Court agrees that any reference letters are not determinative of the issue at hand. “The purpose of a judicial review application is not to determine whether the decision of a tribunal was correct in absolute terms but rather to determine whether its decision was correct on the basis of the record before it” (*Ochapowace First Nation v Canada (Attorney General)*, 2007 FC 920 at para 10).

VI. Issue

[18] After carefully reviewing both parties’ submissions, the Court finds that the main issue to be determined in the present matter is whether the decision to deny the Applicant’s application for an ERS is reasonable.

VII. Standard of Review

[19] The reasonableness standard applies to the decision to deny the Applicant a security clearance and a reliability status. Such decisions involve questions of mixed fact and law and are “discretionary in nature” (*Koulatchenko v Financial Transactions and Reports Analysis Centre of Canada*, 2014 FC 206 at para 30 [*Koulatchenko*]). Therefore, the Court must show deference to the Director’s conclusions if they fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

VIII. Analysis

[20] The application for judicial review is dismissed.

[21] The Applicant demonstrated through his written submissions and his oral arguments that he is a loyal Canadian citizen. The Respondent does not dispute the Applicant's loyalty to Canada. The Respondent, however, argues that this matter is about the trustworthiness of the Applicant.

[22] The decision to grant or deny a security status to an individual is discretionary in nature. The Court must show great deference to the Director's decision to deny the Applicant an ERS. In *Kampman v Canada (Treasury Board)*, [1996] 2 FC 798, at paragraph 12, Justice Marceau acknowledged that the question of reliability is one that is highly factual:

[...] a reliability assessment is the responsibility of the institution concerned and a so-called enhanced reliability status is essentially an attestation that, in the subjective opinion of the deputy head of the institution, a high degree of confidence or reliance may be placed on the individual involved.

[23] As submitted by the Respondent, the TBS Standard permits deputy heads of all departments, as well as departmental security officers, to ensure that each individual is properly security screened based on the three different levels of security screening for federal public service employees, namely Reliability status, Secret security clearance and Top Secret security clearance. Deputy heads have the discretion for determining their department's specific security screening requirements. Consequently, it is part of the RCMP officials' responsibilities to determine whether individuals who applied for a job within the RCMP are able to demonstrate

that they can be trusted within government, between government and Canadians, and between Canada and other countries.

[24] Pursuant to section 3.3 of the TBS Standard, when individuals apply for an ERS, they may undergo specific evaluations depending on their duties or position which involve or directly support security and intelligence functions. The security screening process leading to the decision of either granting or denying the Applicant his ERS was highly factual and the RCMP officials had to follow their own policy, considering that the Applicant applied to become a Regular Member within their department.

[25] The Court understands the Applicant's frustrations in his failed attempt of joining the RCMP as a Regular Member. The Applicant also made sure to express his feelings and his love for Canada in his written submissions and oral arguments. The Applicant also pointed out some inaccuracies in the record on matters such as dates of citizenship and dates of his employment, however, the Court finds that those inaccuracies did not form the basis of the Director's decision at issue.

[26] However, the main issue in the present matter is to determine whether it was reasonable for the Director to deny the Applicant's application for an ERS, considering the evidence before the decision-maker. The Court also notes that the Applicant was given a fair procedure throughout the entire security screening process, considering he had the opportunity to respond to the Risk Investigator's concerns (*Koulatchenko* at para 115). Following his second interview with the Risk Investigator, the Applicant also had the opportunity to repair his errors, which he

failed to do. Thus, the Applicant was unable to satisfy the RCMP that there was no reason to doubt his reliability or trustworthiness in dealing with sensitive information in the department.

[27] The Court finds that the Director had sufficiently strong evidence before him to conclude that the Applicant's ERS should be denied (*Thomson v Canada (Deputy Minister of Agriculture)*, [1992] 1 SCR 385). For these reasons, the Court concludes that the Director's decision is reasonable and falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

IX. Conclusion

[28] The application for judicial review is dismissed. There will be no order as to costs.

JUDGMENT in T-1267-18

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

There is no Order as to costs. The Style of Cause for the Respondent is amended to Attorney General of Canada.

“Paul Favel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1267-18

STYLE OF CAUSE: HAMID ALAKOZAI v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MARCH 6, 2019

JUDGMENT AND REASONS: FAVEL J.

DATED: MAY 1, 2019

APPEARANCES:

Hamid Alakozai

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Elsa Michel

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT