Federal Court  Cour fédérale

Date: 20210902

Docket: IMM-2205-20

Citation: 2021 FC 912

Vancouver, British Columbia, September 2, 2021

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

SAVIZ REZAIE

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review challenges a decision of the Immigration Appeal Division (IAD) upholding a removal order made earlier against the Applicant, Saviz Rezaie, by the Immigration Division (ID).

[2] Mr. Rezaie is an Iranian citizen who, along with his mother, acquired permanent residency status in Canada as a refugee in 1997. On September 26, 2019, the ID issued a removal

order against him based on a proven criminal history. Although Mr. Rezaie has only two convictions on his record – both for possession of narcotics for the purpose of trafficking – he has been the subject of other charges that appear to have been stayed. The index offence took place in 2010 and involved cocaine trafficking. A further trafficking charge was laid against him in 2013 but it was stayed based on prosecutorial delay. That charge did result, though, in a civil forfeiture of Mr. Rezaie's home and automobile. According to the Canada Border Services Agency [CBSA] section 44 report, the charges involved both Mr. Rezaie and his spouse.

[3] Mr. Rezaie did not challenge the legality of the ID's removal order before the IAD but he did unsuccessfully seek humanitarian relief. It is the refusal of that form of relief by the IAD that is the subject of this application.

[4] Mr. Rezaie contends that the IAD decision is unreasonable because it fails to account for his rehabilitation since his last criminal involvement and, in particular, the passage of seven years of lawful and productive behaviour. He also argues that the IAD failed to conduct an appropriate best interests of the child (BIOC) analysis concerning his relationship with his 15-year-old nephew.

[5] The Minister says that Mr. Rezaie's concerns amount to no more than an argument for the Court to reweigh the evidence - in particular, the IAD's evidentiary findings that Mr. Rezaie's testimony about rehabilitation and remorse lacked credibility and that he remained a high risk to reoffend.

[6] For the reasons that follow, I am dismissing this application.

[7] Although the parties agree the applicable standard of review of the issues raised by Mr. Rezaie is reasonableness, it is always helpful to explain what that means in practice. This begins with an appreciation for the scope of the IAD's authority when it hears an appeal from a removal order on humanitarian and compassionate grounds. In *Santiago v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 91, Chief Justice Crampton described that authority as follows:

> [27] Paragraph 67(1)(c) provides a mechanism for individuals to establish exceptional circumstances, based on H&C considerations, why they should be allowed to remain in Canada (*Khosa*, above, at para 57; *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, at para 90; *Iamkhong v Canada (Citizenship and Immigration)*, 2011 FC 355, at para 47; *Pervaiz v Canada (Citizenship and Immigration)*, 2014 FC 680, at para 40). To establish "exceptional" circumstances why they should be allowed to remain in Canada, individuals must demonstrate that their circumstances are exceptional, relative to other foreign nationals who seek to remain here after unsuccessful applications in that regard under other provisions of the IRPA (*Gonzalo v Canada (Citizenship and Immigration)*, 2015 FC 526, at paras 16–19).
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> [28] The IAD's ability to allow an appeal based on whether "sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case" contemplates a highly discretionary exercise that must be accorded significant deference *(Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 61; *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, at para 36; *Karshe v Canada (Citizenship and Immigration)*, 2015 FC 530, at para 22).

[8] When this Court examines an IAD decision to assess its reasonableness in the humanitarian and compassionate context, it does not require perfection. Rather, it asks whether

the decision bears the three hallmarks of reasonableness: justification, transparency and intelligibility and whether it is justified in relation to the factual and legal constraints that apply: see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99. Asserted flaws or shortcomings in a decision must be more than superficial or inconsequential. Instead, they must be sufficiently significant to render the decision unreasonable: *Vavilov* at para 100. If the line of analysis of the evidence as applied to the law could reasonably lead to the conclusion reached, it cannot be successfully impeached on judicial review: *Vavilov* at para 102. These are the considerations this Court must apply to the IAD decision in this case.

[9] Mr. Rezaie argues that the IAD failed to appropriately account for his good behaviour during the years following his last criminal activity. He says that when the IAD was considering whether he had been fully rehabilitated, it was required to give considerable weight to the absence of criminality after 2013. This history is said to be inconsistent with the IAD's conclusion that Mr. Rezaie was not fully rehabilitated and remained a high risk to reoffend.

[10] Mr. Rezaie's argument would carry greater weight but for the fact that the IAD's doubts about his rehabilitation were supported by an adverse assessment of his credibility. The IAD had a sound evidentiary foundation for rejecting Mr. Rezaie's expressions of contrition and responsibility. In this regard, it cited his testimony of supposed innocence to the charges that led to his conviction for the index offence. This unwillingness to take responsibility for his established criminal behaviour was a valid concern when measured against the CBSA section 44 report which described the event and the ultimate conviction as follows:

(1) Possession for the Purpose of Trafficking - Convicted and sentenced to 6 months jail

The subject was arrested for this matter by VPD on 25 April 2008 and charged [sic] were laid on 30 March 2009. VPD conducted surveillance on a commercial business that was believed to be selling narcotics. Little commercial traffic was observed but they did observe behaviour believed to be associated to drug trafficking and the VPD entered the premise. One male was working behind the front counter and Mr REZAIE was located in the rear storeroom. At the time VPD entered the storeroom REZAIE was counting cash at a table $1,010. Observed within reach of the subject was a baggie with 60 rocks of crack cocaine. A further search of REZAIE located $2165 cash in his wallet that did not contain a bank card or any ID. While the trafficking was believed to be part of a large criminal organization, evidence is not available at this time to support a 37 report.

During the trial REZAIE's common law partner Debra Eremenko testified on behalf of the defence. In his reasons for judgement, Mr Justice Schultes noted that the amount and location of the cash discovered were inconsistent with them being proceeds of the stores legitimate sales. Mr Rezaie stated that he was suffering from addiction and provided letters of support from his parents and common law partner. Mr Justice Schultes in his reason for sentence rejected a conditional sentence order and stated the following - that while the subject is unlikely to be deported he would have to go through the administrative process in order to determine his eligibility to remain in Canada.

-[25] that all cash seized by VPD would be forfeited to the crown $3175

-[28] "with respect to the circumstance of this offence, I would characterize it as possession for the purposes of a street-level crack cocaine trafficking operation that appears, in the context of the downtown eastside, to have been relatively extensive and lucrative.

-[31] In addition, I am also concerned that Mr Rezaie claims to have worked with his father's business for the last four years. This is a period that includes the date of the present offence. This causes me to question whether he was actually engaged in work with his father during the offence period and whether, if he was, the continuing availability of that work has any meaningful to the possibility of his future offending, given that it did not enable him to avoid committing the present offence."

> -[37] While, as the Crown counsel fairly pointed out in his submissions, rehabilitation still looms large for Mr REZAIE. I think that, on the information I have, denunciation and deterrence must be given greater weight. The only inferences that emerge on the evidence available to me at this point are that (1) Mr Rezaie did not learn anything from being allowed to serve his previous sentence in the community that enable him to avoid repeating the offence and (2) that the sentence imposed for the present offence must ensure that he clearly understands the absolute need to cease any future involvement in the drug trade.

[11] Added to the above was Mr. Rezaie's admission that at the time of his arrest he was actively involved in the drug trade. Needless to say, the IAD was troubled by Mr. Rezaie's refusal to accept full responsibility for his established culpability leading it to the following conclusion:

> [22] The Appellant continues to dispute some of the facts in each of the charges made against him. I will give two examples:
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> > a. The Appellant testified that he was not selling cocaine in 2005, and that the drug had just been handed to him by a friend when he was caught by police. This is at odds with his PR letter where he expressed remorse and was "scared straight";
> >
> > b. The Appellant testified that he was shocked to have been found guilty in 2010. He testified that he asked his lawyer to appeal but was advised that since he had already spent a month in jail, it was quicker to complete the time. This is at odds with his later testimony that he felt remorse for this charge.
>
> [23] The Appellant has expressed remorse about the poor choices he has made and that he associated with peers who were a bad influence on him. He was unable to credibly explain why he remains friends with many of them, other than to state that they were from his community and he could not remember what he said in testimony or in relation to his previous charges and convictions. He stated that he now felt "enough was enough" and he needed to change.

> [24] I find that the Appellant's testimony with regard to remorse is related to the potential consequence of his losing his PR status and not remorse for his actions; rather, the consequences being visited upon him.
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> [27] When considering the totality of the evidence, I find that the Appellant has taken limited positive steps towards rehabilitation and is a high risk to reoffend.
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> [28] I find that the Appellant's remorse, rehabilitation and risk of reoffence, is not a factor in favour of the granting of special or discretionary relief.

[12] I accept Mr. Rezaie's point that there was no evidence to support the IAD's finding that he remained friends with "many" of this former drug associates. The evidence was only that he maintained a relationship with one of them. This, however, is an inconsequential error that would have made no difference to the outcome of the appeal.

[13] It is also inaccurate to say that the IAD ignored Mr. Rezaie's asserted good behaviour after his last criminal involvement. That history is recorded at paragraphs 25 and 26 of the IAD decision. While Mr. Rezaie contends that these aspects of his life deserved more weight than they received, that alone is not a basis for judicial intervention. It was open to the IAD to find that while Mr. Rezaie had taken "limited positive steps towards rehabilitation", he remained a high risk to reoffend.

[14] Mr. Rezaie also argues that the IAD paid insufficient attention to the BIOC evidence, most notably to a letter of support written by his 15-year-old nephew. That letter, he notes, was not referred to anywhere in the IAD's reasons. Mr. Rezaie contends that this failure to consider the express wishes of his nephew displayed a lack of sensitivity to the needs of the child and runs

afoul of the requirements established in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61. This argument is unpersuasive.

[15] The IAD was appropriately mindful of the interests of Mr. Rezaie's nephew. It took note of the "strong bond" between the two of them, but also observed that Mr. Rezaie was not in a custodial relationship. The child has a large network of support within his extended family which would continue if Mr. Rezaie were removed from Canada. It was not an error for the IAD to note that there was limited evidence provided to demonstrate the likely impact of Mr. Rezaie's removal on his nephew.

[16] The fact that the nephew's brief letter of support expressed his love for Mr. Rezaie and noted his positive influences is, nevertheless, not particularly strong evidence in proof of the depth of the nephew's actual reliance on Mr. Rezaie. It was not a reviewable error for the IAD not to mention this letter in its reasons because those reasons fairly acknowledge the negative impact of Mr. Rezaie's removal on the child. The IAD accepted that the BIOC considerations, among others, favoured the granting of relief, but ultimately were insufficient to overcome the seriousness of Mr. Rezaie's criminal history, his limited remorse and rehabilitation, and the recidivism risk.

[17] In conclusion, the IAD decision reflects a reasonable balancing of the factors bearing on the exercise of its broad discretion and there is no legal basis to set it aside.

[18] This application is accordingly dismissed.

[19] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT IN IMM-2205-20

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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