

Federal Court



Cour fédérale

Date: 20220317

Docket: IMM-2395-20

Citation: 2022 FC 350

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 17, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

ANOUAR ET TALBI

Applicant

and

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

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Anouar ET Talbi is seeking judicial review of a decision by the delegate of the Minister of Public Safety and Emergency Preparedness [the Minister's Delegate], dated March 3, 2020, to exclude Mr. ET Talbi under section 228 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

[2] In her decision, the Minister's Delegate stated that she was satisfied, on a balance of probabilities, that Mr. ET Talbi is a foreign national who is inadmissible under section 41 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] for failing to meet the requirements under paragraph 20(1)(b) of the Act and section 8 of the Regulations.

[3] For the reasons set out below, the application for judicial review will be dismissed.

II. Background

[4] Mr. ET Talbi is a citizen of Morocco. On August 6, 2018, he obtained a multi-entry temporary resident visa (study) from Canadian authorities. On August 11, 2018, he obtained a study permit upon his arrival in Canada. He changed his program of study shortly after his arrival and obtained a new study permit reflecting that change. The new program of study required the student to complete an internship.

[5] From December 18, 2019, to February 15, 2020, Mr. ET Talbi completed his internship and on February 18, 2020, Mr. ET Talbi obtained a certificate of completion of his professional program of study. However, Mr. ET Talbi completed his internship without having first applied for and obtained the required work permit, when he knew that the work permit was compulsory.

[6] On March 3, 2020, while his passport, his multi-entry temporary resident visa and his study permit were still valid, Mr. ET Talbi left Canada, reported to American authorities and then immediately to Canada ("flag poling") to apply for a work permit in the "post-graduation" category. Mr. ET Talbi was then accompanied by Yassine Atmani, who was also applying for a

post-graduation work permit. The applications for judicial review of Mr. Atmani (IMM-2397-20) and Mr. ET Talbi (IMM-2395-20) were not consolidated, but they were heard together, and a separate decision was made in each of the cases.

[7] At the time of the assessment of his work permit application by an officer of the Canada Border Services Agency at the Lacolle port of entry [the Officer], Mr. ET Talbi confirmed to the Officer that he had completed his internship in Canada but that he did not hold the required work permit.

[8] On March 3, 2020, the Officer invoked paragraph 200(3)(e) of the Regulations and refused to issue a work permit to Mr. ET Talbi since he worked in Canada without authorization or permit. The Officer specifically noted that Mr. ET Talbi's last day of work was February 14, 2020, and that, as provided for in paragraph 200(3)(e) of the Regulations, a work permit could not be issued to Mr. ET Talbi until August 14, 2020.

[9] Also on March 3, 2020, after refusing to issue the work permit, the Officer issued a report pursuant to subsection 44(1) of the Act and designated Mr. ET Talbi a foreign national who is not authorized to enter Canada and is inadmissible under section 41 of the Act for failure to meet the requirements provided for in paragraph 20(1)(b) of the Act and section 8 of the Regulations. The Officer then recorded, among other things, that Mr. ET Talbi was refused a post-graduation work permit and that he sought to enter Canada as a worker without having first obtained a work permit.

[10] Also on March 3, 2020, the Minister's Delegate reviewed the report prepared by the Officer. She noted, among other things, that Mr. ET Talbi (1) has been refused the issuance of the work permit he applied for; (2) intends to work in Canada; (3) intends to settle in Canada; (4) does not have the financial resources to support himself in Canada without working; (5) does not take responsibility for his actions; and (6) admits to having known the statutory requirements in relation to the obligation to hold a work permit.

[11] The Minister's Delegate concluded that, on a balance of probabilities, the risk of Mr. ET Talbi returning to work illegally in Canada outweighed the evidence that he would comply with Canadian laws. The Minister's Delegate issued an exclusion order, without referring the report to the Immigration Division, invoking subparagraph 228(1)(c)(iii) of the Regulations and considering the finding of inadmissibility under section 41 of the Act for non-compliance with paragraph 20(1)(b) of the Act and section 8 of the Regulations.

III. Positions of the parties

[12] Mr. ET Talbi does not challenge the Officer's decision to refuse to issue his work permit, based on paragraph 200(3)(e) of the Regulations. He only challenges the decision of the Minister's Delegate to issue an exclusion order against him.

[13] Mr. ET Talbi argues that the Minister's Delegate's decision is unreasonable because (1) she based her reasoning solely on Mr. ET Talbi's past conduct and not on his future plans, which is contrary to the teachings of the case law (*Cox v Canada (Citizenship and Immigration Canada)*, 2019 FC 1414; (2) the fact that Mr. ET Talbi left the country wipes out his non-

compliance with the Act and Regulations (Citizenship and Immigration Canada Manual; *Paranych v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 158; and (3) she had no authority to issue an exclusion order (*Yang v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 158).

[14] The Minister responds that the decision is reasonable because

(1) subparagraph 200(3)(e)(i) of the Regulations stipulates that an officer shall not issue a work permit to a foreign national if the foreign national has engaged in unauthorized work in Canada unless a period of six months has elapsed; (2) Mr. ET Talbi's application for a work permit was refused and said refusal is not challenged; (3) the elements that the Minister's Delegate considered take into account not only Mr. ET Talbi's past conduct, but also the present and future, ultimately the risk that he will work illegally in Canada in the future; (4) Mr. ET Talbi's factual situation is distinguishable from those in the case law he relies upon; and (5) the Minister's Delegate has full jurisdiction to issue the exclusion order under subparagraph 228(1)(c)(iii) of the Regulations.

IV. Decision

[15] I agree with the parties that the Minister's Delegate's decision must be reviewed on a reasonableness standard. On this standard of review, the burden is on the applicant to show that the Minister's Delegate's decision is unreasonable. A reasonable decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and is justified in relation to the relevant factual and legal constraints that bear on the decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[16] I note at the outset that the facts of this case differ from those set out in the case law cited by Mr. ET Talbi because in this case, the inadmissibility does not stem from the fact that Mr. ET Talbi engaged in unauthorized work in Canada. The fact that Mr. ET Talbi engaged in unauthorized work was, rather, sanctioned by the refusal to issue him a work permit, pursuant to subparagraph 200(3)(e)(i) of the Regulations, which provides that an officer shall not issue a work permit to a foreign national if the foreign national has engaged in unauthorized work in Canada unless a period of six months has elapsed since the cessation of the unauthorized work. As mentioned earlier, Mr. ET Talbi does not challenge the decision to refuse the work permit.

[17] The finding of inadmissibility against Mr. ET Talbi under section 41 of the Act was based not on the fact that he engaged in unauthorized work in Canada in the past, but rather on the fact that he wanted to enter Canada to work, when his application for a work permit was refused and he therefore clearly did not have the documents required by the Act.

[18] Mr. Et Talbi has not persuaded me that it is unreasonable for the Minister's Delegate to confirm that this amounted to non-compliance under section 41 of the Act, as it was a breach of the requirements provided for in paragraph 20(1)(b) of the Act and section 8 of the Regulations.

[19] First, paragraph 20(1)(b) of the Act provides, under the obligation on entry, that every foreign national who seeks to enter or remain in Canada must establish, to become a temporary resident, that they hold the visa or other document required under the regulations. Since his application for a work permit was refused, Mr. ET Talbi could not prove that he had the required documents to work in Canada.

[20] Second, section 8 of the Regulations, in a division dedicated to documents required before entry into Canada, provides that a foreign national may not enter Canada to work without first obtaining a work permit. Once again, Mr. ET Talbi did not obtain the work permit he was seeking. It is reasonable to conclude that, after this refusal, he was seeking to enter Canada to work without having first obtained a work permit.

[21] The notes to file further confirm that the Minister's Delegate did not issue the exclusion order against Mr. ET Talbi because he engaged in unauthorized work in Canada in the past. The notes confirm that the Minister's Delegate was not satisfied that Mr. ET Talbi would not work illegally in Canada in the future.

[22] A review of the file reveals that the Minister's Delegate considered, among other things, that Mr. ET Talbi had already worked illegally in Canada. This review reveals that the Minister's Delegate considered, however, that Mr. ET Talbi's application for a work permit had just been refused, that he wished to work and establish himself in Canada, that he did not have the means to support himself in Canada without working, and she concluded that it was therefore more likely than not that he would work illegally in the future.

[23] Finally, subparagraph 228(1)(b)(iii) of the Regulations clearly provides that the Minister's Delegate has the power to issue an exclusion order without referring the report to the Immigration Division in the circumstances.

[24] The Minister's Delegate's decision is coherent, intelligible and transparent and is justified in relation to the evidence in the record and the plain language of the relevant legislation and regulations.

JUDGMENT in IMM-2395-20

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. No question is certified.

“Martine St-Louis”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2395-20

STYLE OF CAUSE: ANOUAR ET TALBI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC, BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 9, 2022

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: MARCH 17, 2022

APPEARANCES:

Benoit Bessette FOR THE APPLICANT

Zoe Richard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cabinet Hugues Langlais, Ad. E. FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec