

Federal Court



Cour fédérale

Date: 20221027

Docket: IMM-7934-21

Citation: 2022 FC 1482

Ottawa, Ontario, October 27, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

ARSHDEEP SINGH HUNDAL

Applicant

and

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

Respondent

JUDGMENT AND REASONS

[1] The applicant, Arshdeep Singh Hundal, brings this application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Hundal is a foreign national who entered Canada in November 2014 on a study permit. On August 17, 2021, he was convicted of operating a vehicle with excessive alcohol in his blood, contrary to paragraph 320.14(1)(b) of the *Criminal Code*, RSC 1985, c C-46. On August 20, 2021 a CBSA officer wrote a report to the Minister pursuant to section 44(1) of the

IRPA (44(1) Report), stating that in the officer's opinion, Mr. Hundal was inadmissible to Canada under *IRPA* paragraph 36(1)(a). Following an interview on October 20, 2021, another CBSA officer acting as Minister's delegate (Delegate) found Mr. Hundal to be inadmissible and issued a removal order under section 44(2) of the *IRPA*.

[3] Mr. Hundal alleges he was denied procedural fairness, as he was not afforded an opportunity to make submissions and he was not asked appropriate questions during the section 44 proceedings that led to the removal order.

[4] Whether the duty of fairness was met in Mr. Hundal's case is a question that is considered on a standard akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. The reviewing court must determine whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54. Procedural fairness requirements are "eminently variable", inherently flexible, and context-specific (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 77, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paragraphs 22-23, among other cases) and Mr. Hundal bears the onus of demonstrating they were not met (*Lopez Santos v Canada (Citizenship and Immigration)*, 2021 FC 1281 at paragraph 38).

[5] Mr. Hundal submits that all officers who are involved in administration and enforcement of the *IRPA* owe a duty of procedural fairness. According to the manual titled *ENF 5 Writing 44(1) Reports*, the duty of procedural fairness includes an individual's rights to know the case to

be met and to have an opportunity to present evidence relevant to the case. Mr. Hundal submits that his section 44 proceedings unfolded in a mechanical way, without affording him the opportunity to make submissions on why the 44(1) Report should not have been written or why the removal order should not have been issued. He states the 44(1) Report was written without input from him, he did not receive a procedural fairness letter, and the Delegate did not ask appropriate questions at the interview. For example, he was not asked for an explanation and he was not asked whether he wished to apply for an exemption or for permission to remain in Canada, which shows that the Delegate did not even think of exercising her discretion.

[6] The respondent submits the duty of procedural fairness owed to a foreign national in section 44 proceedings is at the low end of the spectrum, and the duty was met in this case. Mr. Hundal received ample notice, in multiple ways:

- he signed the 44(1) Report, which sets out the basis for the officer's opinion;
- he received a call-in notice that was mailed over a month before his interview scheduled for October 20, 2021, and the notice stated he should bring any documents concerning criminal matters to the interview;
- the call-in notice attached a notice stating that the purpose of the interview was to determine whether a removal order should be issued against him, and attached the 44(1) Report setting out the allegations against him.

[7] The respondent states there is no indication that Mr. Hundal did not understand the purpose of the interview or the allegations against him. Mr. Hundal retained an immigration consultant to assist him and he attended a nearly hour-long interview before the Delegate, with

his chosen immigration consultant. He was given an opportunity to ask questions, and he made brief submissions to the Delegate. In the context of the very limited discretion afforded to her, the Delegate addressed all the necessary concerns to render the process procedurally fair to Mr. Hundal, namely: (i) the nature and intent of the proceedings were explained to him; (ii) the 44(1) Report was read out verbatim; (iii) Mr. Hundal fully agreed with the evidence and contents of the 44(1) Report; he did not have any questions about it or anything to add; (iv) Mr. Hundal was afforded the opportunity to make, and did make, submissions regarding whether there was any reason he could not return to his country of origin, and he was afforded an opportunity to ask additional questions, which he declined.

[8] I agree with the respondent's submissions. The duty of fairness in section 44 proceedings is "clearly not at the high end of the spectrum": *Sharma v Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FCA 319 at para 29. Officers and Minister's delegates are effectively "on a fact-finding mission", with little discretion when the facts dictate the remedy: *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126 at paras 35-40 [*Cha*].

[9] In this case, Mr. Hundal was given sufficient notice of the interview with the Delegate, he was informed of the purpose of the interview, and he was invited to bring any documents or evidence concerning his conviction. Mr. Hundal had the opportunity to retain a representative and he attended the interview with his chosen representative. He was afforded sufficient opportunity to make submissions that were relevant to the exercise of the Delegate's limited discretion.

[10] As the respondent notes, although the inadmissibility provisions of the *IRPA* cast a wide net, Mr. Hundal is not without other remedies: *Cha* at para 40.

[11] For the reasons above, Mr. Hundal has not established he was denied procedural fairness. Accordingly, the application for judicial review is dismissed.

[12] Neither party proposed a question for certification. In my view there is no question to certify.

JUDGMENT in IMM-7934-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7934-21

STYLE OF CAUSE: ARSHDEEP SINGH HUNDAL v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 5, 2022

JUDGMENT AND REASONS: PALLOTTA J.

DATED: OCTOBER 27, 2022

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