

Federal Court



Cour fédérale

Date: 20230918

Docket: IMM-6209-22

Citation: 2023 FC 1251

Ottawa, Ontario, September 18, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

DEAN DALY

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Dean Daly, is 46 years old. He has lived in Canada continuously since he was approximately a year old. Mr. Daly is facing potential removal to Jamaica, the only country in which he holds citizenship. He has not returned to Jamaica since he arrived in Canada as an infant.

[2] Mr. Daly sought refugee protection through an application for a Pre-Removal Risk Assessment (“PRRA”) because he believes he is at risk if deported to Jamaica. A Senior

Immigration Officer refused Mr. Daly's PRRA and it is this decision that Mr. Daly is challenging on judicial review.

[3] Mr. Daly raises a number of arguments on judicial review. The determinative issue is the Officer's analysis of Mr. Daly's risk in prisons in Jamaica. The Officer gives this issue "minimal weight" because of the state's efforts at addressing the human rights violations facing those with mental illnesses and addiction issues in prisons. As I will explain below, the Officer's reasoning on this key issue lacks coherence and ultimately leaves me with little confidence in the decision.

[4] Based on the reasons below, I will grant the judicial review.

II. Immigration History in Canada

[5] Mr. Daly was born in Jamaica and came to Canada when he was approximately one year old. He believes that he came to Canada on some sort of temporary status that then expired. There is no indication that he has ever had permanent status in Canada. For almost all of his adult life, Mr. Daly has been homeless and struggled with an addiction to crack cocaine. Mr. Daly is not in contact with any family members in Jamaica.

[6] Mr. Daly was convicted of several serious criminal offences. It does not appear that immigration authorities had interactions with Mr. Daly until approximately three years ago. At that time, Mr. Daly was found to be inadmissible to Canada on the basis of serious criminality under subsections 36(1)(a) and 36(2)(a) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. Mr. Daly submitted a PRRA in February 2021. This application was initially

refused in May 2021 but was then sent back for reconsideration. Further submissions and evidence were filed at this stage. The PRRA was refused in June 2022. It is this decision that is being challenged on judicial review.

III. Issue and Standard of Review

[7] The sole issue relates to the merits of the Officer's analysis on the risk Mr. Daly faces in Jamaica's prisons. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits (*Vavilov* at para 16). There is no reason to depart from this presumption here.

IV. Risk in Jamaica's Prison System

[8] Mr. Daly argued that he is at risk in Jamaica because of a combination of factors, including that he is: returning to Jamaica as a deportee, homeless, without family, living with a mental illness and an addiction to drugs. The Officer did not raise concerns with Mr. Daly's view that because of these factors, he would likely end up in Jamaica's prison system.

[9] The Officer evaluated the evidence on the risk in prisons, particularly for those with mental illnesses. The Officer cited from the United States Department of State report, noting the harsh, life threatening conditions in prisons:

Conditions in prisons and detention facilities were harsh and life threatening due to gross overcrowding, physical abuse, limited food, poor sanitary conditions, inadequate medical care, and poor administration. Prisoners with mental disabilities and children in juvenile correctional facilities represented the most vulnerable populations facing harsh conditions.

[10] The Officer states that they accept that the conditions are “generally poor” in prisons but finds this is “mitigated” because according to the Government of Jamaica: ‘research has been conducted and alternatives to incarceration are being sought for, “... persons primarily with substance use and /or psychiatric disorders.’” Based on this vague statement about research being conducted and alternatives being sought, the Officer concludes, “state authorities are aware of the issues faced by the mentally ill and those with substance abuse issues within the prison populace and are proactive in making changes.” The Officer finds on this basis that the risk the Applicant could face in prison is therefore to be given “minimal weight.”

[11] This is the totality of the analysis on this key issue. In light of the serious consequences of the decision, there is a heightened obligation on an officer to provide responsive reasons that justify their decision to an applicant (*Vavilov* at para 133). Given the Officer’s findings on the nature of the human rights violations in prisons, including “life threatening” conditions, particularly for those who have the same profile as Mr. Daly, the Officer’s conclusion that this factor should be given “minimal weight” because of the authorities are “aware of the problem” lacks coherence; it does not “add up” (*Vavilov* at para 104).

V. Disposition

[12] The application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The matter is sent back to be redetermined by a different decision-maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6209-22

STYLE OF CAUSE: DEAN DALY v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: SADREHASHEMI J.

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