Federal Court  Cour fédérale

Date: 20240524

Docket: IMM-8437-21

Citation: 2024 FC 796

Ottawa, Ontario, May 24, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

THILAK RUBAN THIRUNAVUKKARASU

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Thilak Ruban Thirunavukkarasu, seeks judicial review of a decision of a delegate (the "Delegate") of the Minister of Public Safety and Emergency Preparedness ("Minister") officer dated October 29, 2021, referring the Applicant for an admissibility hearing under section 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant had been found to be inadmissible pursuant to section 36(1)(a) of the *IRPA,* and the Delegate was not satisfied that humanitarian and compassionate ("H&C") factors outweighed the aggravating factors, thus referring the Applicant for admissibility hearing.

[3] The Applicant submits that the Delegate's H&C analysis was flawed such that the decision as a whole is unreasonable.

[4] For the following reasons, I find that the decision is reasonable. This application for judicial review is dismissed.

II. **Analysis**

A. *Background*

[5] The Applicant is a 31-year-old citizen of Sri Lanka. In 2005, he entered Canada as a permanent resident.

[6] In 2019, the Applicant was driving a car whilst under the influence of alcohol and collided with another vehicle. The passenger in his car as well as the individual in the other vehicle suffered significant injuries. In March 2021, he was convicted of two counts of operating causing bodily harm and was sentenced to 15 months' imprisonment (concurrent), 18 months' probation, a two-year driving prohibition, and a fine of $200.

[7] In April 2021, the Applicant was reported as inadmissible to Canada for this conviction.

[8] In a decision dated October 19, 2021, an officer of Canada Border Services Agency (the "Officer") recommended that the Applicant be referred for an admissibility hearing.

[9] The Officer acknowledged evidence of the Applicant's establishment in Canada, including his work experience, assets, volunteerism, family, letters of support, and plans in Canada, including his desire to be a good husband and son. The Officer further acknowledged evidence of how removal would affect the Applicant, including the effect on his family and on his mental health if returned to Sri Lanka, as well as evidence that his brother-in-law had been kidnapped in Sri Lanka in 2011, with the Applicant travelling there at that time to support his sister. On rehabilitation, the Officer acknowledged evidence of the Applicant's remorse, the steps taken to reduce his alcohol intake, and the courses and work he had completed.

[10] The Officer nonetheless acknowledged the seriousness of the Applicant's crime and the serious injury to others that it caused. The Officer found it would be premature to find the Applicant had been rehabilitated, and further found that there was insufficient evidence that the Applicant could not re-establish himself in Sri Lanka, and was not satisfied that the Applicant would be separated from his family on a permanent basis. The Officer found the evidence was insufficient to establish that the Applicant could not support his wife from Sri Lanka and that there would be no other options for support for his mother in Canada.

[11] For these reasons, the Officer concluded that a warning letter was not appropriate and thus recommended the Applicant be referred for an admissibility hearing under section 44(1) of the *IRPA*.

[12] In a decision dated October 29, 2021, the Delegate agreed with the Officer and referred the report under section 44(2) of the *IRPA* for an admissibility hearing.

B. *Issue and Standard of Review*

[13] This application for judicial review raises the sole issue of whether the Delegate's decision is reasonable.

[14] The standard of review on the merits of the decision is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[15] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[16] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing

evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

C. *The decision is reasonable*

[17] The Applicant submits that the Delegate's decision regarding his H&C circumstances is unintelligible and unjustified, and made without reference to his H&C submissions. The Applicant further submits that the doctrine of legitimate expectations was breached by this failure to consider the H&C submissions.

[18] The Respondent submits that the decision is reasonable, the Applicant failing to consider that the Officer's report forms part of the Delegate's decision. The Respondent further submits that delegates do not have any discretion to not write a report based upon the individual's personal circumstances, and that in any event, the remedy the Applicant seeks is futile. Additionally, the Respondent submits that the Applicant's submissions regarding the doctrine of legitimate expectations are meritless and that alternative remedies are available to the Applicant.

[19] I agree with the Respondent. On judicial review, the Officer's report forms part of the Delegate's reasons (*McLeish v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 705 ("*McLeish*") at para 37, citing *Burton v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 753 at para 16). Here, the Applicant does not refer to the Officer's report other than conceding, at the hearing, that it was "thorough." In my view and with respect, the Applicant does not account for *McLeish*. The Applicant's submissions focussing upon the

Delegate's decision fails to point to any feature of the Officer's decision that would warrant review, and he has thus failed to discharge his onus to establish unreasonableness (*Vavilov* at para 100).

[20] I further agree with the Respondent that the doctrine of legitimate expectations has no bearing on this matter. The Applicant submits "that in this case legitimate expectations were that the humanitarian considerations would be considered." Having found that these considerations were present in the Officer's reasons, this argument is meritless.

[21] I note, however, that the Respondent's arguments regarding the lack of discretion to consider personal circumstances must fail (see *Dass v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 624 ("*Dass*")).

III. **Conclusion**

[22] This application for judicial review is dismissed. The Applicant has failed to establish that the Delegate's decision is unreasonable. The Applicant proposes the following question for certification:

> "If there is a promise by the Minister's Delegate acting under s.44 IRPA to consider all the circumstances of the case before a section 44 IRPA report is referred to the Immigration Division, such that there is a legitimate expectation, are the reasons of the Minister's Delegate reviewable to the extent that the Minister's Delegate is considering factors that have been held to be beyond its jurisdiction (see *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151) and *Sidhu v. Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1681 (CanLII), at para 60 [hyperlink omitted])?"

[23] Questions for certification must be serious, dispositive of the appeal, and must transcend the parties' interests (*Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 ("*Obazughanmwen*") at para 28). The question must "have been raised and dealt with by" this Court, and must arise from the case itself, rather than the reasons provided by the Court (*Obazughanmwen* at para 28). Additionally, a question will not be certified if it has been "previously settled by the decided case law" (*Obazughanmwen* at para 28, citing *Liyanagamage v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 1637 (QL) at para 4, *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at para 36, *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras 36, 39).

[24] As noted, the Officer considered the Applicant's personal circumstances, this consideration forming part of the Delegate's decision (*McLeish* at para 37). I further agree with the Respondent that this question collapses the distinction between procedure and substance, with the Applicant instead asking a question about the nature of reviewing the Delegate's decision. As seen from this decision, the Delegate's reasons are subject to reasonableness review under *Vavilov* (see also *Dass* at paras 51-53). The answer to the proposed question for certification would therefore not be dispositive of any appeal of this matter. No certifiable question arises.

JUDGMENT in IMM-8437-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8437-21
STYLE OF CAUSE:	THILAK RUBAN THIRUNAVUKKARASU v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

Michael Crane	FOR THE APPLICANT
Gregory George	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Crane Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT