Date: 20080125

Docket: IMM-2287-07

Citation: 2008 FC 101

Ottawa, Ontario, January 25, 2008

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

PAVEL KRAVCHOV

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Be he Mark Vaisman or be he Pavel Kravchov; be he born in 1965 or in 1967; be he from Azerbaijan or from Armenia; the Immigration and Refugee Board determined in 1994 that he was a refugee within the meaning of the United Nations Convention.

[2] Since then, he has run up some 26 criminal convictions. They set in motion a process which might ultimately lead to his deportation. It began with an officer preparing a report to the Minister pursuant to section 44 of the *Immigration and Refugee Protection Act* (IRPA) in which the opinion was voiced that Mr. Kravchov is inadmissible. The Minister, being of the opinion that the report was well-founded, referred it to the Immigration Division of the Immigration and Refugee Board

for an admissibility hearing. At that hearing he was found inadmissible on the grounds of serious criminality as set out in section 36 of IRPA and ordered deported. Serious criminality includes being convicted in Canada of an offence punishable by a maximum term of imprisonment of at least ten years, as is the case here.

[3] Fortunately for Mr. Kravchov, he was never punished by a term of imprisonment of at least two years, and so was able to appeal to the Immigration Appeal Division (IRPA, s. 64, s. 67). The Member of the Immigration Appeal Division who heard his appeal dismissed it. This is a judicial review thereof.

BACKGROUND

[4] In his personal information form (PIF) delivered to the Board in 1993, he said his name was Mark Vaisman, born in 1967, a citizen of the U.S.S.R. at birth and at that time a citizen of Azerbaijan. The form also noted that he used the name Pavel Kravchov. Indeed, the tribunal record indicates that he usually goes by that name; although he has used other names as well. More recently he claims also to be a citizen of Armenia. Although this may be attributable to the fact that he was born in Najorno-Karabkh (a region of considerable contention and tension between Azerbaijan and Armenia). He attributes his inability to obtain proper identification papers and thus to have applied in the past to become a Canadian permanent resident to this tension.

[5] He says that for some years after his arrival in Canada he worked but was always paid in cash. He then learned he had Hepatitis B and C and turned to a life of crime in order to fund his

treatment. However, there is no evidence in the record that he has Hepatitis B and C, that our health care system would not respond or that he ever received treatment, including when he was in prison.

[6] His criminal activities include organized auto theft, leasing automobiles with fraudulent documents to resell or send them overseas. He was in possession of forged instruments including Immigration and Citizenship Canada stamps and seals.

[7] He was last convicted in 2005. He was in pre-sentence custody for 15 months and then received a suspended sentence with three years probation. He says that he has repented. He first met a woman in 2002 and, after coming out of jail in 2005, obtained a job with her help and has moved in with her. He has been respecting his probation conditions and provided a psychological assessment.

THE DECISION UNDER REVIEW

[8] Mr. Kravchov did not contest that he had been convicted of serious crimes and did not seek that the deportation order be quashed. Rather he asked that its enforcement be stayed on conditions such as keeping the peace and avoiding criminal elements.

[9] The Board carried an analysis pursuant to section 67(1) (c) of IRPA which provides:

67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,	**67.** (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :
[…]	[…]

(*c*) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	*c*) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

[10] Mr Kravchov has no children and apparently no family left in Azerbaijan. He does have a romantic relationship here.

[11] The Member set out the non-exhaustive H&C criteria identified in *Ribic v. Canada (Minister of Employment and Immigration)* (T84-9623), [1985] I.A.B.D. No.4, approved by the Supreme Court in *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84. They are:

a) the seriousness of the offences leading to the deportation;

b) the possibility of rehabilitation;

c) the length of time spent in Canada and the degree to which the appellant is established here;

d) family in Canada and the dislocation that deportation of the appellant would cause to that family;

e) the support available for the appellant not only within the family but also within the community;

f) the degree of hardship that would be caused to the appellant by returning to his country of nationality.

[12] The Member was of the view that the offences were very serious because of their organized and repetitive aspects, and because they victimized many individuals and organizations. He had no difficulty changing his identity when it suited him, indicative of criminal sophistication.

[13] A psychological assessment concluded that Mr. Kravchov is suffering from a major depressive episode and from panic disorder from his past ordeals, his problems with the law and his ongoing immigration worries. However, the Member was of the opinion that because of Mr. Kravchov's lack of credibility, probative value could not be given to the psychological assessment which was based "…solely on what the appellant has told him". This was not quite accurate as he had also been subjected to testing. His lack of forthrightness with respect to his medical condition was also a negative factor.

[14] The Member was of the view that he had minimal establishment in Canada, and only first filed a tax return for 2006. The fact that he began to live with a woman, whom he calls his common-law wife, in February 2006, did not constitute a sufficient ground to grant a stay.

[15] In terms of the degree of hardship that would be caused if he were returned to his country of nationality, doubt was continuously expressed as to who he really is, and where he is from, as he has an expertise in creating or obtaining fraudulent documents.

STANDARD OF REVIEW

[16] The overall standard of review in humanitarian and compassionate situations is that of reasonableness *simpliciter* (*Baker v. Canada (Minister of Citizenship and Immigration*), [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39. The Federal Court of Appeal recently applied that standard in this particular context (*Khosa v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 24, [2007] 4 F.C.R. 332). A decision to grant a stay is discretionary. Although there can only be one correct decision, there may be more than one reasonable decision, and so the Member is owed deference.

MR. KRAVCHOV'S SUBMISSIONS

[17] Mr. Kravchov alleges breach of procedural fairness, errors in law and in fact. On the procedural fairness point he complains that the Member permitted documents to be introduced as evidence without sufficient notice.

[18] The error in law is that the Member referred to two criminal charges which were withdrawn. The Member should not have taken those charges into consideration.

[19] As to findings of fact, Mr. Kravchov submitted that it was patently unreasonable for the Member to question is identity and his inability to obtain documentation from Azerbaijanian authorities. The dismissal of the psychologist's report was unjustified. There was other relevant evidence which was ignored, such as that of his common-law wife that he is now toeing the line.

ANALYSIS

[20] Having reviewed the record, and the submissions of counsel, I have come to the conclusion that procedural fairness is not in issue, and no error in law was made and that the decision was not unreasonable. A reasonable decision is one that can stand up to a somewhat probing examination (*Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, [1996] S.C.J. No. 116 at paragraph 56 and 57). Mr. Justice Iacobucci went on to say at paragraph 80:

> I wish to observe, by way of concluding my discussion of this issue, that a reviewer, and even one who has embarked upon review on a standard of reasonableness *simpliciter*, will often be tempted to find some way to intervene when the reviewer him- or herself would have come to a conclusion opposite to the tribunal's. Appellate courts must resist such temptations. My statement that I might not have come to the same conclusion as the Tribunal should not be taken as an invitation to appellate courts to intervene in cases such as this one but rather as a caution against such intervention and a call for restraint. Judicial restraint is needed if a cohesive, rational, and, I believe, sensible system of judicial review is to be fashioned.

[21] In my opinion such blemishes as there may have been in the reasons for the decision were taken out of context. I am mindful of what Mr. Justice Joyal said in *Miranda v. Canada (Minister of Employment and Immigration)*, 63 F.T.R. 81 (Fed. T.D.), [1993] F.C.J. No. 437:

> It is true that artful pleaders can find any number of errors when dealing with decisions of administrative tribunals. Yet we must always remind ourselves of what the Supreme Court of Canada said on a criminal appeal where the grounds for appeal were some 12 errors in the judge's charge to the jury. In rendering judgment, the Court stated that it had found 18 errors in the judge's charge, but that in the absence of any miscarriage of justice, the appeal could not succeed.
>
> This is the point I am trying to establish here. One may look at the decision of the Board, then one may balance it off against the evidence found in the transcript and the evidence of the

> claimant himself in trying to justify his objective as well as subjective fears of persecution.
>
> On the basis of that analysis, I find that the conclusions reached by the Refugee Board are well-founded on the evidence. There can always be conflict on the evidence. There is always the possibility of an opposite decision from a differently constituted Board. Anyone might have reached a different conclusion. Different conclusions may often be reached if one perhaps subscribes to different value systems. But in spite of counsel for the applicant's thorough exposition, I have failed to grasp forcefully the kind of error in the Board's decision which would justify my intervention. The Board's decision, in my view, is fully consistent with the evidence.

[22] As to procedural unfairness, the rules require that documents proposed to be entered as exhibits be disclosed at least 20 days before the hearing. In this case, a list of Mr. Kravchov's criminal record was disclosed within time, but some of the police reports were only presented the Friday afternoon before the Monday hearing. As master of its procedure, the Tribunal has discretion to allow in documents on short notice.

[23] The essence of the complaint is that during the Monday hearing Mr. Kravchov's counsel was only allowed a further a 20-minute postponement. However given that the documents had been provided three days earlier, that they were merely supplemental to what had already been disclosed, and that Mr. Kravchov's counsel examined in chief and led him through his criminal past, late disclosure does not serve as a ground for judicial review. Furthermore, counsel did not ask to file post-hearing commentary on these documents. Mr. Kravchov was not denied a fair hearing. Cases such as *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, [1985] S.C.J. No. 78, and

C.U.P.E. v. Ontario (Minister of Labour), 2003 SCC 29, [2003] 1 S.C.R. 539 have no application.

[24] As to reference to the withdrawn charges, if they were material to the decision, then they would be cause for concern (*Bertold v. Canada (Minister of Citizenship and Immigration),* [1999] F.C.J. No. 1492, 175 F.T.R. 195, at paragraph 49 and *Bakchiev v. Canada (Minister of Citizenship and Immigration,* [2000] F.C.J. No. 1881, 196 F.T.R. 306, and *Veerasingam v. Canada (Minister of Citizenship and Immigration,* 2004 FC 1661, [2004] F.C.J. No. 2014). The shoplifting incident, however, was relevant in questioning Mr. Kravchov's identity. He says that he gave that name to the police officers who apprehended him rather than his real name, Mark Vaisman. The concealed weapons charge was simply part of Mr. Kravchov's history. With 26 convictions and the Member's analysis limited to fraud related charges, it cannot possibly be said that the recital of these incidents entitle Mr. Kravchov to a new hearing.

[25] The Member did not ignore the psychologist report or the girlfriend's testimony. Rather she gave little weight to them. It was her duty to determine whether or not Mr. Kravchov was credible, not the psychologist's, and not the girlfriend's. Despite his claim to have accepted responsibility for his actions and his claim that he has reformed, she was entitled to form the view that he was still weaving a web of deceit. For instance, she found that notwithstanding that he has been here since 1993, he only filed one tax return, and that for the year 2006, after he realized he was at risk of being deported. He said that he had not filed earlier returns because he had always been paid in

cash. When told that one is obliged to file returns whether one has paid in cash or not, he quickly changed his story and said he had indeed filed three or four tax returns in the past.

[26] Mr. Kravchov may well be depressed at the prospect of being deported. However that is no reason to let him stay. Depression and anxiety are inevitable aspects of deportation (*Melo v. Canada (Minister of Citizenship and Immigration*, 2000 F.C.J. 403, 188 F.T.R. 39).

[27] As pointed out by the Member, there is uncertainty as to who Mr. Kravchov really is, where he is from, (and indeed when he was born) as he was determined to be a refugee under both names. He remains a protected person notwithstanding that he is inadmissible on grounds of serious criminality. He can only be removed pursuant to section 115 of IRPA if in the Minister's opinion he constitutes a danger to the public in Canada.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2287-07
STYLE OF CAUSE:	PAVEL KRAVCHOV v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 17, 2008
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	January 25, 2008

APPEARANCES:

Ms. Krassina Kostadinov	FOR THE APPLICANT
Mr. Bernard Assan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT