Federal Court  Cour fédérale

Date: 20100401

Docket: IMM-4382-09

Citation: 2010 FC 354

Toronto, Ontario, April 1, 2010

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

ANUAR AHMED MAIO
(aka ANWAR AHMED MAIO)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant Maio is an adult male originally from Somalia who immigrated to Canada when he was about five years of age and left in the custody of an aunt. He gained permanent residence in Canada and remained in Canada subject to the deportation order at issue here. Since living in Canada, the Applicant has left his aunt's residence, his mother and siblings apparently reside in the United Kingdom, his father cannot be located and is said to be in Ethiopia. The Applicant has achieved only Grade 11 education, has no apparent employable skills or training and

has led an itinerant life. The government now wishes to have the Applicant sent back to Somalia under the provisions of section 115(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended (IRPA). A decision in that respect dated July 23, 2009 is the subject of this judicial review application.

[2] For the reason that follow the application is dismissed, no question will be certified, no costs will be awarded.

[3] The Applicant has committed a number of offences in Canada, including armed robbery, and was incarcerated for a period of time. He was released in August 2007 under strict conditions as to parole. He violated these conditions and was placed back in custody once he could be found. He was again released from custody then placed back in custody pending the determination of this application. Given this history I place no weight upon Applicant Counsel's argument that he has not committed any serious offences since his release in August 2007.

[4] The Applicant is to be returned to Somalia. Originally it was to Mogadishu however the Minister has agreed to send the Applicant to the semi-autonomous region of Puntland where, it appears, that the clan to which the Applicant belongs resides. As a result, the Applicant's Counsel no longer pressed arguments as to return to Mogadishu as opposed to Puntland.

[5] Applicant's Counsel raised two main arguments in seeking a favourable judicial review of the decision:

a. Did the Minister's Delegate who made the decision adequately and properly assess the risk faced by the Applicant were he to be returned to Somalia?

b. Were the reasons adequate and, in particular, as to the manner in which humanitarian and compassionate considerations were made?

[6] The nature of an assessment to be made in respect of section 115(2) of IRPA has been the subject of consideration in this Court and the Federal Court of Appeal. Section 115 states:

115. *(1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.* *Exceptions*	***115.*** *(1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.* *Exclusion*
(2) Subsection (1) does not apply in the case of a person *(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or* *(b) who is inadmissible on grounds of security, violating*	*(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire :* *a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;* *b) pour raison de sécurité ou pour atteinte aux droits*

human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.	*humains ou internationaux ou criminalité organisée si, selon le ministre, il ne devrait pas être présent au Canada en raison soit de la nature et de la gravité de ses actes passés, soit du danger qu'il constitue pour la sécurité du Canada.*
Removal of refugee	*Renvoi de réfugié*
(3) A person, after a determination under paragraph 101(1)(e) that the person's claim is ineligible, is to be sent to the country from which the person came to Canada, but may be sent to another country if that country is designated under subsection 102(1) or if the country from which the person came to Canada has rejected their claim for refugee protection.	*(3) Une personne ne peut, après prononcé d'irrecevabilité au titre de l'alinéa 101(1)e), être renvoyée que vers le pays d'où elle est arrivée au Canada sauf si le pays vers lequel elle sera renvoyée a été désigné au titre du paragraphe 102(1) ou que sa demande d'asile a été rejetée dans le pays d'où elle est arrivée au Canada.*

[7] Consideration in respect of section 115(2) was given in *Ragupathy v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151 by the Federal Court of Appeal, per Evans J.A. who wrote at paragraph 18:

> ***18*** *If the delegate is of the opinion that the presence of the protected person does not present a danger to the public, that is the end of the subsection 115(2) inquiry. He or she does not fall within the exception to the prohibition in subsection 115(1) against the refoulement of protected persons and may not be deported. If, on the other hand, the delegate is of the opinion that the person is a danger to the public, the delegate must then assess whether, and to what extent, the person would be at risk of persecution, torture or other inhuman punishment or treatment if he was removed. At this stage, the delegate must determine how much of a danger the person's continuing presence presents, in order to balance the risk and, apparently, other humanitarian and compassionate*

> *circumstances, against the magnitude of the danger to the public if he remains.*

[8] A comprehensive summary was provided by the Federal Court of Appeal, per Trudel J.A., in *Nagalingam v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 153 at paragraph 44:

> ***44*** *By way of summary then, the principles applicable to a delegate's decision under paragraph 115(2)(b) of the Act and the steps leading to that decision are as follows:*
>
> *(1) A protected person or a Convention refugee benefits from the principle of non-refoulement recognized by subsection 115(1) of the Act, unless the exception provided by paragraph 115(2)(b) applies;*
>
> *(2) For paragraph 115(2)(b) to apply, the individual must be inadmissible on grounds of security (section 34 of the Act), violating human or international rights (section 35 of the Act) or organized criminality (section 37 of the Act);*
>
> *(3) If the individual is inadmissible on such grounds, the delegate must determine whether the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada;*
>
> *(4) Once such a determination is made, the delegate must proceed to a section 7 of the Charter analysis. To this end, the Delegate must assess whether the individual, if removed to his country of origin, will personally face a risk to life, security or liberty, on a balance of probabilities. This assessment must be made contemporaneously; the Convention refugee or protected person cannot rely on his or her status to trigger the application of section 7 of the Charter (Suresh, supra at paragraph 127).*
>
> *(5) Continuing his analysis, the Delegate must balance the nature and severity of the acts committed or of the danger to the security of Canada against the degree of risk, as well as against any other humanitarian and compassionate considerations (Suresh, supra at paragraphs 76-79; Ragupathy, supra at paragraph 19).*

[9] Recently Justice Russell of this Court considered the provisions of section 115 in *Jama v. Canada (Minister of Citizenship and Immigration),* 2009 FC 781. At paragraph 85 he stated that the jurisprudence made it clear that the onus is on the Applicant to establish risk and that, in so doing, the Applicant cannot simply rely on his status as a Convention refugee. At paragraphs 88 to 92 Russell J. considered how, in the context of section 115, consideration is to be given to risk and humanitarian and compassionate (H&C) considerations. At paragraph 91 he concluded:

> ***91*** *In other words, the purpose of section 115(2)(a) and the balancing exercise required by the jurisprudence is not to determine whether there are sufficient H&C considerations to exempt the Applicant from a requirement of the Act. The objective is to determine whether the risk that the Applicant poses to the Canadian public outweighs the risks he faces if returned and "other humanitarian and compassionate circumstances." The risk to the Applicant is addressed separately in the weighing process and "other humanitarian and compassionate factors" cannot, in my view, mean anything other than humanitarian and compassionate factors "other" than risk.*

[10] In taking these principles into consideration, I conclude that the Applicant bears the onus in establishing risk to himself or herself, and that humanitarian and compassionate considerations are not a separate ground for determination as to exception from removal but are part of the overall assessment of risk. The decision of the Minister's Delegate in this respect is to be assessed on the basis of reasonableness.

[11] In the present situation I find that the Minister's Delegate's reasons, comprising twenty pages, thoroughly examined all relevant factors, including risk and humanitarian and compassionate

considerations and balanced those factors against the danger that the Applicant poses to society. The consideration given to all relevant factors was appropriate so as to allow the Minister's Delegate to conclude, at page 20 of her reasons:

> *After fully considering all facets of this case, including the humanitarian aspects, and an assessment of the risk Mr. Maio might face if returned to Somalia, and the need to protect Canadian society, I find that Mr. Maio may be deported despite subsection 115(1), since removal to Somalia would not violate his rights under section 7 of the Charter. In other words, upon consideration of all the factors noted above, I am of the opinion that the interests of Canadian society in removing a danger to the public outweigh the potential general country risks that Mr. Maio would face if returned to Somalia.*

[12] On the first of the issues raised by the Applicant's Counsel therefore I find that the Minister's Delegate made an adequate assessment of the relevant factors.

[13] The second issue raised by Applicant's Counsel was the adequacy of the reasons. In that regard Counsel relies on a decision of Pinard J. of this Court in *Dinta v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 184. In that decision however, it was pointed out that there was no separate decision as such, the Minister's Delegate simply adopted a Request for Opinion and a Ministerial Opinion Request. Apparently the Delegate said that humanitarian and compassionate considerations were taken into account when in fact neither the Request nor the Opinion made any reference to them. It was appropriate, therefore, for Pinard J. to find the reasons to be inadequate.

[14] Here we have a twenty page decision with consideration given to a number of matters under separate titles as well as an overview at the beginning and summary at the end.

[15] Undoubtedly there is an obligation to provide reasons. The Federal Court of Appeal in *VIA Rail Canada Inc. v. National Transportation Agency (C.A.),* [2001] 2 F.C. 25, per Sexton J.A. set out those requirements at paragraph 22:

> *22 The obligation to provide adequate reasons is not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion. Rather, the decision maker must set out its findings of fact and the principal evidence upon which those findings were based. The reasons must address the major points in issue. The reasoning process followed by the decision maker must be set out and must reflect consideration of the main relevant factors.*

[16] However this was not an invitation to have Counsel hold up every set of reasons to minute scrutiny in the hopes of finding some slip or omission the result of which, it will be argued, invalidate the result. The Federal Court of Appeal in *Ragupathy v. Canada (Minister of Citizenship and Immigration),* 2000 FCA 151 per Evans J.A. wrote at paragraph 15:

> *15 Although trite, it is also important to emphasize that a reviewing court should be realistic in determining if a tribunal's reasons meet the legal standard of adequacy. Reasons should be read in their entirety, not parsed closely, clause by clause, for possible errors or omissions; they should be read with a view to understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression.*

[17] I reviewed the issue as to adequacy of reasons in *Rachewiski v. Canada (Minister of Citizenship and Immigration)* 2010 FC 244 and concluded at paragraph 24:

> ***24*** *The general principles set out in these decisions are appropriate, however, much depends on knowing what the actual decision that they were dealing with said. The present decision for the first two pages simply sets out information in the context of a form; the next two pages itemize in detail the various factors taken into consideration by the Officer in point form. The last two pages plus a final paragraph set out a narrative of the Applicants'*

> *circumstances and arguments raised together with the conclusions reached by the Officer. I am satisfied that these reasons taken as a whole are sufficiently intelligible and transparent and justified so as to enable the Applicants to understand what was considered by the Officer and the conclusions reached in respect of the relevant issues. One does not expect and the Officer should not be put to a higher standard than that exhibited by these reasons. One should not expect, for instance, a classic response to a law school examination where a candidate is expected to follow a formula such as - on one hand - on the other hand - I have determined ...because ...*

[18] I find that the reasons provided in the present case to be fully adequate. Any reasonable person can read and understand what was considered, the conclusion reached, and why.

[19] As a subset of Applicant's Counsel's argument on this point, it was argued that, notwithstanding that a "previous lawyer" acting for the Applicant had made submissions in respect of humanitarian and compassionate factors that consisted simply of providing a number of the usual country reports and saying only:

> *"Furthermore, the humanitarian and compassionate factors in this case are that the documentary evidence concerning the present situation in Somalia in overwhelmingly clear."*

somehow the Minister's Delegate was obliged to comb through all such documents in the hope of finding some passages that support the Applicant's position. I do not accept this argument. The Applicant has an onus, through his lawyer or otherwise, to do more than simply say here are some documents, find something that supports my case.

[20] In the reasons provided, the Minister's Delegate did endeavor to set out the Applicant's personal circumstances and the situation in Somalia and to strike a balance. It was reasonable for the Minister's Delegate to conclude, given the submissions:

> *Counsel has written that the humanitarian and compassionate factors in this case are that the documentary evidence concerning the present situation in Somalia is overwhelmingly clear and of his young age at the time he entered Canada, which I noted above. After careful consideration of all the information before me, I find there are insufficient factors to warrant allowing Mr. Maio to remain in Canada on humanitarian and compassionate grounds.*

[21] I conclude that no sufficient grounds have been established so as to set aside the decision at issue. No party has requested certification and I find no reason to do so.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT ORDERS AND ADJUDGES that:

1. The application is dismissed;

2. There is no question for certification;

3. There is no order as to costs.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4382-09
STYLE OF CAUSE:	ANUAR AHMED MAIO (aka ANWAR AHMED MAIO) v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION, THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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