Federal Court  Cour fédérale

Date: 20131017

Docket: IMM-10234-12

Citation: 2013 FC 1048

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 17, 2013

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

SAMIR MOULOUD

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision rejecting the pre-removal risk assessment (PRRA) application filed by Samir Mouloud (the applicant) pursuant to section 112 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). Given that the applicant is inadmissible to Canada on grounds of serious criminality, he was not entitled to a full PRRA and

therefore the risk assessment was made solely on the basis of section 97 de la IRPA, in accordance with paragraph 113(*d*) of this same Act.

[2] In 2007, a first PRRA found that the applicant would be at risk if he were sent back to Algeria, his country of origin. Five years later, the Director of Case Determination (the Director) came to the opposite conclusion.

[3] For the reasons that follow, I find that this application should be dismissed.

I. Facts

[4] The applicant was born in Algeria on September 9, 1969. He entered Canada as a stowaway aboard the MV Sersou on July 13, 2000.

[5] On his Personal Information Form (PIF), the applicant indicated that he was self-employed and that he had worked as a mechanic and painter before coming to Canada. He feared extremist youths and claimed to have been threatened and injured by four of these youths on two occasions in 1997; he was allegedly hit in his right thigh by a projectile, and was subsequently stabbed a few months later. The applicant also explained that in his country military service was compulsory once you turned 18, for a period of 24 months. Although he had not fulfilled this obligation, the applicant stated that his situation was in the process of being regularized. In any event, he did not cite any risk related to the fact that he had not completed his military service or that he had deserted.

[6] Following a hearing to determine whether he was a Convention refugee, the Immigration and Refugee Board (IRB) concluded that the applicant was not credible and that his testimony, as well as the evidence adduced, did not support a well-founded fear of persecution in Algeria. The IRB accordingly rejected his refugee protection claim on February 20, 2001.

[7] In 2002, an immigration officer received information to the effect that the applicant had been convicted of murder in Algeria, on or about March 1, 1991, for which he had apparently served a prison sentence. The applicant initially denied this information. Then, in 2003, the Interpol Bureau in Ottawa informed immigration authorities that the applicant had had brushes with the law in Algeria as a result of criminal activities. At page 33 of the document sent by Interpol to Citizenship and Immigration Canada, there is the following description of his criminal history:

> [TRANSLATION]
>
> - Theft and Destruction of another's property on the date of November 13, 1985 and was given a two-year conditional sentence.
>
> - Theft on the date of November 22, 1986 and was given a sixteen-month conditional sentence.
>
> - Also charged with voluntary manslaughter followed by robbery on the date of March 13, 1991.
>
> Algiers did not provide us with further details about the homicide.

[8] Between 2002 and 2007, the applicant was arrested and brought before the courts numerous times. He was found guilty of the following offences:

> [TRANSLATION]
>
> - March 8, 2002: Failure to comply with a condition of an undertaking given to an officer in charge.

- March 11, 2004: Mischief not exceeding $5,000, assaulting a peace officer and theft under $5,000.

- March 30, 2004: Failure to comply with a condition of an undertaking given to an officer in charge.

- May 5, 2004: Failure to comply with a condition of an undertaking given to an officer in charge.

- April 7, 2005: Resisting a peace officer.

- June 10, 2005: Mischief not exceeding $5,000, theft under $5,000 and failure to comply with a probation order.

- December 7, 2007: Failure to comply with a condition of undertaking or recognizance, assault and possession of controlled substances.

- April 8, 2008: Theft under $5,000 and possession of property obtained by crime.

[9] These convictions led to four inadmissibility reports under section 44 of the IRPA on grounds of criminality and serious criminality. No measures were taken, despite these reports; this was because the applicant was still under a conditional removal order that had been issued in 2000 following an inadmissibility report for seeking to enter or remain in Canada without a visa or other document required to establish permanent residence. An application for permanent residence was denied in December 2003, and as was previously mentioned, an officer had granted a first PRRA application in 2007.

[10] It was not until this first PRRA application that the applicant changed his version of the facts. In it he stated that he had served in the navy from 1989 to 1991 and that he was falsely charged with homicide in 1991 and sentenced to 10 years in prison. The applicant claims that it was

a set-up and that he was falsely accused of the crime, tortured and imprisoned because he had deserted the army and did not want to participate in the massacre of civilians under the pretext of fighting Islamists.

[11] In support of his initial PRRA application, the applicant submitted documents from a university hospital centre indicating that he had been admitted to the emergency ward of this establishment after having been stabbed in the stomach on March 6, 1991, and was released on March 12. He also submitted a document stating that he had been in a re-education camp from March 14, 1991, to April 11, 1996, and then from November 3, 1999 to May 6, 2000. He was allegedly released after having been incarcerated for nine years and two months thanks to the intervention of his father, who had managed to bribe certain people. He apparently then fled his country immediately aboard the ship that took him to Canada.

[12] The applicant claims to have fabricated his first story in order to obtain refugee status because he had relied on bad advice and because he thought his true story would not have been believed.

[13] Following his first PRRA, the applicant was the subject of three other inadmissibility reports under section 44 of the IRPA on grounds of criminality and serious criminality (on December 20, 2007, February 12, 2008, and April 11, 2008). Information on the danger the applicant posed to Canada and the positive PRRA decision were sent to the Case Management Division for review and determination under subsection 112(3) of the IRPA. On November 9, 2011, a deportation order was issued against the applicant following an inadmissibility report dated

February 11, 2008, and a decision rejecting his second PRRA application was issued on July 13, 2012. It is this last decision that is the subject of the present application for judicial review.

II. Impugned decision

[14] After having considered subsection 112(1), paragraphs 112(3)(*b*) and 113(*d*)(i) of the IRPA and section 172 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227), as well as the principles set out by the Supreme Court of Canada in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3, the Director concluded, on a balance of probabilities, that the applicant would not be subject to a risk to his life or a risk of cruel and unusual treatment or punishment if he were to return to Algeria. She further stated that she found the applicant to be a present and future danger to the public in Canada.

[15] Relying on the PRRA decision from 2007, the applicant pointed out that the situation had not changed since then and that the risks described in that decision would still be present if he were to be returned to Algeria. In his written submissions dated December 19, 2011, he argued that Algerian authorities often associate nationals deported from third countries with terrorists. This tends to have disastrous consequences for such persons, as they are immediately detained for questioning and placed under arrest as soon as they set foot on Algerian soil.

[16] The Director took note of both versions presented by the applicant, and noted that the documents adduced in support of his allegations did not corroborate the fact that he had been detained for nine years and two months. After reviewing the document stating that he had spent time in a re-education camp and the information transmitted by Interpol, she wrote: [TRANSLATION]

"Without additional information on the subject, I also note that the information does not indicate that Mr. Mouloud is wanted or sought after by the authorities, as would reasonably be believed about someone who had escaped from or left prison illegally" (Tribunal Record, p. 14).

[17] In reviewing the first PRRA decision, the Director found that the evidence failed to show that the applicant was sought after by the Algerian authorities for past crimes or for links to terrorist groups, or that he had been an officer in the Algerian army. On the one hand, he would not be considered a deserter if he was in prison until his departure. On the other hand, the information from Interpol suggests that he was neither an army officer, nor a prisoner when he left for Canada; therefore it is quite possible that he simply completed his military service before later leaving the country legally.

[18] In light of all of the contradictions in the applicant's statements, and notwithstanding the explanations he proffered on this subject, the Director determined that he had not discharged his burden of showing that he would be arrested for desertion by the Algerian authorities. Citing documents explaining that measures exist to regularize the status of certain persons who have not fulfilled their military duty, the Director was of the view that the applicant would not be at risk even if he were to be arrested for desertion by Algerian authorities upon his arrival.

[19] Lastly, the Director wondered whether the fact that the applicant had claimed refugee protection in Canada would make him a person of interest to the Algerian authorities or would lead to a risk of arrest and mistreatment. Relying on an IRB report on the fate of failed refugee claimants who return to Algeria, the Director concluded that such persons are not at risk. The report indicates

that a number of European countries had deported Algerian nationals and that their respective embassies did not receive information about those persons being subsequently mistreated.

[20] While persons who have past ties with Islamist movements may be persecuted upon their return, the most recent evidence shows that it is highly unlikely that a failed refugee claimant deported to Algeria would be targeted unless there were reasons to believe he or she had participated in illegal or terrorist activities. Given that the applicant had not been arrested on such suspicions in the past, and that he himself had been victimized by extremist youths, the Director failed to see how the fact of his having lived in Canada for 12 years would make him a suspected terrorist. Moreover, she added that it was reasonable to believe that Interpol would have information to that effect if the applicant was wanted by Algerian authorities or if he was suspected of being a terrorist and that such information would have triggered an investigation by Canadian authorities.

[21] Despite the first PRRA officer's conclusion and observations by the applicant and his counsel, the Director came to the conclusion that the applicant had not discharged his burden of showing that he would be personally targeted should he return to Algeria, or that a person in his situation would automatically be suspected of terrorist activities. In spite of the opposite finding by the PRRA officer in 2007 and the applicant's observations, the Director was of the view that the problems in Algeria are generalized and that the applicant would not be subject to a danger of torture or a risk to his life or a risk of cruel and unusual treatment or punishment if he were to return to Algeria.

[22] Although it was not determinative of his removal, the Director ultimately proceed with an analysis of the danger posed by the applicant to the public, explaining that it was for the purpose of obtaining background information on the applicant's situation in Canada. She noted that the record provided few details about the applicant's prior convictions, but that it nonetheless showed that the applicant's brushes with the law started when he was 16 years old. However, the applicant was 42 years old at the time she drafted her reasons, and he had accumulated a very lengthy criminal record since his arrival in Canada, including convictions for assault and assault with a weapon, as well as arrests for violent episodes. All of these offences convinced the Director that the applicant constituted a present and future danger to Canadian society and presented an unacceptable risk to the public. She did not consider him to be rehabilitated by the mere fact that he had not committed any criminal acts since 2008, and given that he has not accepted responsibility for his actions, she concluded that [TRANSLATION] "if he were to find himself in a situation of conflict with his spouse once again, his past does not indicate that he would deal with his problems other than by consuming drugs and committing criminal acts" (Tribunal Record, p. 22).

III. Issues

[23] The sole issue arising from this application is whether the Director's decision is reasonable.

IV. Analysis

[24] It is agreed that the appropriate standard of review for issues relating to findings of fact, law or mixed fact and law is reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 (*Dunsmuir*). Accordingly, the Court must determine whether the Director's decision falls within

"a range of possible, acceptable outcomes which are defensible in respect of the facts and law" and whether the reasons are transparent and intelligible (*Dunsmuir*, above, at para 47).

[25] The applicant essentially argues that the Director conducted a fragmentary assessment of the evidence on the risk he would be subject to, rather than proceeding with an overall analysis based on all of the applicant's circumstances and all of the objective evidence. He further contends that the Director erred by imposing too heavy a burden on him with respect to demonstrating the risk he would face if he were to return to Algeria.

[26] Dealing first with the burden of proof, the applicant cites two passages from the decision that purportedly show that the Director erred by requiring proof of the systematic persecution of failed refugee claimants:

> [TRANSLATION]
>
> The objective evidence does in fact indicate that failed refugee claimants may be subject to questioning upon their arrival in Algeria if they are suspected of having links to terrorist groups, however, it does not say that <u>all</u> failed refugee claimants are automatically suspected of terrorist activities. (Tribunal Record, p. 19)
>
> [Emphasis added in original.]
>
> …
> Lastly, I am of the view that Mr. Mouloud has not discharged his burden of showing that he would be personally targeted should he return to Algeria, and the documentary evidence does not indicate that persons in the same situation as Mr. Mouloud are <u>automatically</u> suspected of terrorist activities. (Tribunal Record, p. 20)
>
> [Emphasis added]

[27] Contrary to what the applicant maintains, I do not believe that it can be inferred from these two excerpts that the Director imposed a burden of proof beyond that of the balance of probabilities. Rather, it seems to me that the Director was simply responding to the applicant's argument that he would necessarily be considered to be a terrorist due to his long absence and failed refugee claim. A careful reading of the entire paragraph from which the two passages above are cited reveals that the Director, after weighing all of the evidence, had no grounds to believe that he would be suspected of international terrorism or of having links to terrorist groups. In so doing, she was dismissing the applicant's contention rather than stating that his argument could not succeed without proof beyond all doubt that he would be at risk.

[28] As to the contention that the Director conducted a partial rather than overall assessment of the risk to which the applicant would be exposed, it too cannot succeed. Contrary to what the applicant maintains, the Director did consider the fact the applicant has a criminal record in Canada, that he had brushes with the law in Algeria, that he lived in Canada for twelve years, that he would be travelling with a document that was not a passport and that his refugee protection claim had been denied. She nonetheless found that these factors, whether considered in isolation or as a whole, were not the sort that would give rise to the applicant being suspected of terrorism. Recent objective evidence from the Home Office in the United Kingdom and cited by the Director (Tribunal Record, p. 19) shows in fact that a person having left Algeria and claimed refugee protection or obtained citizenship in another country would probably not be worried upon their return unless the authorities had grounds to believe they had links to terrorist groups. The applicant adduced no recent evidence that someone with his profile would be at risk, and I am of the opinion that in these circumstances

the Director could reasonably conclude that the applicant would not be subject to a danger of torture or a risk to his life, or to a risk of cruel and unusual treatment or punishment.

[29] For all of the reasons, the application for judicial review must be dismissed. No question is certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question is certified.

"Yves de Montigny"
Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10234-12
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