Federal Court  Cour fédérale

Date: 20150702

Docket: IMM-205-15

Citation: 2015 FC 816

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 2, 2015

Present: The Honourable Mr. Justice Noël

BETWEEN:

JOVAN KOJIC

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGEMENT AND REASONS

I. Introduction

[1] This is an application by Jovan Kojic [applicant] pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of a decision issued on December 17, 2014, by a Citizen and Immigration Canada visa officer [officer],

rejecting the applicant's application for a temporary resident visa on the basis that he was inadmissible under paragraph 35(1)(*b*) of the LIPR.

II. Facts alleged

[2] The applicant is a 66-year-old Serbian citizen.

[3] From 1971 to 2010, the applicant held various administrative officer positions at Serbia's department of foreign affairs, among others, with a secondment at the office of the president of Serbia between 1998 and 2004.

[4] On May 21, 2014, the applicant submitted an application for a Canadian temporary resident visa [visa application] to the Canadian Embassy in Vienna [Embassy].

[5] On June 10, 2014, he received an email from the Embassy asking him to send a supplementary document, i.e., a complete summary of employment since 1990 including all the names of the departments and offices where he had worked. On June 11, 2014, the applicant sent the document requested by return email.

[6] On August 6, 2014, a visa officer refused his visa application on the basis that he was inadmissible under paragraph 35(1)(*b*) of the IRPA.

[7] On November 18, 2014, the respondent advised the applicant that he would re-examine his visa application.

[8] On December 16, 2014, the applicant attended at the Embassy for an interview with the officer in charge of his file. At the end of the interview, the officer refused the visa application. The written decision was issued on December 17, 2014. This is the impugned decision.

III. Impugned decision

[9] The officer determined that the applicant did not meet the criteria for a temporary resident visa. The officer was of the opinion that the duties and tasks performed by the applicant as he described them in his testimony before the International Criminal Tribunal for the former Yugoslavia [ICTY], his proximity to the President of Serbia [President], his decision-making power, i.e. what information would be given to the President, and the fact that he reported directly to the President on a few occasions indicate that there are grounds to believe that he is inadmissible under paragraph 35(1)(*b*) of the IRPA.

IV. Submissions of the parties

[10] First, the applicant alleges that he does not have the required training to be a prescribed senior official within the meaning of section 16 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. The respondent replies that the applicant's training is irrelevant to determining whether he is inadmissible; only his role with the government of the day is to be taken into account.

[11] The applicant also argues that the officer did not specify the position he held in his letter refusing the visa application, which is contrary to the operational manual on enforcement,

ENF-18 – War Crimes and Crimes Against Humanity [operational manual]. The respondent replies that the officer was not required to give a detailed decision after reviewing the applicant's visa application.

[12] The applicant is also of the opinion that the officer erred by stating that he was able, as an administrative officer, to exert significant influence on the exercise of power by his government or to benefit from his position. The respondent states that the officer assessed all the evidence in the file such as the report by the Canada Border Services Agency [CBSA] and the applicant's testimony before the ICTY in addition to inviting him for an interview in order to issue his decision.

[13] Last, the applicant states that the officer erred by finding that his employer, the office of the president of Serbia, was a government that engages or has engaged in terrorism, systematic or gross human rights violations, or a genocide, a crime against humanity or a war crime within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24. The respondent, for his part, argues that the officer's decision was reasonable because the government of Serbia is a designated regime under paragraph 35(1)(*b*) of the IRPA and he held a position that enabled him to exert significant influence on the exercise of power in Serbia.

V. Issue

[14] After reviewing the submissions of the parties and their respective records, I would state the issue as follows:

1. Did the officer err by finding that the applicant was inadmissible under paragraph 35(1)(*b*) of the IRPA and section 16 of the Regulations?

VI. Standard of review

[15] The issue raised in this case is a question of mixed fact and law. Therefore, the reasonableness standard applies (*Habeeb v Canada (Minister of Citizenship and Immigration)*, 2011 FC 253 at para 4, citing *Ndibwami v Canada (Minister of Citizenship and Immigration)*, 2009 FC 924; *Hamidi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 333; *Yahie v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1319). This Court will therefore intervene only if the decision is unreasonable, that is, if it falls outside of "a range of possible acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

VII. Analysis

[16] A foreign national who wishes to come to Canada must request the necessary documents prior to his or her arrival under section 11 of the IRPA. An immigration officer then reviews the visa application and may issue the visa if the officer concludes that the applicant meets the conditions of the IRPA and is not inadmissible.

[17] Paragraph 35(1)(*b*) of the IRPA is the inadmissibility section that is relevant to this case. This paragraph stipulates that "[a] permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for . . . being a prescribed senior official in the

service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*". Section 16 of the Regulations explains that "[f]or the purposes of paragraph 35(1)(*b*) of the Act, a prescribed senior official in the service of a government is a person who, by virtue of the position they hold or held, is or was able to exert significant influence on the exercise of government power or is or was able to benefit from their position". Section 16 enumerates a non-exhaustive list of positions that meet the definition of a senior official. Section 33 of the IRPA sets out the applicable evidentiary standard, i.e. that the facts, acts or omissions mentioned at section 35 of the IRPA are assessed on the basis of reasonable grounds to believe that they have occurred, are occurring or may occur (*Gebremedhin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 380 at para 33, citing *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100 at paras 114 and 115).

[18] The operational manual explains that for a person who holds a position not described in section 16 of the Regulations, the analysis under paragraph 35(1)(*b*) of the IRPA involves two pieces of evidence: (1) a designated regime and (2) establishing that the applicant, even if he did not hold a senior position, was able to exercise significant influence on the regime's actions or policies or was able to benefit from the position.

[19] In this case, the parties do not agree on the Minister's designation of the government or on the role the applicant played in the office of the president of Serbia. The applicant believes, first, that the officer erred by determining that the office of the president of Serbia was a

designated government because President Milan Milutinović [President] was acquitted by the ICTY. The President had been accused of crimes associated with the Yugoslavian army during the period 1997-2002, a period during which he was an administrative officer working for the President. Second, he maintains that, as an administrative officer, he did not exert significant influence on the exercise of power by the government and did not benefit from the position. The respondent states that the office of the president of Serbia was part of the government of the Republic of Serbia as a government designated by the Minister and that the applicant held a senior position.

[20] With respect to the Minister's designation of the government, on June 30, 1999, the governments of the Federal Republic of Yugoslavia and the Republic of Serbia (Milosevic) were designated for the period from February 28, 1998, to October 7, 2000. The office of the president of Serbia is an integral part of the designated regime of the Republic of Serbia. The applicant worked at the office of the president of Serbia from 1998 to 2004. He explained that, during his period of employment at the office of the president of Serbia, Milan Milutinović held the position of President of Serbia, i.e. between December 1997 and December 2002 (Applicant's Record [AR] at page 44 at para 19). Accordingly, contrary to the applicant's argument, President Milutinović's acquittal by the ICTY is not relevant for the purposes of determining whether the government of Serbia was a designated government under paragraph 35(1)(*b*) of the IRPA. The position of president is an essential component of the government of Serbia. As such, the office of the president is part of the government of Serbia. Moreover, I note that the applicant did not provide any authority to support his argument. The Minister designated the governments of the Federal Republic of Yugoslavia and the Republic of Serbia (Milosevic) during the same

period in which the applicant worked at the office of the president of Serbia. The first criterion is therefore satisfied. Accordingly, what remains to be determined is whether the position held by the applicant, i.e. administrative officer, met the criteria of section 16 of the Regulations.

[21] Section 16 of the Regulations sets out a list of positions that meet the definition of a prescribed senior official in the service of a government. The applicant's position during his secondment to the office of the president of Serbia, i.e. [TRANSLATION] "an administrative officer" does not fall directly within the positions enumerated in section 16 of the Regulations. That being said, the fact that the applicant held an administrative position does not exclude the possibility that he held a senior position (*Ismail v Canada (Minister of Citizenship and Immigration)*, 2006 FC 987 at para 18). In fact, both the CBSA's report and the notes of the officer's interview with the applicant show that they were of the opinion that the applicant's position at the office of the president of Serbia was similar to that of a principal advisor to a head of state, a position listed in section 16 of the Regulations. In order to analyze the officer's decision, I will conduct a pragmatic analysis of the case by assessing whether the officer reasonably found that the applicant exerted significant influence on the regime's actions and policies or benefited from the position and by contextually assessing his role at the office of the president of Serbia for the period in question.

[22] This is what emerges from the applicant's affidavit that was provided for his testimony before the ICTY concerning his duties at the office of the president of Serbia:

1. He was aware of everyone who telephoned the President (certified copy of the Tribunal Record [CCT], applicant's affidavit for his testimony before the ICTY, page 48 at

para 13) as well as all documents sent to the office of the president of Serbia (*Ibid*, at para 14). He kept a file that included all the President's meetings and when they were held. The applicant also had a similar file for the President's telephone calls (*Ibid*, page 50 at para 21);

2. He received and followed the instructions that the President gave him (*Ibid*, page 49 at para 20);

3. He received daily information bulletins on the events and crimes that had occurred on the preceding day (*Ibid*, page 50 at para 25). He sorted the correspondance for the President and prepared daily summaries of the news for the President. These news summaries contained only what the applicant considered relevant and were prepared for the purpose of briefing the President (*Ibid*, page 51 at para 26). The applicant was also responsible for sorting the correspondance addressed to the President and giving him what he considered appropriate. To make these decisions, he relied on his knowledge and experience (*Ibid*, page 51 at para 27);

4. The applicant prepared all the President's meetings (*Ibid*, page 52 at para 31);

5. The applicant was also involved in preparing a political agreement (*Ibid*, at paras 34 to 36).

[23] I also read his testimony before the ICTY, which confirmed the tasks performed but also showed the importance of the role the applicant played in working for the President.

[24] I also add to this list of duties the fact that the applicant directly informed the President about important events and helped the President manage the situation (CCT, Transcript of the applicant's testimony before the ICTY, pages 174-175).

[25] Therefore, the evidence in the record shows that the applicant was more than a mere administrative officer. The duties he carried out and that were assigned to him showed that he had significant responsibilities. He seems to have had the President's trust and to have maintained that trust throughout his career at the office of the president of Serbia. The applicant's proximity to the President, the access he had to the President, the control he had over the communications and news forwarded to the President, the organization and preparation of the President's meetings and the duties that the President directly assigned to him demonstrate that he was able to influence the President of Serbia for the relevant period. I am therefore of the opinion that the conclusion of the CBSA and officer's report is reasonable, i.e. that the duties and tasks the applicant carried out put him in a position similar to a senior advisor to a head of state, a position listed in section 16 of the Regulations. As a result, the officer's decision is reasonable.

[26] I also note that the applicant said he had never been promoted throughout his career. Although he perhaps did not receive a promotion with respect to the title of his position, stating that he had always kept the title of administrative officer, a review of his summary of positions submitted to the officer shows that he seems to have received some promotions in terms of career progression. He worked for the Yugoslavian Mission to the United Nations in New York, the Embassy of Yugoslavia in Egypt, the Federal Republic of Yugoslavia's Mission at the United Nations Office in Geneva, Switzerland, and was then chosen by the President to work at the

office of the President of Serbia. The various positions he held around the world indicate that he played a more important role than a mere administrative officer.

[27] That being said, I will nonetheless address the applicant's arguments. The applicant also argues that he does not have the requisite training to hold a senior position within the meaning of section 16 of the Regulations. Nowhere in the Act, the Regulations or the operational manual is it stated that an individual's training must be taken into account in analyzing whether a person is inadmissible under paragraph 35(1)(*b*) of the IRPA. Furthermore, the applicant did not submit any authority to support this argument.

[28] The applicant is also of the opinion that the officer erred in the refusal letter issued on December 17, 2014, because it does not specify the position that the appellant held that resulted in him being declared inadmissible. He states that this is contrary to the operational manual. This argument is erroneous. The letter in question must be taken into consideration with the process the officer followed. In this case, at the applicant's interview on December 16, 2014, the officer explained his decision orally and allowed him to comment on it. The letter dated December 17, 2014, only confirmed the decision given orally the previous day. The applicant therefore cannot state that he was unaware of the officer's reasons, in particular the substance of the position he held.

VIII. Conclusion

[29] The officer reasonably concluded that the applicant was inadmissible under paragraph 35(1)(*b*) of the IRPA. The applicant worked for a designated government, and the

officer adequately took into account all the evidence in the file in assessing whether the applicant's role in the office of the president of Serbia had significantly influenced the regime's actions and policies or whether he had benefited from his position. This Court's intervention is not warranted.

[30] The parties were invited to submit questions for certification, but none was proposed.

JUDGMENT

THE COURT'S JUDGMENT IS THAT

1. This application for judicial review is dismissed.

2. No question is certified.

"Simon Noël"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-205-15
STYLE OF CAUSE:	JOVAN KOJIC v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 22, 2015
JUDGMENT AND REASONS:	NOËL J.
DATED:	JULY 2, 2015

APPEARANCES:

Cristina Marinelli	FOR THE APPLICANT
Jocelyne Murphy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cristina Marinelli Nexus Services juridiques Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT